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SUBJECT – INDEX

धाराएं 11, 47 एवं 48 – *पूर्व–न्याय* – निष्पादन कार्यवाही – अभिनिर्धारित, प्रथम निष्पादन याचिका का गुण–दोष के आधार पर न्यायनिर्णयन नहीं किया गया था और उसमें उठाए गए किसी बिन्दु या आपत्ति पर न्यायालय द्वारा निर्णय नहीं लिया गया था, इसलिए द्वितीय निष्पादन याचिका *पूर्व न्याय* के सिद्धांत से बाधित नहीं होगी।

***104 (ii) 237**

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Order 7 Rule 11 – Bar on suit – Suit property was purchased by the husband in the name of his wife after paying sale consideration from his known sources – Such transaction does not come within the purview of '*benami* transaction' u/s 2(9) of the Act.

आदेश 7 नियम 11 – वाद वर्जन – पति द्वारा अपनी पत्नि के नाम पर अपने ज्ञात स्त्रोतों से विक्रय प्रतिफल का भुगतान कर वादग्रस्त संपत्ति क्रय की गई थी – ऐसा संव्यवहार अधिनियम की धारा 2(9) के अंतर्गत 'बेनामी संव्यवहार' की परिधि में नहीं आता।

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Order 7 Rule 11 – Suit for declaration of title and injunction – When jurisdiction of Civil Court is expressly barred then Civil Court cannot examine question of applicability of Act of 1976 to suit land.

आदेश 7 नियम 11 – स्वत्व घोषणा और निषेधाज्ञा का वाद – जब सिविल न्यायालय का क्षेत्राधिकार प्रत्यक्ष रूप से वर्जित है तब सिविल न्यायालय वाद भूमि के संबंध में अधिनियम, 1976 के प्रयोज्यता के प्रश्न का परीक्षण नहीं कर सकता। **107 246**

Order 21 Rule 16 – (i) Execution of decree by transferee – Scope – Where a decree is transferred by assignment, the transferee may apply for execution under Order 21 Rule 16 CPC.

(ii) Notice to judgment-debtor – No general mandate in Order 21 CPC requiring notice to judgment-debtor in cases of execution by the original decree holder.

आदेश 21 नियम 16 – (i) अंतरिती द्वारा डिक्री का निष्पादन – विस्तार – जहां डिक्री का समनुदेशन द्वारा अंतरण हुआ है, वहां अंतरिती आदेश 21 नियम 16 सीपीसी के अंतर्गत निष्पादन के लिए आवेदन कर सकता है।

(ii) निर्णीतऋणी को सूचना–पत्र – आदेश 21 सीपीसी में मूल डिक्री धारक द्वारा निष्पादन कराए जाने के मामलों में निर्णीतऋणी को सूचना–पत्र देने की आवश्यकता के लिए कोई सामान्य अनुदेश नहीं है। **108 249**

Order 21 Rules 97 and 99 – (i) Execution proceeding – "Any person" not a party to the suit can seek re-delivery, after he has been dispossessed – A term stranger transferee would cover within its ambit a *pendent lit*e transferee, who has not been impleaded as a party to the suit.

(ii) Suit property transferred during pendency of suit – It was incumbent on the decree-holder to have impleaded the transferee by filing application under Order 21 Rule 97, CPC.

आदेश 21 नियम 97 एवं 99 – (i) निष्पादन कार्यवाही – "कोई व्यक्ति" जो वाद का पक्षकार नहीं है उसे आधिपत्यच्युत बेकब्जा किए जाने के पश्चात् उसकी पुर्नप्राप्ति की मांग कर सकता है – "अपरिचित" शब्द की परिधि में ऐसा वादकालीन अंतरिती भी सम्मिलित होगा जिसे वाद में पक्षकार के रूप में संयोजित नहीं किया गया है।

(ii) वादग्रस्त सम्पत्ति वाद के लंबन के दौरान अन्तरित की गई – डिक्रीधारी के लिए यह आवश्यक था कि वह आदेश 21 नियम 97 सी.पी.सी. का आवेदन प्रस्तुत कर ऐसे अन्तरिती को पक्षकार बनाता। **109 250**

Order 22 Rule 3, 4, 9 and 10A – (i) Substitution of legal representatives upon death of a party – The broader aim is to adjudicate cases on substantive arguments, courts prefer not to punish litigants for minor technical errors – This principle often leads to a liberal approach when interpreting procedural rules.

(ii) Death of party – Appropriate sequence in which remedies are available to have an order for setting aside abatement of suit/ appeal explained.

(iii) Duty of the pleader – Rule 10-A was added to the CPC in 1976 to lessen the hardship for opposing parties who were unaware of another party's death, especially during appeals.

आदेश 22 नियम 3, 4, 9 एवं 10क – (i) किसी पक्षकार की मृत्यु होने पर विधिक प्रतिनिधियों का प्रतिस्थापन – व्यापक उद्देश्य सारवान तर्कों के आधार पर मामलों का न्यायनिर्णयन करना है, न्यायालय तुच्छ तकनीकी त्रुटियों के लिए पक्षकारों को दंडित करने को वरीयता नहीं देता है – यह सिद्धांत प्रक्रियात्मक नियमों की व्याख्या करते समय बहुधा एक उदार दृष्टिकोण की ओर ले जाता है।

(ii) पक्षकार की मृत्यु – वाद/अपील में उपशमन को अपास्त करने के लिए उपलब्ध उपचारों का उचित क्रम समझाया गया।

(iii) अधिवक्ता का कर्तव्य – नियम 10–क को 1976 में सी.पी.सी. में उन विरोधी पक्षकारों की कठिनाई को कम करने के लिए जोड़ा गया था जो किसी अन्य पक्षकार की मृत्यु से अनभिज्ञ हैं, विशेषतः से अपील के दौरान। **110** **253**

COMMERCIAL COURTS ACT, 2015

वाणिज्यिक न्यायालय अधिनियम, 2015

Section 15(2) – Commercial Suit – Jurisdiction – Specified value limit of 3 lakh will be applicable prospectively and not retrospectively.

धारा 15(2) – वाणिज्यिक वाद – क्षेत्राधिकार – तीन लाख रूपये के विनिर्दिष्ट मूल्य की सीमा भविष्यलक्षी प्रभाव से लागू होगी न कि भूतलक्षी प्रभाव से। ***111** **255**

COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS (AMENDMENT) ACT, 2018

वाणिज्यिक न्यायालय, उच्च न्यायालयों का वाणिज्यिक प्रभाग और वाणिज्यिक अपीलीय प्रभाग (संशोधन) अधिनियम, 2018

Section 19 – See section 15(2) of the Commercial Courts Act, 2015.

धारा 19 – देखें वाणिज्यिक न्यायालय अधिनियम, 2015 की धारा 15(2)।

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CONSTITUTION OF INDIA

भारत का संविधान

Articles 21 and 39-A – Constitutional/Fundamental rights – Right to get legal aid – Failure to provide legal aid to accused.

अनुच्छेद 21 एवं 39–क – संवैधानिक/मौलिक अधिकार – विधिक सहायता पाने का अधिकार – अभियुक्त को विधिक सहायता प्रदान करने में विफलता।

118 (iv) **271**

COURT FEES ACT, 1870

न्यायालय शुल्क अधिनियम, 1870

Section 7(v)(a) – Suit for declaration and possession – Plaintiff was not a signatory or party to the sale deed and mortgage deed – Held, Plaintiff is not required to pay *Ad valorem* court fees.

Section 227 – Discharge – There was no intention and knowledge on the part of the accused persons to cause death or to cause such bodily injury as was likely to cause death.

Discharge – Scope – At the stage of charge, court is not required to undertake a threadbare analysis of material gathered.

धारा 227 – उन्मोचन – अभियुक्त व्यक्तियों का मृत्यु या ऐसी शारीरिक उपहति कारित करने का कोई आशय और ज्ञान नहीं था जिससे मृत्यु होने की संभावना हो।

उन्मोचन – विस्तार – आरोप के स्तर पर, न्यायालय को एकत्र की गई सामग्री का व्यापक विश्लेषण करने की आवश्यकता नहीं है। **117** **269**

Sections 303, 304 and 313 – Examination of accused – Effect of not putting incriminatory material to accused in language known to him.

Examination of accused – Unless all material circumstances are put to the accused, he cannot decide whether he wants to lead any defence evidence.

Examination of accused – It is the duty of Public Prosecutor to ensure that there are no infirmities in the conduct of the trial which will cause prejudice to the accused.

धाराएं 303, 304 एवं 313 – अभियुक्त परीक्षण – अभियुक्त के समक्ष उसकी भाषा में अभियोगात्मक सामग्री न रखे जाने का प्रभाव।

अभियुक्त परीक्षण – जब तक अभियुक्त के समक्ष सभी तात्विक परिस्थितियां नहीं रख दी जाती हैं तब तक वह यह निर्णय नहीं ले सकता कि वह कोई बचाव साक्ष्य प्रस्तुत करना चाहता है या नहीं।

अभियुक्त परीक्षण – यह सुनिश्चित करना लोक अभियोजक का कर्तव्य है कि मामले के संचालन में कोई भी कमी न हो जिससे अभियुक्त के प्रति पूर्वाग्रह पैदा हो।

118(i), (ii) & (iii) **271**

Section 437 (3) – Grant of bail – Conditions to be imposed while granting bail – Scope.

धारा 437(3) – जमानत प्रदान किया जाना – जमानत प्रदान करते समय अधिरोपित की जाने वाली शर्तें – विस्तार। **119** **279**

Sections 437(6) and 439 – (i) Grant of bail – Where there is absence of positive factors going against the accused, showing possibility of prejudice to prosecution or accused not being responsible for delay in trial, an application u/s 437(6) CrPC must be dealt with liberal hands to protect individual liberty.

(ii) Bail – Magistrate triable offences – Factors which are relevant for consideration of application under section 437(6) CrPC, explained.

धाराएं 437(6) एवं 439 – (i) जमानत प्रदान किया जाना – जहाँ अभियुक्त के विरूद्ध सकारात्मक कारकों की अनुपस्थिति है, जो अभियोजन के प्रति पूर्वाग्रह की संभावना दर्शाता है या अभियुक्त विचारण में विलम्ब के लिए जिम्मेदार नहीं है, वहाँ धारा 437 (6) सी.आर. पी.सी. के अंतर्गत आवेदन को व्यक्तिगत स्वतंत्रता की रक्षा के लिए उदारता पूर्वक विचार में लिया जाना चाहिए।

(ii) जमानत – मजिस्ट्रेट द्वारा विचारणीय अपराध – दंड प्रक्रिया संहिता की धारा 437 (6) के अंतर्गत प्रस्तुत आवेदन पर विचार करने के लिए सुसंगत कारक, समझाये गये। **120 280**

Section 439 – (i) Grant of bail – A superficial application of bail parameters not only undermines the gravity of the offence but also risks weakening public faith in judiciary.

(ii) Cancellation of bail – Justification.

धारा 439 – (i) जमानत प्रदान करना – जमानत मापदंडों का सतही अनुप्रयोग न केवल अपराध की गंभीरता को कम करता है, बल्कि न्यायपालिका में जनता के विश्वास को भी कमजोर करने का खतरा उत्पन्न करता है।

(ii) जमानत निरस्त किया जाना – औचित्य। **121 283**

DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946
दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946

Section 6 – See sections 120B, 406 and 420 of the Indian Penal Code, 1860

धारा 6 – देखें भारतीय दण्ड संहिता, 1860 की धाराएं 120ख, 406 एवं 420। **127 300**

EVIDENCE ACT, 1872
साक्ष्य अधिनियम, 1872

Section 3 – See sections 323 and 376 of the Indian Penal Code, 1860.

धारा 3 – भारतीय दण्ड संहिता, 1860 की धाराएं 376 एवं 323। **134 324**

Sections 3, 8 r/w/s 27 and 45 – (ii) Circumstantial Evidence – Five golden principles which needs to be kept in mind, reiterated.

(iii) Crime against woman and children – Circumstantial evidence.

(iv) Circumstantial evidence – Relevancy of conduct.

(v) Failure to conduct DNA test – Where various links in the chain of circumstances form a complete chain pointing the guilt of accused alone in exclusion of all hypothesis of innocence in his favour – In such cases failure to conduct DNA test would not be fatal to prosecution case.

धाराएं 3, 8 सहपठित धारा 27 एवं 45 – (ii) परिस्थितिजन्य साक्ष्य – पांच स्वर्णिम सिद्धांत जिन्हें ध्यान में रखने की आवश्यकता है, दोहराए गए।

(iii) महिलाओं और बच्चों के विरूद्ध अपराध – परिस्थितिजन्य साक्ष्य।

(iv) परिस्थितिजन्य साक्ष्य – आचरण की सुसंगतता।

(v) डीएनए परीक्षण कराए जाने में विफलता – जहां परिस्थितियों की श्रृंखला में विभिन्न कड़ियां एक पूरी श्रृंखला बनाती हैं जो अभियुक्त के पक्ष में निर्दोषता की सभी परिकल्पनाओं को छोड़कर मात्र अभियुक्त के दोषी होने की ओर इशारा करती है – ऐसे मामलों में डीएनए परीक्षण न करा पाना भी अभियोजन मामले के लिए घातक नहीं होगा।

145 (ii), (iii), (iv) & (v) 346

Section 9 – Test identification proceedings – Appreciation of evidence – Test identification parade is merely corroborative evidence, not a substantive piece of evidence.

धारा 9 – परीक्षण पहचान कार्यवाही – साक्ष्य का मूल्यांकन – परीक्षण पहचान परेड केवल पुष्टिकारक साक्ष्य है, तात्विक साक्ष्य नहीं। **136 (ii) 328**

Sections 25 and 106 – Extra-judicial confession – Extra-judicial confession by its very nature is a weak type of evidence and requires appreciation with great deal of care and caution.

Recovery of weapon – Investigating officer merely deposed that he drew *panchnama* and identified his signature and that of the panch witnesses.

Charge of murder of wife – In order to invoke section 106 of Evidence Act the prosecution must establish foundational facts – If prosecution fails to prove foundational facts, mere absence of explanation of accused would not benefit the prosecution.

धाराएं 25 और 106 – न्यायिकेत्तर संस्वीकृति – न्यायिकेत्तर संस्वीकृति स्वभावतः निर्बल प्रकृति की साक्ष्य मानी जाती है, इसलिए इसका अत्यंत सतर्कता और ध्यान पूर्वक विश्लेषण किया जाना चाहिए।

आयुध की बरामदगी – अन्वेषण अधिकारी ने मात्र यह अभिकथित किया कि उसने *पंचनामा* तैयार किया था और अपने तथा पंचगवाहों के हस्ताक्षरों की पहचान की।

पत्नी की हत्या का आरोप – साक्ष्य अधिनियम की धारा 106 प्रभावी करने हेतु अभियोजन को मूलभूत तथ्यों को सिद्ध करना आवश्यक है – यदि अभियोजन मूलभूत तथ्यों को सिद्ध करने में विफल रहता है, तो केवल अभियुक्त द्वारा स्पष्टीकरण न देने से अभियोजन को लाभ नहीं मिलेगा। **130 (i), (ii) & (iii) 309**

Section 27 – Discovery of fact – Information received from accused – How to be proved?

धाराएं 304क एवं 304 भाग II – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 227।

117 **269**

Sections 304-B, 306 and 498-A – (i) Offence of dowry death – Prerequisites to raise presumption u/s 113B of the Evidence Act having not been fulfilled, conviction of the appellant/husband for the offence u/s 304B cannot be justified.

(ii) Conviction u/s 304B, 306 and 498A of IPC – Prosecution has failed to place any credible evidence in respect of involvement of Sister-in-law of deceased.

धाराएं 304–ख, 306 एवं 498–क – (i) दहेज हत्या का अपराध – साक्ष्य अधिनियम की धारा 113–ख के अंतर्गत उपधारणा करने के लिए आवश्यक पूर्व शर्तें पूरी नहीं होने के कारण धारा 304–ख के अपराध के लिए अपीलार्थी/पति की दोषसिद्धि को उचित नहीं ठहराया जा सकता।

(ii) भारतीय दण्ड संहिता की धारा 304–ख, 306 और 498–क के अंतर्गत की गई दोषसिद्धि – अभियोजन मृतिका की भाभी की संलिप्तता के संबंध में कोई विश्वसनीय साक्ष्य प्रस्तुत करने में विफल रहा है । **133** **321**

Sections 304B and 498A – See section 439 of the Criminal Procedure Code, 1973.

धाराएं 304ख एवं 498क – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 439।

121 **263**

Sections 323 and 376 – Offence of rape – Appreciation of evidence.

धाराएं 323 एवं 376 – बलात्कार का अपराध – साक्ष्य का मूल्यांकन।

134 **324**

Section 376 – Rape – Distinction between rape on the grounds of false promise to marry and consensual relationship, explained.

धारा 376 – बलात्संग – विवाह का झूठा वादा कर बलात्संग करना और आपसी सहमति पर आधारित संबंधों के बीच का, अंतर स्पष्ट किया गया। **135** **326**

Sections 395 and 397 – Dacoity – There were major discrepancies between the seizure memo and the seized item.

धाराएं 395 एवं 397 – डकैती – जब्ती पत्रक एवं जब्त की गई सामग्री के मध्य गंभीर विसंगतियां थीं। **136 (i)** **328**

Sections 420, 201 and 120B – See sections 437(6) and 439 of the Criminal Procedure Code, 1973.

धाराएं 420, 201 एवं 120ख – देखें दण्ड प्रक्रिया संहिता, 1973 की धाराएं 437(6) एवं 439। **120** **280**

LAND REVENUE CODE, 1959 (M.P.)

भू–राजस्व संहिता, 1959 (म.प्र.)

Sections 57 and 158 – (i) Bhumiswami rights – Priest is only a manager of the temple property and not the owner or Kashtkar Morushi – Proprietary rights over temple land claimed by a priest amount to mismanagement.

(ii) Revenue records – In the absence of impleadment of deity or Jagirdar (true owners), suit challenging such mutation not maintainable due to non-joinder of necessary and proper parties.

धाराएं 57 एवं 158 – (i) भूमिस्वामी अधिकार – पुजारी केवल मंदिर की संपत्ति का प्रबंधक है एवं स्वामी अथवा मौरूसी काश्तकार नहीं है – पुजारी का ऐसी भूमि पर कोई अधिकार नहीं है जिसे म.प्र. भू–राजस्व संहिता के अंतर्गत संरक्षित किया जा सके।

(ii) राजस्व अभिलेख – मूर्ति अथवा जागीरदार (वास्तविक स्वामियों) को समाविष्ट किये जाने के अभाव में, आवश्यक एवं उचित पक्षकारों के असंयोजन के कारण ऐसे नामांतरण को चुनौती देने वाला वाद पोषणीय नहीं है। **137 331**

Sections 109, 110, 111 and 257 – (i) Mutation – If no dispute is raised by any legal heirs of the testator or by any other person with respect to authenticity of Will, then it would be open for the Tehsildar to carry out the mutation in such undisputed cases.

(ii) Mutation – Procedure to be followed by Tehsildar where approach to civil court is not made or despite approach no injunction is granted, law explained and clarified.

(iii) Mutation – Where issue of Government having interest in land crops up in course of mutation, then Tehsildar may decide that question by taking evidence – But in those cases also no inquiry as to validity of Will or of any registered title deed can take place before Tehsildar.

धाराएं 109, 110, 111 एवं 257 – (i) नामान्तरण – यदि वसीयतकर्ता के किसी भी विधिक उत्तराधिकारी या किसी अन्य व्यक्ति द्वारा वसीयत की प्रामाणिकता के संबंध में कोई विवाद उत्पन्न नहीं किया जाता है, तब तहसीलदार को ऐसे निर्विवाद मामलों में नामान्तरण करने का विकल्प उपलब्ध रहता है।

(ii) नामान्तरण – जहां सिविल न्यायालय की शरण नहीं ली गई या कोई निषेधाज्ञा जारी नहीं की गई तब तहसीलदार को उसके द्वारा अपनाई जाने वाली प्रक्रिया को समझाया और स्पष्ट किया गया।

(iii) नामान्तरण – जहां नामान्तरण के दौरान भूमि में सरकार का हित होने का विवाद उठता है, तब तहसीलदार साक्ष्य लेकर उस प्रश्न का निराकरण कर सकता है – परन्तु

धाराएं 166 एवं 168 – मोटर दुर्घटना दावा – कार्यात्मक निःशक्ता। **141** **337**

NATIONAL HIGHWAYS ACT, 1956

राष्ट्रीय राजमार्ग अधिनियम, 1956

Section 3J – Right of fair compensation and transparency in land acquisition – Grant of solatium and interest – Judgment would apply retrospectively since granting prospective application thereof would effectively nullify the very relief that the judgment intended to provide.

धारा 3ञ – भूमि अधिग्रहण में उचित प्रतिकर और पारदर्शिता का अधिकार – तोषण राशि और ब्याज का अनुदान – निर्णय भूतलक्षी प्रभाव से लागू होगा क्योंकि भविष्यलक्षी प्रभाव से लागू करने पर निर्णय द्वारा जो प्रभावी राहत प्रदान करने की मंशा दिखाई गई है वह विफल हो जावेगी। **142** **338**

NEGOTIABLE INSTRUMENTS ACT, 1881

परक्राम्य लिखत अधिनियम, 1881

Sections 138 and 139 – Dishonor of cheque – Question of debt being time barred or not can be decided only after evidence as it is mixed question of law and fact.

धाराएं 138 एवं 139 – चैक का अनादरण – ऋण परिसीमा बाह्य है या नहीं, इसका निर्णय साक्ष्य के उपरांत ही किया जा सकता है क्योंकि यह विधि और तथ्य का मिश्रित प्रश्न है। **143** **340**

PRACTICE AND PROCEDURE:

प्रथा एवं प्रक्रिया:

– A Procedural law should not ordinarily be construed as mandatory, but is always subservient to and is in aid to justice.

– प्रक्रियात्मक विधि को सामान्यतः अनिवार्य नहीं माना जाना चाहिए, प्रक्रियात्मक विधि हमेशा न्याय के अधीन एवं न्याय की सहायक होती है।

105 (ii) **238**

PREVENTION OF CORRUPTION ACT, 1988

भ्रष्टाचार निवारण अधिनियम, 1988

Sections 13 (1) (d) & 13 (2) – See sections 120B, 406 and 420 of the Indian Penal Code, 1860

धाराएं 13 (1)(घ) एवं 13 (2) – देखें भारतीय दण्ड संहिता, 1860 की धाराएं 120ख, 406 एवं 420। **127** **300**

PREVENTION OF MONEY LAUNDERING ACT, 2002

धन–शोधन निवारण अधिनियम, 2002

Sections 3, 4 and 44(1)(b) – Offence of money laundering – Economic offences – There is no embargo on considering the plea of absence of sanction after cognizance is taken by the Special Court of the offences punishable u/s 4 PMLA.

Complaint was filed u/s 4 PMLA – Provision of section 197(1) CrPC are applicable to a complaint filed u/s 44(1)(b) of PMLA.

धाराएं 3, 4 एवं 44(1)(ख) – धन–शोधन का अपराध – आर्थिक अपराध – धन–शोधन निवारण अधिनियम की धारा 4 के अंतर्गत दंडनीय अपराधों का विशेष न्यायालय द्वारा संज्ञान लिए जाने के उपरान्त भी पूर्वानुमति के अभाव के अभिवाक् पर विचार करने में कोई प्रतिबंध नहीं है।

धन–शोधन निवारण अधिनियम की धारा 4 के अंतर्गत परिवाद प्रस्तुत – धारा 197(1) दण्ड प्रक्रिया संहिता के प्रावधान धन–शोधन निवारण अधिनियम की धारा 44(1)(ख) के अंतर्गत प्रस्तुत परिवाद पर लागू होते हैं। **144 (ii) & (iii) 342**

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012

Sections 29 and 30 – Presumption under the POCSO Act – The injury on the prepuce of the penis of the accused alongwith the matching of the blood group coupled with other circumstantial evidence clearly constitute foundational facts for raising presumption u/s 29 and 30 of the POCSO Act, 2012.

धाराएं 29 एवं 30 – लैंगिक अपराधों से बालकों का संरक्षण अधिनियम के अंतर्गत उपधारणा – आरोपी के लिंग के अग्रभाग पर चोट के साथ–साथ रक्त समूह का मिलान और अन्य परिस्थितिजन्य साक्ष्य स्पष्ट रूप से अधिनियम, 2012 की धारा 29 और 30 के अंतर्गत उपधारणा करने के लिए आधारभूत तथ्य गठित करती है।**145 (i) 346**

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005

Section 25 (2) – (i) Order of maintenance passed u/s 12 – Order of maintenance cannot be set aside, it can only be altered, modified or revoked that too upon recording satisfaction that a change in circumstances has occurred after the order was passed.

(ii) Order for alteration, modification or revocation of maintenance –Applicant cannot seek refund of the amount already paid in compliance of the original order passed u/s 12 of the Act.

EDITORIAL

Esteemed Readers,

I warmly welcome you to the June 2025 edition of *JOTI Journal*. After the summer break, I hope each one of you has returned refreshed and ready to continue your important work. Breaks are not just for rest, they also give us time to pause and think about how we are living and working. A little reflection often helps us to grow as individuals and as professionals.

I would like to begin by sharing our gratitude to Hon'ble Shri Justice Suresh Kumar Kait, Former Chief Justice, High Court of Madhya Pradesh who has demitted office. We wish His Lordship the best of times ahead. We also extend a warm and cordial welcome to Hon'ble Shri Justice Deepak Khot, Hon'ble Shri Justice Amit Seth and Hon'ble Shri Justice Pavan Kumar Dwivedi on their appointment as Judges of the High Court of Madhya Pradesh.

Sometime ago, I had the privilege of visiting the National Judicial Academy, Bhopal**,** for a Director's meet programme. It was an excellent opportunity to interact with Faculties and Directors from other State Academies. What made me especially happy was hearing how *JOTI Journal* is not only appreciated in our own State but is also followed and respected in many other Academies across the country. This recognition is a matter of pride for all of us and encourages us to keep improving.

In this edition, we have included some important and inspiring content. First, we a Standard Operating Procedure (SOP) for Judicial Officers on how to communicate to the Hon'ble Supreme Court or Hon'ble High Court when they need more time in time-bound matters. These guidelines will help officers to follow the correct procedure and maintain the dignity of communication with Higher Courts.

One of the most inspiring Articles in this edition is the story of *Shri Nani Palkhivala* in our "*Our Legends*" section. He is known as one of the greatest lawyers and speakers our country has produced. But did you know that he had a serious stammer as a child? It is hard to imagine that someone who later became a brilliant orator once struggled to speak. His story teaches us that any weakness can be overcome with courage, effort, and determination. In addition, we are publishing an article on compensation in accidental deaths involving children. I hope the readers find guidance from this article on addressing this vital point in motor accident claim cases.

Speaking of Academic Activities, the Civil Judges Batch of 2022 undertook one-year refresher training, from 28th April to 3rd May, 2025**.** We also organized

two important training events recently. One was a Workshop on Emerging Trends in Cyber Crimes held online on 28th June, 2025. As technology changes, new types of crimes are also emerging. It is important that we, in the legal field, stay updated. This workshop focused on modern tools used to collect evidence in cyber crime cases and how the law looks at such evidence.

Another training programme was the Regional Workshop for Advocates held on a cluster basis. It brought together advocates from different areas to learn, share ideas, and improve their knowledge. We believe that continuous learning, whether for judges or lawyers helps improve our justice system.

I would like to highlight an important issue that in recent times, the judiciary has faced an unprecedented challenge. The decline in public confidence, fueled by recent untoward incidents and broader societal distrust, threatens the Rule of Law. Such developments, though not representative of the institution as a whole have nonetheless imputed the perception of justice among the common citizen. However, this challenge presents an opportunity for judges to reaffirm their commitment to justice. By upholding ethical standard, both inside and outside the courtroom, safeguarding independence, promoting fairness by maintaining high standards of integrity and impartiality and addressing criticism constructively, we the Judges can actively work towards restoring confidence.

We should always remember that the trust of the general public on the judiciary is our biggest strength, hence, it is the responsibility of all of us to not only maintain this trust but also to strengthen it through our behavior and conduct. The Academy remains committed to supporting judicial officers through training and resources to navigate these challenges. As stewards of justice, we the Judges must lead by example, ensuring that the judiciary remains a beacon of integrity and impartiality in a democratic society.

As you read through this edition, I hope you feel the same sense of purpose and pride that we do in preparing it. Our goal is to share knowledge, celebrate achievements and encourage one another. Whether it is learning a new legal skill, drawing inspiration from a great personality or simply reading about others in the field, I hope this Journal adds value to your work and your thinking.

Best Wishes,

Krishnamurty Mishra
Director

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Refresher Course for Civil Judges of 2022 batch
(on completion of one year service)
(28.04.2025 to 03.05.2025)

Group-I

Group-II

APPOINTMENT OF JUDGES IN THE HIGH COURT OF MADHYA PRADESH

Hon'ble Shri Justice Deepak Khot, Hon'ble Shri Justice Amit Seth and Hon'ble Shri Justice Pavan Kumar Dwivedi were administered oath of office on 30th May, 2025 as Judges of the High Court of Madhya Pradesh by Hon'ble the Acting Chief Justice Shri Sanjeev Sachdeva in a Swearing-in-ceremony held in the Conference Hall of South Block of High Court of Madhya Pradesh at Jabalpur.

Hon'ble Shri Justice Deepak Khot was born on 3rd March, 1975. After completing school education from Gwalior, His Lordship obtained B.Com. and LL.B. degree from M.L.B. College, Gwalior and topped in LL.B. First Year Examination and remained in topper list. His Lordship was enrolled as an advocate on 15th July, 2000 in the State Bar Council of Madhya Pradesh and practised in the Supreme Court of India, High Court of Madhya Pradesh, all District Courts of Madhya Pradesh and Consumer Fora and has been practicing at Gwalior Bench of the High Court of Madhya Pradesh for about 25 years.

His Lordship appeared in Civil, Criminal, Constitutional and Service matters. His Lordship has been Chief Legal Advisor/Chief Standing Counsel for Municipal Corporation, Gwalior, Gwalior Development Authority, Gwalior Trade Fair Authority, Gwalior Smart City Development Corporation and M.P. Housing Board and was also Panel Lawyer for Jiwaji University, Gwalior, Raja Mansingh Music University, Gwalior, M.I.T.S. Gwalior, Scindia Kanya Vidyalaya Madhav College, Gwalior, Prestige Institute, United Western Bank/IDBI Bank, India Infoline Ltd. and ICICI Lombard General Insurance Company. He also represented Bharti Cellular Ltd., Bharti Infotel Ltd., Tata Teleservices Ltd., Sun Ultra Technologies, Coca Cola India Ltd., Macdowells Ltds., Shaw-wallace Ltd., United Brewages Group, Pernod Ricard Ltd. and Digeo Ltd.

His Lordship worked as a Government Advocate from 2010 to 2011 and from 2020 till elevation.

Hon'ble Shri Justice Amit Seth was born on 15th March, 1975. After completing school education from St. Aloysius Senior Secondary School, Jabalpur, obtained B.Com. degree from G.S. College of Commerce and Economics, Jabalpur and LL.B. degree from Rani Durgavati Vishwavidyalaya, Jabalpur. His Lordship enrolled as an advocate on 8th March, 2003 on the rolls of the State Bar Council of Madhya Pradesh and started practice from the chamber of Shri Sanjay K. Agrawal, Senior Advocate. His Lordship has been practicing for about 19 years at the High Court of Madhya Pradesh at Jabalpur, Central Administrative Tribunal, Jabalpur, District & Sessions Court, Jabalpur, Madhya Pradesh Arbitration Tribunal (Madhyastham), Bhopal, National Green Tribunal, Bhopal and National Consumer Disputes Redressal Commission, Delhi.

His Lordship handled cases before the High Court and District Court, Jabalpur and appeared in Civil, Constitutional, Labour and Service matters. He also dealt with Contract, Education, Land Acquisition, Insurance, Arbitration and Criminal matters.

His Lordship was Panel Lawyer for the State of Madhya Pradesh from 2013 to 2015 and worked as a Government Advocate for the State of Madhya Pradesh from April, 2015 to January, 2019. His Lordship represented M.P. Power Transmission Company Ltd., M.P. Power Generating Company Ltd., M.P. Madhya Kshetra Vidyut Vitran Company Ltd., M.P. State Mining Corporation Ltd., Jabalpur Development Authority, Makhanlal Chaturvedi National University for Journalism and Communications, Bhopal, Barkatullah University, Bhopal, Rani Durgavati University, Jabalpur, M.P. Professional Examination Board, Bhopal, Kala Niketan Polytechnic College, Jabalpur, Gannon Dunkerley & Co. Ltd., Essar Power M.P. Ltd., Mahan Energen Limited, Sasan Power Ltd., Edelweiss Rural & Corporate Services Ltd., M.P. Adivasi Vitta Evam Vikas Nigam, Bhopal and M.P. Rajya Beej Evam Farm Vikas Nigam, Bhopal.

His Lordship was designated as a Senior Advocate in December, 2024 and has also served as *Amicus Curiae* in the matters of public interest and legal significance, as appointed by the Hon'ble High Court.

His Lordship also held the office of Deputy Advocate General for the State of Madhya Pradesh from February, 2022 to July, 2023 and Additional Advocate General, Jabalpur w.e.f. August, 2024 till elevation.

Hon'ble Shri Justice Pavan Kumar Dwivedi was born on 24th July, 1974. After completing school education from different places in the State of Madhya Pradesh, as his father was in transferable job, His Lordship obtained B.A. degree and passed LL.B. examination in the year 2003 securing first division. Thereafter, His Lordship obtained LL.M. degree in 2005 from M.L.B. College, Gwalior and thereafter, was enrolled as an Advocate on 2nd October, 2004 on the rolls of the State Bar Council of Madhya Pradesh and started practice at District Court, Gwalior as well as the High Court of Madhya Pradesh, Bench at Gwalior. His Lordship has been practicing at the Gwalior Bench of the High Court of Madhya Pradesh for about 21 years.

His Lordship handled cases before the High Court and District Court, Gwalior and appeared in Civil, Criminal, Constitutional, Taxation, Labour, Company, Election and Service matters.

His Lordship represented M.P. Trade and Investment Facilitation Corporation Limited (TRIFAC), was the standing counsel for Municipal Council, Guna and Municipal Council, Phoof, District Bhind. He also represented Municipal Corporation, Gwalior in Income Tax matters, represented NFL in Tax matters and also represented Punj Lloyd, IFFCO, Bharat Heavy Electricals, Ruchi Soya, Agro Solvent, Parag Edible, VLCC etc. His Lordship filed several Public Interest Litigation for public related issues like – amelioration of amenities in schools imparting primary education, protection of land of Tribal Community, Hygienic procedure for TT operations, regarding security of DRDE, Gwalior, sale of online medicine, malnutrition of children etc.

His Lordship was appointed as *Amicus Curie* in several important cases like Food Adultration, Cleanliness in the City of Gwalior, ATM security etc.

We on behalf of JOTI Journal, wish Their Lordships the best of their tenure.

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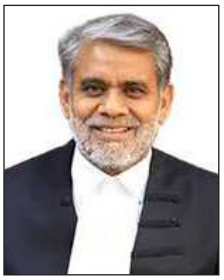
HON'BLE SHRI JUSTICE SURESH KUMAR KAIT, CHIEF JUSTICE OF MADHYA PRADESH DEMITS OFFICE



Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice of High Court of Madhya Praedesh demitted office on His Lordship's attaining superannuation.

His Lordship was born on 24th May, 1963 at Village Kakaut, Distt. Kaithal, Haryana. His Lordship graduated in Humanities from University College Kurukshetra. During graduation, His Lordship was selected as Unit Leader in National Service Scheme (NSS) and was awarded University Merit Certificate. His Lordship did Post-Graduation in Political Science from Kurukshetra University. During Post-Graduation, His Lordship was elected as Joint Secretary of Students' Union, Kurukshetra Unviersity. After obtaining Bachelor's Degree in Law from Campus Law Centre, University of Delhi, was enrolled as an Advocate in the year 1989. His Lordship is first in the family to become an Advocate. His Lordship had been the Panel Lawyer/Senior Counsel for U.P.S.C. and Railways. His Lordship was appointed as Standing Counsel for Central Government in the year 2004 and continued till elevation.

His Lordship was elevated as an Additional Judge of Delhi High Court on 5th September, 2008 and became a Permanent Judge on 12th April, 2013. His Lordship was transferred to High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh w.e.f. 12th April, 2016. His Lordship was transferred to Delhi High Court w.e.f. 12th October, 2018.

His Lordship was appointed as the 28th Chief Justice of High Court of Madhya Pradesh on 25th September, 2024 and took charge on 16th September, 2024.

During His Lordship's tenure as Chief Justice of Madhya Pradesh in the capacity of Patron of Judicial Education, His Lordship took keen interest in the functioning of the Academy and provided wholesome motivation, support and guidance for diversifying the academic activities of the Academy.

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

HON'BLE SHRI JUSTICE DUPPALA VENKATA RAMANA AND HON'BLE SHRI JUSTICE SANJAY DWIVEDI DEMIT OFFICE

Hon'ble Shri Justice Duppala Venkata Ramana has demitted office on Lordship's attaining superannuation.

His Lordship was born on 3rd June, 1963. After completing LL.B from N.V.P. Law College, Visakhapatnam in 1989 and LL.M from Acharya Nagarjuna University, Guntur. His Lordship was enrolled as an Advocate in June, 1989 and joined District Bar Association, Srikakulam and practiced till June, 1990. Thereafter, His Lordship shifted practice to Visakhapatnam Bar Association and practiced till May, 1994.

His Lordship joined Andhra Pradesh Judicial Services as District Munsif in 1994 and was promoted as officiating District Judge in the year 2015.

His Lordship was elevated as an Additional Judge of the High Court of Andhra Pradesh on 4th August, 2022. On His Lordship's transfer, took oath as Additional Judge of the High Court of Madhya Pradesh on 1st November, 2023 and as Permanent Judge on 13.03.2024.

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

Hon'ble Shri Justice Shri Sanjay Dwivedi has demitted office on Lordship's attaining superannuation.

His Lordship was born on 1st July, 1963 at Bilaspur (Chhattisgarh). After obtaining degrees of B.Com. and LL.B., enrolled as an Advocate on 10th July, 1989 and joined the chamber of Shri Deepak Verma, who later on was appointed as Hon'ble Judge of High Court and then as Hon'ble Judge of Supreme Court and also worked with a renowned Senior Advocate Shri N.S. Kale. Completed 27 years of active practice in the High Court of Madhya Pradesh in civil, criminal, constitutional etc. matters. His Lordship was appointed as Deputy Advocate General in the year 2009. His Lordship was appointed as Judge of the High Court of Madhya Pradesh on 19th October, 2018.

During his tenure in the High Court of Madhya Pradesh, His Lordship rendered invaluable services as Judge and Member of various Administrative Committees of the High Court including Governing Council of Madhya Pradesh State Judicial Academy and all round motivation, support and guidance for diversifying the academic activities of the Academy.

We on behalf of JOTI Journal, wish Their Lordships a healthy, happy and prosperous life.

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PART – I

OUR LEGENDS

NANI PALKHIVALA
THE IMMORTAL LAWYER

In this edition, we speak of one of the finest minds our country has ever produced – a legendary constitutional lawyer, erudite speaker, and a man with a photographic memory and eloquent disposition – Nani Palkhivala.

THE ROAD FROM CHILDHOOD

Nani Ardeshir Palkhivala was born on January 16, 1920, into a modest Parsi family in Nana Chowk, Bombay. His father ran a laundry at Cumballa Hill and was the first person to influence him deeply. A perfectionist who loved his work, Nani's father taught him the value of doing every task, big or small, with precision and dedication.

Nani grew up in a family with a strong value system. A popular anecdote tells of how, once, his father gave him a plate of almonds to share with the poor boy next door. Without hesitation, young Nani handed over the entire plate. This small act reflected the deep empathy that would define his life.

As a child, Nani suffered from a severe stammer. Rather than let it hold him back, he took it as a challenge. Through perseverance and constant effort, he overcame it, developing a legal style known for its clarity, logic and compelling advocacy. This personal victory is a testament to turning setbacks into strengths.

It is worth mentioning that Nani Palkhivala completed his master's degree in English literature from St. Xavier's College. After graduating, Palkhivala applied for the position of a lecturer at the Bombay University, but was not awarded the post. Interestingly, he tried to get admission into institutions of higher learning to further his academic career. Since the admission term was closed for most courses, he then enrolled at Government Law College, Bombay graduating in 1944. His command over language and sharp intellect made him a standout student. He began

his legal career under the legendary Sir Jamshedji Behramji Kanga. Together, they co-authored *The Law and Practice of Income Tax*, which remains an authoritative text for practitioners even today.

Nani Palkhivala soon became known for his meticulous preparation, clear articulation and persuasive arguments. Having once struggled with speech, he valued precision in expression. His ability to simplify complex legal concepts into understandable arguments made him stand out. His eloquence in court was the result of persistent hard work. Anil Divan's experience as narrated in Nani Palkhivala – A role model, in context of the extra-ordinary charmer Nani Palkhivala was bears repetition, which is reproduced hereunder:

> "But for his double-breasted coat and tie, the lecturer could well have been mistaken for a student. He slowly warmed up as the lecture proceeded–lucid, epigrammatic and pithy sentences laced with caustic humor. Gradually, he captivated his class and perceptibly achieved dominance over the minds of his audience. By the end of the lecture, Nani Palkhivala had captured the hearts of a host of student admirers. This was my first exposure to his verbal charms.
>
> Later, in the early fifties in Bombay, as young briefless lawyers, we used to follow cases from court to court. On countless occasions, I observed the same pattern repeated that I had seen in the LL.B class a quiet beginning slowly turning into a persuasive argument, maturing into the inexorable logic of legal reasoning and finally reaching a spell-binding climax where the advocate attained complete mastery over the judge and the listeners. Palkhivala, like all great advocates, achieved this result with logic and incomparable lucidity. His arguments, though gentle and unfailingly courteous, had an overwhelming effect. This probably gave rise to the oft-repeated story that many judges would not decide a case until they had reflected for a few days after the conclusion of his argument. When asked whether his talent was natural or cultivated, Palkhivala modestly replied, "it is mainly God-given, but partly cultivated too."

In this context, an excerpt from V. Sudesh Pai's book, *Legends in Law*, is worth quoting. Iqbal Chagla shared that in the 1960s, he was involved in a case where Palkhivala was briefed as senior counsel. There were hardly any decided

cases on the points involved. Chagla had looked up some authorities and prepared notes. A conference was fixed, and when he met Palkhivala and showed him the material, Palkhivala noted everything down on a piece of paper and placed it in his pocket. He asked to be informed when the case would be taken up so he could be present for the arguments. When informed, he rushed from Bombay House and just as the counsel before him concluded, entered the courtroom with "May it please your Lordships," and then began an enunciation of the law of trusts from first principles. Chagla recalls never having heard such clarity before or since. Palkhivala referred to all the authorities discussed during the conference without using any notes or books, recalling facts and law with accuracy and only later turned to the brief and books.

Nani Palkhivala was also revered for his photographic memory. Dinesh Vyas, in his tribute, also recalls Palkhivala's astonishing skills and court craft. He reminisced that Nani had an amazing photographic memory and made continuous efforts to preserve it. A brief, once read, would virtually be printed in his mind. In the case of ***Indian Oil Corporation v. Rajagopalan***, ***AIR 1998 SC 2456,*** argued in 1973 before the Bombay High Court, Palkhivala had advised filing a writ petition. After the petition was filed, the brief was sent to him, and he returned it months later with clear instructions that it should only be sent to his home the day before the final hearing. He declined to carry it to Delhi in advance. On the day of the hearing, he arrived at 10:55 a.m., just five minutes before the court was to commence. With no opportunity to re-read the brief in advance, he began his arguments in fourth gear, presenting the issue succinctly, setting out all facts in detail, citing case law extensively, and concluding just as the court rose. It was a stunning performance and, for Vyas, just the beginning of many such displays of brilliance.

NANI AS SAVIOUR OF DEMOCRACY

Notably, Nani authored *We, the People*, which covers themes like education, democracy, socialism, taxation, and constitutional matters in an eloquent and accessible manner. In one of its chapters, titled "Sentinels of Democracy," Palkhivala wrote:

> "A lawyer by his training and equipment and by his professional competence is better qualified than the rest of the citizenry to take an active part in the making of laws and

> formulation of public policies. He would be failing his country if he did not do this duty."

These words reflect the way he lived his life – a lawyer committed to shaping the nation's future.

At a time when India was still finding its footing as a young democracy, Nani played a vital role in strengthening citizens' rights. In ***R.C. Cooper v. Union of India, AIR 1970 SC 564***, he helped to overturn the restrictive interpretation of fundamental rights set in the ***A.K. Gopalan*** case, ***AIR 1950 SC 27***, thereby expanding their protection.

His most iconic contribution came in ***Kesavananda Bharati v. State of Kerala***, ***AIR 1973 SC 1461***, where he argued that the Constitution has a basic structure that cannot be amended, even by Parliament. This case, which challenged the Indira Gandhi Government's reforms, resulted in a landmark judgment that preserved the core of India's democracy.

Justice H.R. Khanna in his autobiography, *Neither roses nor thorns*, famously said of Palkhivala's performance in the case:

> "It was not Nani who spoke. It was divinity speaking through him."

When the government later tried to overturn this judgment, Palkhivala again rose to defend the Constitution. He even wrote a heartfelt letter to Prime Minister Indira Gandhi, urging her to reconsider. He wrote:

> "I beseech you, dear Indiraji, to consider the consequences of seeking to have the judgment in *Kesavananda* case overruled. We have reached a historic moment when two roads diverge in the woods and our own decision at this juncture can have an imponderable impact for the good of the country... I would not have done so but for my conviction that you always have an open mind and that your decision can save the Constitution."

Palkhivala was more than a brilliant lawyer – he was a man of principles and courage. During the Emergency (1975–77), when civil liberties were under threat, he boldly defended the rights of citizens. In a courtroom exchange, he said:

> "The only place where there is any freedom of speech in this country is the few hundred square feet of various courtrooms."

He took great pride in the Indian legal system and its jurisprudence. One example of this is his affidavit in the ***Bhopal Gas Tragedy case***, where he wrote:

> "The Indian system is undoubtedly capable of evolving the law to cope with advances in technology in the unfolding future. If the Bhopal litigation represents an opportunity for the further development of tort law in India, that chance should not be denied to India merely because some might say that the American system is ahead in development."

Nani Palkhivala was a fierce protector of the rights of freedom of expression and freedom of the press. In 1972, in an attempt to stifle dissenting opinion, the Central Government imposed import controls on newsprint in 1972. In the case of ***Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788***, Palkhivala argued that newsprint was more than just a general commodity:

> "Newsprint does not stand on the same footing as steel. Steel will yield products of steel. Newsprint will manifest whatever is thought of by man."

PALKHIVALA BEYOND THE COURTROOM: WRITER, ECONOMIST AND PHILANTHROPIST

Beyond law, Palkhivala also served the nation in other roles. He joined the Tata Group in 1961 and later became a Director at Tata Sons. In 1977, he was appointed as India's Ambassador to the United States, a recognition of his intellect and diplomatic skill. He also influenced India's economic policy through his popular annual budget speeches.

Interestingly, in the 1960s, he was offered the position of Judge, Supreme Court of India. Had he accepted, he would have been the longest-serving CJI. But he declined, possibly choosing to remain an independent thinker and voice, free from institutional constraints. In 1968, he was offered the position of Attorney-General by Govinda Menon, then the Law Minister in the Congress Government. Palkhivala recounts in his book, *We the Nation*:

> "After a great deal of hesitation I agreed. When I was in Delhi I conveyed my acceptance to him, and he told me that the announcement would be made the next day. I was happy that the agonising hours of indecision were over. Sound sleep is one of the blessings I have always enjoyed. That night I went to bed and looked forward to my usual quota of deep slumber. But suddenly and inexplicably, I became wide awake at three o'clock in the morning with the clear conviction, floating like a hook through my consciousness, that my decision was erroneous and that I should reverse it

> before it was too late. Early in the morning I profusely apologized to the Law Minister for changing my mind. In the years immediately following, it was my privilege to argue on behalf of the citizen, under the same Congress Government and against the government, the major cases which have shaped and moulded constitutional law"

Nani Palkhivala was also an economist and was popular for giving deeply researched valuable speeches on budget. He had an in depth knowledge of the taxation Law and also passionately advocated for liberal economic reforms. His essays and speeches tackled pressing social issues, always aiming to provoke thought and dialogue. He believed in the power of knowledge to bring about societal change. Although anyone who deals with the Indian Tax Code will invariably regard the work of Nani Palhivala in *The Law and Practice of Income Tax*, as a primary reference, this work has also secured international recognition and served as a tax law draft guide at the International Monetary Fund. The first edition was published in 1950 when Palkhivala was only 30 years old, and is still in print today.

In the context of Nani's addresses on budgets, Former Attorney-General Soli J. Sorabjee, Nani's friend and colleague for many years, said:

> "His talent in expounding the subject was matched by his genius in explaining the intricacies of the Budget to thousands of his listeners. His famous Annual Budget speeches had humble beginnings in 1958 in a small hall of an old hotel called Green Hotel in Bombay. He spoke without notes and reeled off facts and figures from memory for over an hour keeping his audience in rapt attention."

Describing the Annual Budget meeting, Sorabjee goes on to say:

> "The audience in these meetings was drawn from industrialists, lawyers, businessmen and the common individual. Nani's speeches were fascinating for their brevity and clarity. His Budget speeches became so popular throughout India and the audience for them grew so large that bigger halls and later the Brabourne Stadium in Bombay had to be booked to keep pace with the demand of an audience of over 20,000. It was aptly said that in those days there were two Budget speeches, one by the Finance Minister and the other by Nani Palkhivala, and Palkhivala's speech was undoubtedly the more popular and sought after."

Beyond his mastery of legal texts, Nani Palkhivala was also a prolific writer and intellectual. His work *We, the People* stands as a deeply reflective commentary on the Indian Constitution and democratic values. It is pertinent to mention that his writings resonated with both legal scholars and general readers alike.

In recognition of his extraordinary contributions, Palkhivala was awarded honorary doctorates by several prestigious institutions, including Princeton University, Rutgers University, Lawrence University, the University of Wisconsin–Madison, Annamalai University, Ambedkar Law University and the University of Mumbai. Notably, the Princeton University has praised him as a "defender of constitutional liberties and a champion of human rights," noting that he "has courageously upheld the principle that progress achieved at the cost of freedom is not advancement, but a step backward." It further lauded him as a lawyer, educator, author and economic visionary, who in his role as India's Ambassador, embodied intelligence, warmth, experience and a deep commitment to fostering international understanding.

Nani Palhivala was a philanthropist. He would do everything in his power to help people in need in whatever way he could. His compassion was as striking as his intellect. He once gave Dr. S.S. Badrinath, the founder of Sankara Nethralaya, a cheque for ₹ 2 crore after a casual dinner, without seeking any publicity. Silent generosity was an integral part of his character.

END OF AN ERA

Nani Palkhivala's wife Nargesh was a simple lady and lent meaningful support to him. They were a perfect couple married for 55 years until she passed away on 4th June, 2000. This is said to have left Nani broken and coupled with other ailments he lost his desire to live. In the last years of his life, Nani was severely affected by Alzheimer's disease. With deepening illness, one of his humorous quotes still resonates, "Of all the things I've lost, I miss my mind the most." He remained witty even in late years of his life. He passed away on December 11, 2002 at the age of 82.

Many books have been written about him, sharing his contributions and memorable moments. He once said:

> "Life is a gift to be lived with purpose. The Constitution is a trust to be guarded with courage."

Nani Palkhivala Foundation and Nani Palkhivala Arbitration Centre were founded in his memory. He believed in arbitration as a quick and fair form of dispensing justice, primarily as a solution to the massive backlog and delays in the court system.

Nani Palkhivala was not just a lawyer. He was a philosopher in court, a patriot at heart, a man of kindness and a shining example of integrity. He defended the Constitution like a living soul, stood up when others remained silent and gave away his wealth to the needy with grace and humility. In today's fast changing world, Nani Palkhivala's life reminds us that one person's courage, preparation and faith in the rule of law can preserve a nation's soul. Let us remember him not only as a legend in law but as the moral voice that our country needs.

The Trustees of Nani Palkhivala Foundation have published a collection of speeches delivered by Nani Palkhivala with the hope to motivate the younger generation of the country. A QR code to the link to the said pdf is published below for reader's kind perusal.

COMPENSATION IN THE DEATH AND PERMANENT DISABILITY CLAIM OF CHILDREN

Manish Sharma.
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Motor Accident Claims Tribunals serve as specialized forums to adjudicate compensation claims arising out of motor accidents under the Motor Vehicles Act, 1988 (along with its subsequent amendments). Among the most sensitive and complex of these cases are those involving the death or permanent disability of a child. The stakes go far beyond a mere calculation of economic loss. The ensuing legal battles encapsulate broader social concerns – the future potential loss, the emotional and developmental impact on families and the responsibilities that insurers and the State owe to society's vulnerable members. Over the past few years, Hon'ble the Supreme Court of India has played a pivotal role in clarifying key issues related to these claims and underscored that any interpretation must prioritize the interests of the child and their family over narrow technicalities. This article explores the contours of this evolving jurisprudence and examines how recent judicial pronouncements are reshaping the landscape for MACT claims concerning a child's death and permanent disability.

Classification based on age

In this context it is proper to mention that in ***Lata Wadhva v. State of Bihar (2001) 8 SCC 197,*** Hon'ble Supreme Court has for the first time divided the children based on age groups of 05-10 years and 10-15 years of age and then compensation was awarded. In ***M.S. Girewal v. Deep Chand Sood, (2001) 8 SCC 151*** and ***R.K. Malik v. Kiran Pal, (2009) 14 SCC 1,*** Hon'ble Supreme Court has given a detailed analysis of the method of calculation of compensation for a child by discussing the ratio of ***Lata Wadhwa*** (supra)**.** These principles which were adopted in ***M.S. Girewal*** (supra) and ***R.K. Malik*** (supra) are concerned with accidents that occurred in 90s decade, which is almost 35 years ago. But the said precedent has been followed even for purposes of accident of later years, virtually to date. Although, for calculating the amount of compensation, the bifurcation of age, which was adopted by the Supreme Court, is taken into consideration till now, and it is the current guidance on deciding the 'just compensation'. Therefore, the first thing expected of the tribunals is to decide the age of the deceased child and that to determine that the child belongs to the age group of 0-5 years, 5-10 years, 10-15 years or 15 -18 years.

Determination of Income

There can be no two options about the facts that in the case of children, there can hardly ever be a clear proof of pecuniary loss resulting from death. Persons of age below 18 years are not expected to be, and most of the time is not, engaged in any activity earning a livelihood at the same time, it cannot be said that no pecuniary loss accrues due to the death. The calculation of loss to the estate, to be awarded as pecuniary damages, is more in the realm of speculation than based on any actual data. In these circumstances, the most appropriate course is to go by the notional income of non-earning persons for which provision was made by the legislature in the Second Schedule appended to the M.V. Act, 1988 regarding section 163-A.

Hon'ble Supreme court in ***UPSRTC v. Trilok Chandra, (1996) 4 SCC 362, Oriental Insurance Co. Ltd. v. Hansrajbhai v. Kodala, (2001) 5 SCC 175, Sarla Verma v. DTC, (2009) 6 SCC 121*** and ***Puttamma v. K.L Narayana Reddy, (2013) 15 SCC 45*** has examined the structured formula contained in section 163A of MV Act, that the prescription in the second schedule is full of errors or defects. The said special provision was inserted in 1994 with a cap of ₹ 40,000 on the income to be considered for calculating the loss of dependency (or income) in fatal accident cases. Though by sub-section (3), the legislature empowered the Central Government to amend the second schedule by notification from time to time "keeping in view the cost of living", the said authorization has not resulted in any amendment being brought about to revise the annual income, even after elapse of more than three decades; regrettably so, particularly because the court has reminded the Government of its obligation in this regard several times.

With regards to deciding the notional income in the case of death of a child, Hon'ble High Court of Delhi in ***Chetan Malhotra v. Lala Ram, 2016 SCC Online Del 2981*** has given the following directions:

(i) Till such time as the law is amended by the legislature, or the Central Government notifies the amendment to the Second Schedule in exercise of the enabling power vested in it by Section 163-A (3) of the Motor Vehicles Act, 1988, and except in cases where in the prospects of employability and earnings (in future or present) of the deceased child are proved by cogent and irrefutable evidence, this having regard, *inter alia*, to the academic record or training in special talents or skills, for computing the pecuniary damages on account of the loss to estate, the notional income of non-earning persons (₹ 15000 p.a) as specified in the Second Schedule (brought into force w.e.f. 14.11.1994), shall be assumed to be the income

of the deceased child and taken into account after it is inflation corrected with the help of Cost Inflation Index (CII) as notified by the Government of India from year to year u/s 48 of the Income Tax Act, 1961, by applying the formula indicated hereinafter.

(ii) For inflation-correction, the financial year of 1997-1998 shall be treated as the "base year" and the value of the notional income relevant to the date of cause of action shall be computed in the following manner:

> ₹ 15,000/ × A ÷331 [wherein the figure of '₹ 15,000' represents the notional income specified in the second schedule requiring inflation-correction; 'A' represents the CII for the financial year in which the cause of action arose (i.e., the accident /death occurred); and the figure of '331' represents the CII for the 'base year']

The next question arises is whether the notional income is to be calculated for all age groups of children?

Age group of a child below 5 years of age

In the judgment of ***Puttamma*** (supra), Hon'ble Apex Court has held that the Central Government was bestowed with the duties to amend Schedule-II in view of Section 163-A(3) of the Motor Vehicles Act 1988, but it failed to do so. In view of the same, specific directions were issued to the Central Government to make appropriate amendments to Schedule-II keeping in mind the present cost of living. Till such amendments are made, directions were issued for award of compensation by fixing a sum of ₹ 1,00,000 (One lakh only) towards compensation for the non-earning children up to the age of five years old and a sum of ₹ 1,50,000 (one lakh fifty thousand only) for the non- earning persons of more than five years old.

For very young children below 5 years, courts have been cautious in applying multiplier due to uncertainties in future income and career prospects. In some cases compensation is awarded based on a notional income fixed by courts, applying a suitable multiplier reflecting the potential years of contribution to the family. Courts also add amounts for love, affection, funeral expenses and loss of estate amongst others. In some other cases, lump sum compensation is awarded. Typical compensation ranges from about ₹ 1,00,000 to ₹ 2,00,000 plus additional conventional heads, depending on case specifics.

Age group of 5 years to 15 years

For this age group, in case of death of 7 years old boy studying in class 2, the Hon'ble Apex Court in ***Oriental Insurance Co. Ltd. v. Syed Ibrahim and ors.,***

2007 ACJ 2816 (SC) has pronounced that, "In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation".

Later on, in celebrated case of ***Krishna Gopal v. Lala, 2013 AIR SCW 5037*** the Hon'ble Apex Court has observed that "in our considered view, the aforesaid legal principle laid down in ***Lata Wadhwa's*** (supra) case is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. The Supreme Court had also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non- earning member prior to the date of accident was fixed at ₹ 15,000. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it is found justified and reasonable to determine the notional income at ₹ 30,000 per annum.

In ***Rajendra Singh v. National Insurance Company Ltd., 2020 SCC Online SC 521*** while considering dismissal of Appeals arising out of the Impugned Awards in regard to accident prior to 2019, decided the notional income of a 12-year-old child (deceased), as ₹ 36,000 p.a. by observing that the structured formula provided in the Second Schedule was inadequate to assess the compensation; thus, the computation by the Learned Tribunal was fair and the Awards passed by the learned Tribunal did not warrant any interference.

Recently, in case of death of a boy who was aged about 7 years at the time of accident and was studying in Grade-II, the Hon'ble Supreme Court in ***Kurvan Ansari and anr. v. Shyam Kishore Murmu and anr., 2022 ACJ 166*** has inferred, "We are of the view that it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living. We deem it appropriate to take notional income of the deceased at ₹ 25,000 per annum."

Similarly, in case of death of 12 year old boy in a motor accident Hon'ble Supreme Court in ***Meena devi v. Nunu Chand Mahto @ Nemchand Mahto & ors., (2022) 18 SCR 449*** considering the fact that deceased boy was studying in a private school and was a brilliant student, accepted the notional income as ₹ 30,000 p.a.

Age group of 15 years to 18 years

In ***V. Mekale v. M. Malathi and ors., 2014 INSC 344,*** Hon'ble Supreme Court while considering the factual matrix, has held that the applicant is a 16 year old girl and she is a brilliant student as she has secured first rank in the 10th Standard, she would have had a better future in terms of educational career to acquire basic or master degrees in the professional courses and she could have got a suitable either public or private employment but on account of permanent disablement she suffered due to injuries sustained by her in the accident, that opportunity is lost to her. Therefore, taking ₹ 6,000 as monthly notional income by the tribunal for the purpose of awarding compensation under this head is too meager an amount. Thereafter, keeping in mind her past results found it just and proper to enhance the notional income @ 10,000 for computation of just and reasonable compensation under the head of loss of income.

Whenever tribunals are going to decide the compensation of a deceased child who is between 15-18 years of age, then parameters like her educational status and potential of earning in future should be kept in mind.

Amendment in Motor Vehicles Act, 1988 and its effect

It is pertinent to mention here that the Second Schedule stands deleted w.e.f. 01.09.2019. Thus, the question what would be the basis of assessing the notional income of a child/ i.e. a non-earning member below 15 years of age, who is a victim of a motor vehicle accident, became a subject of extensive judicial discourse. A definitive change of principle of determination of the income of a deceased/disabled child from notional income with its correction on the basis of Cost Inflation Index to Minimum Wages was reflected in ***Kajal v. Jagdish Chand & ors., (2020) 4 SCC 413***, wherein while computing the loss of earning for calculating compensation to be granted to an injured girl child aged around 12 years, who suffered permanent disability, the Hon'ble Supreme Court observed that the Courts have erred in taking notional income of ₹ 15,000 p.a. as the girl was a young child of 12 years and held that this was not a proper way of assessing the future loss of income, because after studying, the child could have worked and would have earned much more than ₹ 15,000 p.a. Hence, the Hon'ble Supreme Court assessed the notional income on the basis of the minimum wages payable to a skilled workman and opined that the same would be reflective of the minimum amount which she would have earned on becoming major.

Subsequently, in ***Master Ayush v. Branch Manager, Reliance General Insurance Co. Ltd., (2022) 7 SCC 738***, the Apex Court while considering the grant of compensation to the parents on account of injuries suffered by a five-year-old child, relied upon ***Kajal*** (supra) and held that the notional income should be calculated on the basis of minimum wages payable to a skilled worker. Similar observations were made in ***Minor Roopa v. The Divisional Manager, New India Assurance Company Ltd., Civil Appeal No.5069 of 2022 decided on 03.08.2022*** and the Apex Court assessed the compensation based on minimum wages notified by the State of Karnataka. Recently, Hon'ble High Court of Delhi in ***Oriental Insurance v. Reena Raghav, 2023 SCC Online Del 6695, United India Insurance Company Ltd. v. Jamaluddin Khan & ors., NC No. 2023:DHC:6242*** and ***Om Prakash v. Reliance Gen Ins Co. Ltd. and ors., 2023 SCC Online Del 6526*** wherein the deceased were approximately school going 5-year old children, the Courts assessed the income of the deceased by adopting minimum wages of a skilled labour as notified in their respective States.

The Hon'ble Kerala High Court in the case of ***Master Jyothis Raj Krishna, represented by His Next Friend and Father Rajesh Kumar v. Sunny George, 2024 SCC Online Ker 6875*** said, "this Court is conscious of the fact that by referring to the provisions of the Minimum Wages Act, 1948, for the purpose the notional income of a minor child, this Court has never ignored the future of a blooming young mind nor has closed its eyes over the bright future of the child and the prospects which he may have secured but for this fatal accident."

The Minimum Wage criteria has again been adopted by Hon'ble Supreme Court in the case of ***Baby Sakshi Greola v. Manzoor Ahmad Simon & anr., SLP (C) No. 10996/2018, DOJ 11th December 2024*** wherein the Apex Court applied the approach taken in ***Kajal*** (supra) and ***Master Ayush*** (supra) and ascertained the notional income of a 7-year-old injured child on the basis of the Minimum Wages paid to a skilled worker on a fulltime basis.

In light of the aforementioned judgments, it emerges that the minimum wage criteria guarantees a dignified and a uniform standard for compensation calculation. The most reasonable basis for estimating the child's income would be to refer to the minimum wages established by the State Government, in the location where the minor lived at the time of the accident.

No future prospects for age group up to 15 years

In ***New India Insurance Co Ltd v. Satender, (2006) 13 SCC 60***, the deceased victim of the accident was a nine year old school going child. Considering the claim for loss of future prospects in absence of a regular income, it was observed that the

compensation so determined had to be just and proper by a judicious approach and not fixed arbitrarily or whimsically. The uncertainties of a young life were noticed in the following terms:

> "In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation."

Likewise, in ***Rajendra Singh and ors. (S) v. National Insurance Company Limited and ors. (S), 2020 INSC 438*** Hon'ble Supreme Court has concluded that the determination of a just and proper compensation to the appellants with regard to the deceased child, in the entirety of the facts and circumstances of the case does not persuade us to enhance the same any further from ₹ 2,95,000/ by granting any further compensation under the separate head of "future prospects". It is important to notice that ***R.K. Malik*** (supra) does not consider ***Satender*** (supra) on the grant of future prospects as far as children are concerned.

Therefore, we can say that in case of claim cases relating to the children of age up to 15 years tribunals should not calculate the compensation with future prospects,

Future prospects after age of 15 years

In ***V. Mekale*** (supra), Hon'ble Supreme Court while rejecting the argument that insurance company for not enhancing the amount of compensation under the head of 'loss of income' and 'future prospects', opined that it is pertinent to reiterate here that the claimant/ appellant has undergone and undergoing substantial pain and suffering due to the accident which has rendered both her legs dysfunctional. This has reduced the scope of her future prospects including her marriage substantially". Further, the High Court has failed to take into consideration the future prospects of income based on the principles laid down by this Court in catena

of cases referred to supra. Therefore, the appellant is justified in seeking for re-enhancement under this head as well and we hold that the claimant-appellant is entitled to 50% increase under this head as per the principle laid down by this Court in the case of ***Santosh Devi*** (supra).

Furthermore, the Constitutional Bench of Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and ors., (2017) 16 SCC 680*** has given the directions that while calculating the compensation future prospects shall be added for permanent job (salaried) and for Self-employed. Later, in ***Kirti v. Oriental Insurance Company Ltd., Civil Appeal No. 1920 of 2021 LL 2021 SC 3*** it was held that future prospects can be granted to the person for whom notional income is calculated. Again in ***Meena Pawaia v. Ashraf Ali, CA 6724 of 2021 DOJ 18 Nov 2021,*** it was observed that future prospects can be awarded to the compensation of deceased who have no income at the time of accident.

Looking at the observations of Hon'ble Supreme Court, it can be said that in case of age group of 15-18 position is different from those who belong to lower age group. The children in this category would ordinarily be of such age group as is generally receiving formal school education or those who are (being) imparted special training so as to be equipped with requisite skills to be gainfully employed in a variety of trades. They are, after all, nearing adulthood and thus, on the threshold of becoming self-reliant. In such cases, the prospects of their employability and earnings in the future or present, based on evidence adduced about their academic track record or training in special talents or skills, would need to be borne in mind. In such cases future prospects can be granted.

Deduction of personal expenses

In ***National Insurance Company Limited v. Pranay Sethi and ors., (2017) 16 SCC 680,*** Hon'ble Supreme Court has followed ***Sarla Verma (Smt) & ors. v. Delhi Transport Corporation & anr., (2009) 6 SCC 121*** and has concluded that while calculating the compensation, the tribunals should deduct the personal expenses of the deceased from the income which is proved. In case of bachelors and specially who are under the age of 18 years out of the amount so assessed, 50% had to be deducted on account of personal and living expenses for a bachelor. This is followed by Hon'ble Supreme Court in catena of cases.

Multiplier

In this context it is proper to make mention of the case of ***Reshma Kumari v. Madanmohan, (2013) 9 SCC 65*** wherein it was held that irrespective of section

166 or 163A multiplier of 15 and the assessment indicated in schedule 2 subject to correction as pointed out in Table 6 of ***Sarla Verma*** (supra) shall be followed.

Recently, after discussing the various judgments including the ***Kajal*** (supra) Hon'ble Supreme Court in ***Divya v. National Insurance Co., CA 7605 of 2022 DOJ 18th October, 2022*** has stated that we are of the considered view that the selection of multiplier '15' for the age group up to 15 years by the three-Judge Bench in ***Reshma Kumari's case*** is having a sound basis. It is common knowledge that the age group of 21 to 25 years is regarded as the commencement of normal productive years as referred specifically by the two-Judge Bench in ***Sarla Verma's case*** at paragraph 39. True that in ***Sarla Verma's case*** the same multiplier viz., '18' is selected for the age group 15 to 20 years. In this context, it is relevant to refer to the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, which is an enactment to prohibit the engagement of children in all occupation and to prohibit the engagement of adolescence in hazardous occupations and process and matters connected therewith and incidental thereto In the said circumstances, when there is clear prohibition under an enactment for engagement of children and the definition of "child" under the said enactment takes in children who have not completed their fourteenth year of age within its fold, there is certainly justification for selecting a lower multiplier of '15' in the case of victims belonging to the age group up to 15 years. Since the Constitutional Bench in ***Pranay Sethi's case*** (supra) held that ***Rajesh's case*** (supra) as not a binding precedent for not taking note of decision in ***Reshma Kumari's case***, held that the formula relating to multiplier has been approved in ***Reshma Kumari's case*** after extracting the afore-extracted paragraph No. 43.1 and 43.2 in ***Reshma Kumari's case*** and that the three-Judge Bench in ***Reshma Kumari*** held that as regards the cases where the age of the victim happens to be up to 15 years the multiplier should be '15' we are bound to take the multiplier of victims up to the age group of 15 years as '15'.

Other conventional heads/Lump sum amount

In the case of ***Smt. Sarla Verma*** (supra), the Apex Court has awarded the compensation up to ₹ 2,25,000 in a child death. Hon'ble Court has opined that, the amount of compensation as awarded by the Claims Tribunal is liable to be enhanced by ₹ 1,50,000 in lump sum thereby making the total compensation ₹ 2,32,000 which shall be payable along with the interest from the date of filing of the claim petition

In Case of ***Meena Devi*** (supra) as per the judgment of MACT, lump sum compensation of ₹ 1,50,000 has been awarded, while the High Court enhanced it to

₹ 2,00,000 up to the value of the Claim Petition. Hon'ble Supreme Court has observed that the said amount of compensation is not just and reasonable looking to the computation made hereinabove. Hence, total compensation is awarded as ₹ 5,00,000.

In the case of ***Pranay Sethi*** (supra), it was held that in the case of death, ₹ 15,000 is liable to be paid towards the loss of estate and funeral charges each, while ₹ 40,000 was payable towards the loss of consortium to each legal heir and the same may be enhanced by 10% every three years. If the accident is of 2015 while the Award was passed in 2022. Then, an amount of ₹ 18,000 should be granted towards the Loss of Estate, and ₹ 18,000 towards funeral charges.

Consortium:

The Hon'ble Supreme Court in the case of ***Magma General Insurance Co v. Nanu Ram alias Churu Ram, (2018) 18 SCC 130,*** has held that in a case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit. Again in ***United India Insurance Co. Ltd. v. Satinder Kaur alias Satwinder Kaur & ors., (2021) 11 SCC 780***, it is observed that we feel ourselves bound by the above judgment of Three Judge Bench (*Reference is of* ***Pranay Sethi*** (supra)). We, thus, cannot accept the submission of the learned counsel for the appellant that the amount of consortium awarded to each of the claimants is not sustainable.

Also, the Hon'ble Supreme Court in ***New India Assurance Company Limited v. Somwati and ors., 2020 SCC Online SC 720*** has further claried that 'loss of love and affection' is comprehended in 'loss of consortium', hence, there is no justification to award compensation towards 'loss of love and affection' as a separate head.

Death of an unborn child

The Hon'ble High court of Delhi in the matter of ***Prakash and ors. v. Arun Kumar Saini and ors., 2010 ACJ 2184*** said that this Court is in respectful agreement with the judgments of Andhra Pradesh High Court in the case of ***Oriental Insurance Co. Ltd. v. Santhilal Patal, 2007(4) ACD 835*** and Hon'ble High Court of Kerala in the case of ***Manikuttan v. M.N. Baby, 2009 ACJ 1497***,

and holds that an unborn child aged five months onwards in mother's womb till its birth is treated as equal to a child in existence. The unborn child to whom the live birth never comes is held to be a 'person' who can be the subject of an action for damages for his death. The fetus is another life in woman and loss of fetus is actually a loss of child in the offing. The appellants are, therefore, entitled to compensation for the loss of foetus. In that case where the unborn child aged 5 months, court has awarded compensation of ₹ 2,50,000.

Likewise, the Hon'ble Supreme court in the matter of ***National Insurance co. Ltd v. Kusuma and ors., 2011 ACJ 2432*** which is a case of death of unborn child where the woman was 30 weeks pregnant, had awarded the compensation of ₹ 1,80,000.

Similarly, the Hon'ble High court of Madhya Pradesh in the matter of ***Shraddha v. Badresh and ors., 2006 ACJ 2067*** has observed that in the case of death of 7 months old child in the womb, award of ₹ 2,50,000/ is compensation. Later, in ***Radhe Shyam and ors. v. Rajendra and ors., 2021 ACJ 808***, after taking the notice of the fact that in the accident 7 months old child in the womb of appellant no.2 had died, compensate the claimants with award of ₹ 2,50,000/.

Permanent disability in case of child

Under this head, in ***Master Mallikarjun v. Divisional Manager, the National Insurance Company Limited and anr., AIR 2014 SC 736,*** Hon'ble Supreme Court has held, "We are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and up to 30% to the whole body, ₹ 3 lakhs; up to 60%, ₹ 4 lakhs; up to 90%, ₹ 5 lakhs and above 90%, it should be ₹ 6 lakhs. For permanent disability up to 10%, it should be ₹ 1 lakh, unless there are exceptional circumstances to take different yardstick."

In ***Kajal*** (supra) which is most celebrated judgment on permanent disability of child Hon'ble Supreme Court has observed that, the court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.

Similarly, in ***Master Ayush v The Branch Manager, Reliance General Insurance Co Ltd., 2022 INSC 364,*** Hon'ble Supreme Court in a case of child of 5 years of age who is paralyzed and his both the legs cannot be moved found that

Since the minimum wages as on the date of accident is rounded off to ₹ 3700/ as per State of Karnataka's notification, the compensation is to be assessed on the basis of the said minimum wages on the assumption that the appellant would have been able to earn after attaining majority. Along with it 40% of future prospects are also awarded.

Attendant Charges

Regarding the issue of attendant charges, in ***Kajal*** (supra), Hon'ble Supreme Court has observed that while awarding attendant charges, the multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges etc. The relevant extract says, "The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant and also other issues such as the uncertainties of life should be considered. Out of all the various alternative methods, the multiplier method has been recognized as the most realistic and reasonable method. It ensures better justice between the parties and thus results in award of 'just compensation' within the meaning of the Act."

Conclusion

Section 168 of the Motor Vehicles Act, 1988 stipulates that "just compensation" must be awarded to the claimants. Any compensation calculation approach that fails to yield 'fair award' would be inconsistent with the Act. The term "just" possesses considerable range of meaning. The Courts must define the term in a way that fulfils the purpose of the Act, which is to provide sufficient and equitable compensation to the dependents of the deceased. It is essential to recognize that compensation can be disbursed only once, not repeatedly. Consequently, when assessing compensation for the death or permanent disability of a child, tribunals must consider the amount of compensation while following the armchair rule. Compensation should neither be minimal nor resemble a lottery.

Note: *The Academy has also published an article on death and permanent disability of a child in the October 2010 edition. Readers are requested to go through that article also for reference.*

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विधिक समस्यायें एवं समाधान

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

1. मध्यप्रदेश आबकारी अधिनियम, 1915 के अंतर्गत अधिहरित किये गये वाहन के संबंध में पारित अधिहरण आदेश विषयक अद्यतन विधिक स्थिति क्या है?

माननीय मध्यप्रदेश उच्च न्यायालय ने न्याय दृष्टांत ***रामलाल झारिया विरूद्ध मध्य प्रदेश राज्य (निर्णय दिनांक 21.04.2025, रिट पिटीशन क्रं. 6542/2025)*** में माननीय उच्चतम न्यायालय के न्याय दृष्टांत ***मध्यप्रदेश राज्य विरूद्ध मधुकर राव, (2008) 14 एस सी सी 624,*** में प्रतिपादित विधि के आलोक में म.प्र. आबकारी अधिनियम, 1915 की धारा 47–क को इस आधार पर असंवैधानिक घोषित किया है कि कलेक्टर के समक्ष की जा रही अधिहरण कार्यवाही में अधिनियम की धारा 47–क, वाहन मालिक को यह सिद्ध करने का कोई अवसर नहीं देती है कि वाहन उसके संज्ञान या सहमति के बिना प्रयोग हुआ, जो कि उसके मूलभूत अधिकारों एवं संविधान के अनुच्छेद 300 में प्रतिपादित संपत्ति के अधिकार का उल्लंघन है।

उपरोक्त निर्णय के अनुसार किसी आपराधिक प्रकरण के विचारण के दौरान कलेक्टर द्वारा अधिहरण का आदेश पारित नही किया जा सकता है, क्योंकि उक्त आदेश पारित करने का अधिकार सिर्फ उस न्यायालय को प्राप्त होगा जो कि उस अपराध का विचारण कर रहा है, जैसा कि उक्त अधिनियम की धारा 46 और 47 में वर्णित है। परिणामस्वरूप, अधिनियम की धारा 47–क अब उन सभी मामलों में अप्रभावी हो जाती है जिनमें अब तक अधिहरण का आदेश पारित नहीं किया गया है। उक्त निर्णय के अनुसार निम्नलिखित विधिक स्थिति स्पष्ट होती है –

अ. यदि निर्णय दिनांक तक अधिहरण का आदेश पारित नहीं हुआ है, तो अब अधिहरण का आदेश कलेक्टर द्वारा नहीं अपितु आपराधिक न्यायालय द्वारा ही निर्णय के प्रक्रम पर किया जाएगा।

ब. यदि अधिहरण का आदेश पारित हो चुका है परन्तु आदेश के विरूद्ध अपील, पुनरीक्षण, धारा 482 द.प्र.सं. के अंतर्गत याचिका या रिट आदि के रूप में लंबित है, तो इस निर्णय का लाभ ऐसे मामले में भी प्राप्त होगा।

स. जहाँ अधिहरण का आदेश या अधिहरण के विरूद्ध की गई अपील का आदेश, माननीय उच्च न्यायालय के इस निर्णय दिनांक के पूर्व ही पारित हो चुका है, वहां इस निर्णय का लाभ केवल तभी प्राप्त होगा जब इसे चुनौती देने के लिए वैधानिक सीमा निर्णय दिनांक को समाप्त नहीं हुई है और यदि पुनरीक्षण में पारित आदेश इस निर्णय दिनांक से तीन माह के भीतर पारित किया गया है

तब भी इस निर्णय का लाभ रिट याचिका/धारा 482 भ.द.सं. में उच्च न्यायालय के समक्ष चुनौती देते समय लाभ होगा।

द. ऐसे मामले जहाँ अधिहरण के आदेश को चुनौती नहीं दी गई, या चुनौती दी गई परन्तु वह विफल रही है और अब कोई मामला लंबित नहीं है, या चुनौती देने का समय समाप्त हो चुका है तब ऐसे मामलों में अधिहरण आदेश अब अंतिम माना जाएगा।

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2. वाणिज्यिक न्यायालय अधिनियम, 2015 की संशोधित धारा 2(i) जिसके द्वारा वाणिज्यिक विवाद के 'विनिर्दिष्ट मूल्य' की सीमा एक करोड़ रूपए से घटाकर तीन लाख रूपए की गई है, के दिनांक 03.05.2018 से प्रभावशील होने के बाद उक्त दिनांक के पूर्व संस्थित हुए सिविल वाद जिनका वादमूल्य तीन लाख रूपए से अधिक परन्तु एक करोड़ रूपए से कम था, क्या वाणिज्यिक न्यायालय में अंतरित किये जा सकते हैं?

वाणिज्यिक न्यायालय अधिनियम, 2015 की संशोधित धारा 2(i) जो दिनांक 03.05.2018 से प्रभावशील हुई है, का प्रभाव भविष्यलक्षी (Prospective) है न कि भूतलक्षी (Retrospective) इसलिये ऐसे मामले जो पूर्व में वाणिज्यिक विवाद से संबंधित 'विनिर्दिष्ट मूल्य' की परिधि में नहीं आते थे, वे संशोधन के पश्चात् भी उस परिधि में नहीं आ सकते हैं । अतः ऐसे प्रकरणों को वाणिज्यिक न्यायालय में अंतरित नहीं किया जा सकता है।

इस संबंध में माननीय मध्य प्रदेश उच्च न्यायालय की इन्दौर खण्डपीठ द्वारा ***सुमन इन्फ्रास्ट्रकचर प्राइवेट लिमिटेड विरुद्ध मध्य प्रदेश राज्य और अन्य, आई एल आर 2025 म.प्र. 90 (डीबी)*** में प्रतिपादित विधि अवलोकनीय है।

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> Education is at the heart of the matter. Literacy is not enough. It is good to have a population which is able to read; but immensely better to have people able to distinguish what is worth reading.
>
> – Nani Palkhivala

PART – II

NOTES ON IMPORTANT JUDGMENTS

101. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Sections 2 (b) and 12 (1) (c)

Disclaimer of title – Suit for eviction was filed on the grounds as contained in section 12(1) (a), (c) and (f) of the Act – Plaintiff claimed herself as owner of the suit premises on the basis of Will allegedly executed by the original owner – Plaintiff's derivative title was challenged by the tenant as she was not natural successor of original owner – Tenant never denied her status as tenant – Held, challenge of derivative title of the landlord by tenant cannot be said to be disclaimer of title – No decree u/s 12 (1) (c) can be passed.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धाराएं 2(ख) एवं 12 (1)(ग) स्वत्व का इंकार – निष्कासन का वाद अधिनियम की धारा 12(1)(क), (ग) एवं (च) में अंतर्विष्ट आधारों पर प्रस्तुत किया गया था – वादिनी ने स्वयं को वाद परिसर की स्वामी होने का दावा मूल स्वामी द्वारा निष्पादित की गई वसीयत के आधार पर किया – किराएदार ने वादी के व्युत्पन्न स्वत्व को चुनौती दी कि वादिनी मूल स्वामी की नैसर्गिक उत्तराधिकारी नहीं थी – किरायेदार ने स्वयं की किरायेदार होने की प्रस्थिति से कभी इंकार नहीं किया – अभिनिर्धारित, भवन स्वामी के व्युत्पन्न हित/स्वत्व को किरायेदार द्वारा चुनौती दिया जाना, स्वत्व से इंकारी नहीं कहा जा सकता – धारा 12(1) (ग) के अंतर्गत डिक्री पारित नहीं की जा सकती।

Smt. Jyoti Sharma v. Vishnu Goyal and anr.

Judgment dated 07.08.2024 passed by the High Court of Madhya Pradesh in Second Appeal No. 657 of 2009, reported in ILR 2005 MP 134

Relevant extracts from the judgment:

There had never been any attornment of the tenancy by the tenant-defendant in favour of plaintiff. Neither the plaintiff has received the rent, not any receipt signed by plaintiff as landlord has been given to tenant. Therefore, the plaintiff is totally a third party for tenant. As per plaintiff only after the death of Ramjidas which took place on 07.08.1999, it was husband of plaintiff namely Madan Mohan Sharma who was receiving the rent and therefore Madan Mohan Sharma would be landlord for the tenant as per Section 2 (b) of Act of 1961. Once Madan Mohan Sharma became landlord, then if a suit is filed by person who is neither natural

successor of Ramjidas nor a landlord, then in that circumstance, the tenant can challenge the will allegedly executed by Ramjidas in favour of plaintiff. Since the plaintiff has based her claim on the basis of will and the suit has been filed under Section 12 (1) (f) of the Act of 1961 also, therefore, the plaintiff is required to prove her ownership and not just land lordship. Therefore, the tenant has every right to challenge the derivative title of the person filing the suit. In these circumstances, the defendant/tenant is having right to challenge the will filed by plaintiff because the will which has been filed by plaintiff is required to be proved by her in order to fall under the definition of owner as per Section 12 (1) (f) of the Act of 1961.

Hon'ble Apex Court in ***Sheela and ors. v. Firm Prahlad Rai, AIR 2002 SC 1264*** arising out of State of Madhya Pradesh considered the entire law on the question of granting decree on the ground of disclaimer of title when the tenant challenges the derivative title. Apex Court held that a tenant calling upon landlord to prove his ownership or putting the landlord to prove his title so as to protect his tenancy without this owing his character of possession of tenant cannot be said to be disclaimer of title. In the case at hand also, the present respondent never disclaimed himself to be tenant and has always admitted his tenancy and has only asked the plaintiff to prove his derivative title in order to protect his tenancy and therefore no ground under Section 12 (1) (c) of the Act is made out.

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102. BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988 – Section 4(1)
BENAMI TRANSACTIONS (PROHIBITION) AMENDMENT ACT, 2016 – Section 2(9)
CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11
Bar on suit – Suit property was purchased by the husband in the name of his wife after paying sale consideration from his known sources – Such transaction does not come within the purview of '*benami* transaction' u/s 2(9) of the Act – Date of purchase and date of filing of suit is immaterial – Plea of *benami* that property was purchased in the name of spouse can always be taken – Such suit is not barred by law therefore, plaint cannot be rejected.

बेनामी संव्यवहार (प्रतिषेध) अधिनियम, 1988 – धारा 4(1)
बेनामी संव्यवहार (प्रतिषेध) संशोधन अधिनियम, 2016 – धारा 2(9)
सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11
वाद वर्जन – पति द्वारा अपनी पत्नि के नाम पर अपने ज्ञात स्त्रोतों से विक्रय प्रतिफल का भुगतान कर वादग्रस्त संपत्ति क्रय की गई थी – ऐसा संव्यवहार अधिनियम की धारा 2(9) के अंतर्गत 'बेनामी संव्यवहार' की परिधि में नहीं आता

– क्रय करने की तिथि एवं वाद प्रस्तुत करने की तिथि महत्वहीन है – संपत्ति अपने जीवनसाथी के नाम पर क्रय की गई थी, बेनामी का ऐसा अभिवाक् सदैव लिया जा सकता है – ऐसा वाद विधि द्वारा वर्जित नहीं है, अतः वादपत्र नामंजूर नहीं किया जा सकता।

Mahesh v. Yogesh & ors.

Order dated 13.08.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 4859 of 2023, reported in ILR 2025 MP 105

Relevant extracts from the order:

After giving the definition of benami transaction the exceptions have been given and the effect of Section 2 (9) (A) (b) (iii) is that a transaction would not be a benami transaction when the property is held by an individual in the name of his spouse and the consideration for such property has been provided or paid out of the known sources of the individual. The essence or the material provision of deleted Sub Section 2(a) of the original Act, 1988 has been incorporated in this definition the effect of which is that a property held by a person in the name of his spouse when the consideration has been provided for by him would not be a benami transaction and a plea that the property is owned by the individual though held by his spouse shall very well be permissible to be raised.

Thus, whether it was under the original Act, 1988 or the Act as amended in 2016, there has always been an exemption from applicability of the Act to a property held by a person in the name of his spouse where the same has been purchased by that person and consideration for such purchase has been provided or paid out of the known sources of such person. It does not matter as to when the property was purchased i.e. prior to coming into force of the Act, 1988, during its pendency up to the amendment in the year 2016 or even thereafter. The date of purchase is immaterial and so also is the date of filing of the suit. In any suit, even if instituted after 1988 or even after 2016 a plea can very well be raised as regards a property being *benami* having been purchased by the individual in the name of his spouse at any point of time. It is hence very much permissible for plaintiff to raise a plea in the suit that the suit house was purchased by late Chandrashekhar benami in the name of his wife, defendant No.2.

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103. CIVIL PROCEDURE CODE, 1908 – Section 9
LAND REVENUE CODE, 1959 (M.P.) – Sections 109, 110, 111 and 257
BHU-RAJASVA SANHITA (BHU ABHILEKHO ME NAMANTARAN) NIYAM, 2018 (M.P.) – Rule 3

(i) Mutation – On the basis of Will – Jurisdiction of Tehsildar – Scope – Tehsildar can entertain application for mutation on the basis of Will, however, it would be obligatory upon him to enquire about the legal heirs of the deceased and issue notice to them – If no dispute is raised by any legal heirs of the testator or by any other person with respect to authenticity of Will, then it would be open for the Tehsildar to carry out the mutation in such undisputed cases.

(ii) Mutation – On the basis of Will – Jurisdiction of Tehsildar – While dealing with cases of mutation u/s 109 and 110 of MPLRC between private parties, Tehsildar is not authorized to take any evidence – In case any dispute is raised between private parties, then the Tehsildar would not have any competence to decide the dispute and it would be for the parties to approach the civil court – Procedure to be followed by Tehsildar where approach to civil court is not made or despite approach, no injunction is granted – Law explained and clarified.

(iii) Mutation – Jurisdiction of Tehsildar – Where issue of Government having interest in land crops up in course of mutation, then Tehsildar may decide that question after taking evidence – However, in such cases no inquiry as to validity of Will or of any registered title deed can take place before Tehsildar.

सिविल प्रक्रिया संहिता, 1908 – धारा 9
भू–राजस्व संहिता, 1959 (म.प्र.) – धाराएं 109, 110, 111 एवं 257
भू–राजस्व संहिता (भू–अभिलेखों में नामांतरण) नियम, 2018 (म.प्र.) – नियम 3

(i) नामान्तरण – वसीयत के आधार पर – तहसीलदार का क्षेत्राधिकार – विस्तार – तहसीलदार वसीयत के आधार पर नामान्तरण का आवेदन ग्रहण कर सकता है, परन्तु उसके लिये यह बाध्यकारी है कि वह मृतक के विधिक उत्तराधिकारियों के बारे में जॉच करे एवं उन्हें नोटिस दे – यदि वसीयतकर्ता के किसी भी विधिक उत्तराधिकारी या किसी अन्य व्यक्ति द्वारा वसीयत की प्रामाणिकता के संबंध में कोई विवाद उत्पन्न नहीं किया जाता है, तब तहसीलदार को ऐसे निर्विवाद मामलों में नामान्तरण करने का विकल्प उपलब्ध रहता है।

(ii) नामान्तरण – वसीयत के आधार पर – तहसीलदार का क्षेत्राधिकार – निजी पक्षकारों के मध्य म.प्र. भू–राजस्व संहिता की धाराएं 109 और 110 के अंतर्गत नामान्तरण के मामलों में कार्यवाही करने के दौरान तहसीलदार साक्ष्य लेने के लिए अधिकृत नहीं है – यदि निजी पक्षकारों के मध्य कोई विवाद उत्पन्न हो जाता है, तब तहसीलदार को विवाद का निराकरण करने की कोई अधिकारिता नहीं होगी और यह पक्षकारों पर होगा कि वे सिविल न्यायालय की शरण लें – जहां सिविल न्यायालय की शरण नहीं ली गई या कोई निषेधाज्ञा जारी नहीं की गई तब तहसीलदार को उसके द्वारा अपनाई जाने वाली प्रक्रिया को समझाया और स्पष्ट किया गया।

(iii) नामान्तरण – तहसीलदार का क्षेत्राधिकार – जहां नामान्तरण के दौरान भूमि में सरकार का हित होने का विवाद उठता है, तब तहसीलदार साक्ष्य लेकर उस प्रश्न का निराकरण कर सकता है – परन्तु उन मामलों में भी वसीयत या किसी पंजीकृत स्वत्व विलेख की वैधता के बारे में कोई जांच तहसीलदार के समक्ष नहीं हो सकेगी।

Anand Choudhary v. State of M.P. and ors.
Order dated 14.02.2025 passed by the High Court of Madhya Pradesh in Writ Petition No. 3499 of 2022, reported in 2025 (1) MPLJ 646 (FB)

Relevant extracts from the order:

In view of the discussion, we answer the question referred to us in the negative and hold that Tehsildar cannot reject the application for mutation at threshold on the ground that it is based upon will. However, in view of detailed discussion made by us above, it would be appropriate to summarize our conclusions serially as under: –

(1) The Tehsildar while dealing with cases of mutation u/s 109 and 110 MPLRC between private parties, does not perform judicial or quasi-judicial functions, but only performs administrative functions and therefore, he is not authorized to take any evidence for the purpose of deciding applications for mutation.

(2) The Tehsildar can entertain application for mutation on the basis of will. However, it would be obligatory upon him to enquire about the legal heirs of the deceased and notice them in view of provisions of section 110(4) MPLRC.

(3) Sections 109 and 110 have to be read alongwith Section 111 MPLRC and a bare reading of Section 111 of MPLRC leads to conclusion that where-ever rights of private parties are involved, then it will only be for the Civil Court to adjudicate the disputed cases. The jurisdiction of the Revenue Officers in the matters of mutation in Revenue records, is merely administrative.

(4) A dispute as to validity of will, competence of testator to execute will or existence of two rival wills of testator, or a dispute as to validity of any other non-testamentary registered title document as enumerated in Form-1 of Mutation Rules of 2018 would create a dispute relating to any right which is recorded in the record of rights and arising during either mutation or correction of entry would be such a dispute.

(5) In case any dispute as mentioned in para (4) above is raised between private parties, then the Tehsildar would not have any competence to decide the dispute and it would be for the parties to approach the civil court to get the dispute adjudicated, in terms of detailed discussion contained in para-74 above. Such matters will either be disposed or kept pending and reported to the Collector in terms of Section 110(7) MPLRC by the Tehsildar, in the manner discussed in detail in this order.

(6) The decision in disputed cases as contemplated under Section 110 (4) MPLRC does not give any authority to the Tehsildar to decide such dispute and assume powers of Civil Court by going into the authenticity of will or of any non-testamentary registered title document and that outer time limit has to be read only to determine whether a dispute exists in the matter and granting opportunity to parties to approach the Civil Court. If such approach to Civil Court is not made or despite approach no injunction is granted by Civil Court, then mutation will be carried out on basis of succession by ignoring disputed testamentary document and in case of non-testamentary registered title documents, by giving effect to such document. Once a dispute in the matter of competence of testator, validity of the will (whether registered or not) or into a non-testamentary registered title document or dispute as to title is raised before Civil Court and injunction is granted, then the only course open for the Tehsildar would be not to proceed further and to report the matter to the Collector under Section 110(7) of MPLRC.

(7) In case no dispute is raised by any legal heirs of the testator or by any other person in the matter of competence of testator to execute the will and authenticity of the will, then it would be open for the Tehsilder to carry out the mutation in such undisputed cases. However, even in those cases subsequent Civil Suit will not be barred.

(8) In case where issue of Government having interest in the land crops up in course of mutation, then the Tehsildar may decide that question in terms of section 111 readwith Section 257(a) MPLRC by exercising jurisdiction which

is wider than administrative one and may take evidence, but in those cases also, no enquiry as to validity of will or of any registered title document can take place before the Tehsildar.

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***104. CIVIL PROCEDURE CODE, 1908 – Sections 11, 47 and 48**
SPECIAL MARRIAGE ACT, 1954 – Sections 36 and 39-A
LIMITATION ACT, 1963 – Article 136

(i) Execution of interim maintenance order u/s 36 of the Special Marriage Act – Enforceability of the order by applying section 39-A – Order passed on an application u/s 36 of the Act contained in Chapter VII, would be an order passed by the Court in a proceeding under Chapter V or VI as section 36 has no independent existence – Thus, such order would be enforceable in terms of section 39-A of the Act.

(ii) *Res judicata* – Execution proceedings – Applicability – Respondent/wife has simultaneously filed two execution petitions and later withdrawn one of the two, to pursue the second execution petition – Held, first execution petition was not adjudicated on mertis and no issue or objection raised therein was decided by the court, therefore, the second execution petition would not be barred by the principles of *res judicata*.

(iii) Interim maintenance – Limitation for execution – Article 136 of the Limitation Act prescribes a period of 12 years for filing application for execution – Execution application filed after 1 year is within limitation.

सिविल प्रक्रिया संहिता, 1908 — धाराएं 11, 47 एवं 48
विशेष विवाह अधिनियम, 1954 — धाराएं 36 एवं 39—क
परिसीमा अधिनियम, 1963 — अनुच्छेद 136

(i) विशेष विवाह अधिनियम की धारा 36 के अंतर्गत अंतरिम भरण—पोषण आदेश का निष्पादन — धारा 39—क को प्रयोज्य कर आदेश की प्रवर्तनीयता — अधिनियम, 1954 के अध्याय VII में अंतर्विष्ट धारा 36 के अंतर्गत पारित आदेश अध्याय V या VI के अंतर्गत कार्यवाही में न्यायालय द्वारा पारित आदेश होगा, क्योंकि धारा 36 का स्वतंत्र अस्तित्व नहीं है — अतः ऐसा आदेश अधिनियम की धारा 39—क के अनुसार प्रवर्तनीय होगा।

(ii) *पूर्व—न्याय* — निष्पादन कार्यवाही — प्रयोज्यता — प्रतिवादी/पत्नी ने एक साथ दो निष्पादन याचिकाएं प्रस्तुत की और फिर द्वितीय निष्पादन याचिका

को आगे बढ़ाने के लिए दो में से एक को वापस ले लिया है – अभिनिर्धारित, प्रथम निष्पादन याचिका का गुण–दोष के आधार पर न्यायनिर्णयन नहीं किया गया था और उसमें उठाए गए किसी बिन्दु या आपत्ति पर न्यायालय द्वारा निर्णय नहीं लिया गया था, इसलिए द्वितीय निष्पादन याचिका *पूर्व न्याय* के सिद्धांत से बाधित नहीं होगी।

(iii) अंतरिम भरण–पोषण – निष्पादन की परिसीमा – परिसीमा अधिनियम का अनुच्छेद 136 निष्पादन के लिए आवेदन प्रस्तुत करने की परिसीमा 12 वर्ष निर्धारित करता है – एक वर्ष उपरांत प्रस्तुत निष्पादन आवेदन परिसीमा में है।

Dr. Lalit Chaturvedi v. Dr. Dipali Sahu

Order dated 15.10.2024 passed by the High Court of Madhya Pradesh in First Appeal No. 1775 of 2024, reported in 2025 (1) MPLJ 444 (DB)

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105. CIVIL PROCEDURE CODE, 1908 – Section 151 and Order 7 Rule 14
PRACTICE AND PROCEDURE:

(i) Production of documents before Commercial Court – Documents could not be produced with plaint either due to *bona fide* mistake or were not in possession/custody of plaintiff – Court permitted the plaintiff to produce such documents – Whether the order of the court was justified? Held, Yes – No prejudice would be caused to defendant for production of documents by plaintiff – Defendant has sufficient opportunity for cross-examining the plaintiff in respect of those documents and he may also adduce evidence in rebuttal – No grave injustice is caused to defendant – Impugned order passed by Commercial Court, affirmed.

(ii) Procedure is handmaid of justice – Procedural and technical hurdles shall not be allowed to come in the way of Court while doing substantial justice – If procedural violation does not seriously cause prejudice to adversary party, Court must lean towards doing substantial justice rather than relying upon procedural and technical violation – Procedural law should not ordinarily be construed as mandatory but is always subservient to and is an aid to justice.

सिविल प्रक्रिया संहिता, 1908 – धारा 151 एवं आदेश 7 नियम 14
प्रथा एवं प्रक्रिया:

(i) वाणिज्यिक न्यायालय के समक्ष दस्तावेजों का प्रस्तुतीकरण – दस्तावेजों को या तो सद्भाविक त्रुटि के कारण वादपत्र के साथ प्रस्तुत नहीं किया जा

सका या दस्तावेज वादी के कब्जे/अभिरक्षा में नहीं थे – न्यायालय ने वादी को ऐसे दस्तावेज प्रस्तुत करने की अनुमति दी – क्या न्यायालय का आदेश न्यायोचित था? अभिनिर्धारित, हाँ – वादी द्वारा दस्तावेजों के प्रस्तुतीकरण से प्रतिवादी को कोई पूर्वाग्रह नहीं होगा – प्रतिवादी के पास इन दस्तावेजों के संबंध में वादी से प्रतिपरीक्षण करने का पर्याप्त अवसर है और वह खंडन में साक्ष्य भी प्रस्तुत कर सकता है – प्रतिवादी को कोई गंभीर अन्याय नहीं हुआ है – वाणिज्यिक न्यायालय द्वारा पारित आक्षेपित आदेश की पुष्टि की गई।

(ii) प्रथा एवं प्रक्रिया – प्रक्रिया न्याय की दासी है – प्रक्रियात्मक और तकनीकी बाधाओं को सारभूत न्याय करते समय न्यायालय के मार्ग में आने की अनुमति नहीं दी जाएगी – यदि प्रक्रियात्मक उल्लंघन प्रतिपक्ष को गंभीर रूप से पूर्वाग्रह कारित नहीं करता है, तब न्यायालय को प्रक्रियात्मक और तकनीकी उल्लंघन पर निर्भर होने की अपेक्षा सारभूत न्याय करने के लिए अग्रसरित होना चाहिए – प्रक्रियात्मक विधि को सामान्यतः अनिवार्य नहीं माना जाना चाहिए, प्रक्रियात्मक विधि हमेशा न्याय के अधीन एवं न्याय की सहायक होती है।

Manoj Gupta v. Sharma Advertising

Order dated 09.01.2025 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 5394 of 2024, reported in 2025 (1) MPLJ 610 (DB)

Relevant extracts from the order:

The Provisions of order XI-I(3) under Commercial Courts Act make it clear that it is the duty of plaintiff to file all original documents along-with plaint and give an Affidavit or declaration on oath that no other documents are in his/her/its power, possession, control and custody at the time of filing of plaint. But, above Provisions are procedural law.

Procedure is handmaid of justice. Procedural and technical hurdles shall not be allowed to come in a way of Court while doing substantial justice. If procedural violation does not seriously cause prejudice to adversary party, Court must lean towards doing substantial justice rather than relying upon procedural and technical violation. ***[***See: ***Sugandhi v. P. Rajkumar, (2020) 10 SCC 706]***.

No person has a vested right in any course of procedure. He/she has only right of prosecution or defence in the manner for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. ***[***See: ***Blyth v. Blyth, (1966) 1 All ER 524 (HL)]***.

A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. ***[***See: ***Shreenath v. Rajesh, (1998) 4 SCC 543: AIR 1998 SC 1827]***.

On perusal of impugned orders, it appears that no prejudice whatsoever would be caused to petitioner-defendant for production of documents by the plaintiff, which could not be produced by plaintiff with plaint either due to *bona fide* mistake or documents were not in possession/custody of plaintiff. It cannot be said that these documents are filed by plaintiff to fill up lacuna. Defendant has sufficient opportunity before the Commercial Court for cross-examination of plaintiff in respect of alleged documents sought by the plaintiff and may also adduce evidence in rebuttal at the time of evidence. No prejudice and grave injustice is caused to defendant.

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106. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11
COURT FEES ACT, 1870 – Section 7(v)(a)
SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSESTS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 – Sections 17 and 34

(i) Civil suit against bank – Bar created by section 34 of the Act of 2002 – Applicability – Civil Court's jurisdiction is ousted only in respect of those matters which the DRT or DRAT is empowered to determine under the said Act – Plaintiff, who was not a borrower and has an independent claim, sought relief that the disputed sale-deed and mortgage deed be declared null and void – DRT does not have the jurisdiction to grant such declaration – Jurisdiction to declare such disputed deeds being illegal is vested upon the civil court u/s 9 of the Code – Similarly, DRT does not have the jurisdiction to grant relief of possession to the plaintiff – Thus, relief of restoration of possession is also not barred by section 34 of the Act of 2002.

(ii) Suit for declaration and possession – Relief of cancellation of sale deed and mortgage deed – Court fees – Plaintiff was not a signatory or party to the sale deed and mortgage deed – Held, plaintiff is not required to pay *ad valorem* court fees.

(iii) Partial rejection of plaint – Permissibility – When some relief in the suit is grantable and some is barred by law – Plaint cannot be rejected as a whole under Order 7 Rule 11 – Civil Court cannot reject a plaint partly – Procedure to be followed by the court, explained.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11
न्यायालय शुल्क अधिनियम, 1870 – धारा 7(v)(क)
वित्तीय परिसंपत्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम, 2002 – धाराएं 17 एवं 34

(i) बैंक के विरुद्ध सिविल वाद – अधिनियम, 2002 की धारा 34 द्वारा सृजित वर्जन रोक – प्रयोज्यता – सिविल न्यायालय का क्षेत्राधिकार केवल उन मामलों के संबंध में वर्जित हो जाता है, जिनमें डीआरटी या डीआरएटी को 2002 के अधिनियम के अंतर्गत निर्धारित करने का अधिकार है – वादी, जो ऋणी नहीं था और जिसका स्वतंत्र दावा था, ने यह अनुतोष चाहा कि विवादित विक्रय–विलेख और बंधक–विलेख को शून्य और अकृत घोषित किया जाए – डीआरटी के पास ऐसी घोषणा करने का क्षेत्राधिकार नहीं है – ऐसे विवादित विलेखों को शून्य घोषित करने का क्षेत्राधिकार सिविल प्रक्रिया संहिता की धारा 9 के अंतर्गत सिविल न्यायालय में निहित है – इसी प्रकार डीआरटी को वादी की आधिपत्य की सहायता देने का भी क्षेत्राधिकार नहीं है – इस प्रकार आधिपत्य की पुनर्स्थापना की सहायता भी अधिनियम, 2002 की धारा 34 से वर्जित नहीं है।

(ii) घोषणा और आधिपत्य के लिए वाद – विक्रय–विलेख और बंधक–विलेख के रद्दकरण का अनुतोष – न्यायालय शुल्क – वादी विक्रय–विलेख और बंधक–विलेख का हस्ताक्षरकर्ता या पक्षकार नहीं था – अभिनिर्धारित, वादी को मूल्यानुसार न्यायालय शुल्क का भुगतान करने की आवश्यकता नहीं है।

(iii) वादपत्र की आंशिक अस्वीकृति – अनुज्ञेयता – जब वाद में कुछ अनुतोष दिया जा सकता है और कुछ विधि द्वारा वर्जित है – आदेश 7 नियम 11 के अंतर्गत, वादपत्र को पूर्ण रूप से नामंजूर नहीं किया जा सकता – सिविल न्यायालय वादपत्र को आंशिक रूप से नामंजूर नहीं कर सकता – न्यायालय द्वारा अपनाई जाने वाली प्रक्रिया स्पष्ट की गई।

Central Bank of India and anr. v. Prabha Jain and ors.

Order dated 09.01.2025 passed by the Supreme Court in Civil Appeal No 1876 of 2016, reported in (2025) 4 SCC 38

Relevant extracts from the order:

Section 34 of the SARFAESI Act provides that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter which a

Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine…" Hence, the civil court's jurisdiction is only ousted in respect of those matters which the Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under the SARFAESI Act to determine. The SARFAESI Act confers certain powers upon the Debts Recovery Tribunal by virtue of the following sections: Sections 5(5), 13(10), 17 and 19. Except for Section 17, as such none of the other sections referred to above are relevant for the purposes of this matter.

Section 17 of the SARFAESI Act is as follows:

(i) Under Section 17(1) of the Act,

(ii) From Sections 17(2), (3) and (4) of the SARFAESI Act, it is clear that the Tribunal has the power to examine whether

> "(2) … *any of the measures referred to in sub-section (4) of Section 13* taken by the secured creditor … *are in accordance with the provisions of this Act and the rules made thereunder*."

(iii) The Tribunal has the power to pass consequential orders as provided in Section 17(3).

From Section 17, it is clear that it is only the Tribunal that has the jurisdiction to determine whether "*any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor*" are in accordance with the Act or Rules thereunder.

The plaintiff in her suit has prayed for 3 reliefs:

(*a*) The first relief is in relation to a sale deed executed by Sumer Chand Jain in favour of Parmeshwar Das Prajapati.

(*b*) The second relief is in relation to a mortgage deed executed by Pramod Jain in favour of the Bank.

(*c*) The third relief is for being handed over the possession of the suit property.

So far as the first and second reliefs are concerned, they are not in relation to any measures taken by the secured creditor u/s 13(4) of the SARFAESI Act. Rather, they are reliefs in relation to the actions taken prior to the secured creditor stepping into the picture and well prior to the secured creditor invoking the provisions of the SARFAESI Act.

Therefore, the Tribunal would have no jurisdiction under Section 17 of the SARFAESI Act to grant the declarations sought in the first and the second reliefs.

Further, the SARFAESI Act is enacted essentially to provide a speedy mechanism for recovery of debts by banks and financial institutions. The SARFAESI Act has not been enacted for providing a mechanism for

adjudicating upon the validity of documents or to determine questions of title finally. The DRT does not have the jurisdiction to grant a declaration with respect to the mortgage deed or the sale deed as sought by the plaintiff. The jurisdiction to declare a sale deed or a mortgage deed being illegal is vested with the civil court under Section 9 of the Code of Civil Procedure. Therefore, the civil court has the jurisdiction to finally adjudicate upon the first two reliefs.

In the aforesaid context, we may give few illustrations of the kind of disputes that can crop up. These illustrations would indicate that DRT can never have the jurisdiction to decide such civil disputes of title between a third person and a borrower. Two illustrations may be considered:

Illustration 1: A and B are sons of X. On X's death, A claims that X made a will bequeathing a particular parcel of land ("Land 1") exclusively to A. A mortgages Land 1 to a bank and the bank initiates proceedings under the SARFAESI Act. The other son i.e. B claims that father X had made a will bequeathing Land 1 exclusively to B. Hence, there are two conflicting wills propounded by each son. B files a suit praying for a declaration that he is the exclusive owner of the land on the basis of the will and other reliefs. The civil court will have jurisdiction to decide which of the two wills is valid. It is inconceivable that DRT would have the jurisdiction to decide which will is valid.

Illustration 2: X was married to Y (wife). They did not have any biological children. Hence, in 1985, the couple adopted Q. In 1990, Y died and left her entire estate to X by way of a will. X died in 1995 without making a will. The adopted child Q (claiming to be sole owner by intestate succession) mortgaged one of the lands in favour of the bank which initiated SARFAESI proceedings. However, X's only brother 12 Z made a claim that the "adoption" of Q was not as per law and that there being no adoption in law, Q was not entitled to the estate of X. X filed a suit inter alia praying for the following declarations:

1. The adoption of Q was void and ineffective.
2. Z being the only heir as per intestate succession, Z was exclusively entitled to the land.
3. The Mortgage by Q in favour of the bank was invalid as it was a mortgage by Q who had no title.

Unamended Section 17(3) of the SARFAESI Act as applicable to the present case:

(i) Section 17(3) as it stood prior to the 2016 Amendment, provides that where the DRT finds that the measures taken by the secured creditor under Section 13(4) of the Sarfaesi Act are not in accordance with the Act or Rules, it has the power to "restore the possession of the secured assets back to the borrower". In this context, there are two significant points that deserve to be considered:

> *(i)* While it is true that Section 17(1) uses the words "any person (including the borrower) aggrieved", Section 17(3) does not explicitly empower the DRT to restore the possession *to* anyone other than the borrower. Yes, in a given case, if the borrower has put someone else in possession, then perhaps, it could be contended that under Section 17(3), the DRT's power to restore possession to the "borrower" would include the power to restore possession to the person who was holding it on behalf of the borrower or claiming through the borrower. However, it cannot be contended that under Section 17(3), the DRT can hand over possession to someone whose claim is adverse to that of the borrower.
>
> *(ii)* What is even more important is that in the unamended Section 17(3), the word used is "restore" and not "hand over". As per *Cambridge English Dictionary*, word "restore" means "to return something or someone to an earlier good condition or position". Under Section 17(3), the DRT has the power to "restore" possession which would mean that it has the power to return possession to the person who was in possession when the bank took over possession. DRT only has power to "restore" possession; it has no power to "hand over" possession to a person who was never in possession when the bank took over possession.

The word "restore" has been very rightly used by Parliament. It is one thing to empower the DRT to hold that the actions of the secured creditor are not in accordance with the Act and to empower the DRT to give directions to the secured creditor to *reverse* its actions and to direct it to restore the property back to where it was. However, it would be quite illogical for Parliament to empower the DRT to direct the secured creditor to hand over possession to some third party who was never in possession in the first place.

(ii) Now, the question that arises is this: Whether the plaintiff being not in possession could have sought for from the DRT under the unamended Section

17(3)? In our considered view for the following two reasons, the plaintiff could not have sought from DRT the relief of being given possession:

> *(i)* The plaintiff is neither a borrower nor a person claiming under/through the borrower. The plaintiff has a claim independent of and adverse to the borrower.

(iii) Hence, the plaintiff could not have sought from DRT, the relief of being handed over the possession. DRT would have no jurisdiction to grant such relief to her. Hence, the plaintiff's third relief in her suit is also not barred by Section 34 of the Sarfaesi Act.

(iv) The Bank may contend that even if the plaintiff cannot seek the relief of being handed over possession under the expression "restore the possession … to the borrower", she can still seek that relief under the widely worded expression appearing at the end of Section 17(3):"and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13" appearing at the end of Section 17(3). We are of the view that even under such expression, the plaintiff cannot seek the relief of being handed over possession for the following reasons:

> *(i)* Under the last phrase of Section 17(3), the civil court has the power to pass other orders as it may consider appropriate and necessary "in relation to any of the measures taken by the secured creditor under sub-section (4) of Section 13".
>
> *(ii)*The measures taken by the secured creditor are of taking over possession from the borrower and not from the plaintiff. Hence, the plaintiff's prayer to hand over possession is not at all "in relation to any of the measures taken by…". The passing of an order to hand over possession to the plaintiff is, therefore, not an order "in relation to any of the measures taken by the secured creditor".
>
> *(iii)* Hence, even under the last phrase of Section 17(3), DRT has no power to pass an order directing the secured creditor to hand over possession to the plaintiff. Hence, the plaintiff could not have sought that relief from DRT.

(v) Although Section 17(3) as amended by the Sarfaesi Act, 2016 does not arise for our consideration in this matter, yet it is pertinent to note that even the amended Section 17(3) uses the expression "*restore* the possession of secured

assets". The expression "or such other aggrieved person" has been inserted after the word "borrower" in clause (*b*). However, there is no power conferred to hand over the property to someone who was never in possession. The amended Section 17(3) is reproduced below:

> "17. (3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order –
>
> (*a*) declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the secured creditor as invalid; and
>
> (*b*) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and
>
> (*c*) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13."

Even if we would have been persuaded to take the view that the third relief is barred by Section 17(3) of the Sarfaesi Act, still the plaint must survive because there cannot be a partial rejection of the plaint under Order 7 Rule 11CPC. Hence, even if one relief survives, the plaint cannot be rejected under Order 7 Rule 11CPC. In the case on hand, the first and second reliefs as prayed for are clearly not barred by Section 34 of the Sarfaesi Act and are within the civil court's jurisdiction. Hence, the plaint cannot be rejected under Order 7 Rule 11CPC.

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107. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11
URBAN LAND (CEILING AND REGULATION) ACT, 1976 – Section 10(3)
URBAN LAND (CEILING AND REGULATION) REPEAL ACT, 1999
Suit for declaration of title and injunction – Suit land was subject-matter of ceiling proceedings – Defendant filed an application for rejection of plaint on the ground that jurisdiction of civil court is barred by Ceiling

Act, 1976 – Trial Court rejected the application which was filed under Order 7 Rule 11(d) on the ground that the Act of 1976 has been repealed in the year 1999 w.e.f. 17.02.2000 and therefore, the provisions of the Act of 1976 are not applicable as cause of action *prima facie* arose on 15.09.2016 in this case – Whether the trial court was justified in rejecting the application? Held, No – When disputed land was subject-matter of ceiling proceedings, then remedy of appeal, revision before designated Appellate and Revisional Authority was available to plaintiff and therefore, plaintiff cannot invoke jurisdiction of Civil Court – When jurisdiction of Civil Court is expressly barred then Civil Court cannot examine question of applicability of Act of 1976 to the suit land – Plaint is liable to be rejected under Order 7 Rule 11(d) of the Code.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11
शहरी भूमि (अधिकतम सीमा और विनियमन) अधिनियम, 1976 – धारा 10(3)
शहरी भूमि (अधिकतम सीमा और विनियमन) निरसन अधिनियम, 1999
स्वत्व घोषणा और निषेधाज्ञा का वाद – वादग्रस्त भूमि, सीलिंग कार्यवाही की विषयवस्तु थी – प्रतिवादी ने वादपत्र को नामंजूर करने हेतु इस आधार पर आवेदन प्रस्तुत किया कि सीलिंग अधिनियम, 1976 द्वारा सिविल न्यायालय का क्षेत्राधिकार वर्जित है – विचारण न्यायालय ने आदेश 7 नियम 11 (घ) के अंतर्गत प्रस्तुत आवेदन को इस आधार पर निरस्त किया कि सीलिंग अधिनियम, 1976 दिनांक 17.02.2000 से प्रभावशील निरसन अधिनियम 1999 से निरसित हो चुका है अतः अधिनियम, 1976 के प्रावधान लागू नहीं होते हैं क्योंकि इस मामले में प्रथम दृष्टया वाद कारण दिनांक 15.09.2016 को उत्पन्न हुआ – क्या विचारण न्यायालय द्वारा आवेदन को निरस्त किया जाना उचित था? अभिनिर्धारित, नहीं – जब विवादित भूमि सीलिंग कार्यवाही की विषयवस्तु थी, तब वादी को अपीलीय एवं पुनरीक्षण प्राधिकरण के समक्ष अपील, पुनरीक्षण का उपचार उपलब्ध था और इसलिए वादी सिविल न्यायालय के क्षेत्राधिकार का उपयोग नहीं कर सकता है – जब सिविल न्यायालय का क्षेत्राधिकार प्रत्यक्ष रूप से वर्जित है तब सिविल न्यायालय वाद भूमि के संबंध में अधिनियम, 1976 की प्रयोज्यता के प्रश्न का परीक्षण नहीं कर सकता – संहिता के आदेश 7 नियम 11 (घ) के अंतर्गत वाद नामंजूर किये जाने योग्य है।

State of M.P. and ors. v. Ayodhya Bai and ors.

Order dated 27.09.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 682 of 2023, reported in 2025 (1) MPLJ 525

Relevant extracts from the order:

In ***Kapilaben Amalal Patel and ors. v. State of Gujarat and anr, (2021) 12 SCC 95*** it is held that, "the normal mode of taking possession is drafting the 'Panchnama 'in the presence of 'Panchas' and taking possession and giving delivery to the beneficiaries is accepted mode of taking possession of the land Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession".

The Supreme Court in the case of ***Tamil Nadu Housing Board v. A.Viswam (Dead) by LRs., AIR 1996 SC 3377*** has held as under:-

> "It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or 'Panchanam'a by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land."

Accordingly, the challenge on the ground that possession of the disputed land is with the petitioners/respondents does not survive and arguments does not succeeds that after 17.12.2000, the date on which Urban Land (Ceiling and Regulation) Repeal Act, 1999, the provisions of Urban Land (Ceiling and Regulation) Act, 1976 does not apply to the disputed land in question.

Now, we examine the rest of the arguments advanced on behalf of the respondent plaintiff. When the disputed land was the subject matter of Ceiling Proceedings then the remedy of appeal, revision before the designated appellate and Revisional Authority was available to the plaintiffs/respondents, but they cannot invoke the jurisdiction of Civil Court to try the suit regarding the suit land. Accordingly, when the jurisdiction of Civil Court is barred then the Civil Court cannot examine the questions that Urban Land (Ceiling and Regulation) Act, 1976 was not applicable to the suit land or notices were not issued to the present plaintiffs. Arguments advanced on behalf of the plaintiffs/respondents on the ground that the case of **State of *M.P. v. Ghisilal, 2022(2) MPLJ 587(SC)*** is distinguishable on the facts also does not succeed when the jurisdiction of trial Court is barred and plaintiffs/respondents cannot defend themselves on the basis of ***R.S.I.D.I Corporation v. S.S Co-operative House Society Jaipur, AIR 2013 SCC 1226*** submitting that proceedings before the competent authority under Urban Land (Ceiling and Regulation) Act, 1976 were void ab initio.

Accordingly, in the light of **State of *M.P. v. Ghisilal* (supra)**, ***Shri Mukund Rao Pohankar v. State of Madhya Pradesh, 2024 Latest Caselaw 21396 MP*** and ***Smt Shantibai and others v. State of M.P. and anr.***, judgment dated 24.04.2023 in Second Appeal No. 948 of 2014 before the High Court of Madhya Pradesh at Jabalpur the findings of Trial Court in rejecting the application under Order VII Rule 11 of CPC suffers from patent illegality and cannot be sustained. Proceedings before the trial Court is covered under Order VII Rule 11 (d) of the CPC, the Civil Revision is allowed and the order dated 07.07.2023 is set aside and the plaint is rejected under Order VII Rule 11 (d) of the CPC.

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108. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 16

(i) Execution of decree by transferee – Scope – Where a decree is transferred by assignment, the transferee may apply for execution under Order 21 Rule 16 CPC – Proviso to this Rule mandates that notice of such execution application shall be given to the transferor and judgment-debtor and objections, if any, must be heard before proceeding – However, the Rule does not require prior permission of the Court or pre-filing notice to the judgment-debtor – Such interpretation would be contrary to the plain language of the provision.

(ii) Notice to judgment-debtor – Applicability – Requirement of notice under Rule 16 arises only when execution is sought by an assignee, and not when the original decree-holder files application for execution – No general mandate in Order 21 CPC requiring notice to judgment-debtor in cases of execution by the original decree- holder.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 16

(i) अंतरिती द्वारा डिक्री का निष्पादन – विस्तार – जहाँ डिक्री का समनुदेशन द्वारा अंतरण हुआ है, वहां अंतरिती आदेश 21 नियम 16 सीपीसी के अंतर्गत निष्पादन के लिए आवेदन कर सकता है – इस नियम का परन्तुक यह अनिवार्य करता है कि ऐसे निष्पादन आवेदन की सूचना अंतरक एवं निर्णीतऋणी को दी जावे, एवं आपत्तियां, यदि कोई हैं, पर सुनवाई अग्रिम कार्यवाही करने से पूर्व की जावे – किंतु उक्त नियम न्यायालय की पूर्व अनुमति अथवा निर्णीतऋणी को आवेदन प्रस्तुत करने के पूर्व सूचना–पत्र देने की अपेक्षा नहीं करता है – ऐसा निर्वचन, प्रावधान की स्पष्ट भाषा के विपरीत होगा।

(ii) निर्णीतऋणी को सूचना–पत्र – प्रयोज्यता – नियम 16 के अंतर्गत सूचना–पत्र की आवश्यकता केवल तब उत्पन्न होती है जब निष्पादन की मांग समनुदेशिती द्वारा की जावे, एवं तब नहीं जब मूल डिक्री धारक निष्पादन के लिए आवेदन प्रस्तुत करता है – आदेश 21 सीपीसी में मूल डिक्री धारक द्वारा निष्पादन कराए जाने के मामलों में निर्णीतऋणी को सूचना–पत्र देने की आवश्यकता के लिए कोई सामान्य अनुदेश नहीं है।

Abdul Shakur through LRs. v. Purushhottam

Order dated 29.07.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 4032 of 2024, reported in ILR 2024 MP 2303

Relevant extracts from the order:

As per Order 21 Rule 16 of the CPC, where interest of a decree holder in the decree is transferred by assignment, the transferee may apply for execution of the decree. In the proviso it has been stated that when the decree has been transferred by assignment, notice of the execution application shall be given to the transferor and the judgment debtor and the decree shall not be executed until the Court has heard their objection to its execution.

The rule only contemplates notice of the execution application to be given to the judgment debtor after its filing. The same cannot be stretched to mean that prior to filing of execution application an assignee decree holder is required to obtain permission for the same from the executing Court and to issue notice to the judgment debtor to enable him to file objection before the executing Court which is then to be heard and only thereafter execution is to be proceeded with. Such an interpretation would be violating the very simple language of the rule.

The provision as regards issuing notice to the decree holder has been made since the execution is not filed by the original decree holder but by the assignee. If the same had been filed by the original decree holder, no notice would have been required to be issued to the judgment debtor since there is no such provision in Order 21 of the CPC to that effect.

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109. CIVIL PROCEDURE CODE, 1908 – Order 21 Rules 97 and 99

(i) Execution proceeding – Right of *pendente lite* transferee – Final decree in suit for partition was passed on 09.03.1970 which was engrossed on the stamp paper on 19.11.1990 – Execution petition for delivery of possession was filed on 13.03.1991 – Possession of the suit

property was delivered in execution proceeding to plaintiff on 22.11.1994 – Respondent who was *pendente lite* transferee, filed an application under Order 21 Rule 99 CPC for re-delivery of the suit property claiming independent right, title and interest in the same – Executing Court rejected the application – In appeal, High Court allowed the appeal and remanded the matter to the Trial Court for fresh consideration – Held, being *pendente lite* transferee, the respondent was entitled to claim his independent right, title and interest in the property and to raise question of limitation of the execution petition – "Any person" not a party to the suit can seek re-delivery, after he has been dispossessed – A term stranger transferee would cover within its ambit a *pendent lite* transferee, who has not been impleaded as a party to the suit.

(ii) Suit property transferred during pendency of suit – In execution proceedings, transferee resisted delivery of possession – Held, it was incumbent on the decree-holder to have impleaded the transferee by filing an application under Order 21 Rule 97 CPC.

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

(i) निष्पादन कार्यवाही – वाद कालीन अन्तरिती का अधिकार – विभाजन के वाद में अंतिम डिक्री दिनांक 09.03.1970 को पारित की गई जिसे स्टाम्प पेपर पर दिनांक 19.11.1990 को लिखा गया – आधिपत्य दिलाए जाने हेतु दिनांक 13.03.1991 को निष्पादन याचिका प्रस्तुत की गई – निष्पादन कार्यवाही में दिनांक 22.11.1994 को दावाकृत संपत्ति का आधिपत्य वादी को सौंपा गया – प्रत्यर्थी जो वादकालीन अन्तरिती था, उसने दावाकृत संपत्ति की पुनः प्राप्ति हेतु अपने स्वतन्त्र अधिकार, स्वत्व एवं हित का दावा करते हुए आदेश 21 नियम 99 सी.पी.सी. के अन्तर्गत आवेदन प्रस्तुत किया – निष्पादन न्यायालय ने आवेदन निरस्त किया – अपील में, उच्च न्यायालय ने अपील स्वीकार करते हुए प्रकरण को नये सिरे से पुनर्विचार के लिए विचारण न्यायालय को प्रतिप्रेषित किया – अभिनिर्धारित, वादकालीन अन्तरिती के रूप में प्रत्यर्थी संपत्ति में अपने स्वतन्त्र अधिकार स्वत्व, और हित का दावा करने और निष्पादन याचिका की परिसीमा पर आपत्ति करने का अधिकारी है – "कोई व्यक्ति" जो वाद का पक्षकार नहीं है उसे आधिपत्यच्युत बेकब्जा किए जाने के पश्चात् उसकी पुनर्प्राप्ति की मांग कर सकता है – "अपरिचित" शब्द की परिधि में ऐसा वादकालीन अंतरिती भी सम्मिलित होगा जिसे वाद में पक्षकार के रूप में संयोजित नहीं किया गया है।

(ii) वादग्रस्त सम्पत्ति वाद के लंबन के दौरान अन्तरित की गई – निष्पादन कार्यवाही में अन्तरिती द्वारा सम्पत्ति का आधिपत्य दिलाए जाने का विरोध किया – अभिनिर्धारित, डिक्रीधारी के लिए यह आवश्यक था कि वह आदेश 21 नियम 97 सी.पी.सी. का आवेदन प्रस्तुत कर ऐसे अन्तरिती को पक्षकार बनाता।

Renjith K.G. and ors. v. Sheeba

Judgment dated 14.10.2024 passed by the Supreme Court in Civil Appeal No. 8315 of 2014, reported in AIR 2024 SC 5167

Relevant extracts from the judgment:

On a reading of Order XXI Rule 99 CPC, it is lucid that where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property, or where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession. It also means that a third party to the decree has a right to approach the Court even after dispossession of the immovable property, which he was occupying. In the case on hand, the predecessor of the respondents was not a party to the suit and he was dispossessed from the property, in execution of the decree passed in the suit and therefore, he who is purported to be a stranger to the decree, can very well adjudicate his claim of independent right, title and interest in the decretal property as per Order XXI Rule 99 CPC.

We have already held that "any person" not a party to the suit or in other words a stranger to the suit can seek re-delivery, after he has been dispossessed. The term "Stranger" would cover within its ambit, a pendent lite transferee, who has not been impleaded.

That apart, the facts in the present case disclose that the property stood transferred to the predecessor of the respondents before the Final Decree was passed in 1970. The fact that Mr. Raghuthaman had successfully resisted the claim of the 9th Defendant for delivery of possession, in the presence of the predecessor of the appellant is not disputed. While so, it was incumbent on the appellants to have impleaded the predecessor of the respondents by filing an application under Order 21 Rule 97 of CPC, when they resisted the delivery.

Therefore, once an application under Order 21 Rule 99 is filed, it is incumbent upon the Trial Court to consider all the rival claims including the right title and interest of the parties under Order 21 Rule 101 which bars a separate suit by mandating the execution court to decide the dispute.

As regards the question of limitation for execution of a decree passed in the suit for partition, this Court, in the decision in ***Chiranji Lal (D) by LRs. v. Hari Das (D) by LRs., (2005) 10 SCC 746***, has categorically held that the time begins to run from the date of final decree and not from the date on which it is engrossed on the stamp paper.

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110. CIVIL PROCEDURE CODE, 1908 – Order 22 Rules 3, 4, 9 and 10-A

(i) Substitution of legal representatives upon death of a party – Application for setting aside abatement – Any party, not just the plaintiff or the appellant, may file an application for substitution of LRs. under Order XXII of the CPC – Where parties have belatedly discovered the death of a litigant and have applied for substitution, court may treat such an application as including a prayer to set aside abatement – This approach fosters substantial justice, departing from a rigid or traditionalist reading of procedural law – The broader aim is to adjudicate cases on substantive arguments, courts prefer not to punish litigants for minor technical errors – This principle often leads to a liberal approach when interpreting procedural rules. (*Union of India v. Ramcharan, AIR 1964 SC 215* and *Mithailal Dalsangar Singh v. Anna Bai Deviram Kini, (2003) 10 SCC 691* relied on)

(ii) Death of party – Appropriate sequence in which remedies are available to have an order for setting aside abatement of suit/ appeal, explained.

(iii) Duty of the pleader – Rule 10-A was added to CPC in 1976 to lessen the hardship for opposing parties who were unaware of another party's death, especially during appeals – The pleader of the deceased party should formally inform the court of the death, prompting the court to notify the other party – The clock only begins to tick against the surviving party upon receipt of the notice or a formally recorded reference in court proceedings.

सिविल प्रक्रिया संहिता, 1908 – आदेश 22 नियम 3, 4, 9 एवं 10-क

(i) किसी पक्षकार की मृत्यु होने पर विधिक प्रतिनिधियों का प्रतिस्थापन – उपशमन को अपास्त करने के लिए आवेदन – वादी या अपीलार्थी ही नहीं अपितु कोई अन्य पक्षकार भी, सी.पी.सी. के आदेश 22 के अंतर्गत प्रतिस्थापन के लिए आवेदन प्रस्तुत कर सकता है – जहां पक्षकारों को किसी पक्षकार की मृत्यु के बारे में विलम्ब से जानकारी प्राप्त होती है और वह प्रतिस्थापन के लिए आवेदन करता है, तो न्यायालय ऐसे आवेदन को उपशमन की

प्रार्थना सहित प्रस्तुत किया गया मान्य करेगा – यह दृष्टिकोण प्रक्रियात्मक विधि की कठोर या रूढ़िवादी व्याख्या से हटकर पर्याप्त न्याय को बढ़ावा देता है – व्यापक उद्देश्य सारवान तर्कों के आधार पर मामलों का न्यायनिर्णयन करना है, न्यायालय तुच्छ तकनीकी त्रुटियों के लिए पक्षकारों को दंडित करने को वरीयता नहीं देता है – यह सिद्धांत प्रक्रियात्मक नियमों की व्याख्या करते समय बहुधा एक उदार दृष्टिकोण की ओर ले जाता है। *(यूनियन ऑफ इंडिया विरूद्ध रामचरण, ए.आई.आर. 1964 एससी 215* एवं *मिठाईलाल दलसंगर सिंह विरूद्ध अन्ना बाई देवीराम किनी, (2003) 10 एससीसी 691* अवलंबित)

(ii) पक्षकार की मृत्यु – वाद/अपील में उपशमन को अपास्त करने के लिए उपलब्ध उपचारों का उचित क्रम समझाया गया।

(iii) अधिवक्ता का कर्तव्य – नियम 10–क को 1976 में सी.पी.सी. में उन विरोधी पक्षकारों की कठिनाई को कम करने के लिए जोड़ा गया था जो किसी अन्य पक्षकार की मृत्यु से अनभिज्ञ हैं, विशेषतः से अपील के दौरान – मृतक पक्षकार के अधिवक्ता को औपचारिक रूप से मृत्यु के संबंध में न्यायालय को सूचित करना चाहिए, जिससे न्यायालय दूसरे पक्ष को सूचित करने के लिए अग्रसर होगा – उत्तरजीवी पक्षकारों के विरूद्ध समय केवल तभी प्रारंभ होगा जब उन्हें सूचना प्राप्त हो गई हो या न्यायालयीन कार्यवाही में औपचारिक रूप से मृत्यु की सूचना दर्ज की गई हो।

Om Prakash Gupta @ Lalloowa (now deceased) and ors. v. Satish Chandra (now deceased)

Judgment dated 11.02.2025 passed by the Supreme Court in Civil Appeal No. 13407 of 2024, reported in AIR 2025 SC 1201

Relevant extracts from the judgment:

Rule 1 of Order XXII, CPC provides that when a party to a suit passes away, the suit will not abate if the right to sue survives. In instances where the right to sue does survive, the procedure for bringing on record the legal representative(s) of the plaintiff/appellant and the defendant/respondent are provided in Rules 3 and 4, respectively, of Order XXII. The suit/appeal automatically abates when an application to substitute the legal representative(s) of the deceased party is not filed within the prescribed limitation period of 90 days from the date of death, as stipulated by Article 120 of the Limitation Act, 1963. It could well be so that death of a defendant/respondent is not made known to the plaintiff/appellant within 90 days, being the period of limitation. Does it mean that the suit or appeal will not abate? The answer in view of the scheme of Order XXII cannot be in the negative. In the event the plaintiff/appellant derives knowledge of death immediately after

the suit/appeal has abated, the remedy available is to file an application seeking setting aside of the abatement, the limitation wherefor is stipulated in Article 121 and which allows a period of 60 days. Therefore, between the 91st and the 150th day after the death, one has to file an application for setting aside the abatement. On the 151 st day, this remedy becomes time-barred; consequently, any application seeking to set aside the abatement must then be accompanied by a request contained in an application for condonation of delay under Section 5 of the Limitation Act in filing the application for setting aside the abatement. Thus, the total time-frame for filing an application for substitution and for setting aside abatement, as outlined in Articles 120 and 121 of the Limitation Act, is 150 (90+60) days. The question of condonation of delay, through an application under Section 5 of the Limitation Act, arises only after this period and not on the 91st day when the suit/appeal abates. From our limited experience on the bench of this Court, we have found it somewhat of a frequent occurrence that after abatement of the suit and after the 150th day of death, an application is filed for condonation of delay in filing the application for substitution but not an application seeking condonation of delay in filing the application for setting aside the abatement. The proper sequence to be followed, therefore, is an application for substitution within 90 days of death and if not filed, to file an application for setting aside the abatement within 60 days and if that too is not filed, to file the requisite applications for substitution and setting aside the abatement with an accompanying application for condonation of delay in filing the latter application, i.e., the application for setting aside the abatement. Once the court is satisfied that sufficient cause prevented the plaintiff/appellant from applying for setting aside the abatement within the period of limitation and orders accordingly, comes the question of setting the abatement. That happens as a matter of course and following the order for substitution of the deceased defendant/respondent, the suit/appeal regains its earlier position and would proceed for a trial/hearing on merits. Be that as it may.

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***111. COMMERCIAL COURTS ACT, 2015 – Section 15 (2)**

COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS (AMENDMENT) ACT, 2018 – Section 19

Commercial Suit – Jurisdiction – Suit was instituted on 24.11.2017 with valuation of ₹ 51 lakh – By Amendment Act, 2018, the range of specified value of commercial dispute reduced from ₹ 1 crore to ₹ 3 lakh w.e.f.

03.05.2018 – Suit transferred to Commercial Court by operation of section 15 (2) – Commercial Court returned the suit – Held, specified value limit of ₹ 3 lakh will be applicable prospectively and not retrospectively – On 24.11.2017 when the suit was instituted, the specified value for commercial dispute was ₹ 1 crore – Commercial Court rightly returned the suit.

वाणिज्यिक न्यायालय अधिनियम, 2015 – धारा 15(2)
वाणिज्यिक न्यायालय, उच्च न्यायालयों का वाणिज्यिक प्रभाग और वाणिज्यिक अपीलीय प्रभाग (संशोधन) अधिनियम, 2018 – धारा 19
वाणिज्यिक वाद – क्षेत्राधिकार – दिनांक 24.11.2017 को इक्यावन लाख रूपये के मूल्यांकन के साथ वाद प्रस्तुत किया गया – संशोधन अधिनियम, 2018 के द्वारा दिनांक 03.05.2018 से वाणिज्यिक विवाद के विनिर्दिष्ट मूल्य की सीमा कम करते हुए एक करोड़ रूपये से घटाकर तीन लाख की गई – धारा 15 (2) के प्रवर्तन में वाद वाणिज्यिक न्यायालय को अंतरित किया गया – वाणिज्यिक न्यायालय द्वारा वाद लौटाया गया – अभिनिर्धारित, तीन लाख रूपये के विनिर्दिष्ट मूल्य की सीमा भविष्यलक्षी प्रभाव से लागू होगी न कि भूतलक्षी प्रभाव से – दिनांक 24.11.2017 को जब दावा संस्थित किया गया था तब वाणिज्यिक विवाद का विनिर्दिष्ट मूल्य एक करोड़ रूपये था – वाणिज्यिक न्यायालय द्वारा वाद सही लौटाया गया।

Suman Infrastructure Pvt. Ltd. (M/s) v. State of M.P. & ors.

Judgment dated 06.08.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 3923 of 2023, reported in ILR 2025 MP 90 (DB)

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112. CRIMINAL PROCEDURE CODE, 1973 – Sections 41 and 50
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 35 and 47

(i) Arrest without warrant – Accused was presented before the Judicial Magistrate after 24 hours of arrest – After arrest, accused was handcuffed and also admitted to hospital, where he was chained to the hospital bed – Accused was not informed about the grounds of his arrest in a meaningful manner – The arrest memo did not disclose any grounds for arrest – Non-compliance of mandatory requirement of informing grounds of arrest, is violation of Articles 21 and 22(1) of the Constitution – Such non-compliance vitiates the

arrest of the accused as well the order of remand passed by the court.

(ii) Non-production of accused within 24 hours – Any deviation from the 24-hour deadline for presenting the accused before the court cannot be accepted – The burden of proof is on police that there is compliance with the constitutional mandate – Even in cases where there is a statutory restriction on the grant of bail, it would be a ground of bail – Procedural guidelines were laid down.

(iii) Grounds of arrest – Requirement to be informed – Duty of Judicial Magistrate – When arrested person is produced before the court for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) has been made – If there is non-compliance, the arrest would be illegal and consequently the arrestee cannot be remanded.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 41 एवं 50
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 35 एवं 47

(i) बिना वारंट के गिरफ्तारी – अभियुक्त को गिरफ्तार किये जाने के 24 घंटे बाद न्यायिक मजिस्ट्रेट के समक्ष प्रस्तुत किया गया – गिरफ्तारी के बाद, अभियुक्त को हथकड़ी लगाई गई और अस्पताल में भर्ती कराया गया, जहां उसे अस्पताल के बिस्तर पर जंजीर से बांध दिया गया – अभियुक्त को अर्थपूर्ण तरीके से उसकी गिरफ्तारी के आधारों के बारे में सूचित नहीं किया गया – गिरफ्तारी पत्रक में गिरफ्तारी के किसी भी आधार का खुलासा नहीं किया गया – गिरफ्तारी के आधारों की सूचना देने की अनिवार्य आवश्यकता का पालन न करना, संविधान के अनुच्छेद 21 और अनुच्छेद 22 (1) का उल्लंघन है – इस प्रकार का अनानुपालन अभियुक्त की गिरफ्तारी के साथ–साथ न्यायालय द्वारा पारित अभिरक्षा के आदेश को भी दूषित करता है।

(ii) अभियुक्त का 24 घण्टे की अवधि के भीतर प्रस्तुत न किया जाना – अभियुक्त को न्यायालय के समक्ष प्रस्तुत करने की 24 घंटे की समय–सीमा से किसी प्रकार का व्यतिक्रम स्वीकार नहीं किया जा सकता – सबूत का भार पुलिस पर है कि संवैधानिक आदेश का पालन किया गया है – ऐसे मामलों में भी जहां जमानत देने पर वैधानिक प्रतिबंध है, वहां भी यह जमानत देना का आधार होगा – प्रक्रियात्मक दिशानिर्देश जारी किये गए।

(iii) गिरफ्तारी के आधार – सूचित किए जाने की आवश्यकता – न्यायिक मजिस्ट्रेट का कर्तव्य – जब गिरफ्तार व्यक्ति को अभिरक्षा के लिए न्यायालय

के समक्ष प्रस्तुत किया जाता है तब यह सुनिश्चित करना मजिस्ट्रेट का कर्तव्य है कि क्या अनुच्छेद 22 (1) का पालन किया गया है – यदि अनानुपालन होता है, तो गिरफ्तारी अवैध होगी और परिणामस्वरूप गिरफ्तार व्यक्ति को अभिरक्षा में नहीं दिया जा सकता।

Vihaan Kumar v. State of Haryana and anr.

Judgment dated 07.02.2025 passed by the Supreme Court in Criminal Appeal No. 621 of 2025, reported in AIR 2025 SC 1388

Relevant extracts from the judgment:

When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) has been made. The reason is that due to non-compliance, the arrest is rendered illegal; therefore, the arrestee cannot be remanded after the arrest is rendered illegal. It is the obligation of all the Courts to uphold the fundamental rights.

Therefore, we conclude:

(a) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);

(b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

(c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);

(d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);

(e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

(f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.

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113. CRIMINAL PROCEDURE CODE, 1973 – Section 125
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 144
Maintenance – Entitlement and standard of proof – Strict proof of marriage is not essential as in matrimonial proceedings – Even long co-habitation as husband and wife leads to presumption that they are legally married couple for claim of maintenance of wife. *[Kamala and ors. v. M.R.Mohan Kumar, (2019) 11 SCC 491* referred]

दण्ड प्रक्रिया संहिता, 1973 – धारा 125
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 144
भरण–पोषण – पात्रता एवं प्रमाण का स्तर – विवाह का कठोर प्रमाण आवश्यक नहीं, जैसा कि वैवाहिक कार्यवाहियों में होता है – यहां तक कि पति–पत्नी के रूप में लंबे सहचर्य से यह उपधारणा होती है कि पत्नी के भरण–पोषण के मामले में वे विधितः वैवाहिक जोड़ा है। *[कमला व अन्य वि. एम.आर.मोहन कुमार, (2019) 11 एससीसी 491* अनुसरित]

Shailesh Bopche v. Anita Bopche

Order dated 02.04.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal case No. 30262 of 2023, reported in ILR 2024 MP 2407

Relevant extracts from the order:

The Trial Court has not given a specific finding that the respondent is not the legally wedded wife of the applicant. However, the findings are that the respondent could not prove the rituals as well as the fact that marriage was performed in the Temple but later on Trial Court has given a finding that since the applicant and respondent were living as husband and wife for considerable long time and the respondent has also given birth to a child, therefore respondent is entitled for maintenance.

The Supreme Court in the case of ***Kamala and ors v. M.R. Mohan Kumar, (2019) 11 SCC 491*** has held as under:-

> "Unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under Section 125 CrPC, such strict standard of proof is not necessary as it is summary in nature meant to prevent vagrancy. In ***Dwarika Prasad Satpathy v. Bidyut Prava Dixit***, ***(1999) 7 SCC 675:*** this Court held that:
>
> > " the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence under Section 494 IPC. The learned Judges explained the reason for the aforesaid finding by holding that an order passed in an application under Section 125 does not really determine the rights and obligations of the parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. The learned Judges held that maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached." [Ed.: As observed in ***Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141, SCC p. 147, para 27***.]

When the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance of wife under Section 125 CrPC.

Considering the totality of facts and circumstances of the case as well as in the light of law laid down by Supreme Court in the cases of ***Chanmuniya*** case and ***Badshah v. Urmila Badshah Godse & anr., (2014) 1 SCC 188,*** in the case of Kamala (supra) as well as law laid down by this Court in the case of Smt. Pushpa Pandey (supra),this Court is of considered opinion that since the applicant and respondent were residing as husband and wife for a considerable long time and in absence of any specific finding by the Trial Court that respondent is not a legally wedded wife of the applicant, this Court is of considered opinion that the Trial Court did not commit any mistake by awarding maintenance to the respondent under Section 125 of Cr.P.C.

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114. CRIMINAL PROCEDURE CODE, 1973 – Section 125
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 144
CIVIL PORCEDURE CODE, 1908 – Section 11

(i) Presumption of legitimacy – DNA test – Respondent claimed that his biological father was the appellant and sought DNA test – Section 112 of the Evidence Act creates a conclusive proof of legitimacy if the child is born during a valid marriage and the husband had access to the wife – Presumption can only be rebutted by proof of "non-access" and not on mere allegations of adultery or presumed biological ties – Since respondent's mother and the father were cohabiting at the time of respondent's conception, there was no proof of non-access – Request for DNA test was not allowed – DNA test to prove paternity, when permissible? Law reiterated.

(ii) *Res judicata* – Maintenance petition filed by the respondent was closed by the Family Court in 2010 with the possibility of revival only if decision of the Civil Court regarding paternity was overturned in appeal – Appeal did not succeed and the judgment of the High Court attained finality – Revival not permissible.

दण्ड प्रक्रिया संहिता, 1973 – धारा 125
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 144
सिविल प्रक्रिया संहिता, 1908 – धारा 11

(i) धर्मजता की उपधारणा – डीएनए परीक्षण – प्रत्यर्थी ने दावा किया कि अपीलार्थी उसका जैविक पिता है और डीएनए परीक्षण कराने की मांग की – भारतीय साक्ष्य अधिनियम की धारा 112 के अनुसार, यदि शिशु वैध विवाह के दौरान जन्मा है और पति को पत्नी तक पहुंच प्राप्त थी, तो वह धर्मजता का निर्णायक प्रमाण माना जाता है – इस उपधारणा को केवल अप्रवेश के प्रमाण से ही खंडित किया जा सकता है, केवल व्यभिचार के आरोप या जैविक संबंधों के अनुमान पर्याप्त नहीं – चूंकि प्रत्यर्थी की मां और पिता गर्भधारण के समय साथ रह रहे थे, अप्रवेश का कोई प्रमाण नहीं था – डीएनए परीक्षण की मांग अस्वीकार कर दी गई – पितृत्व प्रमाणित करने हेतु डीएनए परीक्षण – कब अनुज्ञेय? विधि दोहराई गई।

(ii) पूर्व न्याय – प्रत्यर्थी द्वारा दायर भरण–पोषण याचिका 2010 में कुटुम्ब न्यायालय द्वारा इस निर्देश के साथ समाप्त कर दी गई थी, की यदि पितृत्व संबंधी सिविल न्यायालय का निर्णय अपील में पलट दिया जाता है तो याचिका को पुर्नस्थापित किया जा सकेगा – अपील असफल रही और उच्च न्यायालय का निर्णय अंतिम रूप से मान्य हो गया – पुनर्स्थापन अनुज्ञेय नहीं।

Ivan Rathinam v. Milan Joseph

Judgment dated 28.01.2015 passed by the Supreme Court in Criminal Appeal No. 413 of 2025, reported in AIR 2025 SC 1004

Relevant extracts from the judgment:

The language of the section 112 of the Evidence Act, 1872 makes it abundantly clear that there exists a strong presumption that the husband is the father of the child borne by his wife during the subsistence of their marriage. This section provides that conclusive proof of legitimacy is equivalent to paternity. The object of this principle is to prevent any unwarranted enquiry into the parentage of a child. Since the presumption is in favour of legitimacy, the burden is cast upon the person who asserts 'illegitimacy' to prove it only through 'non-access.'

It is well-established that access and non-access under Section 112 do not require a party to prove beyond reasonable doubt that they had or did not have sexual intercourse at the time the child could have been begotten. 'Access' merely refers to the possibility of an opportunity for marital relations. To put it more simply, in such a scenario, while parties may be on non-speaking terms, engaging in extra-marital affairs, or residing in different houses in the same village, it does not necessarily preclude the possibility of the spouses having an opportunity to engage in marital relations. Non-access means the impossibility, not merely inability, of the spouses to have marital relations with each other. For a person to rebut the presumption of legitimacy, they must first assert non-access which, in turn, must be substantiated by evidence.

In the case at hand, it is an admitted fact that when the Respondent was begotten in 2001, his mother and Mr. Raju Kurian were married. In fact, they had been married since 1989 and neither had ever questioned the validity of the marriage. They were, admittedly, living under the same roof from 1989 till 2003, when they decided to separate. It is, but obvious, that the Respondent's mother and Mr. Raju Kurian had access to each other throughout their marriage. This conclusion has been arrived at through concurrent findings of all the courts involved, at multiple stages of litigation. Even if it is assumed that the Respondent's mother had relations with the Appellant during her marriage and especially when the Respondent was begotten, such a fact per se, would not be sufficient to displace the presumption of legitimacy. The only thing that such an allegation sheds light on is the fact that there seems to have been simultaneous access with the Respondent's mother, by the Appellant and Mr. Raju Kurian. What, however, needs to be clarified is that an 'additional' access or 'multiple' access does not automatically negate the access between the spouses and prove non-access thereof. Consequently, there is a

statutory mandate that the Respondent must be presumed to be the son of Mr. Raju Kurian.

Accordingly, we deem it appropriate to allow this appeal and set aside the Impugned Judgment of the High Court dated 21.05.2018 and of the Family Court dated 09.11.2015, with the following directions and conclusions:

(i) Legitimacy determines paternity under Section 112 of the Indian Evidence Act, 1872, until the presumption is successfully rebutted by proving 'non-access';

(ii) The Munsiff Court and the Sub-Judge Court possessed jurisdiction to entertain the Original Suit, which dealt with the question of the legitimacy of the Respondent;

(iii) The Family Court, Alappuzha erred in reopening the Maintenance Petition when the self-imposed condition was not satisfied;

(iv) The impugned proceedings, initiated by the Respondent, are barred by the principle of *res judicata*;

(v) The proceedings in MC No. No. 224/2007 before the Family Court, Alappuzha stand quashed;

(vi) Any claim by the Respondent based upon the perceived relationship of paternity *qua* the Appellant, stands negated; and

(vii) The Respondent is presumed to be the legitimate son of Mr. Raju Kurian.

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115. CRIMINAL PROCEDURE CODE, 1973 – Sections 154, 156(3), 157(1), 200, 203 and 362

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 173, 175(3), 176(1), 223, 226 and 403

(i) Preliminary inquiry by police before registration of FIR – If after conducting the preliminary inquiry police, comes to the conclusion that no cognizable offence is made out, then the police cannot sit upon the report – Police should file its report to the concerning Magistrate – Strict directions issued to DGP and all the police officers across the State.

(ii) Bar created by section 362 CrPC with respect to review of orders – Applicability – Complainant filed an application/complaint u/s 156(3)/200 CrPC before the Court of Magistrate – Magistrate dismissed the complaint holding that no offence is made out against the non-applicant – Revision was preferred by the complainant

against the said order – Revisional Court allowed the revision and after setting aside the order of Magistrate, remanded the case with direction to the Trial Court to reconsider the matter afresh – Trial Court in compliance of the order of Revisional Court reconsidered the matter and passed an order u/s 156 (3) thereby directing the police to investigate the matter – Whether such order passed by the Magistrate is hit by the provisions of section 362 CrPC? Held, No – Where the Revisional Court had directed the Magistrate to reconsider the complaint, then in absence of challenge to the order of remand passed by Revisional Court, subsequent order passed by Magistrate allowing application u/s 156(3) cannot be said to be barred under the provisions of section 362 CrPC.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 154, 156(3), 157(1) 200, 203 एवं 362 भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 173, 175(3), 176(1), 223, 226 एवं 403

(i) प्रथम सूचना रिपोर्ट पंजीबद्ध किए जाने के पूर्व पुलिस द्वारा प्रारंभिक जांच – यदि प्रारंभिक जॉच उपरांत पुलिस इस निष्कर्ष पर पहुंचती है कि कोई संज्ञेय अपराध गठित नहीं होता तब पुलिस ऐसी रिपोर्ट को रोककर नहीं रख सकती – पुलिस को अपनी रिपोर्ट संबंधित मजिस्ट्रेट को प्रस्तुत करना चाहिए – प्रदेश के डीजीपी एवं समस्त पुलिस अधिकारियों को सख्त निर्देश जारी किए गए।

(ii) आदेशों के पुनर्विलोकन के संबंध में धारा 362 दं.प्र.सं. द्वारा सृजित वर्जन – प्रयोज्यता – परिवादी ने धारा 156(3)/200 दं.प्र.सं. के अंतर्गत मजिस्ट्रेट न्यायालय के समक्ष आवेदन/परिवाद प्रस्तुत किया – मजिस्ट्रेट ने परिवाद यह निर्धारित करते हुए निरस्त किया गया कि अनावेदक के विरूद्ध कोई अपराध गठित नहीं होता है – परिवादी द्वारा उक्त आदेश के विरूद्ध पुनरीक्षण याचिका प्रस्तुत की गई – पुनरीक्षण न्यायालय ने मजिस्ट्रेट के उक्त आदेश को अपास्त करते हुए पुनरीक्षण याचिका स्वीकार की और प्रकरण इस निर्देश के साथ विचारण न्यायालय को प्रतिप्रेषित किया गया कि मामले पर नये सिरे से पुनः विचार किया जावे – विचारण न्यायालय ने पुनरीक्षण न्यायालय के आदेश के पालन में प्रकरण पर पुनः विचार किया और धारा 156(3) के अंतर्गत आदेश पारित किया गया और पुलिस को प्रकरण में अनुसंधान करने के लिये निर्देशित किया – क्या मजिस्ट्रेट द्वारा पारित ऐसा आदेश धारा 362 दं.प्र.सं. के प्रावधान से प्रभावित होता है? अभिनिर्धारित, नहीं – जहां पुनरीक्षण न्यायालय द्वारा मजिस्ट्रेट को परिवाद पर पुनर्विचार करने के लिये निर्देशित किया गया हो वहां पुनरीक्षण न्यायालय

द्वारा पारित किये गये प्रतिप्रेषण के आदेश को चुनौती दिये जाने के अभाव में मजिस्ट्रेट द्वारा धारा 156(3) के आवेदन को स्वीकार करने संबंधी पारित पश्चातवर्ती आदेश धारा 362 दं.प्र.सं. के प्रावधान से वर्जित होना नहीं कहा जा सकता।

Lakhiram Ramchandani & ors. v. State of M.P. & anr.

Order dated 31.05.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 31459 of 2023, reported in ILR 2025 MP 204

Relevant extracts from the order:

So far as the report submitted by SHO, Police Station Waraseoni, District Balaghat to SDO (P), Waraseoni, District Balaghat on 05.06.2021 is concerned, the counsel for applicants was directed to clarify that if an Investigating Officer decides to conduct a preliminary inquiry before registration of FIR and after conducting a preliminary inquiry if he comes to a conclusion that no cognizable offence is made out, then whether he is required to file, the said report before the concerning Magistrate or he can sit over the same.

It was fairly conceded by counsel for applicants that in such a situation where a preliminary inquiry was conducted and if Inquiry Officer comes to a conclusion that no cognizable offence is made out, then he has to submit a report to the Magistrate under Section 157 of CrPC. The aforesaid submission made by counsel for the applicants is in conformity with the law laid down by the Supreme Court in the case of ***Kailash Vijayvargiya v. Rajlakshmi Chaudhari and ors., 2023 SCC OnLine SC 569***, which reads as under:-

> "Further there is a distinction between Section 154 and 157 as the latter provision postulates a higher requirement than under Section 154 of the Code. Under Section 157(1) of the Code, a Police officer can foreclose the investigation if it appears to him that there is no sufficient ground to investigate. The requirement of Section 157(1) for the Police officer to start investigation is that he has 'reason to suspect the commission of an offence'. Therefore, the Police officer is not liable to launch investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence. When the Police officer forecloses investigation in terms of clauses (a) and (b) of the proviso to Section 157(1), he must submit a report to the Magistrate. Here, the Magistrate can direct

> the Police to investigate, or if he thinks fit, hold an inquiry. Where a Police officer, in a given case, proceeds to investigate the matter, then he files the final report under Section 173 of the Code. The noticeable feature of the scheme is that the Magistrate is kept in the picture at all stages of investigation, but he is not authorised to interfere with the actual investigation or to direct the Police how the investigation should be conducted."

Admittedly in this case, the police sat over its preliminary inquiry report and did not submit the report to the concerning Magistrate. This act of the Investigating Officer is unknown to law and gives unfettered powers to Inquiry Officer to sit over the report without getting it judicially approved from the concerning Magistrate. This Court is again and again realizing that after conducting the preliminary inquiry, police is not filing its report before the concerning Magistrate.

Accordingly, the Director General of Police, State of Madhya Pradesh is directed to circulate a copy of order passed by Supreme Court in the case of ***Kailash Vijayvargiya*** (supra) as well as copy of this order to all the Superintendents of Police with a direction to the Superintendents of Police to circulate the orders to the SHOs of all the Police Stations so that they are made aware of the legal provisions of law.

It is next contended by counsel for applicants that once the Magistrate had dismissed the complaint filed by respondent No. 2 by holding that no offence is made out, then it does not have any authority to change its view and then to issue an order under Section 156(3) of CrPC.

The Supreme Court in the case of ***Adalat Prasad v. Roopal Jindal and ors., (2004) 7 SCC 338*** has held that after the summons have been issued by the Magistrate, then the only remedy available to the aggrieved accused is not by invoking section 203 of CrPC because section 203 of CrPC does not contemplate a review of an order and the remedy lies in invoking section 482 of CrPC. Accordingly, the judgment passed by Supreme Court in the case of ***K.M. Mathew v. State of Kerala, (1992) 1 SCC 217*** was overruled.

However, that is not the facts and circumstances of the case in hand. In the present case after the dismissal of complaint under section 203 of CrPC, the respondent no.2 preferred a revision before the revisional court and the revision filed by the respondent no.2 was allowed and the matter was remanded back by the revisional court to the trial court to reconsider the matter afresh. After the order passed by the trial court was set aside by the revisional court, then by no stretch of imagination it can be said that the fresh appreciation of material would amount to

review because after the order was passed by the revisional court, the first order passed by the Magistrate had merged in the order passed by the revisional court. Therefore, after the remand if the revisional court had directed the Magistrate to reconsider the complaint, then in absence of challenge to the order passed by the revisional court, this Court cannot hold that the impugned order dated 21.6.2023 passed by Magistrate; thereby allowing an application under section 156(3) of CrPC is hit by provisions of section 362 of CrPC.

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116. CRIMINAL PROCEDURE CODE, 1973 – Sections 173 and 202
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 193 and 225

Second complaint – Maintainability – First private complaint was investigated by Police u/s 156(3) CrPC and negative final report was filed before CJM, which was accepted on merits after considering the protest petition filed by the complainant – Thereafter, on identical set of facts, a second complaint was again filed by the complainant – Whether second complaint was maintainable? Held, No – If the earlier complaint was disposed of not on technical ground but on merits after recording findings that no *prima facie* case is made out, then on identical set of facts, second complaint would not be maintainable.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 173 एवं 202
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 193 एवं 225
द्वितीय परिवाद – पोषणीयता – प्रथम परिवाद पुलिस द्वारा धारा 156(3) दं.प्र.सं. के अंतर्गत अन्वेषित किया गया और मुख्य न्यायिक मजिस्ट्रेट के समक्ष नकारात्मक अन्तिम प्रतिवेदन प्रस्तुत किया गया जो कि परिवादी द्वारा प्रस्तुत विरोध याचिका पर विचार करते हुए गुणदोषों पर स्वीकार किया गया – इसके बाद, समान तथ्यों पर परिवादी द्वारा पुनः द्वितीय परिवाद प्रस्तुत किया गया – क्या द्वितीय परिवाद पोषणीय था? अभिनिर्धारित, नहीं – यदि पूर्व परिवाद तकनीकी आधारों पर निराकृत न होकर ''कोई प्रथम दृष्टया मामला नहीं बनना पाते हुए'', गुणदोषों पर निराकृत किया गया था, तब समान तथ्यों पर द्वितीय परिवाद पोषणीय नहीं होगा।

Subrata Choudhury alias Santosh Choudhury and ors. v. State of Assam and anr.

Judgment dated 05.11.2024 passed by the Supreme Court in Criminal Appeal No. 4451 of 2024, reported in AIR 2024 SC 5690

Relevant extracts from the judgment:

The circumstances expatiated and a scanning of the decision in ***Samta Naidu & anr. v. State of Madhya Pradesh & anr., (2020) 5 SCC 378*** and the decisions in ***Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876, Jatinder Singh v. Ranjit Kaur, (2001) 2 SCC 570, Poonam Chand Jain v. Farzu, (2010) 2 SCC 631*** and ***Shivshankar Singh v. State of Bihar, (2012) 1 SCC 130*** would constrain us to say, with respect, that the understanding of the settled position in regard to the maintainability of a second complaint or second protest petition of the High Court, as reflected mainly in paragraph 20 of the impugned judgment is not true to the position settled by this Court. Merely because this Court in some of such decisions held that when a Magistrate conducted an inquiry under Section 202 CrPC, and dismissed a complaint on merits, a second complaint on the same facts would not be maintainable unless there are very exceptional circumstances, it could not be understood that in all cases where a complaint to a Magistrate was not proceeded under Section 202 of the CrPC, and dismissed not at the stage of Section 203 CrPC, a second complaint or a second protest petition would be maintainable. The various decisions referred above in ***Samta Naidu's case*** (supra) and recitals therefrom, extracted above would indubitably reveal the said position. The different situations where a second complaint or a second protest petition would be maintainable and would not be maintainable were specifically discussed and decided, in those decisions. In short, the maintainability or otherwise of the second complaint would depend upon how the earlier complaint happened to be rejected/dismissed at the first instance.

In the context of the contentions, it is to be noted that the case at hand stands on a firmer footing than the case involved in ***Samta Naidu's case*** (supra). Paragraph 16 of ***Samta Naidu's case*** (supra), as extracted above, would reveal that the earlier complaint involved in that case was disposed of not on technical ground but on finding that no *prima facie* case was made out and in the second complaint the nature of the supporting materials were furnished and this Court observed that it could not be said that those materials furnished and relied upon in the second complaint could not have been procured earlier. Thereafter, finding that both the complaints were identical the finding of the High Court that the second complaint was maintainable was rejected and the subject complaint was dismissed as not being maintainable. In the case at hand, a perusal of protest petition dated 05.05.2011 and the second complaint dated 20.07.2011 would reveal that the

second complaint filed after acceptance of final report filed pursuant to the investigation in the FIR registered based on the complaint dated 11.11.2010, that too after considering the *narazi* petition and hearing the complainant (the second respondent herein) the second complaint dated 20.07.2011 has been filed reproducing the first complaint dated 11.11.2010 and stating that the said complaint was not properly investigated and action should be taken on the second complaint dated 20.07.2011. In fact, the indubitable position is that the core of the original complaint dated 11.11.2010 and the second complaint dated 20.07.2011 is the same.

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117. CRIMINAL PROCEDURE CODE, 1973 – Section 227
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 250
INDIAN PENAL CODE, 1860 – Sections 304A and 304 Part II
BHARATIYA NYAYA SANHITA, 2023 – Sections 106 and 105

(i) Discharge – Two deceased employees of accused were undertaking work of decoration on a signboard of a shop which was approximately at a height of 12 feet from ground level – While working, they were struck by electricity and got electrocuted and fell, resulting in multiple injuries leading to their death – There was no intention and knowledge on the part of the accused persons to cause death or to cause such bodily injury as was likely to cause death – No *prima facie* case is made out u/s 304A or 304 Part II of IPC – Accused persons deserve to be discharged.

(ii) Discharge – Scope – At the stage of charge, court is not required to undertake a threadbare analysis of material gathered – All that is required is that material should be sufficient to initiate a criminal trial – If there is no material to justify the launch of a criminal trial, then the accused should be discharged.

दण्ड प्रक्रिया संहिता, 1973 – धारा 227
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 250
भारतीय दण्ड संहिता, 1860 – धाराएं 304क एवं 304 भाग II
भारतीय न्याय संहिता, 2023 – धाराएं 106 एवं 105

(i) उन्मोचन – अभियुक्त के दो मृत कर्मचारी दुकान के साइनबोर्ड पर सजावट का कार्य कर रहे थे जो जमीन की सतह से लगभग 12 फीट की ऊंचाई पर था – कार्य करते समय, उन्हें विद्युत आघात लगा और करंट लगने के

परिणामस्वरूप वे गिर गये जिससे कई चोटें आईं और उनकी मृत्यु हो गई – अभियुक्त व्यक्तियों का मृत्यु या ऐसी शारीरिक उपहति कारित करने का कोई आशय और ज्ञान नहीं था जिससे मृत्यु होने की संभावना हो – भारतीय दण्ड संहिता की धारा 304क या 304 भाग II के अंतर्गत कोई प्रथम दृष्टया मामला नहीं बनता है – अभियुक्तगण उन्मोचित किये जाने योग्य है।

(ii) उन्मोचन – विस्तार – आरोप के स्तर पर, न्यायालय को एकत्र की गई सामग्री का व्यापक विश्लेषण करने की आवश्यकता नहीं है – अपेक्षित केवल यह है कि सामग्री आपराधिक विचारण शुरू करने के लिए पर्याप्त होनी चाहिए – यदि आपराधिक विचारण आरम्भ करने का औचित्य सिद्ध करने के लिए कोई सामग्री नहीं है, तो अभियुक्त को उन्मोचित किया जाना चाहिए।

Yuvraj Laxmilal Kanther and anr. v. State of Maharashtra

Judgment dated 07.03.2025 passed by the Supreme Court in Criminal Appeal No. 2356 of 2024, reported in AIR 2025 SC 1515

Relevant extracts from the judgment:

Even if we take the allegation against the appellants as correct, we are afraid no prima facie case can be said to have been made out against the appellants for committing an offence under Section 304 Part II IPC. From the record of the case, it is evident that there was no intention on the part of the two appellants to cause the death or cause such bodily injury as was likely to cause the death of the two deceased employees. It cannot also be said that the appellants had knowledge that by asking the two deceased employees to work on the sign board as part of the work of decoration of the frontage of the shop, they had the knowledge that such an act was likely to cause the death of the two deceased employees. As such, no prima facie case of culpable homicide can be said to have been made out against the appellants. If that be so, the subsequent requirement of having knowledge that the act was likely to cause the death but not having any intention to cause death would become irrelevant though we may hasten to add that nothing is discernible from the record of the case that the appellants had the knowledge that by asking the two employees to work on the sign board would likely cause their death or cause such bodily injury as is likely to cause their death.

Therefore, the basic ingredients for commission of offence under Section 304 Part II IPC are absent in the present case.

Section 227 CrPC deals with discharge. What Section 227 CrPC contemplates is that if upon consideration of the record of the case and the documents submitted

therewith and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there is no sufficient grounds for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. At the stage of consideration of discharge, the court is not required to undertake a threadbare analysis of the materials gathered by the prosecution. All that is required to be seen at this stage is that there are sufficient grounds to proceed against the accused. In other words, the materials should be sufficient to enable the court to initiate a criminal trial against the accused. It may be so that at the end of the trial, the accused may still be acquitted. At the stage of discharge, court is only required to consider as to whether there are sufficient materials which can justify launch of a criminal trial against the accused. By its very nature, a discharge is at a higher pedestal than an acquittal. Acquittal is at the end of the trial process, may be for a technicality or on benefit of doubt or the prosecution could not prove the charge against the accused; but when an accused is discharged, it means that there are no materials to justify launch of a criminal trial against the accused. Once he is discharged, he is no longer an accused.

In so far facts of the present case is concerned, the two deceased employees of appellant No. 1 were undertaking the work of decoration of the front side of the shop. As part of the said work, they were working on the sign board which was approximately at a height of 12 feet from the ground level. For this purpose, they were provided with an iron ladder. While working on the sign board, they were struck by electricity as a result of which they got electrocuted and fell down resulting in multiple injuries leading to their death. It was purely accidental. On these basic facts, no prima facie case can be said to be made out against the appellants for committing an offence under Section 304A IPC, not to speak of Section 304 Part II IPC. In any case, the Trial Court only considered culpability of the appellants qua Section 304 Part II IPC as the committing Magistrate had committed the case to the Court of Sessions confining the allegations against the appellant to Section 304 Part II IPC and not Section 304A IPC.

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118. CRIMINAL PROCEDURE CODE, 1973 – Sections 303, 304 and 313
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 340, 341 and 351
CONSTITUTION OF INDIA – Articles 21 and 39-A
INDIAN PENAL CODE, 1860 – Sections 201, 302 and 376

BHARATIYA NYAYA SANHITA, 2023 – Sections 238, 103(1) and 64
EVIDENCE ACT, 1872 – Section 27
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 23(2)

(i) Examination of accused – Effect of not putting incriminatory material to accused in language known to him – The witnesses can depose in a language not known to the accused – Held, if the material circumstances appearing in evidence are not put to the accused and explained to the accused, in a language understood by him, it will cause prejudice to the accused.

(ii) Examination of accused – Object – Stage of defence evidence arises only after statement of accused is recorded u/s 313 of CrPC – Unless all material circumstances are put to the accused, he cannot decide whether he wants to lead any defence evidence.

(iii) Examination of accused – Role of the Public Prosecutor – Public Prosecutor, required to invite the court's attention to the requirement of putting all incriminating material to the accused – He must assist the court in framing the questions to be put to the accused – It is the duty of Public Prosecutor to ensure that there are no infirmities in the conduct of the trial which will cause prejudice to the accused.

(iv) Constitutional/Fundamental rights – Right to get legal aid – Failure to provide legal aid to accused – If effective legal aid is not made available to an accused who is unable to engage an advocate, it will amount to infringement of his fundamental rights guaranteed by Article 21 – If legal aid is provided only for the sake of providing it, it will serve no purpose – Legal aid must be effective – Advocates appointed to espouse the cause of the accused must have good knowledge of criminal laws, law of evidence and procedural laws apart from other important Statutes – As there is a constitutional right to legal aid, that right will be effective only if the legal aid provided is of a good quality – If the legal aid advocate provided to an accused is not competent enough to conduct the trial efficiently, the rights of the accused will be violated.

(v) Discovery of fact – Information received from accused – How to be proved? Recovery of the victim's slipper and underwear is alleged at the appellant's instance – The recovery memo is signed by the

circle officer and two independent witnesses – The prosecution did not examine the two independent witnesses – Though the date of recovery is mentioned in the memo, the time and most importantly, the place of recovery are not mentioned – Therefore, it cannot be said that pursuant to the statement made by the appellant, in accordance with Section 27 of the Evidence Act the articles were found at the place stated by the appellant – Held, the prosecution failed to prove that the recovery was from a particular place.

(vi) Rape and murder of minor – Allegation against the accused was that while working as an operator of a tube-well, he committed rape and murder of minor victim aged about 10 years – Trial Court convicted the accused for the offences punishable u/s 376, 302 and 201 of IPC and imposed capital punishment – High Court, in appeal, although confirmed the conviction, set aside the death penalty and sentenced the accused to undergo life imprisonment for the remainder of his natural life – Testimony of sole child eye witness was not found to be of sterling quality – Conduct of material witness who is father of victim, was found unnatural – Recovery of incriminating articles at the instance of the accused has not been found duly proved – Material incriminating circumstances appearing in evidence were not put to the accused and explained to him in a language understood by him – State has failed to provide timely and effective legal aid to the accused – For all these reasons, Supreme Court set aside the conviction and acquitted the accused of all the charges.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 303, 304 एवं 313
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 340, 341 एवं 351
भारत का संविधान – अनुच्छेद 21 एवं 39–क
भारतीय दण्ड संहिता, 1860 – धाराएं 201, 302 एवं 376
भारतीय न्याय संहिता, 2023 – धाराएं 238, 103(1) एवं 64
साक्ष्य अधिनियम, 1872 – धारा 27
भारतीय साक्ष्य अधिनियम, 2023 – धारा 23(2)

(i) अभियुक्त परीक्षण – अभियुक्त के समक्ष उसकी भाषा में अभियोगात्मक सामग्री न रखे जाने का प्रभाव – साक्षीगण अभियुक्त के समक्ष ऐसी भाषा में कथन कर सकते हैं जो अभियुक्त को ज्ञात न हो – अभिनिर्धारित, यदि साक्ष्य में प्रकट होने वाली तात्विक परिस्थितियों को अभियुक्त के समक्ष नहीं रखा

जाता है और उसे उसकी समझ में आने वाली भाषा में नहीं समझाया जाता है, तब इससे अभियुक्त के प्रति पूर्वाग्रह उत्पन्न होगा।

(ii) अभियुक्त परीक्षण – उद्देश्य – बचाव साक्ष्य की अवस्था धारा 313 के अंतर्गत अभियुक्त कथन लेख किये जाने के उपरान्त आती है – जब तक अभियुक्त के समक्ष सभी तात्विक परिस्थितियां नहीं रख दी जाती हैं तब तक वह यह निर्णय नहीं ले सकता कि वह कोई बचाव साक्ष्य प्रस्तुत करना चाहता है या नहीं।

(iii) अभियुक्त परीक्षण – लोक अभियोजक की भूमिका – लोक अभियोजक से यह अपेक्षित है कि वह न्यायालय का ध्यान अभियुक्त के समक्ष सभी दोषपूर्ण सामग्री प्रस्तुत करने की आवश्यकता की ओर आकर्षित करे – उसे अभियुक्त से पूछे जाने वाले प्रश्नों को तैयार करने में न्यायालय की सहायता करनी चाहिए – यह सुनिश्चित करना लोक अभियोजक का कर्तव्य है कि मामले के संचालन में कोई भी कमी न हो जिससे अभियुक्त के प्रति पूर्वाग्रह पैदा हो।

(iv) संवैधानिक/मौलिक अधिकार – विधिक सहायता पाने का अधिकार – अभियुक्त को विधिक सहायता प्रदान करने में विफलता – यदि किसी अभियुक्त को, जो अधिवक्ता नियुक्त करने में असमर्थ है, प्रभावी विधिक सहायता उपलब्ध नहीं कराई जाती है, तो यह अनुच्छेद 21 द्वारा गारंटीकृत उसके मौलिक अधिकारों का उल्लंघन होगा – यदि विधिक सहायता केवल उपलब्ध कराने के लिए प्रदान की जाती है, तो यह किसी उद्देश्य की पूर्ति नहीं करेगा – विधिक सहायता प्रभावी होनी चाहिए – अभियुक्त का पक्ष रखने के लिए नियुक्त अधिवक्ताओं को अन्य महत्वपूर्ण विधियों के अतिरिक्त आपराधिक विधियों, साक्ष्य विधि और प्रक्रियात्मक विधि का अच्छा ज्ञान होना चाहिए – चूंकि विधिक सहायता संवैधानिक अधिकार है, यह अधिकार तभी प्रभावी होगा जब प्रदान की गई विधिक सहायता अच्छी गुणवत्ता की हो – यदि अभियुक्त को विधिक सहायता प्रदान कर नियुक्त किया गया अधिवक्ता, मामले का संचालन कुशलतापूर्वक करने में सक्षम नहीं है, तब अभियुक्त के अधिकारों का उल्लंघन होगा।

(v) तथ्य की खोज – अभियुक्त से प्राप्त जानकारी – कैसे साबित की जायेगी? अपीलार्थी के बताए जाने पर पीड़िता की चप्पल और कपड़ों की बरामदगी किया जाना आक्षेपित है – बरामदगी मैमो सर्कल अधिकारी और दो स्वतंत्र साक्षियों द्वारा हस्ताक्षरित है – अभियोजन ने दोनों स्वतंत्र साक्षियों का परीक्षण नहीं कराया – यद्यपि मैमो में बरामदगी दिनांक का उल्लेख है, लेकिन समय और सबसे महत्वपूर्ण बरामदगी के स्थान का उल्लेख नहीं किया गया है – अतः यह नहीं कहा जा सकता है कि अपीलार्थी द्वारा दिए गए कथन के अनुसार, साक्ष्य अधिनियम की धारा 27 के अनुरूप अपीलार्थी

द्वारा बताए गए स्थान पर वस्तुऐं मिली थीं – अभिनिर्धारित, अभियोजन यह साबित करने में विफल रहा कि बरामदगी एक निश्चित स्थान से हुई थी।

(vi) नाबालिग से बलात्संग और हत्या – अभियुक्त के विरूद्ध आरोप है कि उसने एक ट्यूबवेल ऑपरेटर के रूप में कार्य करते समय, लगभग 10 वर्ष की नाबालिग पीड़िता के साथ बलात्संग और हत्या की – विचारण न्यायालय ने अभियुक्त को भारतीय दण्ड संहिता की धाराओं 376, 302 और 201 के अंतर्गत दंडनीय अपराधों के लिए दोषी ठहराया और मृत्युदंड अधिरोपित किया – उच्च न्यायालय ने अपील में, यद्यपि दोषसिद्धि की पुष्टि की, मृत्युदंड को अपास्त कर अभियुक्त को उसके शेष प्राकृतिक जीवन के लिए आजीवन कारावास से दण्डित किया – एकमात्र बाल चक्षुदर्शी की साक्ष्य उत्कृष्ट गुणवत्ता की नहीं पाई गई – महत्वपूर्ण साक्षी, जो पीड़िता का पिता है, का आचरण अस्वाभाविक पाया गया – अभियुक्त की निशानदेही पर अभियोगात्मक वस्तुओं की बरामदगी विधिवत साबित नहीं हुई – साक्ष्य में प्रकट हुईं अभियोगात्मक परिस्थितियों को अभियुक्त के समक्ष नहीं रखा गया और उसे उसकी समझ में आने वाली भाषा में नहीं समझाया गया – राज्य अभियुक्त को समय पर और प्रभावी विधिक सहायता प्रदान करने में विफल रहा – इन सभी कारणों से, उच्चतम न्यायालय ने दोषसिद्धि को अपास्त कर अभियुक्त को सभी आरोपों से दोषमुक्त कर दिया।

Ashok v. State of Uttar Pradesh

Judgment dated 02.12.2024 passed by the Supreme Court in Criminal Appeal No. 771 of 2024, reported in (2025) 2 SCC 381 (Three-Judge Bench)

Relevant extracts from the judgment:

It is necessary to consider the other circumstantial evidence. In this case, the recovery of the victim's slipper and underwear is alleged at the appellant's instance. We have perused the recovery memo signed by the circle officer and two independent witnesses. The prosecution did not examine the two independent witnesses. Though the date of recovery is mentioned in the memo, the time and, most importantly, the place of recovery are not mentioned. Therefore, it cannot be said that pursuant to the statement made by the appellant, in accordance with Section 27 of the Evidence Act, 1972 (for short "the Evidence Act"), the articles were found at the place stated by the appellant.

Hence, the prosecution failed to prove that the recovery was from a particular place. Thus, evidence of recovery will have to be kept out of consideration. The recovery of the articles at the instance of the appellant is a very important

circumstance in the chain of circumstances. It is not proved. Hence, the appellant's guilt beyond reasonable doubt has not been established.

Now, we come to the appellant's statement, recorded per Section 313CrPC. Only three questions were put to the appellant. In the first question, the names of ten prosecution witnesses were incorporated, and the only question asked to the appellant was what he had to say about the testimony of ten prosecution witnesses. In the second question, all the documents produced by the prosecution were referred, and a question was asked, what the appellant has to say about the documents. In the third question, it was put to the appellant that knowing the fact that the victim belongs to a Scheduled Caste, he caused her death after raping her and concealed her dead body, and he was asked for his reaction to the same. What PW 1 and PW 2 deposed against the appellant was not put to the appellant. The contents of the incriminating documents were not put to the appellant.

In a given case, the witnesses may have deposed in a language not known to the accused. In such a case, if the material circumstances appearing in evidence are not put to the accused and explained to the accused, in a language understood by him, it will cause prejudice to the accused.

In the present case, there is no doubt that material circumstances appearing in evidence against the appellant have not been put to him. The version of the main prosecution witnesses PWs 1 and 2 was not put to him. The stage of the accused leading defence evidence arises only after his statement is recorded under Section 313CrPC. Unless all material circumstances appearing against him in evidence are put to the accused, he cannot decide whether he wants to lead any defence evidence.

In this case, even the date and place of the crime allegedly committed by the appellant were not put to the appellant. What was reportedly seen by PW 2 was not put to the appellant in his examination. Therefore, the appellant was prejudiced. Even assuming that failure to put material to the appellant in his examination is an irregularity, the question is whether it can be cured by remanding the case to the trial court.

The date of occurrence is of 27-5-2009. Thus, the incident is fifteen-and-a-half years old. After such a long gap of fifteen-and-half years, it will be unjust if the appellant is now told to explain the circumstances and material specifically appearing against him in the evidence. Moreover, the appellant had been incarcerated for about twelve years and nine months before he was released on bail. Therefore, considering the long passage of time, there is no option but to hold that

the defect cannot be cured at this stage. Even assuming that the evidence of PW 2 can be believed, the appellant is entitled to acquittal on the ground of the failure to put incriminating material to him in his examination under Section 313CrPC.

We are surprised to note that both the trial court and the High Court have overlooked non-compliance with the requirements of Section 313CrPC. Shockingly, the trial court imposed the death penalty in a case which ought to have resulted in acquittal. Imposing capital punishment in such a case shocks the conscience of this Court.

Our conclusions and directions regarding the role of the Public Prosecutor and appointment of legal aid lawyers are as follows:

(i) It is the duty of the court to ensure that proper legal aid is provided to an accused;

(ii) When an accused is not represented by an advocate, it is the duty of every Public Prosecutor to point out to the court the requirement of providing him free legal aid. The reason is that it is the duty of the Public Prosecutor to ensure that the trial is conducted fairly and lawfully;

(iii) Even if the court is inclined to frame charges or record examination-in-chief of the prosecution witnesses in a case where the accused has not engaged any advocate, it is incumbent upon the Public Prosecutor to request the court not to proceed without offering legal aid to the accused;

(iv) It is the duty of the Public Prosecutor to assist the trial court in recording the statement of the accused under Section 313 CrPC. If the court omits to put any material circumstance brought on record against the accused, the Public Prosecutor must bring it to the notice of the court while the examination of the accused is being recorded. He must assist the court in framing the questions to be put to the accused. As it is the duty of the Public Prosecutor to ensure that those who are guilty of the commission of offence must be punished, it is also his duty to ensure that there are no infirmities in the conduct of the trial which will cause prejudice to the accused;

(v) An accused who is not represented by an advocate is entitled to free legal aid at all material stages starting from remand. Every accused has the right to get legal aid, even to file bail petitions;

(vi) At all material stages, including the stage of framing the charge, recording the evidence, etc. it is the duty of the court

to make the accused aware of his right to get free legal aid. If the accused expresses that he needs legal aid, the trial court must ensure that a legal aid advocate is appointed to represent the accused;

(vii) As held in ***Anokhilal v. State of M.P., (2019) 20 SCC 196***, in all the cases where there is a possibility of a life sentence or death sentence, only those learned advocates who have put in a minimum of ten years of practice on the criminal side should be considered to be appointed as Amicus Curiae or as a legal aid advocate. Even in the cases not covered by the categories mentioned above, the accused is entitled to a legal aid advocate who has good knowledge of the law and has an experience of conducting trials on the criminal side. It would be ideal if the Legal Services Authorities at all levels give proper training to the newly appointed legal aid advocates not only by conducting lectures but also by allowing the newly appointed legal aid advocates to work with senior members of the Bar in a requisite number of trials;

(viii) The State Legal Services Authorities shall issue directions to the Legal Services Authorities at all levels to monitor the work of the legal aid advocate and shall ensure that the legal aid advocates attend the court regularly and punctually when the cases entrusted to them are fixed;

(ix) It is necessary to ensure that the same legal aid advocate is continued throughout the trial unless there are compelling reasons to do so or unless the accused appoints an advocate of his choice;

(x) In the cases where the offences are of a very serious nature and complicated legal and factual issues are involved, the court, instead of appointing an empanelled legal aid advocate, may appoint a senior member of the Bar who has a vast experience of conducting trials to espouse the cause of the accused so that the accused gets best possible legal assistance;

(xi) The right of the accused to defend himself in a criminal trial is guaranteed by Article 21 of the Constitution of India. He is entitled to a fair trial. But if effective legal aid is not made available to an accused who is unable to engage an advocate, it will amount to infringement of his fundamental rights guaranteed by Article 21;

(xii) If legal aid is provided only for the sake of providing it, it will serve no purpose. Legal aid must be effective. Advocates

> appointed to espouse the cause of the accused must have good knowledge of criminal laws, law of evidence and procedural laws apart from other important statutes. As there is a constitutional right to legal aid, that right will be effective only if the legal aid provided is of a good quality. If the legal aid advocate provided to an accused is not competent enough to conduct the trial efficiently, the rights of the accused will be violated.

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119. CRIMINAL PROCEDURE CODE, 1973 – Section 437 (3)
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 480
Grant of bail – Conditions to be imposed while granting bail – Scope – Courts discretion in imposing conditions must be guided by the need to facilitate the administration of justice, secure the accused's presence and prevent misuse of liberty to impede investigation or obstruct justice – Courts should not impose such condition which may tantamount to deprivation of civil rights.

दण्ड प्रक्रिया संहिता, 1973 – धारा 437(3)
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 480
जमानत प्रदान किया जाना – जमानत प्रदान करते समय अधिरोपित की जाने वाली शर्तें – विस्तार – शर्तें अधिरोपित करने में न्यायालय का विवेक न्याय प्रशासन को सुविधाजनक बनाने, अभियुक्त की उपस्थिति सुनिश्चित करने तथा जांच में बाधा डालने या न्याय में अवरोध उत्पन्न करने वाली स्वतन्त्रता के दुरूपयोग को रोकने की आवश्यकता द्वारा निर्देशित होना चाहिए – न्यायालय को ऐसी शर्तें अधिरोपित नहीं करनी चाहिए जो सिविल अधिकारों से वंचित किए जाने के समान हों।

Ramratan alias Ramswaroop and anr. v. State of Madhya Pradesh

Judgment dated 25.10.2024 passed by the Supreme Court in Criminal Appeal No. 4402 of 2024, reported in AIR 2024 SC 5518

Relevant extracts from the judgment:

This Court in ***Dilip Singh v. State of Madhya Pradesh and anr., (2021) 2 SCC 779***, laid down the factors to be taken into consideration while deciding the application for bail and observed:

> "It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realisation of disputed

> dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial."

The High Court has clearly exceeded its jurisdiction in para 7 of the impugned order by imposing the conditions of demolishing the wall at the expense of the appellants and handing over the possession of the disputed property to the complainant.

In this case, the conditions imposed clearly tantamount to deprivation of civil rights, rather than measures to ensure the accused's presence during trial. Therefore, the conditions imposed by the High Court in the highlighted extract of paragraph 716 of the impugned order, are hereby set aside.

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120. CRIMINAL PROCEDURE CODE, 1973 – Sections 437(6) and 439
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 480(6) and 483
INDIAN PENAL CODE, 1860 – Sections 420, 201 and 120B
BHARATIYA NYAYA SANHITA, 2023 – Sections 318(4), 238 and 61(2)

(i) Grant of bail – Accused was involved in a cryptocurrency scam affecting 2000 investors, involving ₹ 4 crore – Prosecution was intending to examine 189 witnesses, out of which only 1 was examined – Accused has been in custody for more than 12 months – Trial is not going to be concluded in 60 days – Where there is absence of positive factors going against the accused,

showing possibility of prejudice to prosecution or accused not being responsible for delay in trial, an application u/s 437(6) CrPC must be dealt with liberal hands to protect individual liberty.

(ii) Bail – Magistrate triable offences – Factors which are relevant for consideration of application u/s 437(6) CrPC, explained.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437(6) एवं 439
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 480(6) एवं 483
भारतीय दण्ड संहिता, 1860 – धाराएं 420, 201 एवं 120ख
भारतीय न्याय संहिता, 2023 – धाराएं 318(4), 238 एवं 61(2)

(i) जमानत प्रदान किया जाना – अभियुक्त 4 करोड़ रूपये के एक क्रिप्टोकरेंसी घोटाले में शामिल था जिससे 2000 निवेशक प्रभावित थे – अभियोजन 189 गवाहों के कथन कराना चाहता था, जिनमें से केवल 1 साक्षी का परीक्षण हुआ – अभियुक्त 12 माह से अधिक समय से निरोध में था – विचारण 60 दिनों में समाप्त नहीं हो सकता – जहाँ अभियुक्त के विरूद्ध सकारात्मक कारकों की अनुपस्थिति है, जो अभियोजन के प्रति पूर्वाग्रह की संभावना दर्शाता है या अभियुक्त विचारण में विलम्ब के लिए जिम्मेदार नहीं है, वहाँ धारा 437 (6) सी.आर.पी.सी. के अंतर्गत आवेदन को व्यक्तिगत स्वतंत्रता की रक्षा के लिए उदारता पूर्वक विचार में लिया जाना चाहिए।

(ii) जमानत – मजिस्ट्रेट द्वारा विचारणीय अपराध – दंड प्रक्रिया संहिता की धारा 437 (6) के अंतर्गत प्रस्तुत आवेदन पर विचार करने के लिए सुसंगत कारक, समझाये गये।

Subhelal @ Sushil Sahu v. State of Chhattisgarh

Judgment dated 18.02.2025 passed by the Supreme Court in Criminal Appeal No. 818 of 2025, reported in AIR 2025 SC 1483

Relevant extracts from the judgment:

Later part of sub-section (6) of Section 437 of the Code empowers a Magistrate to refuse bail by assigning reasons. In our view, the legislature, has incorporated this provision with a view to recognize right of an accused for a speedy trial with a view to protect individual liberty. At the same time, the legislature has tried to strike a balance by allowing the Magistrate to refuse bail by assigning reasons in a given set of circumstances. Meaning thereby, that where in the opinion of the Magistrate, it is not proper or desirable or in the interest of justice to release such accused on bail, he may refuse bail by assigning reasons. The provisions of Section 437(6), as such, cannot be considered to be mandatory in nature and

cannot be interpreted to grant an absolute and indefeasible right of bail in favour of accused.

The grounds relevant for the purpose of refusing bail would not be the same which could have weighed with the Magisterial Court while refusing bail under Section 437(1) & (2) of the Code. That is a stage much prior to trial. Whereas the stage contemplated under Section 437(6), is after filing of charge-sheet and framing of charge when trial commences and the accused prefers an application after lapse of 60 days from first date fixed for taking evidence. If the grounds were expected or intended by the legislature to be the same, there was no reason for the legislature to insert sub-section (6) of the Code. In our view, therefore, reasons for rejection of application under sub-section (6) of the said Section have to be different and little more weighty than the reasons that may be relevant for rejection for bail at the initial stage. If this meaning is not given, sub-section (6) would be rendered otiose.

We may, however, hasten to add that, that cannot be an absolute proposition and some of the reasons which may be relevant for rejection for regular bail under Section 437(1) & (2) of the Code, may also be relevant for rejection of application under sub-section (6) of the said Section, in a given situation. We do not subscribe to the theory that factors which are relevant for rejection of regular bail, at the initial stage are not at all relevant for rejection of application under sub-section (6) of the said Section. Fact situations are so large in numbers, that it may not be possible to contemplate, enumerate, illustrate or incorporate here the factors which would be relevant and which would not be relevant for the purpose of rejection of application under sub-section (6) of Section 437 of the Code. But, it can certainly be said that grounds relevant for considering application under sub-section (6) of Section 437 of the Code and the grounds relevant for considering application for regular bail would be different to some extent.

In our view, following factors would be relevant:

1. Whether the reasons for being unable to conclude trial within sixty days from the first date fixed of taking evidence, are attributable to the accused?
2. Whether there are any chances of the accused tampering with evidence or causing prejudice to the case of the prosecution in any other manner?
3. Whether there are any chances of abscondence of the accused on being bailed out?
4. Whether accused was not in custody during the whole of the said period?

If the answer to any one of the above referred fact situations or similar fact situations is in affirmative then that would work as a fetter on the right that accrues to the accused under first part of sub-section (6) of Section 437 of the Code.

The right accrues to him only if he is in custody during the whole of the said period as can be seen from the language employed in sub-section (6) of Section 437 of the Code by the legislature.

It would also be relevant to take into consideration the punishment prescribed for the offence for which the accused is being tried in comparison to the time that the trial is likely to take, regard being had to the factors like volume of evidence, number of witnesses, workload on the Court, availability of prosecutor, number of accused being tried with accused and their availability for trial, etc.

Therefore, so far as question Nos. 3 and 4 are concerned, this Court is of the view that the factors, parameters, circumstances and grounds for seeking bail by the accused as well as grounds to be considered by the Magistrate for his satisfaction, would not be exactly the same, but they may in a fact situation be relevant and may overlap each other in both the situation. The factors which are quoted above by this Court are only illustrative and not exhaustive.

This Court is of a considered view that applications under Section 437 (6) have to be given a liberal approach and it would be a sound and judicious exercise of discretion in favour of the accused by the Court concerned more particularly where there is no chance of tampering of evidence e.g. where the case depends on documentary evidence which is already collected; where there is no fault on part of the accused in causing of delay; where there are no chances of any abscondence by the accused; where there is little scope for conclusion of trial in near future; where the period for which accused has been in jail is substantial in comparison to the sentence prescribed for the offence for which he is tried. Normal parameters for deciding bail application would also be relevant while deciding application under Section 437(6) of the Code, but not with that rigour as they might have been at the time of application for regular bail.

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121. CRIMINAL PROCEDURE CODE, 1973 – Section 439
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 483
INDIAN PENAL CODE, 1860 – Section 304B and 498A
BHARATIYA NYAYA SANHITA, 2023 – Sections 80 and 85

(i) Grant of bail – Offence of dowry death and cruelty – Court is duty bound to delve deeper into the circumstances in such offences – The social message emanating from judicial orders in such cases cannot

be overstated – A superficial application of bail parameters not only undermines the gravity of the offence but also risks weakening public faith in judiciary.

(ii) Cancellation of bail – Justification – Father-in-law and mother-in-law of the deceased played a significant role in pressuring the deceased with repeated demands for expensive items and subjected her to persistent cruelty during the first two years of her marriage – Evidence of intense violence, numerous contusions, and injuries inconsistent with the suicide case should have been considered – Evidence on record suggested that the accused persons intentionally tortured the deceased in both mental and physical ways – They are not entitled to bail – Bail is cancelled.

दण्ड प्रक्रिया संहिता, 1973 – धारा 439
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 483
भारतीय दण्ड संहिता, 1860 – धाराएं 304ख एवं 498क
भारतीय न्याय संहिता, 2023 – धाराएं 80 एवं 85

(i) जमानत प्रदान करना – दहेज हत्या और क्रूरता का अपराध – न्यायालय का कर्तव्य है कि वह ऐसे अपराधों में परिस्थितियों पर गहराई से विचार करें – ऐसे मामलों में न्यायिक आदेशों से उद्भूत होने वाले सामाजिक संदेश का आकलन कम नहीं किया जा सकता – जमानत मापदंडों का सतही अनुप्रयोग न केवल अपराध की गंभीरता को कम करता है, बल्कि न्यायपालिका में जनता के विश्वास को भी कमजोर करने का खतरा उत्पन्न करता है।

(ii) जमानत निरस्त किया जाना – औचित्य – मृतिका के ससुर और सास ने महंगी वस्तुओं की बार–बार मांग करने के साथ–साथ मृतिका पर दबाव बनाने में महत्वपूर्ण भूमिका निभाई और विवाह के पहले दो वर्षों के दौरान उसके साथ निरंतर क्रूरता कारित की – घोर हिंसा, कई सारी खरोंचे और आत्महत्या के मामले से असंगत चोटों की साक्ष्य पर विचार किया जाना चाहिए था – अभिलेख पर उपलब्ध साक्ष्य से इंगित हुआ कि अभियुक्त व्यक्तियों ने जानबूझकर मृतिका को मानसिक और शारीरिक दोनों रूप से प्रताड़ित किया – वे जमानत के हकदार नहीं हैं – जमानत निरस्त की गई।

Shabeen Ahma v. State of Uttar Pradesh and anr.

Judgment dated 03.03.2025 passed by the Supreme Court in Criminal Appeal No. 1051 of 2025, reported in AIR 2025 SC 1404

Relevant extracts from the judgment:

Appraisal of the material on record suggests that Accused No.2 (father-in-law) and Accused No.3 (mother-in-law) had a principal role in pressurising the deceased with repeated demands for expensive items and subjecting her to relentless cruelty. It emerges that the deceased's family did provide a motorcycle in her name, yet the demands continued to escalate, culminating in a demand for a car. Equally alarming is the fact that the deceased's final moments appear to have involved intense violence, evidenced by multiple contusions and injuries that are inconsistent with a mere case of suicide. The father-in-law's subsequent phone call to the deceased's parental home, urging them to rush over, does not by itself exonerate him; rather, when considered alongside the forensic and testimonial evidence, it casts further doubt on the entire chain of events leading to the victim's death. In dowry-death cases, courts must be mindful of the broader societal impact, given that the offence strikes at the very root of social justice and equality. Allowing alleged prime perpetrators of such heinous acts to remain on bail, where the evidence indicates they actively inflicted physical, as well as mental, torment, could undermine not only the fairness of the trial but also public confidence in the criminal justice system.

We also find it necessary to express our concern over the seemingly mechanical approach adopted by the High Court in granting bail to the Respondent accused. While the Court did note the absence of prior criminal records, it failed to fully consider the stark realities of the allegations. It is unfortunate that in today's society, dowry deaths remain a grave social concern, and in our opinion, the courts are duty- bound to undertake deeper scrutiny of the circumstances under which bail is granted in these cases. The social message emanating from judicial orders in such cases cannot be overstated: when a young bride dies under suspicious circumstances within barely two years of marriage, the judiciary must reflect heightened vigilance and seriousness. A superficial application of bail parameters not only undermines the gravity of the offence itself but also risks weakening public faith in the judiciary's resolve to combat the menace of dowry deaths. It is this very perception of justice, both within and outside the courtroom that courts must safeguard, lest we risk normalizing a crime that continues to claim numerous innocent lives.

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122. EVIDENCE ACT, 1872 – Section 32

BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 26

Dying declaration – Format and description – Credibility – There is no format prescribed for recording dying declaration – It is not obligatory that it should be recorded in question and answer form only – The formalities that whether dying declaration was read over to the deceased or not or was it in a particular format or not, are matters of caution – Court has to scrutinize that the dying declaration is not a result of tutoring, prompting or imagination – If dying declaration is found to be trustworthy and inspires confidence of the Court then Court may act upon the same.

साक्ष्य अधिनियम, 1872 – धारा 32

भारतीय साक्ष्य अधिनियम, 2023 – धारा 26

मृत्युकालिक कथन – प्रारूप और विवरण – विश्वसनीयता – मृत्युकालिक कथन अभिलिखित करने हेतु कोई प्रारूप निर्धारित नहीं है – यह बाध्यकारी नहीं है कि उसे केवल प्रश्न उत्तर के रूप में ही अभिलिखित किया जा सकेगा – मृत्युकालिक कथन को मृतक को पढ़कर सुनाया गया था या नहीं, वह विनिर्दिष्ट प्रारूप में था या नहीं, ये सारी औपचारिकताएं सावधानी की विषय वस्तु हैं – न्यायालय को यह छानबीन करना होगी कि मृत्युकालिक कथन किसी के द्वारा सिखाये जाने, उकसाये जाने या कल्पना का परिणाम तो नहीं है – यदि मृत्युकालिक कथन विश्वसनीय पाया जाता है और वह न्यायालय का विश्वास जीतता है तब न्यायालय उस पर कार्यवाही कर सकता है।

Chhotibai @ Rani B & ors. v. State of M.P.

Jugdment dated 16.10.2024 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 916 of 2015, reported in ILR 2025 MP 179 (DB)

Relevant extracts from the judgment:

We have gone through the judgment of ***Jai Karan v. State of (N.C.T. Delhi) dated 27.09.1999*** in this judgment, the principles laid down that on what basis the dying declaration can be relied on and in that the first rule is that the dying declaration can form the sole basis for the conviction and each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made, general proposition that a dying declaration is not a weak kind of evidence than other piece of evidence, than the dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to principles governing the weighing

of evidence, that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say in the form of question and answer and as far as practicable in the words of maker of the declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, that in order to test the reliability of dying declaration the court has to keep in view the circumstances like opportunity of dying man for observation and the dying declaration must be scrutinized carefully. Same principles have been laid down in the ***Shaikah Bakshu and ors. v. State of Maharashtra, 2007 AIR SCW 4120***. Furthermore, it is held that if there is no mention in the dying declaration that it was read over and explained to the deceased the dying declaration cannot be acted upon. Same principles have been laid down in the ***Abhishek Sharma v. State (Govt. of NCT of Delhi***) passed in Criminal Appeal No.1473 of 2011 dated 18.10.2023 in para nos. 9, 10 and 11 and in the judgment of ***Smt. Kamla v. State of Punjab*** dated 18.11.1992.

The Apex court in the case of ***Surinder Kumar v. State of Punjab (2012)12 SCC 120*** has stated that there is no format prescribed for recording the dying declaration and no format can be prescribed and thus, it is not obligatory that that dying declaration should be recorded in question and answer form. In some circumstances it may be possible and in some circumstances it may not be possible. Thus, the formalities that the dying declaration was read over to the deceased or not, it was in a particular format or not, all these are matters of caution. The same principle has been laid down in case of ***Farhan Gowda and ors. v. State of Karnataka, 2023 SCC Online 1370,*** that court has to scrutinize that the dying declaration is not as a result of tutoring, prompting or imagination and when the deceased was conscious and it is truthful then the court may act upon the dying declaration.

In the light of the above principles, the dying declaration is corroborated by other prosecution evidence and is proved beyond the reasonable doubt, that the dying declaration is trustworthy inspires confidence of this Court.

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123. EVIDENCE ACT, 1872 – Section 32
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 26
INDIAN PENAL CODE, 1860 – Sections 302 and 304B
BHARATIYA NYAYA SANHITA, 2023 – Section 103(1) and 80
Offence of murder – Multiple dying declarations – Accused allegedly poured kerosene on his deceased wife and set her a blaze, which resulted in her death – On the date of the incident deceased gave two dying

declarations, first to a doctor and second to police; in both, she deposed that the incident occurred while cooking – Later, in third dying declaration given to a Judicial Magistrate, she stated that her husband poured kerosene and set her a blaze – No other corroborative evidence is present – No eyewitness of the incident – Witnesses of seizure memo have not supported the recovery of the matchbox and kerosene can from the scene – According to the doctor, when the deceased was brought to the hospital there was no smell of kerosene on the body – When the deceased's parents arrived at the hospital, they remained silent about the incident – Relations of the accused family with the deceased's family were not cordial – In her third dying declaration, the deceased did not give a proper explanation about her previous two dying declarations – Third dying declaration found to be unreliable – Conviction was set aside.

साक्ष्य अधिनियम, 1872 – धारा 32
भारतीय साक्ष्य अधिनियम, 2023 – धारा 26
भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 304ख
भारतीय न्याय संहिता, 2023 – धाराएं 103(1) एवं 80
हत्या का अपराध – एकाधिक मृत्युकालिक कथन – अभियुक्त ने कथित तौर पर अपनी मृत पत्नी पर मिट्टी का तेल डाला और उसे आग लगा दी, जिसके परिणामस्वरूप उसकी मृत्यु हो गई – घटना दिनांक पर मृतिका ने दो मृत्युकालिक कथन दिये, पहला एक चिकित्सक को और दूसरा पुलिस को; दोनों में, उसने कथन दिया कि घटना खाना पकाने के दौरान हुई थी – पश्चात् में, न्यायिक मजिस्ट्रेट को दिये गये तीसरे मृत्युकालिक कथन में, मृतिका ने बताया कि उसके पति ने मिट्टी का तेल डाला और उसे आग लगा दी – संपुष्टि करने वाली कोई अन्य साक्ष्य मौजूद नहीं है – घटना का कोई प्रत्यक्षदर्शी नहीं है – जब्ती पत्रक के साक्षीगण ने घटनास्थल से माचिस की डिब्बी और मिट्टी के तेल के डिब्बे की बरामदगी का समर्थन नहीं किया – चिकित्सक के अनुसार, जब मृतिका को अस्पताल लाया गया तब शरीर पर मिट्टी के तेल की कोई गंध नहीं थी – जब मृतिका के माता–पिता अस्पताल पहुंचे, तो वे घटना के संबंध में मौन रहे – मृतिका के परिवार के साथ अभियुक्त के परिवार के संबंध सौहार्दपूर्ण नहीं थे – तीसरे मृत्युकालिक कथन में, मृतिका ने पूर्व के दो मृत्युकालिक कथनों के बारे में उचित स्पष्टीकरण नहीं दिया – तीसरा मृत्युकालिक कथन अविश्वसनीय पाया गया – दोषसिद्धि अपास्त की गई।

Suresh v. State Rep. by Inspector of Police

Judgment dated 04.03.2025 passed by the Supreme Court in Criminal Appeal No. 540 of 2013, reported in AIR 2025 SC 1561

Relevant extracts from the judgment:

There is no doubt regarding the well settled position of law that a dying declaration is an important piece of evidence and a conviction can be made by relying solely on a dying declaration alone as it holds immense importance in criminal law. However, such reliance should be placed after ascertaining the quality of the dying declaration and considering the entire facts of a given case. This Court in ***Uttam v. State of Maharashtra, (2022) 8 SCC 576*** with respect to inconsistent dying declarations, observed as follows:

> "In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the court and what would be the guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the court would be expected to carefully scrutinise the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution."

In other words, if a dying declaration is surrounded by doubt or there are inconsistent dying declarations by the deceased, then Courts must look for corroborative evidence to find out which dying declaration is to be believed. This will depend upon the facts of the case and Courts are required to act cautiously in such cases. The matter at hand is one such case. In the present case, the deceased had given two statements which are totally different from her subsequent statements including the statement made before PW12 on 18.09.2008, which has been considered a dying declaration based on which the appellant has been convicted. The first statement was made to the doctor (PW13) on the day of the incident itself where she told PW13 that the incident occurred while she was cooking. On the same day, the second statement was made to the police constable (PW9) where the deceased said the same thing i.e. she caught fire by accident while cooking in the kitchen.

Now, the variances in deceased's statements cast serious doubts on the veracity of her subsequent statement of 18.09.2008 made before the Judicial Magistrate (PW12) where the deceased had blamed the appellant for the incident. The deceased tried to explain her conduct by stating that she made false statements on the day of the incident as she could not tell the truth in the presence of her

husband. It is very difficult to believe this version of the deceased because no other evidence corroborates the deceased's statement that the appellant had poured kerosene on her and then set her on fire. Moreover, in his cross examination, Judicial Magistrate (PW12) admitted that he did not question the deceased with regards to the details of her previous statements made before the police. The deceased did not say anything to the Judicial Magistrate regarding her previous statements of 12.09.2008 and 15.09.2008. In other words, the deceased did not tell the Magistrate that she lied in her statement of 12.09.2008. It is not a case of dowry harassment as all such possibilities were already ruled out during the investigation. When the Judicial Magistrate (PW12) questioned the deceased about the reason for which appellant had set her on fire, as claimed by the deceased, the deceased answered as follows:

> "I had beaten my son Rubiston. My husband had asked me why you are beating the child. My husband had abused me with filthy language. I told him that I am going to die. He said that why do you die and he himself had poured kerosene and burnt me"

This is also contradictory to the other evidence on record and here, the timeline of the events becomes important. From the deposition of PW1, it comes out that PW1 was called by the deceased around 2 pm and PW1 went to deceased's house and brought the deceased's son to her house. The incident occurred in the evening at around 6 pm. As per the deceased's dying declaration, she was beating her child to which the appellant raised objections and the matter escalated, leading to the alleged incident. All of this makes the dying declaration extremely doubtful.

As discussed above, in cases where the dying declaration is suspicious, it is not safe to convict an accused in the absence of corroborative evidence. In a case like the present one, where the deceased has been changing her stance and has completely turned around her statements, such a dying declaration cannot become the sole basis for the conviction in the absence of any other corroborative evidence.

On this point, the prosecution would argue that Observation Mahazar prepared by PW15 talks about the recovery of an empty kerosene can and match stick from the spot. PW15 also mentioned in the Observation Mahazar that when he visited the deceased's house on 15.09.2008, it was full of the smell of burnt kerosene. According to the prosecution, this Mahazar corroborates the dying declaration made by the deceased. However, the veracity of this Observation Mahazar is itself in doubt. Apart from the fact that there had been an inordinate

delay in sending the Mahazar to Court, the witnesses (PW5 and PW6) to the seizure of the above articles had also been declared hostile. PW5 and PW6 deposed that the site was visited by PW15 but they did not support that any articles with kerosene smell were seized from the place.

Moreover, no other witnesses had deposed about seeing any empty kerosene can or match stick. Even PW1 and PW2, who reached the scene and hospitalised the deceased, had not deposed anything like that. On the contrary, PW13 (doctor) had categorically stated in his evidence that there was no smell of kerosene in the body of the deceased when she was brought to the hospital. Normally, where the death is caused by burning through kerosene, the smell of kerosene would definitely remain for a few hours, however, the smell does weaken after some time. Since, in the present case, the deceased was immediately brought to the hospital barely within a few hours of the incident, if kerosene was involved then the smell of kerosene ought to have been there. Even the doctor (PW13), who had examined the deceased immediately after the incident, states that there was no such smell.

There is also another aspect to the case. It has come on record that the relations between the two families i.e., the family of the accused and the family of the deceased, had soured. In 2006, barely two years before the incident, the appellant's brother had filed a criminal case of assault against the appellant's father-inlaw (PW2) and brother inlaw. In that case, PW2 and his son were convicted. Before the Trial Court as well as the High Court, the appellant had tried to unsuccessfully contend that the dying declaration of 18.09.2008 is an afterthought of the deceased and the deceased made such a statement upon being tutored by PW1 and PW2. We are not in a position to give any definitive view on this aspect but considering the other evidence on record, the possibility of what the appellant is suggesting, cannot be ruled out. Thus, in our considered opinion, inspite of a dying declaration here, for the reasons stated above, total reliance on it would be misplaced. Consequently, the appellant deserves to be given the benefit of doubt.

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124. HINDU MARRIAGE ACT, 1955 – Section 25

Quantum of permanent alimony or maintenance – Relevant factors required to be taken into consideration for determination – Law explained.

हिन्दू विवाह अधिनियम, 1955 – धारा 25

स्थायी निर्वाहिका या भरण–पोषण भत्ते की मात्रा – निर्धारण हेतु ध्यान में रखने योग्य सुसंगत काकर – विधि समझाई गई।

Rinku Baheti v. Sandesh Sharda

Judgment dated 19.12.2024 passed by the Supreme Court in Transfer Petition (c) No. 278 of 2023, reported in (2025) 3 SCC 686

Relevant extracts from the judgment:

We have to consider the question of assessing the alimony for the petitioner upon the dissolution of marriage between the parties. It was for the limited purpose of determining the quantum of alimony or maintenance or other rights of the petitioner wife that this Court had transferred the case to the Family Court, Pune. The Family Court has considered the pleadings and evidence of the parties in detail, and has sent us its report in the form of an order dated 22-3-2024. In essence, the petitioner wife has sought permanent alimony commensurate to the assets and income of the respondent husband and on the same principles on which the alimony was paid to the first wife of the respondent. The respondent husband has denied the exorbitant claims of the petitioner and submitted that Rs 20 lakhs to Rs 40 lakhs would be an appropriate amount of permanent alimony for the petitioner. Finally, the Family Court, Pune has suggested a permanent alimony of Rs 2 lakhs per month for the petitioner wife or Rs 10 crores in lump sum.

We have perused the application of the petitioner for fixation of alimony, the reply of the respondent to the said application, the order dated 22-3-2024 passed by the Family Court, Pune, and the submissions advanced in this aspect.

The dispute with respect to the amount of alimony is generally the most contentious point between the parties in such marital proceedings, supplemented by a plethora of accusations to remove the cover from the opposite party's income and assets. The judicial dicta in this context could be discussed as under:

(i) In the order passed by a three-Judge Bench of this Court in ***Shakti v. Anita, (2025) 3 SCC 728***, it was observed as under:

> "That brings us to the aspect of permanent alimony over which the real dispute is. We looked to the offer of the appellant as also the desire of the respondent. There is undoubtedly a mismatch!
>
> As often happens the claim of the respondent is based on what is stated to be a large number of properties of the family of the appellant, though nothing is placed on record of anything in his name."

(ii) The law with respect to deciding the amount of permanent alimony was summarised by a Bench of this Court recently in ***Kiran Jyot Maini v. Anish Pramod Patel, (2024) 13 SCC 66***,

wherein this Court speaking through Vikram Nath, J. has touched upon the question of one-time settlement and the factors that should be taken into consideration while determining fair amount of permanent alimony. It was also observed as under:

> "The status of the parties is a significant factor, encompassing their social standing, lifestyle, and financial background. The reasonable needs of the wife and dependant children must be assessed, including costs for food, clothing, shelter, education, and medical expenses. The applicant's educational and professional qualifications, as well as their employment history, play a crucial role in evaluating their potential for self-sufficiency. If the applicant has any independent source of income or owns property, this will also be taken into account to determine if it is sufficient to maintain the same standard of living experienced during the marriage. Additionally, the court considers whether the applicant had to sacrifice employment opportunities for family responsibilities, such as child-rearing or caring for elderly family members, which may have impacted their career prospects."

(iii) In ***Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112***, this Court held that there cannot be a fixed formula or a straitjacket rubric for fixing the amount of permanent alimony and only broad principles can be laid down. The question of maintenance is subjective to each case and depends on various factors and circumstances as presented in individual cases. This Court in the above judgment stated that the courts shall consider the following broad factors while determining permanent alimony — income and properties of both the parties, respectively, conduct of the parties, status, social and financial, of the parties, their respective personal needs, capacity and duty to maintain others dependent on them, husband's own expenses, wife's comfort considering her status and the mode of life she was used to during the subsistence of the marriage, among other supplementary factors.

(iv) This was further reiterated by this Court in ***Vishwanath Agrawal v. Sarla Vishwanath, (2012) 7 SCC 288***, while observing that permanent alimony is to be granted after considering largely the social status, conduct of the parties, the parties' lifestyle, and other such ancillary factors.

Earlier, a two-Judge Bench of this Court speaking through Indu Malhotra, J. in ***Rajnesh v. Neha, (2021) 2 SCC 324*** ("*Rajnesh*"), elaborated upon the broad criteria and the factors to be considered for determining the quantum of maintenance. This Court emphasises that there is no fixed formula for calculating maintenance amount; instead, it should be based on a balanced consideration of various factors. These factors include and are illustrative but are not limited or exhaustive, they are adumbrated as under:

(*i*) Status of the parties, social and financial.
(*ii*) Reasonable needs of the wife and dependent children.
(*iii*) Qualifications and employment status of the parties.
(*iv*) Independent income or assets owned by the parties.
(*v*) Maintain standard of living as in the matrimonial home.
(*vi*) Any employment sacrifices made for family responsibilities.
(*vii*) Reasonable litigation costs for a non-working wife.
(*viii*) Financial capacity of husband, his income, maintenance obligations, and liabilities.

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125. HINDU MINORITY AND GUARDIANSHIP ACT, 1956 – Sections 6 and 13
GUARDIANS AND WARDS ACT, 1890 – Section 25

Entitlement of custody of minor child – Welfare of minor shall be the paramount consideration – Father, being the natural guardian after death of mother, is having keen interest to bring up his child and take him under his supervision – Minor child will get better exposure in life and growth of his personality would be more prominent under the guardianship of his father rather than in the company of maternal grandmother – Order directing the appellant to handover the custody of minor child to his father upheld.

हिन्दू अप्राप्तवयता तथा संरक्षकता अधिनियम, 1956 – धाराएं 6 एवं 13
संरक्षक और प्रतिपाल्य अधिनियम, 1890 – धारा 25

अवयस्क बालक की अभिरक्षा का अधिकार – अवयस्क बालक का कल्याण ही सर्वोपरि विचारणीय होगा – माता की मृत्यु के बाद प्राकृतिक अभिभावक होने के कारण पिता अपने बालक का भरण–पोषण करने तथा उसे अपनी देखरेख में रखने में सघन रुचि रखता है – अवयस्क बालक को जीवन में बेहतर अवसर मिलेगा तथा उसके व्यक्तित्व का विकास नानी की संगति की अपेक्षा उसके पिता की अभिरक्षा में अधिक होगा – अपीलार्थी को अवयस्क बालक की अभिरक्षा उसके पिता को सुपुर्द करने का आदेश यथावत रखा गया।

Sucheta Bhadoriya v. Ambarish Singh

Judgment dated 18.12.2024 passed by the High Court of Madhya Pradesh (Gwalior Bench) in First Appeal No. 571 of 2024, reported in 2025 (1) MPLJ 532 (DB)

Relevant extracts from the judgment:

While approaching the dispute in question (whether the respondent is entitled to custody of minor child or not?), the relevant provisions under the Hindu Minority and Guardianship Act, 1956 (in short "the Act of 1956") are also to be taken into consideration. As per Section 2 of the Act of 1956, the provisions of this Act shall be in addition to, and not, save as expressly provided, in derogation of, the Act of 1890. Section 6 of the Act of 1956 speaks about the natural guardian of a Hindu minor child.

In juxtaposition, if the provisions of the Act of 1956 and the Act of 1890 are seen, it appears that the welfare of minor child is paramount consideration while considering his custody in appointment or declaration of a person as guardian of Hindu minor by a court (section 13 of the Act of 1956).

On perusal of the impugned judgment and decree as well as the material available on record and in view of the aforesaid legal position, on the anvil of facts and circumstances of this case at hand, it is not in dispute that respondent is the father of minor child and is in private job. He leads a disciplined life inculcating in his family set-up, which would help the minor child to grow in future in a disciplined manner, which in comparison with the life is likely to be led with maternal grandmother, then the difference would clearly appear. The record impugned shows that father, being the natural guardian after death of mother is in keen interest to bring up his child and take him under his supervision. Besides that, the minor child will get better exposure in life and growth of his personality would be more prominent under the guardianship of his father, rather than in the Company of maternal grandmother.

In ***Anand Kumar v. Lakhan, 2022 SCC OnLine MP 3724,*** this Court has discussed the status of father as an important aspect for a child to get better exposure in life and since his father is in private job, therefore, child would have access to different regions and cultures and therefore, growth of his personality would be more prominent in guardianship of his father rather than in company of his maternal grandparents. Besides that appellant appears to be an old lady whereas father of child is comparatively young. Therefore, looking to age related elements and

geriatric limitation, it is apposite that custody of child be given to father of minor child.

So far as the allegation of appellant that the second wife of respondent Shruti is lady of easy virtue and welfare of minor child does not appear to be proper is concerned, but the appellant has utterly failed to prove before the Family Court in order to substantiate such apprehension. Over and above, the respondent, being father of minor child as per Section 6 of the Act of 1956, is the best and natural guardian of minor child and since he is the biological father of minor child also, the statute also favours the cause of respondent being custody of minor child, as father.

Testing on the anvil of welfare of minor child as well as balancing the facts and circumstances of the case, this Court does not find any illegality or impropriety in the findings recorded by the learned Family Court. The learned Family Court after evaluating the materials available on record as well as on going through the relevant provisions of the aforesaid Act of 1956 and the Act of 1890 has rightly passed the impugned judgment and decree with a direction to appellant to hand over the custody of minor child to respondent. No case is made out to interfere in the impugned judgment and decree passed by learned Family Court.

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126. INDIAN PENAL CODE, 1860 – Sections 109, 120B, 468 and 471
BHARATIYA NYAYA SANHITA, 2023 – Sections 49, 61(2), 336(3) and 340(2)
EVIDENCE ACT, 1872 – Sections 45 and 64
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 39(1) and 59
Offence of forgery for the purpose of cheating – Failure to exhibit the original document – Effect – The original postal cover in which fabricated marksheet was transmitted and which allegedly bore the handwriting of accused, was not exhibited – A copy of the original document was exhibited and the handwriting expert has given his finding based on the copy of the original postal cover, which was neither exhibited nor proven in evidence – Objection about its admissibility was also raised by accused during examination – There is no basis for accepting the prosecution's story that it bore the handwriting of the accused – Conviction solely based on the opinion of a handwriting expert without substantial corroboration, is hazardous – Conviction set aside. ***(Murari Lal v. State of M.P., (1980) 1 SCC 704*** **followed*)***

भारतीय दण्ड संहिता, 1860 – धाराएं 109, 120ख, 468 एवं 471
भारतीय न्याय संहिता, 2023 – धाराएं 49, 61(2), 336(3) एवं 340(2)
साक्ष्य अधिनियम, 1872 – धाराएं 45 एवं 64
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 39(1) एवं 59
छल के उद्देश्य से कूटरचना का अपराध – मूल दस्तावेज को प्रदर्शित करने में विफलता – प्रभाव – मूल डाक का लिफाफा जिसमें कूटरचित अंक सूची प्रेषित की गई थी और जिस पर कथित तौर पर अभियुक्त की लिखावट थी, प्रदर्शित नहीं किया गया – मूल दस्तावेज की प्रतिलिपि प्रदर्शित की गई थी, और हस्तलेख विशेषज्ञ ने मूल डाक के लिफाफे की प्रति के आधार पर अपना निष्कर्ष दिया, जिसे न तो प्रदर्शित किया गया था और न ही साक्ष्य में प्रमाणित किया गया था – इसकी ग्राह्यता के संबंध में अभियुक्त द्वारा परीक्षण के दौरान आपत्ति उठाई गई थी – अभियोजन कथनिक कि लिफाफे पर अभियुक्त का हस्तलेख है, स्वीकार करने का कोई आधार नहीं है – पर्याप्त से पुष्टि के बिना केवल एक हस्तलेख विशेषज्ञ की राय के आधार पर दोषसिद्धि खतरनाक है – दोषसिद्धि अपास्त।

C. Kamalakkannan v. State of Tamil Nadu Rep. by Inspector of Police C.B.C.I.D., Chennai

Judgment dated 03.03.2025 passed by the Supreme Court in Criminal Appeal No. 1056 of 2025, reported in AIR 2025 SC 1441

Relevant extracts from the judgment:

The *locus classicus* on this issue is ***Murari Lal v. State of M.P., (1980) 1 SCC 704*** wherein this Court laid down the principles with regard to the extent to which reliance can be placed on the evidence of an expert witness and when corroboration of such evidence may be sought. The relevant paragraphs are extracted hereinbelow:-

> "We will first consider the argument, a stale argument often heard, particularly in Criminal Courts, that the opinion-evidence of a handwriting expert should not be acted upon without substantial corroboration. We shall presently point out how the argument cannot be justified on principle or precedent. We begin with the observation that the expert is no accomplice. There is no justification for condemning his opinion-evidence to the same class of evidence as that of an accomplice and insist upon corroboration. True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable

witnesses the quality of credibility or incredibility being one which an expert shares with all other witnesses – but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is a far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferior sort of witness. His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides. [..]

Expert testimony is made relevant by Section 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person "specially skilled" "in questions as to identity of handwriting" is expressly made a relevant fact…… So, corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it.

We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallized into a rule of law, that opinion- evidence of a handwriting expert must

> never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted."

The trial Court in the instant case, placed reliance on the testimony of the handwriting expert (PW-18) and the expert report (Exhibit A-31) to conclude that the handwriting on the postal cover was that of C. Kamalakkannan i.e., the second accused (appellant herein). To test the veracity of this finding, we have perused the material available on record and find that the trial Court, in its judgment has noted that the postal cover which allegedly bore the handwriting of C. Kamalakkannan, the second accused (appellant herein) was not available on record and thus, the accused appellant had raised an objection against exhibiting the copy thereof. Consequently, the postal cover could not be exhibited in evidence. As the prosecution failed to lead primary evidence, in form of the original postal cover, the trial Court could not have concluded that the prosecution had succeeded in proving that the handwriting on the disputed document was that of the accused appellant. Non-exhibiting of the original document would lead to the only possible inference that the questioned document i.e., the postal cover was never proved as per law and as a consequence, the evidentiary value of the handwriting expert's report concluding that the postal cover bore the handwriting of the accused appellant is rendered redundant.

Furthermore, on going through the evidence of the handwriting expert (PW-18), as referred to in the trial Court's judgment, we find that the expert witness stated that he received the documents as Exhibit A-2, Exhibit A-14 and Exhibit A-15 and a postal cover. Thus, even the handwriting expert (PW-18) did not identify the postal cover, which was the subject matter of examination, as being the same which allegedly bore the handwriting of the accused appellant.

In wake of the above discussion, we have no hesitation in holding that the prosecution miserably failed to prove the existence of the disputed postal cover in which the forged marksheet was purportedly posted. Since the postal cover itself was not exhibited and proved in evidence, there is no question of accepting the prosecution theory that the same bore the handwriting of the accused appellant. As a result, the conviction of the appellant as recorded by the trial Court and affirmed by the appellate Court as well as the High Court does not stand to scrutiny and the appellant is entitled to a clean acquittal.

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127. INDIAN PENAL CODE, 1860 – Sections 120B, 406 and 420
BHARATIYA NYAYA SANHITA, 2023 – Sections 61(2), 316(2) and 318(4)
PREVENTION OF CORRUPTION ACT, 1988 – Sections 13 (1) (d) and 13 (2)
DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946 – Section 6

(i) Offence of cheating – Default in repayment of loan amount – Held, mere inability to repay does not amount to cheating – Intention to cheat must be from the beginning – It is merely a case of breach of contract.

(ii) Maxim "*sublato fundamento cadit opus*" – Explained.

(iii) Jurisdiction of CBI to investigate against non-public servant – Absence of consent of State Government – Held, accused who are non-public servants and who have alleged to have committed offence other than under Act of 1988 or IPC, cannot be investigated, tried and prosecuted by the CBI in absence of consent required u/s 6 of the Act of 1946.

भारतीय दण्ड संहिता, 1860 – धाराएं 120ख, 406 एवं 420
भारतीय न्याय संहिता, 2023 – धाराएं 61(2), 316(2) एवं 318(4)
भ्रष्टाचार निवारण अधिनियम, 1988 – धारा 13 (1)(घ) एवं 13 (2)
दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 – धारा 6

(i) छल का अपराध – ऋण राशि के पुनर्भुगतान में चूक – अभिनिर्धारित, केवल पुनर्भुगतान में असर्मथता छल नहीं है – छल का आशय आरंभ से ही होना चाहिए – यह मामला केवल संविदा के भंग का है ।

(ii) मैक्जिम "***sublato fundamento cadit opus***" को समझाया गया ।

(iii) गैर लोकसेवक के विरूद्ध अनुसंधान करने का सीबीआई का क्षेत्राधिकार – राज्य सरकार की सहमति का अभाव – अभिनिर्धारित, सीबीआई द्वारा अधिनियम, 1946 की धारा 6 के अंतर्गत अपेक्षित सहमति के अभाव

में अभियुक्त जो गैर लोकसेवक हों और जिन पर अधिनियम, 1988 या भा.दं.सं. से भिन्न अपराध कारित किये जाने के आक्षेप हों, का अनुसंधान, विचारण और अभियोजन नहीं किया जा सकता।

Narayan Niryat India Pvt. Ltd. (M/s.) & ors. v. Central Bureau of Investigation

Order dated 08.08.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Criminal Case No. 30530 of 2024, reported in ILR 2025 MP 228 (DB)

Relevant extracts from the order:

From the analysis of admitted facts, it becomes apparent that this is a case where Petitioner No. 1 has defaulted on amount which was repayable as against the credit facility availed by the petitioners and it is settled law that mere inability to pay back loan does not amount to cheating and there should be intention to cheat on part of the petitioners from the beginning. When the petitioners while availing credit facility had mortgaged whole assets of the petitioner no.1company as well as collateral security in form of immovable property valued at approximately Rs. 31.49 Crores it is hardly believable that the petitioners had any intention to defraud the banks from the inception. Furthermore, Bank has concealed while making complaint that they had filed Original Application before DRT, Jabalpur for recovery of amount due by auctioning company assets and mortgaged immovable properties which had been mortgaged against availing of credit facility. It is also evident that petitioners had made continuous efforts to settle by way entering into OTS which further makes this court conclude that there was no intention 23 on part of petitioners to cheat. It is in this factual backdrop that delay in lodging complaint and FIR assumes importance.

It is a settled legal proposition of law that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim "*sublato fundamento cadit opus*" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case. Also, Once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally. It is also a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes

at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be *non est* and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. [Vide ***State of Punjab v. Debender Pal Singh, (2011) 14 SCC 770, Badrinath v. State of Tamil Nadu & ors., AIR 2000 SC 3243, State of Kerala v. Puthenkavu N.S.S. Karayogam & anr., (2001) 10 SCC 191*** and ***State of Orissa & ors. v. Mamata Mohanty, (2011) 3 SCC 456***.]

In the considered opinion of this court, in light of the aforesaid notifications and judgments, the Non-Public Servants, who have been alleged to have committed offence other than of Prevention of Corruption Act, 1988 or offences falling under the Indian Penal Code, can't be investigated, tried and prosecuted in absence of consent. Admittedly, prior to registration of FIR or filing of charge-sheet, no consent under Section 6 of DSPE Act was obtained by Respondent for investigating and prosecuting petitioners who are private company and individuals. Such consent was mandatory especially when in the case at hand, in the complaint on the basis of FIR nowhere alleged involvement of public servants nor there existed any allegation under Prevention of Corruption Act. Such action of the Respondent violates the Constitutional provisions, the DSPE Act, and derogates from the doctrine of federalism. In the considered opinion of this court, CBI cannot be permitted to undertake investigation by simply including Sections from Prevention of Corruption Act in the FIR without there being any ingredient of the offence under the said act in the complaint made by complainant, as if such an action is allowed to 38 be continued the same would render the provisions under Section 6 of the DSPE Act nugatory which cannot be allowed by this court.

In view of the above, this court is of the considered opinion that the case of the petitioners falls under the case category ‘f’ of ***Haryana v. Bhajan Lal, AIR 1992 SC 604*** on account of the fact that there exists a express legal bar engrafted under the Constitution of India and DSPE Act, to the institution and continuance of the proceedings by CBI as against petitioners in absence of consent from State of Madhya Pradesh as required under Section 6 of DSPE Act. Hence in the considered opinion of this court, on this ground alone, FIR, Charge-sheet and consequential proceedings are liable to be quashed.

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128. INDIAN PENAL CODE, 1860 – Sections 193, 415, 420, 465, 468 and 471
BHARATIYA NYAYA SANHITA, 2023 – Sections 229, 318(1), 318(4), 336(2), 336(3) and 340(2)
CRIMINAL PROCEDURE CODE, 1973 – Sections 195 and 397/401
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 215 and 438/442

(i) Bar u/s 195 CrPC – Allegation against the accused was that he prepared forged affidavit outside the Court and thereafter, produced the same before the Court in a civil suit – Trial Court framed charges against the accused – Objection as to bar – Held, if document is forged outside the Court and produced before the Court, bar on cognizance would not apply.

(ii) Cheating – Signature of deponent obtained on blank paper and contents typed at later stage by the accused – Deponent denies its execution – Intention to deceive exists – Such act of the accused would come under the definition of cheating punishable u/s 420 IPC and would also be punishable u/s 468 IPC.

भारतीय दण्ड संहिता, 1860 – धाराएं 193, 415, 420, 465, 468 एवं 471
भारतीय न्याय संहिता, 2023 – धाराएं 229, 318(1), 318(4), 336(2), 336(3) एवं 340(2)
दण्ड प्रक्रिया संहिता, 1973 – धाराएं 195 एवं 397/401
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 215 एवं 438/442

(i) धारा 195 दं.प्र.सं. का वर्जन – अभियुक्त के विरूद्ध यह आक्षेप था कि उसने कूटरचित शपथपत्र न्यायालय के बाहर तैयार किया और उसके बाद सिविल वाद में उसे न्यायालय के समक्ष प्रस्तुत किया – विचारण न्यायालय द्वारा अभियुक्त के विरूद्ध आरोप विरचित किए गए – वर्जन के संबंध में आपत्ति – अभिनिर्धारित, यदि दस्तावेज न्यायालय के बाहर कूटरचित हुआ है और न्यायालय में प्रस्तुत किया जाता है तब संज्ञान पर वर्जन लागू नहीं होगा ।

(ii) छल – अभियुक्त द्वारा शपथकर्ता के हस्ताक्षर कोरे कागज पर लेकर उसकी अंतर्वस्तु बाद में टंकित की गई – शपथकर्ता ने उसके निष्पादन से इंकार किया – प्रवंचना का आशय विद्यमान है – अभियुक्त का ऐसा कृत्य धारा 420 भा.दं.सं. के अंतर्गत दण्डनीय छल की परिभाषा में आता है और धारा 468 भा.दं.सं. के अंतर्गत भी दण्डनीय होगा ।

Lalji Sharma v. State of M.P. & ors.

Order dated 24.07.2024 passed by the High Court of Madhya Pradesh in Criminal Revision No. 3372 of 2024, reported in ILR 2025 MP 189

Relevant extracts from the order:

The Supreme Court in the case of ***Iqbal Singh Marwah and anr. v. Meenakshi Marwah and anr., (2005) 4 SCC 370*** has held as under:-

> "In view of the discussion made above, we are of the opinion that ***Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493*** has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in *custodia legis*."

Thus, it is clear that where a document forged outside the Court is produced by the accused before the Court, then the bar as contained under Section 195 of Cr.P.C. would not apply.

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129. INDIAN PENAL CODE, 1860 – Sections 300, 302 and 304
BHARATIYA NYAYA SANHITA, 2023 – Sections 101, 103(1) and 105
Culpable homicide not amounting to murder – Exception 1 to section 300 – Grave and sudden provocation – What it is? Burden of proof – What should be the approach of the Court while dealing such issue? Law explained.

भारतीय दण्ड संहिता, 1860 – धाराएं 300, 302 एवं 304
भारतीय न्याय संहिता, 2023 – धाराएं 101, 103(1) एवं 105
आपराधिक मानव वध जो हत्या नहीं है – धारा 300 के अपवाद 1 का लागू होना – गंभीर और आकस्मिक प्रकोपन – क्या है ? सबूत का भार – ऐसे मामलों के निराकरण में न्यायालय का दृष्टिकोण क्या होना चाहिए? विधि समझाई गई।

Vijay alias Vijayakumar v. State

Order dated 16.01.2025 passed by the Supreme Court in Criminal Appeal No. 1049 of 2021, reported in (2025) 3 SCC 671

Relevant extracts from the order:

It is not each and every provocation that will reduce the crime from murder to culpable homicide not amounting to murder. The provocation must be both grave and sudden. In order to invoke the benefit of the exception, it must be established

that the act committed by the accused was a simultaneous reaction of grave as well as sudden provocation which deprived him of the power of self-control. If the provocation is grave but not sudden, the accused cannot get the benefit of this exception. Likewise, he cannot invoke the exception where the provocation though sudden is not grave.

In ***Mancini* v. *Director of Public Prosecutions, 1942 AC 1 (HL)***, Viscount Simon observed:

> "It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self control, as the result of which he commits the unlawful act which causes death. 'In deciding the question whether this was or was not the case, regard must be had to the nature of the act by which the offender causes death, to the time which elapsed between the provocation and the act which caused death, to the offender's conduct during that interval, and to all other circumstances tending to show the state of his mind': Stephen's Digest of the Criminal Law, Article 317. The test to be applied is that of the effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in ***R. v. Lesbini, (1914) 3 KB 1116 (CCA)***, so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular importance (*a*) to consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and (*b*) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is a very different thing from making use of a deadly instrument like a concealed dagger. In short, the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter."

In order to bring the case within Exception 1, the following conditions must be complied with:

(*i*) The deceased must have given provocation to the accused;

(*ii*) The provocation must be grave;

(*iii*) The provocation must be sudden;

(*iv*) The offender, by reason of the said provocation, shall have been deprived of his power of self-control;

(*v*) He should have killed the deceased during the continuance of the deprivation of the power of self-control; and

(*vi*) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

In other words, before Exception 1 can be invoked, the accused must establish the following circumstances:

(*i*) there was a provocation which was both grave and sudden;

(*ii*) such provocation had deprived the accused of his power of self-control; and

(*iii*) whilst the accused was so deprived of his power of self-control, he had caused the death of the victim.

In order to bring his case under Exception 1 to Section 300IPC the following ingredients : (*i*) the provocation was sudden; (*ii*) the provocation was grave; and (*iii*) loss of self-control. These three ingredients may be considered one by one:

(i) Whether the provocation was sudden or not does not present much difficulty. The word "sudden" involves two elements. First, the provocation must be unexpected. If an accused plans in advance to receive a provocation in order to justify the subsequent homicide, the provocation cannot be said to be sudden. Secondly, the interval between the provocation and the homicide should be brief. If the man giving the provocation is killed within a minute after the provocation, it is a case of sudden provocation. If the man is killed six hours after the provocation, it is not a case of sudden provocation.

(ii) The main difficulty lies in deciding whether a certain provocation was grave or not. A bare statement by the accused that he regarded the provocation as grave will not be accepted by the court. The court has to apply an objective test for deciding whether the provocation was grave or not. A good test for deciding whether a certain provocation was grave or not is this:"Is a reasonable man likely to lose self-control as a result of such provocation?" If the answer is in the affirmative, the provocation will be classed as grave. If the answer is in the negative, the provocation

is not grave. In this context, the expression "reasonable man" means a normal or an average person. A reasonable man is not the ideal man or the perfect being. A normal man sometimes loses temper. There is, therefore no inconsistency in saying that, a reasonable man may lose self-control as a result of grave provocation. A reasonable or normal or average man is a legal fiction. The reasonable man will vary from society to society. A Judge should not impose his personal standards in this matter. By training, a Judge is a patient man. But the reasonable man or the normal man need not have the same standard of behaviour as the Judge himself. The reasonable man under consideration is a member of the society, in which the accused was living. So, education and social conditions of the accused are relevant factors. An ordinary exchange of abuse is a matter of common occurrence. A reasonable man does not lose self-control merely on account of an ordinary exchange of abuses. So, courts do not treat an ordinary exchange of abuses as a basis for grave provocation. On the other hand, in most societies, adultery is looked upon as a very serious matter. So, courts are prepared to treat adultery as a basis for grave provocation.

(iii) The question of loss of self-control comes up indirectly in deciding whether a particular provocation was grave or not. So, if it is proved that the accused did receive grave and sudden provocation, the court is generally prepared to assume that homicide was committed while the accused was deprived of the power of self-control. In some cases, it may be possible for the prosecution to prove that the accused committed the murder with a cool head in spite of grave provocation. But such cases will be rare. So, when the accused has established grave and sudden provocation, the court will generally hold that he has discharged the burden that lay upon him under Exception 1 to Section 300IPC.

What should be the approach of the court? The provocation must be such as will upset not merely a hasty and hot-tempered or hypersensitive person, but one of ordinary sense and calmness. The court has to consider whether a reasonable person placed in the same position as accused would have behaved in the manner in which the accused behaved on receiving the same provocation. If it appears that the action of the accused was out of all proportion to the gravity or magnitude of the provocation offered, the case will not fall under the exception. The case can only fall under the exception when the court is able to hold that provided the alleged

provocation is given, every normal person would behave or act in the same way as the accused in the circumstances in which the accused was placed, acted.

In the words of Viscount Simon ***[Holmes v. Director of Public Prosecutions, 1946 AC 588 (HL)]***:

> "The whole doctrine relating to provocation depends on the fact that it causes, or may cause, a sudden and temporary loss of self-control, whereby malice, which is the formation of an intention to kill or to inflict grievous bodily harm, is negatived. Consequently, where the provocation inspires an actual intention to kill, or to inflict grievous bodily harm the doctrine that provocation may reduce murder to manslaughter seldom applies."

Section 105 of the Evidence Act, 1872 casts burden of proof on the accused. Being an exception, the burden of proving the circumstances covered by Exception 1 is on the accused. Where the prosecution prima facie proves that the act was committed by the accused which had resulted in the death of the deceased and the accused pleads that the case falls within one of the exceptions, it is for him to prove that.

It is for the accused who seeks to reduce the nature of his crime by bringing his case under Exception 1, to prove that the provocation received by him was such as might reasonably be deemed sufficient to deprive him of self- control, and that the act of killing took place whilst that absence of control was in existence and may fairly be attributed to it. (Ref.: Ratanlal and Dhirajlal's *Law of Crimes*, 24th Edn.)

If at all, the trial court and the High Court wanted to bring the case within the ambit of culpable homicide not amounting to murder, then it could have invoked Exception 4 of Section 300IPC. We say so because the incident was not pre-planned or premeditated. The appellant and his friends had gone to watch a movie. They were returning back home in the late night hours. It appears that after the movie was over and while returning, they decided to take some rest beneath the bridge. The deceased also happened to be sleeping beneath the bridge. However, it is the case of the prosecution that the deceased was in a drunken condition. In fact, there is nothing to indicate that the deceased was drunk. However, the eyewitnesses to the incident and that too none other than the friends of the appellant who were examined by the prosecution deposed that the deceased was in a drunken condition.

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130. INDIAN PENAL CODE, 1860 – Section 302
BHARATIYA NYAYA SANHITA, 2023 – Section 103(1)
EVIDENCE ACT, 1872 – Sections 25 and 106
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 23 and 109

(i) Extra-judicial confession – Credibility – It should not only be true and trustworthy but should also be free of any inducement, coercion etc. – It should be made by the accused on his own free will and volition – Extra-judicial confession by its very nature is a weak type of evidence and requires appreciation with great deal of care and caution – Where it is surrounded by suspicious circumstances, its credibility becomes doubtful and would lose its importance.

(ii) Recovery of weapon – Investigating officer merely deposed that he drew panchnama and identified his signature and that of the panch witnesses – This does not prove the contents of the panchnama – Discovery was disbelieved.

(iii) Charge of murder of wife – Recovery of dead body from inside the house – Accused did not offer any explanation – In order to invoke section 106 of the Evidence Act the prosecution must establish foundational facts – If prosecution fails to prove foundational facts, mere absence of explanation of accused would not benefit the prosecution.

भारतीय दण्ड संहिता, 1860 – धारा 302
भारतीय न्याय संहिता, 2023 – धारा 103(1)
साक्ष्य अधिनियम, 1872 – धाराएं 25 और 106
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 23 और 109

(i) न्यायिकेत्तर संस्वीकृति – विश्वसनीयता – यह न केवल सत्य और विश्वसनीय होनी चाहिए, बल्कि किसी भी प्रकार के प्रलोभन या दबाव आदि से मुक्त होनी चाहिए – यह अभियुक्त द्वारा स्वेच्छा और स्वप्रेरणा से की जानी चाहिए – न्यायिकेत्तर संस्वीकृति स्वभावतः निर्बल प्रकृति की साक्ष्य मानी जाती है, इसलिए इसका अत्यंत सतर्कता और ध्यान पूर्वक विश्लेषण किया जाना चाहिए – यदि यह संदेहास्पद परिस्थितियों से परिवेशित हो, तो इसकी विश्वसनीयता संदिग्ध हो जाती है और इसका महत्व समाप्त हो जाता है।

(ii) आयुध की बरामदगी – अन्वेषण अधिकारी ने मात्र यह अभिकथित किया कि उसने पंचनामा तैयार किया था और अपने तथा पंचगवाहों के हस्ताक्षरों की

पहचान की – यह पंचनामा की अंतर्वस्तु को प्रमाणित नहीं करता – बरामदगी को अविश्वसनीय माना गया।

(iii) पत्नी की हत्या का आरोप – मृत शरीर घर के भीतर से बरामद हुआ – अभियुक्त ने कोई स्पष्टीकरण नहीं दिया – साक्ष्य अधिनियम की धारा 106 प्रभावी करने हेतु अभियोजन को मूलभूत तथ्यों को सिद्ध करना आवश्यक है – यदि अभियोजन मूलभूत तथ्यों को सिद्ध करने में विफल रहता है, तो केवल अभियुक्त द्वारा स्पष्टीकरण न देने से अभियोजन को लाभ नहीं मिलेगा।

Sadashiv Dhondiram Patil v. State of Maharashtra

Order dated 09.01.2025 passed by the Supreme Court in Criminal Appeal No. 1718 of 2017, reported in (2025) 4 SCC 275

Relevant extracts from the order:

We proceed on the footing that PW-2 Vasant Dattu Bhosale, Police Patil of the Village cannot be termed as a police officer for the purpose of Section 25 of the Evidence Act. We also proceed on the footing that the extra-judicial confession alleged to have been made by the accused before PW 2 is admissible in evidence and is not hit by Section 25 of the Evidence Act. However, such extra-judicial confession should be found to be true and trustworthy before it is relied upon by the Court to hold the accused guilty.

Besides, the above such extra-judicial confession should also be found to be free of any inducement, coercion, etc. and it should be shown to have been made by the accused on his own free will and volition.

Just because the panch witnesses have turned hostile does not mean that such discovery should be disbelieved. From the plain reading of the oral evidence of the investigating officer if the discovery is believable and inspires confidence, the same can definitely be looked into as one of the incriminating pieces of evidence against the accused.

However, unfortunately in the case on hand, all that the IO did was to depose that he had drawn the panchnama and in the end identified his signature on the same and that of the panch witnesses. This cannot be said to be proving the contents of the panchnama in accordance with law. In such circumstances, the circumstance of discovery also cannot be relied upon.

The learned counsel appearing for the State submitted that the dead body of the deceased was recovered from the house itself i.e. the place where the family was residing. He would submit that in normal circumstances, the husband could be said to be the best person to explain as to what had happened to his wife on the date of the incident.

According to the learned counsel, when an offence is committed within the four walls of the house and that too in secrecy, it is difficult for the prosecution to establish its case beyond reasonable doubt and, therefore, under Section 106 of the Evidence Act, it is for the accused to explain what had actually happened and in the absence of any such explanation, it could be said that the accused committed the crime as alleged.

The law in the aforesaid regard is well-settled. The prosecution has to prove its case beyond reasonable doubt and that too on its own legs. The initial burden of proof is always on the prosecution. However, in cases where husband is alleged to have killed his wife in the night hours and that too within the residential house, then undoubtedly the husband has to offer some explanation as to what had actually happened and if he fails to offer any plausible explanation, this can go against him. However, Section 106 of the Evidence Act is subject to one well-settled principle of law. The prosecution has to first lay the foundational facts before it seeks to invoke Section 106 of the Evidence Act. If the prosecution has not been able to lay the foundational facts for the purpose of invoking Section 106 of the Evidence Act, it cannot straightaway invoke the said section and throw the entire burden on the accused to establish his innocence.

In the overall view of the matter, we are convinced that the High Court committed error in holding the appellant guilty of the offence of murder.

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131. INDIAN PENAL CODE, 1860 – Section 302
BHARATIYA NYAYA SANHITA, 2023 – Section 103(1)
EVIDENCE ACT, 1872 – Section 65B
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 63

(i) Murder and rape – Circumstantial evidence – Last seen theory – Statement of witnesses who have seen the accused with the deceased together for the last time, were recorded after two months – There was no explanation for the delay – There were major contradictions in the statement of the said witnesses – Evidence not found reliable.

(ii) Appreciation of evidence – The witness who allegedly identified the accused, deposed that he had seen the accused on 05.01.2014 struggling to start a bike – His statement was recorded on 19.01.2014 – Photograph of accused was published in a newspaper before test identification parade – Later, accused was identified by the witnesses

at test identification parade that was conducted after more than two months on 25.03.2014 – His testimony was not found reliable – One more witness deposed that the he had seen accused and his mother present at the scene of the crime on the date of the incident – But this fact alone was not found sufficient to connect the accused with the crime – The other circumstantial evidence that accused visited a priest and performed a pooja to remove the stigma of a past sin involving a woman; also does not establish any nexus with the commission of the offence.

(iii) Extra-judicial confession – Witness stated that the accused took his motorcycle and later confessed before him about killing the deceased – Witness, before whom the alleged confession was made, was also a prime suspect of the offence during the investigation – There are material discrepancies in the statement of the witness – There is no evidence on record to show that the said witness was enjoying the confidence of the accused – There was no corroboration in material particulars – Extra-judicial confession was found unreliable.

(iv) Admissibility of CCTV Footage – Objection regarding non-production of the certificate u/s 65-B of the Evidence Act was raised at earlier point concerning the admissibility of CCTV footage – Prosecution made no efforts to obtain the certificate and produce as per the requirements of law – Furthermore, accused and deceased were not identified in the same CCTV footage – Electronic evidence suffers from various inherent infirmities – Evidence therefore, not found to be admissible and reliable.

भारतीय दण्ड संहिता, 1860 – धारा 302

भारतीय न्याय संहिता, 2023 – धारा 103(1)

साक्ष्य अधिनियम, 1872 – धारा 65ख

भारतीय साक्ष्य अधिनियम, 2023 – धारा 63

(i) हत्या और बलात्कार – परिस्थितिजन्य साक्ष्य – अंतिम बार साथ देखे जाने का सिद्धांत – साक्षीगण के कथन जिन्होंने अभियुक्त को अंतिम बार मृतक के साथ देखा था, दो माह बाद दर्ज किए गए – विलंब के लिए कोई स्पष्टीकरण नहीं दिया गया – उक्त साक्षीगण के कथनों में गंभीर विरोधाभास थे – साक्ष्य विश्वसनीय नहीं पाई गई।

(ii) साक्ष्य का मूल्यांकन – अभियुक्त की कथित रूप से पहचान करने वाले साक्षी ने कथन दिया कि उसने अभियुक्त को मोटरसाइकिल चालू करने के

लिए संघर्ष करते हुए दिनांक 05.01.2014 को देखा था – उसका कथन दिनांक 19.01.2014 को लेखबद्ध किया गया – परीक्षण पहचान परेड के आयोजन से पूर्व एक समाचार पत्र में अभियुक्त की तस्वीर प्रकाशित की गई थी – बाद में परीक्षण पहचान परेड में साक्षीगण द्वारा अभियुक्त की पहचान दिनांक 25.03.2014 को की गई, जो दो माह से अधिक समय बाद आयोजित की गई थी – उनकी साक्ष्य विश्वसनीय नहीं पाई गई – एक अन्य साक्षी ने कथन दिया कि उसने घटना दिनांक को अभियुक्त और उसकी मां को घटना स्थल पर उपस्थित देखा था – परन्तु केवल यह तथ्य अभियुक्त को अपराध से जोड़ने के लिए पर्याप्त नहीं माना गया – अन्य परिस्थितिजन्य साक्ष्य, कि अभियुक्त ने एक पुजारी से मुलाकात कर एक महिला से संबंधित पिछले पाप के कलंक को दूर करने के लिए पूजा की; यह तथ्य भी अपराध के कारित होने के साथ कोई संबंध स्थापित नहीं करता।

(iii) न्यायिकेत्तर संस्वीकृति – साक्षी ने कथन दिया कि अभियुक्त ने उसकी मोटरसाइकिल ली और बाद में उसके सामने मृतक की हत्या करना स्वीकार किया – साक्षी, जिसके समक्ष कथित संस्वीकृति की गई थी, वह भी अन्वेषण के दौरान अपराध का मुख्य संदिग्ध था – साक्षी के कथन में तात्विक विसंगतियां हैं – यह दर्शित करने के लिए अभिलेख पर कोई साक्ष्य नहीं है कि उक्त साक्षी अभियुक्त का विश्वास पात्र था – तात्विक विवरणों से कोई संपुष्टि नहीं हुई – न्यायिकेत्तर संस्वीकृति अविश्वसनीय पाई गई।

(iv) सी.सी.टी.वी. फुटेज की ग्राह्यता – सी.सी.टी.वी. फुटेज की ग्राह्यता के संबंध में साक्ष्य अधिनियम की धारा 65–ख के अंतर्गत प्रमाण पत्र प्रस्तुत न करने संबंधी आपत्ति प्रारंभिक स्तर पर उठाई गई थी – अभियोजन ने विधि की अपेक्षाओं के अनुसार प्रमाण पत्र प्राप्त करने और प्रस्तुत करने का कोई प्रयास नहीं किया – इसके अतिरिक्त, अभियुक्त और मृतक की पहचान एक ही सी.सी.टी.वी. फुटेज में नहीं हुई थी – इलेक्ट्रॉनिक साक्ष्य में विभिन्न अंतर्निहित कमियों से ग्रसित था – अतः साक्ष्य ग्राह्य योग्य और विश्वसनीय नहीं पाया गया।

Chandrabhan Sudam Sanap v. State of Maharashtra

Judgment dated 28.01.2025 passed by the Supreme Court in Criminal Appeal No. 879 of 2019, reported in AIR 2025 SC 1103 (Three-Judge Bench)

Relevant extracts from the judgment:

We find that the infirmities referred to by the defence namely, about the life span of the CCTV footage in DVR-II being 12 days; the absence of identification of both the appellant and deceased in the same footage by the witnesses; the absence

of explanation as to how the Police knew that the person PW-18 and 19 were speaking to was the same person in the footage and other infirmities raised have not been adequately answered by the prosecution in its evidence. Learned Additional Solicitor General Mr. Raja Thakare painstakingly took us through the available evidence and objectively placed the matter before us. However, from the material available on record, these lingering doubts in our mind have not been adequately addressed.

We are dealing with a criminal case where the accused is being tried for the offences which involve capital punishment. A court of law in this scenario cannot be technical about the manner of objections that are raised. Even though objection has not been raised specifically when the CCTV footage was exhibited by PW- 1, when PW-38 was in the witness box a specific question was put to him and subsequent to evidence, he deposed that he was aware of the necessity of furnishing 65-B certificate while collecting electronic evidence. On the facts of the present case, we are inclined to treat it as an objection taken at the earliest point in time. Thus, when the prosecution was aware of the need for the 65-B (4) certificate and they themselves collected it for the CDRs there was no reason as to why they did not collect the same for the CCTV footage.

The resort to Section 465(2) CrPC by the learned A.S.G. does not impress us because according to us, objection has been taken at the earliest available instance.

We have carefully considered the evidence of PW-20 and 21 on the one hand, and PW-18 and 19 on the other. While PW-20 and 21 claim to have last seen the appellant and the deceased EA. PW- 18 and 19 only claim to have seen the appellant.

Analysing the evidence, we must record that the witnesses fail to inspire the necessary confidence that a Court of Law looks for, to clinchingly establish the circumstances of last seen. To start, the statement of PW-20 was recorded on 20th March, 2014 a good two and a half months after 05.01.2014. Statement of PW-21was recorded on 04.03.2014 a good two months later. The police has not explained as to why this delay happened, particularly when they have been inquiring at the Station since 16.01.2014.

PW-20 was approached on 07.01.2014 and was interacted with for thirty minutes and PW-21 was approached on 01.03.2014. Neither of them disclosed anything about seeing the appellant and the deceased together.

PW-20, on top of it, admits to Police pressurising the taxi drivers. There is also contradiction between PW-20 and PW-21. PW-20 states that he gave the statement only after PW-21 told him about his statement. PW-21 denies any such happening. The way his physical features are remembered also does not inspire confidence. It should not be forgotten that they are referring to a time when the Station would have been bustling with hectic activity, when the train would have arrived and people would be departing in hordes in a hurried manner. To recollect something that happened two and a half months back in this situation would be a tall order. The Identification Parade conducted by PW-39 Vishnu Janu Kanhekar also lacks steam since the photographs of the appellant were admittedly published earlier in the newspapers as deposed by DWs 1, 2 and 3.

However, evidence of PW-20 and PW-21 does not point towards the guilt of accused even if we discount all these infirmities. The law on circumstantial evidence mandates that any other hypothesis must be ruled out. This is not a case where any conviction could be sustained even if we believe PW-20 and PW 21 on the basis of their evidence, in view of our holding with regard to the other circumstances, some of which have been recorded hereinabove and some of which are to follow hereinbelow. In view of the same, even we have to assume that the evidence of PW-20 and 21 are to be taken at their face value (which is difficult) we still do not find the evidence clinching to record the conviction.

PW-18 and PW-19 had not last seen the accused appellant and the deceased together. The statement of PW-18 was recorded on 08.02.2014 and the other of PW-19 on 22.01.2014. They have not been shown the CCTV footage admittedly. How they remembered as to what happened on 05.01.2014 when the Police recorded their statement on 22.01.2014 and 08.02.2014 is anybody's guess. In any event, taking the evidence at its highest will only mean that the appellant was at the station and coupled with the other evidence some of which we have analysed hereinabove and the rest of which we have done hereinbelow it does not satisfy the five golden principles of circumstantial evidence. That TI Parade held on 25.03.2014 leaves much to be desired as the photograph of the appellant was all over the place in the Media, as early as on 04.03.2014.

With regard to PW-18 and PW-19 claiming to recollect incidents on the railway platform, we only want to draw attention to the judgment of this Court in ***Sattatiya @ Satish Rajanna Kartalla v. State of Maharashtra, (2008) 3 SCC 210***, wherein this Court answered as under:-

> "The overzealous efforts made by the prosecution to link the handkerchief allegedly found near the body of the deceased to the appellant lends support to the argument of the learned counsel for the appellant that the police had fabricated the case to implicate the appellant. In his statement, PW 7 Mohd. Farid Abdul Gani, who is said to have sold the handkerchief to the appellant, admitted that he was not selling branded handkerchiefs and that there were no particular marks on the goods sold by him. He, however, recognised the handkerchief by saying that the accused made a lot of bargaining and he was amused by the latter's statement that he will soon become an actor.
>
> In our opinion it is extremely difficult to believe that a person engaged in the business of hawking would remember what was sold to a customer almost two months after the transaction and that too without identity of the goods sold having been established."

PW-23 further states that he asked the person who was starting the bike whether he had a problem in starting the bike and the person nodded his head in agreement. The witness adds that when he saw him he found that there was mud on his shoulder and when he asked the person whether he fell down, the person said he did not fall down. When the witness further asked the person whether he could help him start the bike, the person told him that there was no petrol. The witness claims that he saw one bag on his back and one bag was kept on the petrol tank of the bike. The witness adds that the person parked the bike there and was going towards Vikhroli by pulling the trolley bag. The witness says he went towards in with the dogs and saw him wearing white colour T-shirt and blue colour jeans pant and he was 5'5" in height and was of wheatish complexion. The witness claims that he identified the person who he saw on 05.01.2014 at the Identification Parade on 25.03.2014. The witness states that the person shown in Court on the VC screen is the same person.

The learned counsel for petitioner assailing the evidence of PW-23 contends that the statement was belatedly taken on 19.01.2014 and it was unnatural to remember the details after a chance meeting which happened two weeks back particularly when the witness could not recall other past information. Learned counsel contends that the Police asked as to whether he saw someone starting a Motorcycle even though the role of the Motorcycle was known only on 03.03.2014 after the arrest of the appellant on 02.03.2014. Further learned counsel contends that there was no explanation as to how the investigator chanced upon the PW-23

and as to how they were aware that the Motorcycle was being used as early as on 19.01.2024 and as to why no steps were taken to recover the Motorcycle then. No site plan was prepared and according to learned counsel, PW-23 did not depose the exact time of the encounter and the exact place where he saw the man except stating that it was 100 meters away from the service road. According to learned counsel, the proximity of the place where allegedly PW-23 saw the appellant to the spot where the body was found has not been established. Challenging the TI Parade, learned counsel reiterates about the Photos being widely circulated. He further contends that even though the Mobile Phone of the appellant was seized after his arrest on 03.02.2023, no steps to ascertain the location on 05.01.2014 were ever undertaken.

We find the evidence of PW-23 unnatural. As to how on 19.01.2024 he remembered about what happened on 05.01.2024, when he does not remember other past information is surprising. Here again, PW-23 is not the witness in the last seen category. He only claims to have seen the appellant under circumstances which are doubtful and to sustain a conviction on the basis of his evidence will be very unsafe. Hence, we discard the evidence of PW-23. As stated earlier, the TI Parade also is vitiated because admittedly the Photographs were all over the place from 04.03.2014. The other infirmities pointed out by the appellant have also not been met by the prosecution. That on 19.01.2024, PW-23 remembers that on 05.01.2014 he met a person in the early morning who had mud on the shoulders is too big of a pill to swallow. We need to say nothing more on this witness.

We are really at a loss to understand as to what the prosecution seeks to establish. The priest has no systematic account of maintaining registers and on summoning of the Police, he seems to appear before the Police and produced the register out of the bag. It is also intriguing why the appellant would carry the horoscope as late as on 02.03.2014. In any case, the evidence given by PWs -15, 16 and 17 do not constitute circumstantial evidence having any nexus with the commission of the crime in question. We totally discard this from the chain of circumstances.

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132. INDIAN PENAL CODE, 1860 – Sections 302, 316 and 364
BHARATIYA NYAYA SANHITA, 2023 – Sections 103 (1), 92 and 140 (1)
APPRECIATION OF EVIDENCE:
SENTENCING POLICY:

(i) Appreciation of evidence – Non-examination of independent witnesses – Such non-examination by itself would not give rise to adverse

inference against prosecution – It would only assume importance when evidence of eye witnesses raises a serious doubt about their presence at the time of incident.

(ii) Murder – Death sentence – Doctrine of rarest of rare case – Accused had murdered his pregnant daughter by strangulating with the string of her petticoat – Motive of grudge against his daughter for having married a person from a lower caste proved – Doctrine requires that death sentence should not be imposed only by taking into consideration the grave nature of crime – It should be imposed only if there is no possibility of reformation of accused – Apex Court called and considered Prison Conduct Report, Probation Officer's Report, Psychological Evaluation Report and Mitigation Investigation Report of the accused – Considering the mitigating circumstances and possibility of reformation, death sentence modified to 20 years RI without remission.

भारतीय दण्ड संहिता, 1860 – धाराएं 302, 316 एवं 364

भारतीय न्याय संहिता, 2023 – धाराएं 103(1), 92 एवं 140(1)

साक्ष्य का मूल्यांकनः

दण्ड नीतिः

(i) साक्ष्य का मूल्यांकन – स्वतन्त्र साक्षियों का परीक्षण न कराया जाना – ऐसा परीक्षण न होना अपने आप में अभियोजन के विरूद्ध प्रतिकूल निष्कर्ष को जन्म नहीं देगा – यह तभी महत्वपूर्ण होगा जब चक्षुदर्शियों की साक्ष्य से घटना के समय उनकी उपस्थिति के सम्बन्ध मे गम्भीर सन्देह उत्पन्न होता हो ।

(ii) हत्या – मृत्यु दण्ड – विरलतम में विरल मामले का सिद्धान्त – अभियुक्त द्वारा अपनी गर्भवती पुत्री का उसके पेटिकोट की डोरी से गला घोंट कर हत्या की गई – निम्न जाति के व्यक्ति के साथ विवाह करने के कारण पुत्री के प्रति दुर्भावना का हेतुक साबित – इस सिद्धांत में अपराध की गम्भीरता मात्र को विचार में लेकर मृत्युदण्ड का आदेष दिया अपेक्षित नहीं है – उसे तभी अधिरोपित किया जाना चाहिए जब सुधार की कोई भी संभावना शेष न रहे – सर्वोच्च न्यायालय द्वारा अभियुक्त की प्रिजन कंडक्ट रिपोर्ट, प्रोबेशन ऑफीसर्स रिपोर्ट, साइकोलॉजिकल इवेल्यूएशन रिपोर्ट एवं मिटिगेशन इन्वेस्टीगेशन रिपोर्ट बुलाकर उन पर विचार किया गया – शमनकारी परिस्थितियों पर विचार करते हुए और सुधार की संभावना को देखते हुए मृत्युदण्ड को 20 वर्ष के कठोर कारावास बिना परिहार में परिवर्तित किया गया।

Eknath Kisan Kumbharkar v. State of Maharashtra

Judgment dated 16.10.2024 passed by the Supreme Court in Criminal Appeal No. 4220 of 2024, reported in AIR 2024 SC 5299 (Three-Judge Bench)

Relevant extracts from the judgment:

The thrust of the arguments canvassed on behalf of the appellant is to the effect that non-examination of the owner of the tea stall located near the scene of crime; non-examination of the ward boy of Savkar hospital; non-examination of independent witnesses who had assembled near the scene of crime on hue and cry being raised by PW-2; was fatal to the prosecution case. Though at first blush, said arguments looks attractive, on deeper examination it has to be answered against the appellant as it is settled principle of law that non-examination of independent witnesses by itself would not give rise to adverse inference against the prosecution. It would only assume importance when the evidence of eyewitness raises a serious doubt about their presence at the time of actual occurrence. [***Guru Dutt Pathak v. State of Uttar Pradesh, (2021) 6 SCC 116***]

We find that the present case would not fall in the category of "rarest of rare cases" wherein it can be held that imposition of death penalty is the only alternative. We are of the considered opinion that the present case would fall in the category of middle path as held by this court in various judgments of this court **[*Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767, Shankar Kisanrao Khade v. State of Maharasthra, (2013) 5 SCC 546, Gandi Doddabasappa alias Gandhi Basavaraj v. State of Karnataka, (2017) 5 SCC 415, Prakash Dhawal Khairnar (Patil) v. State of Maharastra, (2002) 2 SCC 35, Mohinder Singh v. State of Punjab, (2013) 3 SCC 294*** and ***Madan v. State of Uttar Pradesh, 2023 SCC Online SC 1473*****]**.

In the instant case, it is to be noted that appellant hails from a poor nomadic community in Maharashtra. He had an alcoholic father and suffered parental neglect and poverty. He dropped out of school when he was 10 years old and was forced to start working to support his family, doing odd jobs. All efforts put by the appellant to bring his family out of poverty did not yield desired results. Neither the appellant nor any of his family members have any criminal antecedent. It cannot be presumed that appellant is a hardened criminal who cannot be reformed. Hence, it cannot be said that there is no possibility of reformation, even though the appellant has committed a gruesome crime.

The appellant was aged about 38 years at the time of commission of the crime. He has no criminal antecedents and there are various other mitigating circumstances existing in his favour as per the reports which we have discussed above. The medical reports of the appellant would disclose that he has speech issues, and he has undergone an angioplasty in 2014, apart from suffering other serious ailments, as already noted herein above. The conduct report from the prison would disclose that the behaviour of the appellant in the jail is satisfactory with everyone for the past six years. Considering these factors, we are of the considered view that even though the crime committed by the appellant is unquestionably grave and unpardonable, it is not appropriate to affirm the death sentence that was awarded to him. The doctrine of "rarest of rare" requires that death sentence should not be imposed only by taking into consideration the grave nature of crime but only if there is no possibility of reformation by a criminal. Being conscious of the fact that sentence of life imprisonment is subject to remission, which would not be appropriate in view of the gruesome crime committed by the appellant, the course of middle path requires to be adopted in the instant case. In that view of the matter, we find that the death penalty needs to be converted to a fixed sentence during which period the appellant would not be entitled to apply for remission.

It is an established principle of law that conviction can be based on the testimony of a sole eyewitness. This Court in the case of ***Vadivelu Thevar and anr. v. State of Madras, AIR 1957 SC 614*** has held that the court can act on the testimony of a single witness though uncorroborated. Unless corroboration is insisted upon by a statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence that corroboration should be insisted upon. Whether corroboration of the testimony of a single witness is or is not necessary, would depend upon facts and circumstances of each case and depends upon the judicial discretion. In other words, this Court has held that court would be considered with the quality and not the quantity of the evidence necessary for proving or not proving a fact.

When we turn our attention to the testimony of eyewitness relied upon by the prosecution PW-2, it clearly fortifies the case of the prosecution. We find no reason to doubt the testimony of PW-2 as nothing worthwhile has been elicited in the cross-examination to discredit his testimony or in other words it can be safely concluded that the testimony of PW-2 has stood the scrutiny.

The appellant has drawn the attention of this court to some minor discrepancies in the evidence some of the prosecution witnesses. This Court in the

case of ***Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434*** has held that undue importance should not be given to minor omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution.

This Court in the case of ***Manoj Suryavanshi v. State of Chhattisgarh, (2020) 4 SCC 451*** has held there are bound to be some discrepancies between the narration of different witnesses, when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. It is further observed that corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. As such the contention of the appellant raised in this regard is liable to be rejected and accordingly it is rejected.

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133. INDIAN PENAL CODE, 1860 – Sections 304-B, 306 and 498-A
BHARATIYA NYAYA SANHITA, 2023 – Sections 80, 108 and 85

(i) Offence of dowry death – Deceased wife committed suicide within 7 years of her marriage by hanging herself in her matrimonial house – It was established that the deceased was subjected to cruelty and harassment by her husband/appellant – However, the prosecution has failed to prove that the deceased was subjected to cruelty soon before her death in connection with the demand of dowry – Held, pre-requisites to raise presumption u/s 113B of the Evidence Act having not been fulfilled, conviction of the appellant/husband for the offence u/s 304B cannot be justified – Conviction for the offence u/s 304B set aside however, conviction for the offence u/s 306 and 498-A of IPC was maintained.

(ii) Conviction u/s 304-B, 306 and 498-A of IPC – Sister-in-law of deceased is a married woman and was residing with her family at her matrimonial home – No specific evidence to connect her with the commission of crime – Prosecution has failed to place any credible evidence in respect of involvement of sister-in-law of deceased – Appeal was allowed and she was acquitted of all the charges. [*Charan Singh v. State of Uttarakhand, (2024) 13 SCC 649, State of M.P. v. Jogendra, (2022) 5 SCC 401* and *Rajinder Singh v State of Punjab, (2015) 6 SCC 477* relied on]

भारतीय दण्ड संहिता, 1860 – धाराएं 304–ख, 306 एवं 498–क
भारतीय न्याय संहिता, 2023 – धाराएं 80, 108 एवं 85

(i) दहेज हत्या का अपराध – मृतिका पत्नी ने अपने विवाह के 7 वर्ष के भीतर अपने वैवाहिक घर में फांसी लगाकर आत्महत्या कर ली – यह स्थापित हुआ कि मृतिका के प्रति उसके पति/अपीलार्थी ने क्रूरता और उत्पीड़न किया परन्तु अभियोजन यह साबित करने में असफल रहा कि दहेज की मांग के संबंध में मृतिका को उसकी मृत्यु से ठीक पूर्व क्रूरता का सामना करना पड़ा था – अभिनिर्धारित, साक्ष्य अधिनियम की धारा 113–ख के अंतर्गत उपधारणा करने के लिए आवश्यक पूर्व शर्तें पूरी नहीं होने के कारण धारा 304–ख के अपराध के लिए अपीलार्थी/पति की दोषसिद्धि को उचित नहीं ठहराया जा सकता – धारा 304–ख के अंतर्गत अपराध के लिए की गई दोषसिद्धि को अपास्त कर दिया गया, किन्तु संहिता की धारा 306 और 498–क के अंतर्गत अपराध के लिए की गई दोषसिद्धि यथावत रखी गई।

(ii) भारतीय दण्ड संहिता की धारा 304–ख, 306 और 498–क के अंतर्गत की गई दोषसिद्धि – मृतिका की भाभी एक विवाहित स्त्री है और अपने परिवार के साथ अपने वैवाहिक घर में रह रही थी – कारित अपराध से उसे जोड़ने के लिए कोई विशेष साक्ष्य नहीं – अभियोजन मृतिका की भाभी की संलिप्तता के संबंध में कोई विश्वसनीय साक्ष्य प्रस्तुत करने में विफल रहा है – अपील को स्वीकार कर उसे सभी आरोपों से दोषमुक्त कर दिया गया। (*चरण सिंह बनाम उत्तराखंड राज्य, (2024) 13 एससीसी 649, एमपी राज्य बनाम जोगेंद्र, (2022) 5 एससीसी 401* और *राजिंदर सिंह बनाम पंजाब राज्य, (2015) 6 एससीसी 477* पर भरोसा किया गया)

Chabi Karmakar and ors. v. State of West Bengal

Order dated 29.08.2024 passed by the Supreme Court in Criminal Appeal No. 1556 of 2013, reported in (2025) 1 SCC 398

Relevant extracts from the order:

As far as Appellant 1 (sister-in-law of deceased) is concerned, we are of the view that the prosecution has failed to place any credible evidence for the involvement of Appellant 1 i.e. the sister of Appellant 2 and sister-in-law of the deceased. Moreover, Appellant 1 is a married woman and at the relevant point of time, admittedly, she was residing with her family at her matrimonial home. There is no specific evidence that has come in the form of any of the prosecution witnesses that may connect Appellant 1 to the commission of the crime and the trial court as well as the appellate court have not considered this aspect as it should have been considered on the weight of the evidence which was placed by the prosecution.

After going through the evidence of PW 1, PW 3, PW 4 and PW 16 (who are the brother, father, mother and cousin of the deceased, respectively), it becomes clear that the deceased faced cruelty and harassment at the hands of her husband (Appellant 2) which compelled her to commit suicide. However, these witnesses did not state that such cruelty and harassment was in connection with the demand for dowry. With respect to the demand for dowry, they have just made some general statements which are not sufficient to convict the appellants under Section 304-B IPC.

The trial court raised a presumption under Section 113-B of the Evidence Act to convict the appellants under Section 304-BIPC. The High Court did not go into the question of whether the trial court was right in relying upon Section 113-B of the Evidence Act.

In ***Charan Singh v. State of Uttarakhand, (2024) 13 SCC 649***, where there were allegations against the husband that he was subjecting the deceased therein on the demand of a motorcycle and some land, this Court in relation to Section 113-B of the Evidence Act and Section 304-B IPC, had noted that:

> … It is only certain oral averments regarding demand of motorcycle and land which is also much prior to the incident. The aforesaid evidence led by the prosecution does not fulfil the prerequisites to invoke presumption under Section 304-BIPC or Section 113-B of the Evidence Act. …
>
> On a collective appreciation of the evidence led by the prosecution, we are of the considered view that the prerequisites to raise presumption under Section 304-BIPC and Section 113-B of the Evidence Act having not been fulfilled, the conviction of the appellant cannot be justified. Mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under Sections 304-B and 498-A IPC."

Similarly, in the case at hand, it has not been proved by the prosecution that the deceased was subjected to cruelty soon before her death in connection with the demand of dowry and hence we are of the opinion that this is not a case of dowry death under Section 304-BIPC. PW 1 and PW 3 had only stated that the deceased used to tell them about her torture. PW 4 (mother of the deceased) did not speak about any demand of dowry after marriage. Moreover, this witness had said that Appellant 2 used to assault her deceased daughter as the deceased had objections

to the illicit relation of Appellant 2 with another woman. PW 16, who is the cousin of the deceased, had deposed in court almost a year after the testimony of PWs 1, 3 & 4 and his deposition regarding the physical assault of the deceased in connection with the demand of dowry is also not believable. Considering the aforesaid, in our view, the trial court erred in raising a presumption under Section 113-B of the Evidence Act, even though the demand for dowry was not established.

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134. INDIAN PENAL CODE, 1860 – Sections 323 and 376
BHARATIYA NYAYA SANHITA, 2023 – Sections 115(2) and 64
EVIDENCE ACT, 1872 – Section 3
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 2
Offence of rape – Appreciation of evidence – The evidence provided by the prosecutrix is details of the incident, including the presence and participation of the accused in ravishing her – If evidence deposed by the prosecutrix is believed to be reliable and unflappable, her testimony may be made the sole basis for conviction – Absence of major injury marks on the body of the prosecutrix does not always undermine the prosecution's case – Victim's mother's alleged immorality as justification for falsely implicating the accused was not found acceptable – Conviction upheld.

भारतीय दण्ड संहिता, 1860 – धाराएं 323 एवं 376
भारतीय न्याय संहिता, 2023 – धाराएं 115(2) एवं 64
साक्ष्य अधिनियम, 1872 – धारा 3
भारतीय साक्ष्य अधिनियम, 2023 – धारा 2
बलात्कार का अपराध – साक्ष्य का मूल्यांकन – अभियोक्त्री द्वारा दी गई साक्ष्य में घटना के विवरण सहित, उस पर बलात्संग करते समय अभियुक्त की उपस्थिति और उसकी भागीदारी भी बताई गई – यदि अभियोक्त्री द्वारा प्रस्तुत साक्ष्य को विश्वसनीय और त्रुटिहीन माना जाता है, तो उसकी साक्ष्य को दोषसिद्धि का एकमात्र आधार बनाया जा सकता है – अभियोक्त्री के शरीर पर गंभीर चोट के निशान का अभाव अभियोजन के मामले को सदैव कमजोर नहीं करता है – पीड़िता की मां का कथित अनैतिक चरित्र अभियुक्त को असत्य आधारों पर संलिप्त करने के कारण के रूप में स्वीकार योग्य नहीं पाया गया – दोषसिद्धि की पुष्टि की गई।

Lok Mal @ Loku v. State of Uttar Pradesh

Judgment dated 07.03.2025 passed by the Supreme Court in Criminal Appeal No. 325 of 2011, reported in AIR 2025 SC 1437

Relevant extracts from the judgment:

Though learned counsel for the appellant, submitted before this Court that the oral evidence is unacceptable being the testimony of interested witnesses, we are unable to accept the submissions of the learned counsel for the simple reason that the evidence of the prosecutrix is wholly trustworthy, unshaken and inspires confidence. Admittedly, the prosecutrix was a major girl studying in first part of B.A. at the time of the incident. Though she was subjected to detailed cross examination, she stood firm and unshaken disclosing the incident in detail regarding the presence and participation of the accused in ravishing her.

Merely because in the medical evidence, there are no major injury marks, this cannot a be a reason to discard the otherwise reliable evidence of the prosecutrix. It is not necessary that in each and every case where rape is alleged there has to be an injury to the private parts of the victim and it depends on the facts and circumstances of a particular case. We reiterate that absence of injuries on the private parts of the victim is not always fatal to the case of the prosecution. According to the version of the prosecutrix, the accused overpowered her and pushed her to bed in spite of her resistance and gagged her mouth using a piece of cloth. Thus, considering this very aspect, it is possible that there were no major injury marks. The appellant made an attempt to raise the defence of false implication, however, he was unable to support his defence by any cogent evidence. Ld. counsel for the appellant further submitted that there is an inordinate delay in lodging complaint and registering FIR. However, considering the evidence on record, we are of the opinion that the said delay in lodging of the complaint and registering FIR has been sufficiently explained and is not fatal to the case of the prosecution.

Merely by alleging that mother of the prosecutrix was a lady of easy virtue or her husband left her, there is absolutely no supportive material brought by the appellant in his defence so as to explain why he was implicated. The court is separately required to adjudicate whether the accused committed rape on the victim or not. We find (1983) 3 SCC 217 no reason to accept the contention that the alleged immoral character of the mother of the prosecutrix has any bearing on the accused being falsely roped in on the basis of a concocted story by the mother of the prosecutrix. The question of conviction of the accused for rape of the prosecutrix is independent and distinct. It has absolutely no connection with the character of the mother of the prosecutrix and seems to be a dire attempt at using it as a license to discredit the testimony of the prosecutrix.

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135. INDIAN PENAL CODE, 1860 – Section 376
BHARATIYA NYAYA SANHITA, 2023 – Section 64

Rape – FIR was lodged after 16 years of the alleged first incident of sexual abuse – Complainant is highly qualified and major lady – She developed close relations with the appellant – Their sexual relations continued unabatedly for several years – For 16 years, the complainant maintained silence and even projected herself as wife of the appellant – FIR was lodged only when the complainant came to know that appellant was getting married to another woman – It is a case of live-in relationship gone sour – Allegations of forcible sexual intercourse, not believable – Distinction between rape on grounds of false promise to marry and consensual relationship, explained – FIR against the accused was quashed.

भारतीय दण्ड संहिता, 1860 – धारा 376
भारतीय न्याय संहिता, 2023 – धारा 64
बलात्संग – यौन शोषण की कथित प्रथम घटना के 16 वर्ष उपरांत एफआईआर दर्ज करवाई गई – शिकायतकर्ता एक शिक्षित और वयस्क महिला हैं – उसने अपीलार्थी से निकट संबंध विकसित किए – उनके यौन संबंध बेरोकटोक अनेक वर्षों तक निरंतर बने रहे – 16 वर्षों तक शिकायतकर्ता मौन रहीं और स्वयं को अभियुक्त की पत्नी के रूप में प्रस्तुत करती रहीं – एफआईआर तब दर्ज करवाई गई जब उसे ज्ञात हुआ कि अपीलार्थी किसी अन्य महिला से विवाह करने जा रहा है – यह एक 'लिव–इन रिलेशनशिप' थी जो बाद में बिगड़ गई – बलपूर्वक यौन संबंध बनाने के आरोप अविश्वसनीय पाए गए – विवाह का झूठा वादा कर बलात्संग करना और आपसी सहमति पर आधारित संबंधों के बीच का अंतर स्पष्ट किया गया – अभियुक्त के विरूद्ध एफआईआर अभिखंडित कर दी गई।

Rajnish Singh@ Soni v. State of Uttar Pradesh and anr.

Judgment dated 03.03.2025 passed by the Supreme Court in Criminal Appeal No. ……of 2025 reported in (2025) 4 SCC 197

Relevant extracts from the judgment:

It is trite that there is a distinction between rape and consensual intercourse. This Court in ***Deepak Gulati v. State of Haryana, (2013)7 SCC 675,*** differentiated between a mere breach of promise and not fulfilling a false promise and held that an accused will only be liable if the Court concludes that his intentions are mala fide and he has clandestine motives. The relevant extract is reproduced herein below:

> "Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.
>
> Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The 'failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance'. Section 90IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

Thus, by no stretch of imagination, can this Court be convinced that present is a case wherein the appellant is liable to be prosecuted for having sexually

exploited/assaulted the complainant based on a false promise of marriage. The allegations of the complainant are full of material contradictions and are ex facie unbelievable. Throughout the prolonged period of 16 years, the complainant kept completely quiet about the alleged sexual abuse, meted out to her by the appellant until she learnt that the appellant had married another woman. Further in complete contradiction to the case set up in the FIR, the complainant has on many occasions portrayed herself to be the wife of the appellant and thus, evidently, they lived together as man and wife. Additionally, the long gap of 16 years between the first alleged act of sexual intercourse, continued relations for one-and-a-half decade till the filing of the FIR convinces us that it is a clear case of a love affair/live-in relationship gone sour.

In this background, we are of the opinion that allowing the prosecution of the appellant to continue for the offences alleged, under Sections 376, 384, 323, 504 and 506IPC would be nothing short of a gross abuse of the process of law.

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136. INDIAN PENAL CODE, 1860 – Sections 395 and 397
BHARATIYA NYAYA SANHITA, 2023 – Sections 310(2) and 311
EVIDENCE ACT, 1872 – Section 9
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 7

(i) Dacoity – The appellant was tried for robbery in a bus that was carrying 35 passengers – It was alleged that the accused/ appellant stopped bus at gun point and then robbed the passengers with the help of the other co-accused persons – No article was recovered from appellant – Seized country-made pistol had no connection established with the crime scene, as no empty cartridge or bullet was seized – There was significant delay of nine hours in the preparation of a seizure memo – The weapon underwent a forensic examination after several months of seizure – There were major discrepancies between the seizure memo and the seized item – Arrest and recovery found doubtful.

(ii) Test identification proceedings – Appreciation of evidence – Test identification parade is merely a corroborative evidence and not a substantive piece of evidence – Accused was stated to have been identified by two out of three witnesses in TIP but they were not examined before the court – Dock identification of accused by a

policeman who was not included in the test identification parade – Such identification failed to inspire confidence – Prosecution failed to establish the charges beyond reasonable doubt – Accused is entitled to the benefit of doubt – Conviction set aside and appellant acquitted.

भारतीय दण्ड संहिता, 1860 – धाराएं 395 एवं 397
भारतीय न्याय संहिता, 2023 – धारा 310(2) एवं 311
साक्ष्य अधिनियम, 1872 – धारा 9
भारतीय साक्ष्य अधिनियम, 2023 – धारा 7

(i) डकैती – अपीलार्थी का विचारण 35 यात्रियों को ले जा रही बस में लूट करने हेतु किया गया – यह आरोप था कि अभियुक्त/अपीलार्थी ने बंदूक की नोक पर बस को रोका और फिर अन्य सह–अभियुक्त व्यक्तियों की सहायता से यात्रियों के साथ लूट कारित की – अपीलार्थी से कोई वस्तु बरामद नहीं हुई थी – जब्त किये गये देसी कट्टा का घटना स्थल से कोई संबंध स्थापित नही हुआ क्योंकि कोई खाली कारतूस या गोली जब्त नहीं हुई – जब्ती पत्रक तैयार करने में नौ घंटे का सारवान विलंब था – जब्त किये गए हथियार की फोरेंसिक जांच कई माह बाद कराई गई – जब्ती पत्रक एवं जब्त की गई सामग्री के मध्य गंभीर विसंगतियां थीं – गिरफ्तारी और बरामदगी संदिग्ध पाई गई।

(ii) परीक्षण पहचान कार्यवाही – साक्ष्य का मूल्यांकन – परीक्षण पहचान परेड केवल पुष्टिकारक साक्ष्य है, तात्विक साक्ष्य नहीं – परीक्षण पहचान कार्यवाही में अभियुक्त की पहचान तीन में से दो साक्षियों द्वारा कथित की गई थी, परन्तु न्यायालय के समक्ष उनका परीक्षण नहीं कराया गया – एक पुलिस साक्षी द्वारा न्यायालय में अभियुक्त को पहचाना गया, जो परीक्षण पहचान परेड में सम्मिलित नहीं था – इस तरह की पहचान विश्वास प्रेरित करने में असफल रही – आरोप युक्तियुक्त संदेह से परे साबित करने में अभियोजन विफल रहा – अभियुक्त संदेह का लाभ प्राप्त करने का हकदार है – दोषसिद्धि अपास्त कर अपीलार्थी को दोषमुक्त किया गया।

Vinod @ Nasmulla v. State of Chhattisgarh

Judgment dated 14.02.2025 passed by the Supreme Court in Criminal Appeal No. 1931 of 2019, reported in AIR 2025 SC 1194

Relevant extracts from the judgment:

A test identification parade under Section 9 of the Evidence Act, 18724 is not substantive evidence in a criminal prosecution but is only corroborative evidence. The purpose of holding a test identification parade during the stage of investigation is, firstly, to ensure that the investigating agency is proceeding in the right direction

where the accused is unknown and, secondly, to serve as a corroborative piece of evidence when the witness identifies the accused during trial, ***Umesh Chandra v. State of Uttarakhand, (2021) 17 SCC 616***. The evidence of identification merely corroborates and strengthens the oral testimony in court which alone is the primary and substantive evidence as to identity **[*Hari Nath and anr. v. State of U.P., (1988) 1 SCC 14]***. In ***Rameshwar Singh v. State of Jammu and Kashmir, (1971) 2 SCC 715***, a three-Judge Bench of this Court succinctly summarized the evidentiary value of the TIP as under:

> "……. The identification during police investigation ……. is not substantive evidence in law and it can only be used for corroborating or contradicting evidence of the witness concerned as given in Court. The identification proceedings …… must be so conducted that evidence with regard to them when given at the trial, enables the court safely to form appropriate judicial opinion about its evidentiary value for the purpose of corroborating or contradicting the statement in Court of the identifying witness."

Thus, if the witness who identified a person or an article in the TIP is not examined during trial, the TIP report which may be useful to corroborate or contradict him would lose its evidentiary value for the purposes of identification. The rationale behind the aforesaid legal principle is that unless the witness enters the witness box and submits himself for cross-examination how can it be ascertained as to on what basis he identified the person or the article. Because it is quite possible that before the TIP is conducted the accused may be shown to the witness or the witness may be tutored to identify the accused. Be that as it may, once the person who identifies the accused during the TIP is not produced as a witness during trial, the TIP is of no use to sustain an identification by some other witness.

Ordinarily, if a person is carrying a loaded weapon, he would use the same to evade arrest unless the person is completely outnumbered. Here, the appellant is stated to have been arrested by PW- 5, who was single and about to attend nature's call. Moreover, there is no injury on either side to suggest that resistance was offered at the time of arrest. Such a prosecution story is too convenient to be acceptable as true. More so, when it had support from police witnesses only. Therefore, the court should have been circumspect so as to look for corroborative pieces of evidence. This we say so, because it is not uncommon for the police to be

under pressure to quickly resolve a case having implications on public order and therefore, look for soft targets.

Here, there is neither recovery of any looted article from the appellant or at his instance, nor the country-made pistol was linked to any empty cartridge recovered from the Bus or the scene of crime. There is also no injury report to substantiate that the appellant offered resistance before he was apprehended. In absence of any such corroborative evidence, it would be too naive on our part to accept the prosecution story regarding the manner in which the appellant is stated to have been arrested.

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137. LAND REVENUE CODE, 1959 (M.P.) – Sections 57 and 158
MADHYA BHARAT LAND REVENUE AND TENANCY ACT, SAMVAT 2007
CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 10

(i) Bhumiswami rights – Priest – Status in temple land – A Pujari cannot be treated as Bhumiswami under the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 or under the MPLRC, 1959 – Priest is only the manager of the temple property and not the owner or Kashtkar Morushi – Proprietary rights over temple land claimed by the priest amounts to mismanagement – Held, priest has no right in such land which could be protected under MPLRC. *[M.P. State v. Pujari Utthan Avam Kalyan Samiti, 2021 (2) RN 193* and *Ramchand v. Thakur Janki Ballabhji Maharaj, AIR 1970 SC 532,* referred to]

(ii) Revenue records – Mutation – State Government cannot, by executive instruction alone order deletion of priest's name from revenue records and replace it with Collector's name as manager, unless the temple is vested in the State – In the absence of impleadment of deity or Jagirdar (true owners), suit challenging such mutation not maintainable due to non-joinder of necessary and proper parties.

भू–राजस्व संहिता, 1959 (म.प्र.) – धाराएं 57 एवं 158
मध्य भारत लैंड रेवेन्यू एण्ड टैनेन्सी एक्ट, संवत् 2007
सिविल प्रक्रिया संहिता, 1908 – आदेश 1 नियम 10

(i) भूमिस्वामी अधिकार – पुजारी – मंदिर भूमि में स्थिति – मध्य भारत भू राजस्व और काश्तकारी अधिनियम, संवत, 2007 अथवा म.प्र. भू–राजस्व

संहिता, 1959 के अंतर्गत पुजारी को भूमिस्वामी नहीं माना जा सकता है – पुजारी केवल मंदिर की संपत्ति का प्रबंधक है एवं स्वामी अथवा मौरूसी काश्तकार नहीं है – पुजारी द्वारा मंदिर की भूमि पर सांपत्तिक अधिकार का दावा किया जाना कुप्रबंधन के समान है – अभिनिर्धारित, पुजारी का ऐसी भूमि पर कोई अधिकार नहीं है जिसे म.प्र. भू–राजस्व संहिता के अंतर्गत संरक्षित किया जा सके। *[म.प्र.राज्य वि. पुजारी उत्थान एवं कल्याण समिति, 2021 (2) आर.एन. 193 एवं रामचंद वि. ठाकुर जानकी बल्लभजी महाराज, ए.आई.आर. 1970 एस.सी. 532* अनुसरित*]*

(ii) राजस्व अभिलेख – नामांतरण – राज्य सरकार केवल कार्यपालिक निर्देश द्वारा राजस्व अभिलेखों से पुजारी का नाम हटाने और इसे प्रबंधक के रूप में कलेक्टर के नाम से बदलने का आदेश नहीं दे सकती है, जब तक कि मंदिर राज्य में निहित न हो – मूर्ति अथवा जागीरदार (वास्तविक स्वामियों) को समाविष्ट किये जाने के अभाव में, आवश्यक एवं उचित पक्षकारों के असंयोजन के कारण ऐसे नामांतरण को चुनौती देने वाला वाद पोषणीय नहीं है।

Rampuri thr. LRs. Mahendrapuri & ors. v. State of M.P. & ors.

Order dated 11.07.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 156 of 2001, reported in ILR 2024 MP 2357

Relevant extracts from the order:

The Madhya Pradesh Land Revenue Code, 1959 was brought into force with effect from 21.09.1959 and thereafter, the Act was brought into effect to consolidate and amend the law relating to the land revenue, the powers and jurisdiction of Revenue Officers, right and liabilities of holders of land from the State Government, agricultural tenures and any other matters relating to the land and liabilities regarding agriculture land situated in the boundaries of Madhya Pradesh.

The State of Madhya Pradesh has been constituted with various parts of the State of Madhya Bharat, State of Gwalior, Indore, Malwa, Bhopal and so many other territories and the law relating to the land revenue, powers of the Revenue Officers, rights and liabilities of holders of the land from the erstwhile States, State Government, agricultural tenures and other matters relating to lands and incidental thereto were regulated by various State laws, such as Qanoon Mal in the State of Gwalior and so many other State laws, but after enactment of the M.P. Land Revenue Code, 1959 all these matters have been recovered in the MPLRC.

In the present case, the main question which is required to be decided is whether a priest can be treated as Bhumiswami under the Madhya Bharat Land Revenue and Tenancy Act Samvat 2007 and as a consequence under the MPLRC. The law is clear on the distinction that the Pujari is not a Kashtkar Morushi, or a Government lessee or an ordinary tenant of the Muafi lands. The Pujari is the only a person, who has appointed to manage property of deity, therefore, he cannot be treated as deity. In a Judgment reported as ***Ramchand (Dead) by Legal Representatives v. Thakur Janki Ballabhji Maharaj and anr., AIR 1970 SC 532,*** it was held that if the Pujari claims proprietary rights over the property of the temple, it is an act of mismanagement and he is not fit to remain in possession or to continue as a Pujari.

Hon'ble the Apex Court in the case of ***M.P. State v. Pujari Utthan Avam Kalyan Samiti, 2021 (2) RN193*** it has been held that:

> "the priest cannot be treated to be either a maufidar or inamdar and he cannot treated to be bhumiswami, status of pujari is only that of manager. The citation is applicable in the instant case and on the basis of aforesaid, it is clear that since the priest cannot be treated a bhumiswami, he has no right which could be protected under any of the provisions of MPLRC."

After abolition of Zamindari, the proprietorship of the land vests in the State to whom the rent is payable. It is not uncommon that a person in possession of an agricultural land holding even as an owner cannot put his land to any use as he desires. The plaintiff cannot further be equated with a proprietor or zamindar or an intermediary or jagirdar or malguzar whose proprietary rights were extinguished and vested by operation of law in the State.

Another question which arises for consideration is whether the State Government by way of executive instruction can pass an order for deletion of name of Pujari from the revenue records and insert the name of Collector as Manager. Learned counsel for the respondent has placed reliance upon the judgment of ***Pujari Utthan Avam Kalyan Samiti*** (supra) in which it has been held that "name of Collector as a Manager cannot be recorded in respect of the property vested to the deity as the Collector cannot be a Manager of all the temples unless the temple vested with the State." But in the instant case, appellants did not implicate the deity or concerned Jagirdar as a party, who is the actual owner of the said temple, therefore, non-joinder of necessary and proper party, suit does not appear to be maintainable.

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138. MOTOR VEHICLES ACT, 1988 – Section 166

Compensation – Contributory negligence – Deceased motorcyclist died after colliding with a stationary tractor trolley negligently parked on the road – Tribunal fastened 50% contributory negligence on the deceased – High Court held no evidence was adduced by the owner or driver of the offending vehicle to prove that it was properly parked with due precautions and deceased himself was negligent – Finding recorded by Tribunal that deceased was equally negligent was set aside – Similarly, ground raised by the Insurance Company for its exoneration that the offending trolley was not insured, was found irrelevant as it was attached to insured tractor and formed one vehicle – Doctrine of *res ipsa loquitur* applied – Appeal filed by Insurance Company dismissed and that of claimants, allowed – Enhanced compensation awarded to claimants.

मोटरयान अधिनियम, 1988 – धारा 166

प्रतिकर – योगदायी उपेक्षा – मोटरसाइकिल चालक की मृत्यु सड़क पर उपेक्षापूर्वक खड़ी की गई ट्रैक्टर ट्रॉली से टकराने से हुई – अधिकरण ने मृतक पर 50% योगदायी उपेक्षा अधिरोपित की – उच्च न्यायालय ने अभिनिर्धारित किया कि आपेक्षित वाहन के स्वामी या चालक ने यह प्रमाणित करने हेतु कोई साक्ष्य प्रस्तुत नहीं की है कि वाहन सावधानी पूर्वक और उचित रीति से खड़ा किया गया था और यह कि मृतक स्वयं लापरवाह था – अधिकरण द्वारा दिया गया निष्कर्ष कि मृतक समान रूप से लापरवाह था, अपास्त किया गया – इसी प्रकार बीमा कंपनी द्वारा विमुक्ति के लिए उठाया गया यह आधार कि दोषी ट्रॉली बीमित नहीं थी, अप्रासंगिक पाया गया क्योंकि वह बीमित ट्रैक्टर से जुड़ी थी और एक वाहन निर्मित करती है – *"रेस इप्सा लॉकीटर"* सिद्धांत प्रभावी किया गया – बीमा कंपनी द्वारा प्रस्तुत अपील निरस्त की गई और दावाकर्ता की अपील स्वीकार की गई – दावेदारों को प्रतिकर की राशि बढ़ाकर प्रदान की गई।

ICICI Lombard General Ins. Co. Ltd. v. Sunita and ors. Judgment dated 05.07.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Appeal No. 258 of 2016, reported in 2025 ACJ 655

Relevant extracts from the judgment:

Counsel for the insurance company further submits that the trolley was not insured with the insurance company but in the present case the accident was not caused by the trolley and the deceased was not travelling in the trolley. In the present case the tractor trolley was stationary on the road negligently and the trolley

was attached with the tractor as the trolley itself was not a motor vehicle. When trolley was attached with the tractor that itself is a part of the tractor and there is no need of insurance of the trolley. Thus, in the considered opinion of this Court, non-insurance of the trolley does not affect the liability of the insurance company.

On perusal of the record it is found that the driver and owner of the offending vehicle filed a written statement before the tribunal and thereafter proceeded ex-parte but no evidence was adduced to the effect that the tractor trolley was parked with due care and with all precautions by the side of the road. Perusal of the FIR it is also found that the offending vehicle (tractor trolley) was stationary on the road in negligent manner... Thus, considering the facts and circumstances of the case and the evidence available on record, in the considered opinion of this Court, the tribunal has fastened 50% contributory negligence on the deceased only on assumptions and presumptions and not based on any substantial evidence. So, the finding of the tribunal regarding contributory negligence on the part of the deceased is not correct in the eye of law, therefore, it is hereby set aside.

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

Motor accident claim – Determination of compensation in injury case – Assessment of income – Claims Tribunal assessed income of 17 years old injured vegetable vendor as ₹ 2,500 per month – High Court held that notional income in absence of proof should be based on minimum wages notified under the Minimum Wages Act – Income reassessed as ₹ 3,520 per month as per notification treating the claimant unskilled labour – Disability proved at 40% but Tribunal reduced it to 20% without justification – High Court accepted full 40% permanent functional disability – Also held that future prospects and multiplier must be applied as per Supreme Court rulings – Award enhanced from ₹ 1,65,070 to ₹ 5,65,842 – Directions issued for payment of balance compensation along with interest.

मोटरयान अधिनियम, 1988 — धारा 166

मोटर दुर्घटना दावा — उपहति के मामले में प्रतिकर का निर्धारण — आय का आकलन — दावा अधिकरण ने 17 वर्षीय घायल सब्जी विक्रेता की आय ₹ 2,500 प्रति माह आंकी — उच्च न्यायालय ने अभिनिर्धारित किया कि प्रमाण के अभाव में काल्पनिक आय का निर्धारण न्यूनतम वेतन अधिनियम के अंतर्गत अधिसूचित न्यूनतम मजदूरी के आधार पर किया जाना चाहिए — अधिसूचना के

अनुसार याचिकाकर्ता को अकुशल श्रमिक मानते हुए आय ₹ 3,520 प्रति माह आंकी गई – निःशक्तता 40% प्रमाणित हुई, लेकिन अधिकरण ने बिना किसी उचित कारण के इसे घटाकर 20% कर दिया – उच्च न्यायालय ने पूर्ण 40% स्थायी कार्यात्मक निःशक्तता को स्वीकार किया – यह भी अभिनिर्धारित किया गया कि भविष्य की संभावनाओं और गुणांक (मल्टीप्लायर) का निर्धारण सर्वोच्च न्यायालय के निर्णयों के अनुसार किया जाना चाहिए – प्रतिकर ₹ 1,65,070 से बढ़ाकर ₹ 5,65,842 किया गया – अवशेष प्रतिकर के भुगतान और उस पर ब्याज देने के निर्देश जारी किए गए।

Rajendra v. Union of India and anr.

Judgment dated 09.02.2024 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Appeal No. 205 of 2011, reported in 2025 ACJ 633

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140. MOTOR VEHICLES ACT, 1988 – Section 166

Motor accident claim – Determination of compensation – Death of Indian citizen earning in foreign currency – Tribunal awarded ₹ 8.03 crore applying multiplier of 14 and future prospects @ 30% – High Court reduced multiplier to 10 on ground that income was in foreign currency – Supreme Court held that reduction of multiplier was unjustified – For a person aged 43, multiplier of 14 must be applied regardless of place of earning – Also held that rate of exchange to compute compensation must be taken as prevailing on the date of filing claim petition, not the date of accident – Conversion rate fixed at ₹ 57/USD prevalent in the year 2012 – Tribunal's award restored and compensation enhanced to ₹ 9.64 crore.

मोटरयान अधिनियम, 1988 – धारा 166

मोटर दुर्घटना दावा – प्रतिकर का निर्धारण – विदेशी मुद्रा में आय अर्जित करने वाले भारतीय नागरिक की मृत्यु – अधिकरण ने ₹ 8.03 करोड़ का प्रतिकर प्रदान किया, जिसमें 14 का गुणांक और भविष्य की संभावनाओं को 30% माना गया – उच्च न्यायालय ने यह कहते हुए गुणांक को घटाकर 10 कर दिया कि आय विदेशी मुद्रा में थी – सर्वोच्च न्यायालय ने गुणांक में की गई कटौती को अनुचित माना – 43 वर्षीय व्यक्ति के लिए, आय अर्जन के स्थान की परवाह किए बिना 14 का गुणक लागू किया जाना चाहिए – यह भी अभिनिर्धारित किया गया कि प्रतिकर की गणना के लिए विनिमय दर का निर्धारण दावा याचिका प्रस्तुत करने की तिथि के अनुसार किया जाना चाहिए, न कि दुर्घटना की तिथि से – परिवर्तन

दर वर्ष 2012 में प्रचलित ₹ 57/USD निश्चित की गई – अधिकरण का अधिनिर्णय बहाल किया गया और प्रतिकर बढ़ाकर ₹ 9.64 करोड़ किया गया।

Shyam Prasad Nagalla and ors. v. Andhra Pradesh State Road Trans. Corpn. and ors.

Judgment dated 11.02.2025 passed by the Supreme Court in Civil Appeal No. 2324 of 2025 reported in 2025 ACJ 370 (SC)

Relevant extracts from the judgment:

The major issues that arise for consideration, as recorded in our order dated 3rd January, 2025 are:

(a) Whether the petitioner would be entitled to compensation at the exchange rate of currency as on the date of the accident or on the date of the filing of the Petition?

(b) Whether the High Court was justified in reducing the multiplier to '10' from '14' as taken by the Tribunal?

We have heard the learned counsel for the Appellant. The Respondents have not entered appearance, despite service. On the first issue, this Court in ***Jiju Kuruvila v. Kunjujamma Mohan, 2013 ACJ 2141 (SC)*** had observed that the date of filing of the claim petition is the proper date for fixing the rate of exchange for computing compensation. This exposition has been followed in ***DLF Ltd. v. Koncar Generators & Motors Ltd., 2024 SCC Online SC 107.*** The conversion rate is therefore fixed at ₹ 57/-, which was the prevalent figure at the time of filing the claim petition.

On the second issue, as per ***National Insurance Co. Ltd. v. Pranay Sethi, 2017 ACJ 2700 (SC)*** the law is settled that the multiplier for a person aged 43 must be 14. No exception is made for a person earning in foreign currency.

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

Motor accident claim – Injury case – Amputation of right leg above knee – Functional disability – Claimant was self-employed and running a coaching center for students of Class 9th and 10th, as well as working as an Accountant – Effective business management requires mobility – The amputation of his right leg above the knee will seriously reduce his earning capacity – Court assessed his functional disability at 90%.

मोटरयान अधिनियम, 1988 – धाराएं 166 एवं 168

मोटर दुर्घटना दावा – उपहति का मामला – घुटने के ऊपर दाहिने पैर का विच्छेदन – कार्यात्मक निःशक्ता – आवेदक स्व–नियोजित था एवं 9वीं और

10वीं कक्षा के छात्रों के लिए एक कोचिंग केंद्र चला रहा था, साथ ही एक लेखपाल के रूप में भी कार्य कर रहा था – प्रभावी व्यवसाय प्रबंधन के लिए गतिशीलता आवश्यक है – दाहिने पैर का घुटने के ऊपर से विच्छेदन उसकी अर्जन क्षमता को गंभीर रूप से कम कर देगा – न्यायालय ने उसकी कार्यात्मक निःशक्ता का आकलन 90 प्रतिशत किया।

Sanjay Rajpoot v. Ram Singh and ors.

Judgment dated 11.02.2025 passed by the Supreme Court in Civil Appeal No. 2321 of 2025, reported in AIR 2025 SC 1250

Relevant extracts from the judgment:

We have heard the learned counsel for the parties. Respondent No. 3 - the insurer has not entered appearance. We are unable to agree with the view taken by the Tribunal and High Court on the functional disability suffered by him and also the determination of his age. The Claimant-Appellant is not salaried, but is self-employed running and managing his own business. For the Appellant to be able to effectively run his business, he is definitely required to move around. This has been hampered significantly by his amputation, which proves that the functional disability of the Appellant will severely impact his earning capacity. Therefore, the correct view would be to assess the disability of the Claimant-Appellant as 90%.

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142. NATIONAL HIGHWAYS ACT, 1956 – Section 3J

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 – Sections 30 and 80

Right of fair compensation and transparency in land acquisition – Grant of solatium and interest – Judgment of Hon'ble Supreme Court (*Union of India and anr. v. Tarsem Singh and ors., AIR 2019 SC 4689*) declaring section 3J of NHAI Act unconstitutional, whether applicable prospectively or retrospectively? Held, said judgment would apply retrospectively since granting prospective application thereof would effectively nullify the very relief that the judgment intended to provide.

राष्ट्रीय राजमार्ग अधिनियम, 1956 – धारा 3ञ

भूमि अर्जन, पुनर्वासन और पारदर्शिता में उचित प्रतिकर और पारदर्शिता अधिकार अधिनियम, 2013 – धाराएं 30 एवं 80

भूमि अधिग्रहण में उचित प्रतिकर और पारदर्शिता का अधिकार – तोषण राशि और ब्याज का अनुदान – माननीय सर्वोच्च न्यायालय का निर्णय (*भारत संघ एवं अन्य विरूद्ध तरसेम सिंह एवं अन्य, ए.आई.आर. 2019 एससी 4689*) जिसमें

एन.एच.ए.आई. अधिनियम की धारा 3जे को असंवैधानिक घोषित किया गया, वह भविष्यलक्षी या भूतलक्षी प्रभाव से लागू होगा? अभिनिर्धारित, उक्त निर्णय भूतलक्षी प्रभाव से लागू होगा क्योंकि भविष्यलक्षी प्रभाव से लागू करने पर निर्णय द्वारा जो प्रभावी राहत प्रदान करने की मंशा दिखाई गई है वह विफल हो जावेगी।

Union of India and anr. v. Tarsem Singh and ors.

Judgment dated 04.02.2025 passed by the Supreme Court in Miscellaneous Application No. 1773 of 2021 in Civil Appeal No. 7064 of 2019, reported in AIR 2025 SC 1460

Relevant extracts from the judgment:

The prayer in the instant Application expressly seeks clarification that the decision in ***Union of India and anr. v. Tarsem Singh and ors., (2019) 9 SCC 304*** should be deemed to operate prospectively only. However, in our considered view, granting such a clarification would effectively nullify the very relief that ***Tarsem Singh*** (supra) intended to provide, as the prospective operation of it would restore the state of affairs to the same position as it was before the decision was rendered.

We say so for the reason that the broader purpose behind ***Tarsem Singh*** (supra) was to resolve and put quietus upon the quagmire created by Section 3J of the NHAI Act, which led to the unequal treatment of similarly situated individuals. The impact of Section 3J was short-lived, owing to the applicability of the 2013 Act upon the NHAI Act from the date of 01.01.2015. As a result, two classes of landowners emerged, devoid of any intelligible differentia: those whose lands were acquired by the NHAI between 1997 and 2015, and those whose lands were acquired otherwise.

This must be viewed in the light of the principle that when a provision is declared unconstitutional, any continued disparity strikes at the core of Article 14 and must be rectified, particularly when such disparity affects only a select group. To illustrate, rendering the decision in ***Tarsem Singh*** (supra) as prospective would create a situation where a landowner whose land was acquired on 31.12.2014 would be denied the benefit of 'solatium' and 'interest', whereas a landowner whose land was acquired the very next day, 01.01.2015 the date on which the Ordinance was promulgated, to read the 2013 Act into the NHAI Act, would be entitled to these statutory benefits.

That being so, the decision in ***Tarsem Singh*** (supra) also cannot be assailed on the grounds that it opens a Pandora's Box or contravenes the doctrine of immutability, as it merely allows for the grant of 'solatium' or 'interest', which are inherently embedded as compensatory benefits under an expropriating legislation.

This exercise cannot be equated to reopening of cases or revisiting the decisions that have already attained finality. Similarly, the restoration of these twin benefits does not invite reconsideration of the merits of a decided case, re-evaluation of the compensation amount, or potentially declaring the acquisition process itself to be unlawful. Instead, the ultimate outcome of ***Tarsem Singh*** (supra) is limited to granting 'solatium' and 'interest' to aggrieved landowners whose lands were acquired by NHAI between 1997 and 2015. It does not, in any manner, direct the reopening of cases that have already attained finality.

In all fairness, the only defense that may perhaps seem appealing is the claim of a financial burden amounting to Rupees 100 crores. However, this argument does not persuade us for several reasons: First, if this burden has been borne by the NHAI in the case of thousands of other landowners, it stands to reason that it should also be shared by the NHAI in this instance, in order to eliminate discrimination. Second, the financial burden of acquiring land cannot be justified in the light of the Constitutional mandate of Article 300A. Third, since most National Highways are being developed under the Public Private Partnership model, the financial burden will ultimately be passed on to the relevant Project Proponent. Fourth, even the Project Proponent would not have to bear the compensation costs out of pocket, as it is the commuters who will bear the actual brunt of this cost. Ultimately, the burden is likely to be saddled onto the middle or upper-middle-class segment of society, particularly those who can afford private vehicles or operate commercial ventures. We are thus not inclined to entertain the plea for prospectivity on this limited tenet.

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143. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 139
Dishonor of cheque – Legally enforceable debt – Question of limitation – It was alleged by the accused that cheque has been issued after four years of taking of loan thus, claim is time barred – Money was borrowed by accused/petitioner and cheque was issued by him – Accused has admitted his signature on cheque – Once signature is admitted, it is required to be presumed that cheque was issued towards consideration for legally enforceable debt – Accused is required to rebut presumption during trial by presenting evidence – Question of debt being time barred or not can be decided only after evidence as it is mixed question of law and fact.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 139
चैक का अनादरण – विधि द्वारा प्रवर्तनीय ऋण – परिसीमा का प्रश्न – अभियुक्त द्वारा यह आक्षेपित किया गया था कि ऋण लेने के चार वर्ष उपरांत चैक जारी

किया गया है, इस कारण परिवाद परिसीमा बाह्य है – अभियुक्त/याचिकाकर्ता द्वारा धन उधार लिया गया था और चैक उसके द्वारा जारी किया गया था – अभियुक्त ने चैक पर अपने हस्ताक्षर को स्वीकार किया – एक बार हस्ताक्षर स्वीकार किए जाने के उपरांत, यह उपधारणा किया जाना अपेक्षित है कि चैक विधि द्वारा प्रवर्तनीय ऋण के लिए प्रतिफल के रूप में जारी किया गया था – अभियुक्त से यह अपेक्षित है कि वह विचारण के दौरान साक्ष्य प्रस्तुत कर उपधारणा का खंडन करे – ऋण परिसीमा बाह्य है या नहीं, इसका निर्णय साक्ष्य के उपरांत ही किया जा सकता है क्योंकि यह विधि और तथ्य का मिश्रित प्रश्न है।

Dheeraj Kumar Verma v. Sachin

Order dated 08.08.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 4227 of 2020, reported in 2025 (1) MPLJ 518

Relevant extracts from the order:

In the case in hand, it is clearly averred in para 2 of the complaint that money was borrowed by the accused/petitioner between 31.10.2014 to 03.04.2015 and accused petitioner had issued the cheque on 02.03.2019. Considering the aforesaid facts and Hon'ble Apex Court's dictum in the case of ***Gimpex Private Limited v. Manoj Goel, 2022 11 SCC 705*** wherein it is held that in such a case a new liability, operation of presumptions under Section 139 and 118 of NI Act stands repeated or not as a new liability has been created fresh cause of action or not which is explained and such fresh liability of cause of action itself is a subject matter of trial and proof and it cannot be decided in a petition under Section 482 of CrPC. It is also pertinent to mention that the accused petitioner has not disputed his signature on the cheque. He has admitted his signature on the cheque and has not raised any dispute. Once the signature is admitted, it is required to be presumed that the cheque was issued towards consideration for the legally enforceable debt. Hence, now, it is a matter of evidence.

Considering the aforesaid peculiar facts and circumstances of the case, this Court is of the considered view that the instrument is drawn on 02.03.2019 and the presumption referred u/s 118 of the NI Act and then legal concern referred to Section 139 of NI Act constituted disputed question of fact. The accused/petitioner is required to rebut this presumption during the trial by presenting evidence and the trial Court has to consider this evidence with the principle of preponderance in the mind for the enforcement of the cheque.

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144. PREVENTION OF MONEY LAUNDERING ACT, 2002 – Sections 3, 4 and 44(1)(b)

CRIMINAL PROCEDURE CODE, 1973 – Section 197(1)

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 218

(i) Previous sanction for prosecution of public servants – Object of section 197(1) CrPC is to ensure that the public servants are not prosecuted for anything they do in discharge of their duties – This provision is for protection of honest and sincere officers – However, the protection is not unqualified – They can be prosecuted with a previous sanction from the appropriate Government.

(ii) Offence of money laundering – Economic offences – Plea of absence of sanction for prosecution – Stage – May be raised at any stage of proceeding – The question as to necessity of sanction may be determined from stage to stage – There is no embargo on considering the plea of absence of sanction after cognizance is taken by the Special Court of the offences punishable u/s 4 of PMLA.

(iii) Complaint was filed u/s 4 of PMLA – Special Court took cognizance of complaint and issued summons to accused persons – Accused/respondent challenged the order of taking cognizance before High Court – Prayer was made for quashing the complaint on the ground of absence of sanction – High Court quashed the order of taking cognizance – Held, provisions of section 197(1) CrPC are applicable to a complaint filed u/s 44(1)(b) of PMLA – Quashing of order of cognizance for want of sanction was therefore, found justified.

धन–शोधन निवारण अधिनियम, 2002 – धाराएं 3, 4 एवं 44(1)(ख)

दण्ड प्रक्रिया संहिता, 1973 – धारा 197(1)

भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 218

(i) लोक सेवकों के अभियोजन के लिए पूर्वानुमति – दण्ड प्रक्रिया संहिता की धारा 197(1) का उद्देश्य यह सुनिश्चित करना है कि लोक सेवकों को उनके द्वारा अपने कर्तव्यों के निर्वहन में किये गये किसी भी कार्य के लिए अभियोजित न किया जाये – यह प्रावधान ईमानदार और निष्ठावान अधिकारियों की सुरक्षा के लिए है – तथापि, यह सुरक्षा बिना शर्त नहीं है – उन्हें समुचित सरकार से पूर्व अनुमति लेकर अभियोजित किया जा सकता है।

(ii) धन–शोधन का अपराध – आर्थिक अपराध – अभियोजन की पूर्वानुमति न मिलने का अभिवाक् – प्रक्रम – कार्यवाही के किसी भी प्रक्रम पर उठाया जा सकता है – पूर्वानुमति की आवश्यकता का प्रश्न हर प्रक्रम पर निर्धारित किया जा सकता है – धन–शोधन निवारण अधिनियम की धारा 4 के अंतर्गत दंडनीय अपराधों का विशेष न्यायालय द्वारा संज्ञान लिए जाने के उपरान्त भी पूर्वानुमति के अभाव के अभिवाक् पर विचार करने में कोई प्रतिबंध नहीं है।

(iii) धन–शोधन निवारण अधिनियम की धारा 4 के अंतर्गत परिवाद प्रस्तुत – विशेष न्यायालय ने परिवाद पर संज्ञान लिया और अभियुक्तगण को समन जारी किया – अभियुक्त/प्रत्यर्थी ने उच्च न्यायालय के समक्ष संज्ञान लेने के आदेश को चुनौती दी – अभियोजन की पूर्वानुमति के अभाव के आधार पर परिवाद को निरस्त करने की प्रार्थना की गई – उच्च न्यायालय ने संज्ञान लेने के आदेश को अपास्त कर दिया – अभिनिर्धारित, धारा 197(1) दण्ड प्रक्रिया संहिता के प्रावधान धन–शोधन निवारण अधिनियम की धारा 44(1)(ख) के अंतर्गत प्रस्तुत परिवाद पर लागू होते हैं – अतः पूर्वानुमति के अभाव में संज्ञान के आदेश को अपास्त किया जाना उचित पाया गया।

Directorate of Enforcement v. Bibhu Prasad Acharya and ors.

Judgment dated 06.11.2024 passed by the Supreme Court in Criminal Appeal No. 4314 of 2024, reported in (2025) 1 SCC 404

Relevant extracts from the judgment:

The expression "to have been committed by him while acting or purporting to act in the discharge of his official duty" has been judicially interpreted. A Bench of three Hon'ble Judges of this Court in ***Centre for Public Interest Litigation v. Union of India, (2005) 8 SCC 202***, in para 9, observed thus:

> ". … This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public

servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

In the decision of this Court in ***Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1***, in para 38, this Court held thus:

> "The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage."

A Bench of three Hon'ble Judges of this Court in ***P.K. Pradhan v. State of Sikkim, (2001) 6 SCC 704***, in paras 5 and 15 held thus:

> "The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an

offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty'. The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation.

Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for

> the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

Thus, there is no embargo on considering the plea of absence of sanction, after cognizance is taken by the Special Court of the offences punishable under Section 4 PMLA. In this case, it is not necessary to postpone the consideration of the issue.

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145. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 29 and 30
INDIAN PENAL CODE, 1860 – Sections 302, 364 and 377
BHARATIYA NYAYA SANHITA, 2023 – Sections 103(1) and 140(1)
EVIDENCE ACT, 1872 – Sections 3, 8 r/w/s 27 and 45
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 2, 6 r/w/s 23(2) and 39(1)

(i) Presumption under the POCSO Act – For raising presumption, foundational fact ought to have been proved – It was clearly established by evidence that the deceased was subjected to a brutal sexual assault – The injuries indicated in the post-mortem report shows that the deceased was subjected to aggressive penetrative

sexual assault – The injury on the prepuce of the penis of the accused alongwith the matching of the blood group coupled with other circumstantial evidence clearly constitute foundational facts for raising presumption u/s 29 and 30 of the POCSO Act, 2012.

(ii) Circumstantial evidence – Five golden principles which need to be kept in mind, reiterated.

(iii) Crime against women and children – Circumstantial evidence – Evidence of last seen, presence of accused at scene of crime and injury on private part of accused – Time-gap between the last seen and occurrence of death found very short – Accused offered no explanation – Blood group found on the clothes of the deceased also tallied with the blood group of the accused – Conviction confirmed.

(iv) Circumstantial evidence – Relevancy of conduct – Conduct of the accused in leading the investigation team and the *panchas* and pointing out where the apparel of the deceased was hidden would be admissible – The accused showed willingness to show the place where he had thrown the clothes – By virtue of section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact.

(v) Failure to conduct DNA test – Where various links in the chain of circumstances form a complete chain pointing the guilt of accused alone in exclusion of all hypothesis of innocence in his favour – In such cases, failure to conduct DNA test would not be fatal to prosecution case.

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धाराएं 29 एवं 30
भारतीय दण्ड संहिता, 1860 – धाराएं 302, 364 एवं 377
भारतीय न्याय संहिता, 2023 – धाराएं 103(1) एवं 140(1)
साक्ष्य अधिनियम, 1872 – धाराएं 3, 8 सहपठित धारा 27 एवं 45
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 2, 6 सहपठित धारा 23(2) एवं 39(1)

(i) लैंगिक अपराधों से बालकों का संरक्षण अधिनियम के अंतर्गत उपधारणा – उपधारणा के लिए आधारभूत तथ्य साबित होना चाहिए – साक्ष्य से यह स्पष्ट रूप से स्थापित हो गया था कि मृतक के साथ क्रूर यौन उत्पीड़न किया गया था – पोस्टमार्टम रिपोर्ट में उल्लेखित चोटों से दर्शित हुआ कि मृतक के साथ आक्रामक यौन उत्पीड़न किया गया था – आरोपी के लिंग के अग्रभाग पर चोट के साथ–साथ रक्त समूह का मिलान और अन्य

परिस्थितिजन्य साक्ष्य स्पष्ट रूप से अधिनियम, 2012 की धारा 29 और 30 के अंतर्गत उपधारणा करने के लिए आधारभूत तथ्य गठित करती है।

(ii) परिस्थितिजन्य साक्ष्य – पांच स्वर्णिम सिद्धांत जिन्हें ध्यान में रखने की आवश्यकता है, दोहराए गए।

(iii) महिलाओं और बच्चों के विरूद्ध अपराध – परिस्थितिजन्य साक्ष्य – अंतिम बार देखे जाने की साक्ष्य, अपराध स्थल पर अभियुक्त की उपस्थिति और अभियुक्त के निजी अंग पर चोट – अंतिम बार देखे जाने और मृत्यु कारित होने के मध्य का समय अंतराल बहुत कम पाया गया – अभियुक्त ने कोई स्पष्टीकरण नहीं दिया – मृतक के कपड़ों पर पाया गया रक्त समूह भी अभियुक्त के रक्त समूह से मेल खाता था – दोषसिद्धि की पुष्टि की गई।

(iv) परिस्थितिजन्य साक्ष्य – आचरण की सुसंगतता – अनुसंधान दल और पंचों को अभियुक्त द्वारा यह बताए जाने का आचरण कि मृतक के कपड़े कहॉं छिपाए गए थे, स्वीकार्य होगा – अभियुक्त ने वह स्थान दिखाने की इच्छा दिखाई जहां उसने कपड़े फेंके थे – साक्ष्य अधिनियम की धारा 8 के अनुसार, अभियुक्त का आचरण सुसंगत है, यदि ऐसा आचरण किसी विवाद्यक तथ्य या सुसंगत तथ्य को प्रभावित करता है या उससे प्रभावित होता है।

(v) डीएनए परीक्षण कराए जाने में विफलता – जहां परिस्थितियों की श्रृंखला में विभिन्न कड़ियां एक पूरी श्रृंखला बनाती हैं जो अभियुक्त के पक्ष में निर्दोषता की सभी परिकल्पनाओं को छोड़कर मात्र अभियुक्त के दोषी होने की ओर इशारा करती है – ऐसे मामलों में डीएनए परीक्षण न करा पाना भी अभियोजन मामले के लिए घातक नहीं होगा।

Sambhubhai Raisangbhai Padhiyar v. State of Gujarat

Judgment dated 17.12.2024 passed by the Supreme Court in Criminal Appeal No. 5412 of 2024, reported in (2025) 2 SCC 399 (Three-Judge Bench)

Relevant extracts from the judgment:

The case rests on circumstantial evidence. We are conscious of the five golden principles repeatedly reiterated by this Court which are to be borne in mind in cases involved with circumstantial evidence. In the leading case of ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116***, it was held as under:

> "A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may

be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in ***Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793*** where the observations were made:

'Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.'

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

Irrespective of the admissibility of the discovery, panchnama (Ext. 18) and the recovery panchnama Ext. 21 and irrespective of the admissibility of the recovery of the clothes of the deceased on the statement of the accused, we find that the conduct of the appellant in leading the investigation team and the panchas and pointing out where the apparel of the deceased was hidden would be admissible. In this case PW 17, the investigating officer has clearly deposed that the accused showed willingness to show the place where he had thrown the clothes. PW 17, his team and the panchas reached by walking to the place as indicated by the accused. This Court in ***A.N. Venkatesh v. State of Karnataka, (2005) 7 SCC 714*** relying on ***Prakash Chand v. State (UT of Delhi), (1979) 3 SCC 90*** held as under: (***A.N. Venkatesh case*** (supra):

"By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead

> body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in ***Prakash Chand v. State (UT of Delhi)*** (supra). Even if we hold that the disclosure statement made by the accused-appellants (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW 4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act."

We take this as an additional link in the chain of circumstances.

The judgment in ***Prakash v. State of Karnataka, (2014) 12 SCC 133*** cited by the appellant also does not advance the case of the defence. It is clear from the facts of the case, that the blood sample therein was decomposed and its original grouping could not be determined. In any event, coupled with other circumstances indicated hereinabove, we are inclined to consider the matching of blood group as an additional link in the chain as far as the facts of this case are concerned.

The argument of the learned Senior Counsel for the appellants is that no DNA test was carried out. No doubt, the DNA test was not carried out and it would have been better for the prosecution to have done the same. However, keeping the overall conspectus of the case in mind, we do not think that not conducting DNA test was fatal to the prosecution. We draw support from the judgment of this Court in ***Veerendra v. State of M.P., (2022) 8 SCC 668***, wherein it was held as under:

> "In view of the nature of the provision under Section 53-A CrPC and the decisions referred to, we are also of the considered view that the lapse or omission (purposeful or otherwise) to carry out DNA profiling, by itself, cannot be permitted to decide the fate of a trial for the offence of rape especially, when it is combined with the commission of the offence of murder as in case of acquittal only on account of

> such a flaw or defect in the investigation the cause of criminal justice would become the victim. The upshot of this discussion is that even if such a flaw had occurred in the investigation in a given case, the court has still a duty to consider whether the materials and evidence available on record before it, are enough and cogent to prove the case of the prosecution. In a case which rests on circumstantial evidence, the Court has to consider whether, despite such a lapse, the various links in the chain of circumstances form a complete chain pointing to the guilt of the accused alone in exclusion of all hypothesis of innocence in his favour."

Considering the overall facts and circumstances, we hold that the present is not a case where it can be said that the possibility of reformation is completely ruled out. The option of life imprisonment is also not foreclosed. The case does not fall in the category of the rarest of the rare case. We are of the opinion that ends of justice would be met if we adopt the path carved out in ***Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767***.

Even though the case of the appellant falls short of the rarest of the rare category, considering the nature of the crime, we are strongly of the view that a sentence of life imprisonment which normally works out for 14 years would be grossly disproportionate and inadequate. Having regard to the nature of the offence, a sentence of imprisonment for a prescribed period without remission would alone be proportionate to the crime and also not jeopardise the public confidence in the efficacy of the legal system.

This Court recently in ***Navas v. State of Kerala, (2024) 14 SCC 82***, adverting to this aspect had the following to say:

> "How much is too much and how much is too little? This is the difficult area we have tried to address here. As rightly observed, there can be no straitjacket formulae. Pegging the point up to which remission powers cannot be invoked is an exercise that has to be carefully undertaken and the discretion should be exercised on reasonable grounds. The spectrum is very large. The principle in ***Swamy Shraddananda*** (supra) as affirmed in ***Union of India v. V. Sriharan, (2016) 7 SCC 1*** was evolved as the normally accepted norm of 14 years was found to be grossly disproportionate on the lower side. At the same time, since it is a matter concerning the liberty of the individual, courts should also guard against any disproportion in the

imposition, on the higher side too. A delicate balance has to be struck. While undue leniency, which will affect the public confidence and the efficacy of the legal system, should not be shown, at the same time, since a good part of the convict's life with freedom is being sliced away (except in cases where the Court decides to impose imprisonment till rest of the full life), in view of his incarceration, care should be taken that the period fixed is also not harsh and excessive. While by the very nature of the task mathematical exactitude is an impossibility, that will not deter the Court from imposing a period of sentence which will constitute "just deserts" for the convict."

Applying this principle, we hold that a sentence of imprisonment for a period of 25 (twenty-five) years without remission would be "just deserts".

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146. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Section 25 (2)

(i) Order of maintenance passed u/s 12 – Husband moved an application for setting aside the order and returned of amount paid by him to wife in terms of said order – Power of Magistrate u/s 25 (2) of the Act – Scope – Order of maintenance cannot be set aside, it can only be altered, modified or revoked that too upon recording satisfaction that a change in circumstances has occurred after the order was passed.

(ii) Order for alteration, modification or revocation of maintenance – Such order operates prospectively and not retrospectively – Therefore, applicant cannot seek refund of the amount already paid in compliance of the original order passed u/s 12 of the Act.

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धारा 25(2)

(i) धारा 12 के अन्तर्गत पारित भरण पोषण का आदेश – पति ने आदेश को अपास्त किए जाने और पत्नि को उक्त आदेश के पालन में भुगतान की गई रकम की वापसी के लिए आवेदन प्रस्तुत किया – अधिनियम की धारा 25(2) के अन्तर्गत मजिस्ट्रेट की शक्ति – विस्तार – भरण पोषण आदेश अपास्त नहीं किया जा सकता, उसे मात्र परिवर्तित, संशोधित या विखण्डित किया जा सकता है वह भी तब जब यह संतुष्टि अभिलिखित कर ली गई हो आदेश पारित होने के उपरांत परिस्थितियों में परिवर्तन हुआ है।

(ii) भरण पोषण के परिवर्तन, संशोधन या विखण्डन के लिए आदेश – ऐसा आदेश भविष्यलक्षी रूप से क्रियान्वित होता है ना कि भूतलक्षी – अतः आवेदन अधिनियम की धारा 12 के अन्तर्गत पारित मूल आदेश के पालन में भुगतान की गई रकम की वापसी की मांग आवेदक नहीं कर सकता।

S. Vijikumari v. Mowneshwarachari C.

Judgment dated 10.09.2024 passed by the Supreme Court in Criminal Appeal No. 3989 of 2024, reported in AIR 2024 SC 5058

Relevant extracts from the judgment:

For the invocation of Section 25(2) of the Act, there must be a change in the circumstances after the order being passed under the Act. Thus, an order for alteration, modification or revocation operates prospectively and not retrospectively. Though the order for grant of a maintenance is effective retrospectively from the date of the application or as ordered by the Magistrate, the position is different with regard to an application for alteration in an allowance, which may incidentally be either an increase or a reduction – to take effect from a date on which the order of alteration is made or any other date such as from the date on which an application for alteration, modification or revocation was made depending on the facts of each case.

The position is analogous to Sections 125 and 127 of the CrPC, 1973, wherein the legislature u/s of the CrPC, 1973 had given power to the Magistrate to grant maintenance from the date of the application, but did not give any such power u/s of the CrPC, 1973. Therefore, under the Act, the order of alteration or modification or revocation could operate from the date of the said application being filed or as ordered by the Magistrate u/s 25(2) of the Act. Thus, the applicant cannot seek its retrospective applicability, so as to seek a refund of the amount already paid as per the original order.

Therefore, there cannot be a setting aside of the order dated 23.02.2015 for the period prior to such an application for revocation being made. Unless there is a change in the circumstance requiring alteration, modification or revocation of the earlier order owing to a change occurring subsequent to the order being passed, the application is not maintainable. Thus, the exercise of jurisdiction under sub-section (2) of Section 25 of the Act cannot be for setting aside of an earlier order merely because the respondent seeks setting aside of that order, particularly when the said

order has attained finality by its merger with an appellate order as in the instant case unless a case for its revocation is made out. Secondly, the prayers sought for by the respondent herein are for refund of the entire amount of maintenance that was paid prior to the application under sub-section (2) of Section 25 of the Act being filed and the order dated 23.02.2015 passed in Criminal Miscellaneous No.6/2014 being in fact revoked. The revocation of an order, inter alia, under Section 12 of the Act sought by a party cannot relate to a period prior to such an order being passed. We find that in the instant case the second prayer was not at all maintainable inasmuch as we have already observed that any alteration, modification or revocation of an order passed under Section 12 of the Act owing to a change in circumstances could only be for a period ex post facto, i.e., post the period of an order being made in a petition under Section 12 of the Act and not to a period prior thereto. Thus, such an application for alteration, modification or revocation filed under sub-section (2) of Section 25 of the Act cannot relate to any period prior to the order being passed, inter alia, under Section 12 of the Act. Thus, such an application for alteration, modification or revocation filed under sub-section (2) of Section 25 of the Act cannot relate to any period prior to the order being passed, *inter alia,* under Section 12 of the Act.

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147. REGISTRATION ACT, 1908 – Sections 17(1-A) and 49

Admissibility of unregistered sale agreement – Scope – Stage of consideration – An unregistered agreement to sell, though compulsorily registrable u/s 17(1-A), is admissible in evidence in a suit for specific performance or for collateral purposes by virtue of the proviso to section 49 – Objection to marking or exhibiting such document and the admissibility of that document will be decided at the appropriate stage after recording evidence – Trial Court justified in permitting evidence to be led on such document. (*Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar, (2022) 5 SCC 481* and *S. Kaladevi v. V.R. Somasundaram, (2010) 5 SCC 401* followed and *K.B. Saha v. M/s. Development Construction, (2008) 7 SCC 564* distinguished)

रजिस्ट्रीकरण अधिनियम, 1908 – धाराएं 17(1–क) एवं 49

अपंजीकृत विक्रय करार की ग्राह्यता – विस्तार – विचार का प्रक्रम – एक अपंजीकृत विक्रय करार, जिसका धारा 17(1–क) के अंतर्गत अनिवार्यतः पंजीकृत होना आवश्यक है, धारा 49 के परन्तुक के आधार पर संविदा के विनिर्दिष्ट

अनुपालन के वाद में अथवा सम्पार्श्विक उददेश्य से साक्ष्य में ग्राह्य है – ऐसे दस्तावेज को चिन्हित करने या प्रदर्शित करने पर आपत्ति एवं उस दस्तावेज की ग्राह्यता का निराकरण उचित प्रक्रम पर साक्ष्य अभिलिखित करने के उपरान्त किया जाएगा – ऐसे दस्तावेज पर विचारण न्यायालय द्वारा साक्ष्य प्रस्तुत करने की अनुमति देना न्यायोचित। *(अमीर मिन्हाज वि. डिएड्रे एलिजाबेथ (राइट) इसार (2022) 5 एससीसी 481, एस. कलादेवी वि. बी.आर. सोमसुंदरम, (2010) 5 एससीसी 401 अनुसरित; के.बी साहा वि. मेसर्स डेबलपमेंट कंस्ट्रक्शन (2008) 7 एससीसी 564* विभेदित)

Chandrika Prasad Tiwari v. Prashant Tripathi & anr.

Order dated 02.05.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 938 of 2020, reported in ILR 2024 MP 2293

Relevant extracts from the order:

It is clear that the Supreme Court taking note of the provisions Section 49 of the Act, 1908 has held that an unregistered document could be received in evidence in a suit for specific performance of contract. It is also observed by the Supreme Court that even an unregistered sale deed can also be admitted in evidence for any collateral transaction.

S. Kaladevi v. V.S. Somasundram and ors., (2010) 5 SCC 409 and ***Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar, (2018) 7 SCC 639*** referred by the respondent, which are the case laws of later point of time to that of the case law of ***K.B.Saha*** (supra) referred by the petitioner, this Court has no other option but to follow the said principle of law because the issue involved in the present case is similar to that has been answered by the Supreme Court in the case of ***Ameer Minhaj*** (supra). The Supreme Court in paragraph 13 has dealt with the situation which is exactly existing in the present case and observed that the trial court was right in overturning the objections regarding marking and exhibiting the documents and the admissibility of the same will be decided at the appropriate stage. In the case at hand also the trial Court by the impugned order has allowed to lead the evidence on the document in question but observed that the admissibility of that document in evidence shall be decided after recording evidence and as such the objection raised by the petitioner about leading evidence on the said document has been rejected by the trial court.

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148. SPECIFIC RELIEF ACT, 1963 – Sections 6 and 34
TRANSFER OF PROPERTY ACT, 1882 – Section 6 (h)
CONTRACT ACT, 1872 – Section 11
LIMITATION ACT, 1963 – Article 65
BENAMI TRANSACTIONS (PROHIBTION) ACT, 1988 – Section 4 (1) & (2)

(i) Suit for recovery of possession on the basis of title acquired through registered sale deed – Validity of the sale deed – Plaintiff was minor at the time of purchase of property – Sale cannot be said to be a contract – Therefore, minor can be transferee though not a transferor of immovable property.

(ii) Claim of adverse possession – Limitation – Once the plaintiff proves his title over suit property, it is for the defendant to establish that he perfected title through adverse possession – As per Article 65, limitation would commence only from the date the defendants possession becomes adverse – *Animus possidendi* under hostile colour must be established.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 6 एवं 34
संपत्ति अंतरण अधिनियम, 1882 – धारा 6 (छ)
संविदा अधिनियम, 1872 – धारा 11
परिसीमा अधिनियम, 1963 – अनुच्छेद 65
बेनामी संव्यवहार (प्रतिषेध) अधिनियम, 1988 – धारा 4(1) एवं (2)

(i) पंजीकृत विक्रय-पत्र के माध्यम से अर्जित स्वत्व के आधार पर आधिपत्य वापसी का दावा – विक्रय-पत्र की वैधता – संपत्ति क्रय किये जाते समय वादी अवयस्क था – विक्रय को संविदा नहीं कहा जा सकता – अतः अवयस्क अचल सम्पत्ति का अंतरिती हो सकता है, अंतरक नहीं।

(ii) विरोधी आधिपत्य का दावा – परिसीमा – जब वादी द्वारा वादग्रस्त सम्पत्ति पर अपना स्वत्व साबित कर दिया जाता है, तब प्रतिवादी को यह स्थापित करना होगा कि उसे विरोधी आधिपत्य के आधार पर स्वत्व सृजित हो चुका है – परिसीमा अधिनियम के अनुच्छेद 65 के अनुसार प्रतिवादी का आधिपत्य, विरोधी होने की तिथि से ही परिसीमा प्रारम्भ होगी – अधिपत्य का आशय विरोधी स्वरूप का स्थापित होना चाहिए।

Neelam Gupta and ors. v. Rajendra Kumar Gupta and anr.

Judgment dated 14.10.2024 passed by the Supreme Court in Civil Appeal No. 3159 of 2019, reported in AIR 2024 SC 5374

Relevant extracts from the judgment:

Though an agreement to sell is a contract of sale, going by its definition under Section 54 of the Transfer of Property Act, a sale cannot be said to be a contract. Sale, going by the definition thereunder, is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. The conjoint reading of all the aforesaid relevant provisions would undoubtedly go to show that they would not come in the way of transfer of an immovable property in favour of a minor or in other words, they would invariably suggest that a minor can be a transferee though not a transferor of immovable property. In such circumstances, it can only be said that Sh. Sitaram had no legal disability or disqualification at the time of purchase of suit land on 15.03.1963 in his name as also the plaintiff, as a transferee, at the time of execution of Ext.P1/C - sale deed on 04.06.1968. It is nobody's case that at the time of execution of Ext.P1/C Sitaram had not attained majority.

Owing to the oscillative stand of the defendants/the appellants over the sale deed dated 15.03.1963 and 04.06.1968, and on account of the disentitlement of the defendants to resurrect the contention that the suit land is a Joint Hindu family property coupled with the indisputable position obtained from the materials on record that admittedly suit land was purchased in the name of Sh. Sita Ram, we find absolutely no reason to ascribe voidness to the said sale deed dated 15.03.1963 as also Ext.P1/C sale deed dated 04.06.1968 or to hold that they did not have the effect of transfer of ownership. Though, the defendants did not raise a contention specifically on the ground that Sh. Sita Ram was a benami, the said question whether such a contention is available and can be sustained by the defendants to invalidate the said sale deeds have been gone into by the High Court taking note of the contention that though it was purchased in his name in the year 1963 he did not have right to transfer the suit land to the plaintiff as per Ext.P1/C-sale deed. In that regard, Section 4 of the Benami Transaction Act, 1988 was referred to by the High Court. After referring to Sub-sections 4 (1) and (2) thereof, the High Court held that no suit, claim or action to enforce a right in respect of any property held benami shall lie against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property because of the prohibitory nature therefor. Relying on the decision of this Court in ***R. Rajagopal Reddy (D) by LRs. v. Padmini Chandrasekharan (D) by LRs., AIR 1996 SC 238*** and in view of the prohibition contained in the aforesaid provisions, the High Court virtually held such a contention that Sh. Sita

Ram was not the owner of the property with right to alienate, (of course, on attaining majority) as also the challenge against the right acquired by the plaintiffs pursuant to the purchase of the suit land under Ext.P1/C as meritless. Suffice it to say that in view of the reasons assigned by the High Court and given by us supra, there can be no doubt with respect to the transfer of the ownership of the suit land from Sh. Sita Ram to the plaintiff on the strength of Ext.P1/C sale deed.

In the case on hand, the evidence on the part of the defendants/appellants herein would reveal that instead of establishing '*animus possidendi'* under hostile colour of title they have tendered evidence indicating only permissive possession and at the same time failed to establish the time from which it was converted to adverse to the title of the plaintiff which is open and continuous for the prescriptive period.

Upon considering the evidence on the part of the appellants herein (the defendants), we have no hesitation to hold that the requirements to co-exist to constitute adverse possession are not established by them. So also, it can only be held that the reckoning of the period of limitation from the date of commencement of the right of ownership of the plaintiff over the suit land instead of looking into whether they had succeeded in pleading and establishing the date of commencement of adverse possession and satisfaction regarding the prescriptive period in that regard, was rightly interfered with, by the High Court.

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149. TRANSFER OF PROPERTY ACT, 1882 – Sections 53-A and 54
REGISTRATION ACT, 1908 – Sections 17 and 49

(i) Doctrine of part performance – Conditions for applicability – To claim protection under Section 53-A of the Transfer of Property Act, transferee must satisfy all mandatory conditions – In the absence of evidence showing plaintiff's willingness to perform his part of contract, steps taken by him in furtherance of contract, including failure to file suit for specific performance or issuance of notice to defendant, possession cannot be protected under Section 53-A.

(ii) Transfer of immovable property – Requirement of registration – No title, right or interest in immovable property can pass without a registered sale deed – Mere agreement to sell does not convey ownership or create any enforceable interest in the property. ***[Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi, (2002) 3 SCC 676*** **referred*]***

संपति अंतरण अधिनियम, 1882 – धाराएं 53–क एवं 54
रजिस्ट्रीकरण अधिनियम, 1908 – धाराएं 17 एवं 49

(i) भागिक पालन का सिद्धांत – प्रयोज्यता के लिए शर्तें – संपत्ति अंतरण अधिनियम की धारा 53–क के अंतर्गत बचाव लेने के लिए अंतरिती को सभी आज्ञापक शर्तों की संतुष्टि करनी होगी – वादी का अनुबंध के अपने भाग का पालन करने के लिए रजामंद होने, अनुबंध पालन के लिए उठाए गये कदम अथवा प्रतिवादी को सूचना–पत्र जारी करने में विफल रहने को दर्शित करने वाली साक्ष्य के अभाव में, उसका आधिपत्य धारा 53–क के अंतर्गत संरक्षित नहीं किया जा सकता।

(ii) अचल संपत्ति का हस्तांतरण – पंजीकरण की आवश्यकता – पंजीकृत विक्रय विलेख के अभाव में अंचल संपत्ति में कोई स्वत्व, अधिकार या हित का अंतरण नहीं हो सकता – केवल विक्रय अनुबंध स्वत्व अंतरित नहीं करता अथवा संपत्ति पर किसी प्रवर्तनीय हित का सृजन नहीं करता।[*श्रीमंत शामराव सूर्यवंशी वि. प्रहलाद भैरोबा सूर्यवंशी), (2002) 3 एससीसी 676* अनुसरित]

Kamalsingh v. Sharif Khan and ors.

Order dated 18.03.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 2191 of 2022, reported in ILR 2024 MP 2306

Relevant extracts from the order:

On perusal of the provisions of Section 54 of the Transfer of Property Act, Sections 17 and 49 of the Registration Act it is clear that no right, title or interest in immovable property can be transferred without registration of the sale deed.

The Apex Court in the case of ***Shrimant Shamrao Suryavanshi and anr. v. Pralhad Bhairoba Suryavanshi (dead) by LRs. and ors., (2002) 3 SCC 676*** has held that there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession u/s 53-A of the Act which reads as under:

> "1) there must be a contract to transfer for consideration of any immovable property;
> 2) the contract must be in writing, signed by the transferor, or by someone on his behalf;
> 3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;
> 4) the transferee must in part performance of the contract take possession of the property, or of any part thereof;

5) the transferee must have done some act in furtherance of the contract; and
6) the transferee must have performed or be willing to perform his part of the contract".

It is found that neither the plaintiff nor his father had filed suit for specific performance of contract on the basis of Ex.P-1 agreement and he never gave notice to the defendants in furtherance to the agreement and it was not shown in the evidence that plaintiff is willing to perform his part of contract. So if these above mentioned conditions are not followed by the plaintiff, on the basis of agreement, his possession cannot be protected.

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150. TRANSFER OF PROPERTY ACT, 1882 – Sections 122 and 126
SPECIFIC RELIEF ACT, 1963 – Section 34

(i) Gift deed – Revocation of – Validity – Defendant transferred a piece of land to plaintiff through registered gift deed dated 05.03.1983 – The said gift was acted upon and accepted by the plaintiff – Defendant/donor revoked the gift vide revocation deed dated 17.08.1987 – It was apparent from the complete reading of the gift deed that the gift was absolute with no right reserved for its revocation in any contingency – Held, donee had acquired absolute right and title over the suit property and therefore, the gift could not have been revoked in any manner – Revocation deed was *void ab initio* and of no consequence.

(ii) Gift deed – Revocation of – Permissibility – The only purpose stipulated in the deed was that the property gifted shall be used for manufacturing khadi lungi and khadi yarn – Non-utilization of the gifted property for said purpose may be a disobedience of object of gift but that by itself would not attract power to revoke the gift deed – When can a gift be revoked? Explained.

संपत्ति अंतरण अधिनियम, 1882 – धाराएं 122 एवं 126
विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34

(i) दान विलेख – विखण्डन – वैधता – प्रतिवादी द्वारा पंजीकृत दान पत्र दिनांक 05.03.1983 के माध्यम से वादी को एक भू–भाग अंतरित किया गया – उक्त दान वादी द्वारा स्वीकार और क्रियान्वित किया गया – प्रतिवादी/दानदाता ने विखण्डन विलेख दिनांक 17.08.1987 द्वारा दान को विखण्डित किया – दान पत्र के समग्र अध्ययन से यह स्पष्ट था कि दान

पूर्ण था और किसी आकस्मिकता में, विखण्डित करने का अधिकार सुरक्षित नहीं रखा गया था – अभिनिर्धारित, दानग्रहीता को वादग्रस्त संपत्ति पर पूर्ण स्वत्व और अधिकार अर्जित हो चुके थे और इसीलिये किसी भी तरह से दान को विखण्डित नहीं किया जा सकता था – विखण्डन विलेख आरम्भतः शून्य और निष्प्रभावी था।

(ii) दान विलेख – विखण्डन – अनुज्ञेयता – विलेख में निर्धारित एकमात्र उद्देश्य यह था कि दान में दी गई संपत्ति का उपयोग खादी की लुंगी और खादी का धागा बनाने के लिए किया जाएगा – दान की गई सम्पत्ति का उपयोग उक्त प्रयोजन के लिए न किया जाना दान के उद्देश्य की अवज्ञा तो हो सकती है परंतु इससे दान विलेख विखण्डित करने की अधिकारिता प्राप्त नहीं होगी – दान विलेख कब विखण्डित किया जा सकता है? समझाया गया।

N. Thajudeen v. Tamil Nadu Khadi and Village Industries Board

Judgment dated 24.10.2024 passed by the Supreme Court in Civil Appeal No. 6333 of 2013, reported in AIR 2024 SC 5641

Relevant extracts from the judgment:

No doubt, the gift validly made can be suspended or revoked under certain contingencies but ordinarily it cannot be revoked, more particularly when no such right is reserved under the gift deed. In this connection, a reference may be made to the provisions of Section 126 of the Transfer of Property Act, 18821 which provides that a gift cannot be revoked except for certain contingencies enumerated therein.

The substantive law as is carved out from the simple reading of the aforesaid provision is that a gift cannot be revoked except in the cases mentioned earlier. The said exceptions are three in number; the first part provides that the donor and donee may agree for the suspension or revocation of the gift deed on the happening of any specified event which does not depend on the will of the donor. Secondly, a gift which is revocable wholly or in part with the agreement of the parties, at the mere will of the donor is void wholly or in part as the case may be. Thirdly, a gift may be revoked if it were in the nature of a contract which could be rescinded.

In simpler words, ordinarily a gift deed cannot be revoked except for the three contingencies mentioned above. The first is where the donor and the donee agree for its revocation on the happening of any specified event. In the gift deed, there is no such indication that the donor and donee have agreed for the revocation of the

gift deed for any reason much less on the happening of any specified event. Therefore, the first exception permitting revocation of the gift deed is not attracted in the case at hand. Secondly, a gift deed would be void wholly or in part, if the parties agree that it shall be revocable wholly or in part at the mere will of the donor. In the present case, there is no agreement between the parties for the revocation of the gift deed wholly or in part or at the mere will of the donor. Therefore, the aforesaid condition permitting revocation or holding such a gift deed to be void does not apply. Thirdly, a gift is liable to be revoked in a case where it is in the nature of a contract which could be rescinded. The gift under consideration is not in the form of a contract and the contract, if any, is not liable to be rescinded. Thus, none of the exceptions permitting revocation of the gift deed stands attracted in the present case. Thus, leading to the only conclusion that the gift deed, which was validly made, could not have been revoked in any manner. Accordingly, revocation deed dated 17.08.1987 is *void ab initio* and is of no consequence which has to be ignored.

The non-utilisation of the suit property for manufacturing Khadi Lungi and Khadi Yarns etc., the purpose set out in the gift deed, and keeping the same as vacant may be a disobedience of the object of the gift but that by itself would not attract the power to revoke the gift deed. There is no stipulation in the gift deed that if the suit property is not so utilised, the gift would stand revoked or would be revoked at the discretion of the donor.

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PART – III

(CIRCULARS/NOTIFICATIONS)

STANDARD OPERATING PROCEDURE (SOP) FOR REQUESTING EXTENSION OF TIME FROM HON'BLE SUPREME COURT OR HIGH COURT OF MADHYA PRADESH TO CONCLUDE TIME-BOUND TRIALS/SUITS/OTHER PROCEEDINGS

In the light of the directions issued by Hon'ble Supreme Court in ***Ramkishore @ Kallu v. State of Madhya Pradesh and ors., in M.A. No. 736/2025 in SLP (Crl.) No. 11817/2023,*** dated 09.05.2023, High Court of Madhya Pradesh has prepared the Standard Operating Procedure (SOP) for seeking extension of time from Hon'ble Supreme Court or High Court of Madhya Pradesh, which was circulated vide High Court Memo No. B/2878/III-2-9/2025, Jabalpur, dated 15.05.2025 amongst all the concerned in the State. The same is being reproduced hereunder:

1. Objective:

To lay down a uniform procedure for the Presiding Officers of the Courts of District Judiciary for requesting an extension of time from the Hon'ble Supreme Court or the High Court where specific timelines have been fixed to conclude trials/suits/other judicial proceedings by the Hon'ble Supreme Court or the High Court.

2. Applicability:

This SOP shall be applicable to the Presiding Officers of all the Courts of District Judiciary presiding over trials/suits/other judicial proceedings in which a timeline/deadline or time specific direction for disposal or performing any judicial function has been fixed or mandated by the Hon'ble Supreme Court or the High Court.

3. Procedure for Seeking Extension:

A. Route of Communication:

All requests for extension of time in a trial/suit/other judicial proceeding shall be routed through the proper channel as under:

(1) In case of request for extension of time from Hon'ble High Court

(i) The concerned Presiding Officer (except Principal District & Sessions Judge and Principal Judge/Additional Principal Judge, Family Court) shall send the request for extension of time through the concerned Principal District Judge to the Registrar (Judicial) of the High Court at Principal Bench Jabalpur or Principal Registrar of the Benches at Indore/ Gwalior, as the case may be, through both modes i.e. official e-mail and regular mode.

(ii) The Principal District & Sessions Judge and Principal Judge/Additional Principal Judge, Family Court shall, regarding the matter pending before them, send the request for extension of time to the Registrar (Judicial) of the High Court at Principal Bench Jabalpur or Principal Registrar of the Benches at Indore/Gwalior, as the case may be, through official e-mail and regular mode.

(2) In case of request for extension of time from Hon'ble Supreme Court

(i) The concerned Presiding Officer (except Principal District & Sessions Judge and Principal Judge/Additional Principal Judge, Family Court) shall, *via* official e-mail and regular mode, send the request through the concerned Principal District Judge to the Registrar (Judicial) of the High Court at Principal Bench Jabalpur or Principal Registrar of the Benches at Indore/ Gwalior, as the case may be, who shall then forward the same to the Officer/Registrar concerned in the Registry of the Hon'ble Supreme Court.

(ii) The Principal District & Sessions Judge and Principal Judge/Additional Principal Judge, Family Court shall, regarding the matter pending before them, send the request for extension of time, *via* official e-mail and regular mode, to the Registrar (Judicial) of the High Court at Principal Bench Jabalpur or Principal Registrar of the Benches at Indore/ Gwalior, as the case may be, who shall then forward the same to the Officer/Registrar concerned in the Registry of the Hon'ble Supreme Court.

B. Justification and Supporting Details:

(1) The concerned Presiding Officer shall furnish the relevant information namely; Designation of his Court, Case No., Title of the Case, Nature of the Case, Date of the order of the superior court fixing the time limit, Present status of the case and reason(s) for delay in concise.

(2) The Presiding Officer shall also mention exceptional or unavoidable circumstances, if any, affecting the progress of the case or matter after the date of order of the superior court by which a specific time limit has been fixed and specific period of extension prayed for.

(3) The aforesaid details shall be furnished by the concerned Presiding Officer in a tabular from as mentioned in **Annexure-I.**

(4) Note of Principal District Judge concerned/Registrar (Judicial)/Principal Registrar of respective Benches, if and wherever deemed necessary or required, shall be appended to the request.

4. Restrictions:

Judicial Officers shall, in no case, send a request for extension of time directly to the Registry of the Hon'ble Supreme Court or the High Court without routing them through proper channel as mentioned above.

Repeated or unreasonable delays without proper cause may be viewed seriously and subject to administrative scrutiny, if ordered.

5. Monitoring:

Principal District Judge concerned/Registrar (Judicial)/Principal Registrar of respective Benches shall monitor compliance with time-bound orders and may periodically (preferably in every 30 days) review the status of pending cases or matters, where extensions have been sought or granted.

6. Reporting Requirement:

The Registrar (Judicial)/Principal Registrar of respective Benches shall maintain a record of such cases and file periodical reports, if required, before the concerned Court.

Annexure – I

S. No.	Particulars	Details
(i)	Designation of the Court	……
(ii)	Case No.	……
(iii)	Title of the Case	……
(iv)	Nature of the Case	……
(v)	Date of the order of the superior court fixing the time limit.	……
(vi)	Present status of the case	…… ……
(vii)	Reason(s) for the delay	…… …… …… ……
(viii)	Exceptional or unavoidable circumstances, if any affecting the progress of the case.	…… …… …… ……
(ix)	Specific period of extension prayed for, with reasons.	……

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जिला एवं सत्र न्यायालय, रीवा (म.प्र.)

न्यायालय भवन, जावरा, जिला - रतलाम

मध्यप्रदेश उच्च न्यायालय, जबलपुर

मध्यप्रदेश राज्य न्यायिक अकादमी

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