30th Year

Pursuit of Excellence

JOTI JOURNAL

(BI-MONTHLY)

JOTI JOURNAL

JUNE 2024

JUNE 2024

MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

JOTI JOURNAL JUNE - 2024

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EDITORIAL

Esteemed readers,

There is a famous saying:

> *"Time is free, but it's priceless. You can't own it, but you can use it. You can't keep it, but you can spend it. Once you've lost it, you can never get it back."*

Thinking of time, it leaves me wondering how time flies! Just a couple of months back, we had entered this year and without even realising, we are almost in the mid of the year. We feel like it was just a few years back when the Academy was founded by our 14th Chief Justice late Hon'ble Shri Justice Ullal Lakshminarayana Bhat and few days back, we came to know about the sad demise of His Lordship. It was His Lordship's vision that shaped the Academy and this Journal for which we shall always remain grateful. In honour of the contributions made by His Lordship, we are publishing a tribute in this Journal.

Recalling the events of last two months, on the superannuation of our 27th Chief Justice Hon'ble Shri Justice Ravi Malimath, Hon'ble Shri Justice Sheel Nagu was appointed and assumed charge as Acting Chief Justice of the State of Madhya Pradesh. We convey our best wishes to His Lordship and look forward to receiving His Lordship's valuable inputs in the activities of the Academy. We also extend a warm welcome to Hon'ble Shri Justice Sanjeev Sachdeva, who took oath on 31.05.2024 as Judge of High Court of Madhya Pradesh. We sincerely hope to receive His Lordship's guidance which would certainly benefit us in the long run.

Coming to the activities of the Academy, in a vast and gigantic State like Madhya Pradesh, we were able to impart training to almost all the Judicial Officers by organising Training Course on – New Criminal Laws, 2023 from 28.04.2024 to 18.05.2024 & 01.06.2024 in the Academy as well as at District Headquarters on cluster basis. It is worth mentioning that the training of more than 1700 judicial officers was completed within a span of one month before the New Criminal Laws come into force.

The training on new laws was not only conducted for Judicial Officers but also for other stakeholders. In compliance of the direction of Hon'ble Chief Justice of India, programmes on New Criminal Laws were organised for Advocates and Prosecution

Officers with an objective to equip all the stakeholders of justice delivery system regarding the nuances of these New Laws before their enforcement for better dispensation of Justice.

The Academy, in collaboration with Directorate of Prosecution, has conducted three Training Courses on – New Criminal Laws, 2023 at Central Academy of Police Training, Bhopal in between 28.05.2024 to 12.06.2024 wherein 600 Prosecution Officers of the State were benefitted.

In this sequence, on the request of Advocate General of Madhya Pradesh, a training programme namely Special Workshop for Government Advocates and Panel Lawyers practicing at High Court of M.P., Principal Seat, Jabalpur was conducted on 27.05.2024 & 28.05.2024. Similar programme will be conducted for Government Advocates and Panel Lawyers practicing at Bench Indore and Gwalior respectively. Regional Workshops on – New Criminal Laws, 2023 for the Advocates of the State on cluster basis was conducted through online and other modes of telecommunication on various dates from 31.05.2024 to 22.06.2024.

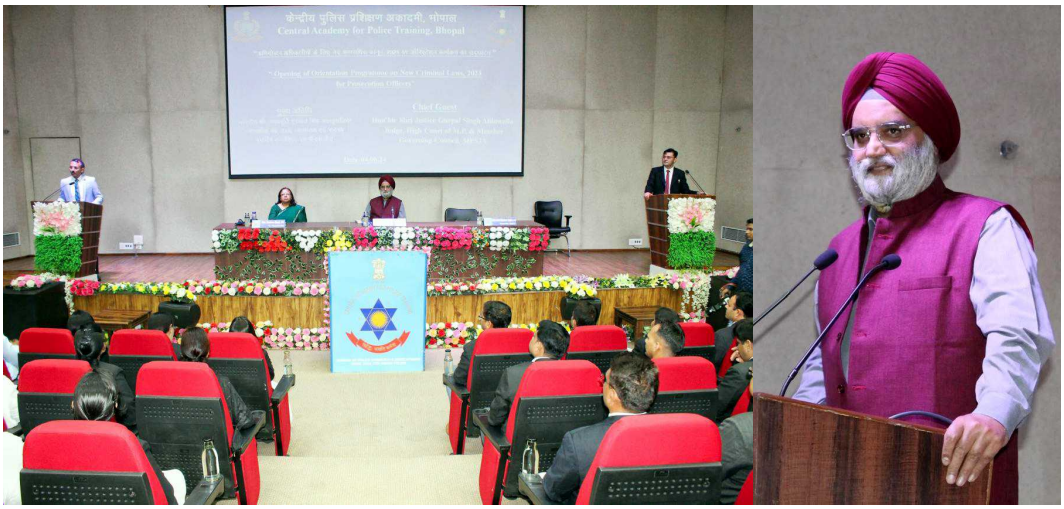
In conducting all these programmes, the race was with time. The trainings were supposed to be completed within the given timeframe before the implementation of the New Criminal Laws and the Academy was for sure able to accomplish that task. I would end with a request to all to make full and productive use of their time and with a quote by Benjamin Franklin from "Poor Richard's Almanac" in 1738:

> *"If you would not be forgotten as soon as you are dead and rotten, either write things worth reading, or do things worth the writing."*

Krishnamurty Mishra
Director

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Special Workshop on – New Criminal Laws, 2023 for Government Advocates and Panel Lawyers (27.05.2024)



Orientation Programme on – New Criminal Laws, 2023 for Prosecution Officers held at CAPT, Bhopal (04.06.2024)

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA ASSUMES CHARGE

Hon'ble Shri Justice Sanjeev Sachdeva, on His Lordship's transfer from Delhi High Court to High Court of Madhya Pradesh, was administered oath of office on 31st May, 2024 by Hon'ble Shri Justice Sheel Nagu, Acting Chief Justice, High Court of Madhya Pradesh in a brief Swearing-in-Ceremony held in the Conference Hall of South Block of High Court of M.P. at Jabalpur.

Hon'ble Shri Justice Sanjeev Sachdeva was born on 26th December, 1964 at Delhi. His Lordship obtained the degree of B.Com. (Honours) from Sri Ram College of Commerce, Delhi University and LL.B. degree from Campus Law Centre, University of Delhi. His Lordship was Merit-lister of the University of Delhi on the basis of the results of LL.B. Examinations in April, 1988. Thereafter, His Lordship was enrolled as an Advocate with the Bar Council of Delhi on 1st August, 1988.

His Lordship was qualified as an Advocate on Record of the Supreme Court of India in June 1995 and was awarded the second prize in the said examination.

His Lordship was trained as a lead trainer to impart training to Advocates in Advocacy skills involving Examination and Cross-examination of Witnesses and also arguing of cases by the Indo-British Advocacy Skills project.

His Lordship did the Personal Computing with Basic Course in 1986 and the Computer Software Applications Course in 1986-87 from the National Institute of Information Technology (N.I.I.T.)

His Lordship practiced in the Supreme Court of India, the High Court of Delhi and the District Courts of Delhi. His Lordship was the Standing Counsel for the Bar Council of India for the Supreme Court of India and the Delhi High Court for over 20 years, also appointed as a Senior Panel Lawyer for the Union of India and represented the Union of India in various matters for over 10 years. His Lordship was designated as a Senior Advocate by the High Court of Delhi in July, 2011.

His Lordship was elevated as an Additional Judge of the High Court of Delhi on 17th April, 2013 and as Permanent Judge on 18th March, 2015 (F/N). His Lordship was transferred to the High Court of Madhya Pradesh and administered oath on 31st May, 2024.

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

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HON'BLE SHRI JUSTICE RAVI VIJAYKUMAR MALIMATH, CHIEF JUSTICE OF MADHYA PRADESH DEMITS OFFICE

Hon'ble Shri Justice Ravi Vijay Kumar Malimath, Chief Justice of High Court of Madhya Pradesh demitted office on His Lordship's attaining superannuation.

His Lordship was born on 25.05.1962 in one of the most respected families of Karnataka. His paternal grandfather late Justice S.S. Malimath was a freedom-fighter and a pioneer in the struggle for the unification of Karnataka and was also one of the first two Judges to be appointed as a Judge of the High Court of Mysore (now Karnataka). His Lordship's father, late Dr. Justice V.S. Malimath was an eminent Chief Justice of the High Court of Karnataka and later on, of Kerala.

His Lordship graduated in Commerce from M.E.S. College, Bangalore and completed Law Degree from Sri Jagadguru Renukacharya College of Law. Thereafter, joined the chambers of Sri Shivraj Patil, who was later on, elevated as a Judge of the High Court of Karnataka and thereafter, as a Judge of the Supreme Court of India. His Lordship practiced in almost all fields of law. His Lordship was appointed as an Additional Judge of the High Court of Karnataka on 18.02.2008 and as Permanent Judge on 17.02.2010.

His Lordship was transferred as a Judge of the High Court of Uttarakhand and was administered oath on 05.03.2020. His Lordship was also appointed as the Acting Chief Justice of the High Court of Uttarakhand w.e.f. 28.07.2020. Later, His Lordship was transferred and took oath as a Judge of the High Court of Himachal Pradesh on 07.01.2021. His Lordship also assumed charge of the office of Acting Chief Justice on 01.07.2021.

His Lordship was sworn-in as the 27th Chief Justice of Madhya Pradesh High Court on 14.10.2021 and took charge on 20.10.2021.

During His Lordship's two and half years of 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. The Academy acquired the new motto "*pursuit of excellence"* at the behest of His Lordship. This motto reflects the constant endeavour of the Academy to attain excellence in whatever task it undertakes. The Academy is deeply indebted for His Lordship's kind support and benevolent guidance.

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

HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV DEMITS OFFICE

Hon'ble Shri Justice Rajendra Kumar-IV has demitted office on His Lordship's attaining superannuation.

His Lordship was born on 1st July, 1962 and graduated in the year 1986. His Lordship was appointed in the Higher Judicial Services in the year 2000 and promoted as District & Sessions Judge in the year 2016. His Lordship was elevated as Additional Judge of Allahabad High Court on 22nd November, 2018 and as Permanent Judge on 20th November, 2020.

On His Lordship's transfer to the High Court of Madhya Pradesh as Judge, took oath on 1st November 2023.

During 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.

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

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A TRIBUTE FOR THE DISTINGUISHED JURIST : LATE HON'BLE SHRI JUSTICE U.L. BHAT

In the hustle and bustle of life, there comes a moment when news of someone's passing makes you pause and reflect on the life journey of the departed. This time, it is the Academy that has momentarily paused at the news of the sad demise of its founder – Late Hon'ble Shri Justice Ullal Lakshminarayana Bhat. We reflect upon the life of this distinguished jurist with a profound sense of gratitude.

Late Hon'ble Shri Justice U.L. Bhat was born on 14th October, 1933. He was enrolled as an Advocate of the Madras High Court in July, 1955 and began practicing in civil and criminal laws. Shri U.L. Bhat started his legal career in the local courts of Kasaragod, Kerala. Despite a thriving practice, fate prompted him to appear for the Higher Judicial Services Examination (Direct from Bar) and he was appointed as an Additional District and Sessions Judge in May, 1970. Although, Justice Bhat primarily practiced civil law, when he was appointed as a District Judge, he presided over criminal cases as well. Very soon, through his logical judgments and decisions, he gained prominence in this role.

His Lordship was elevated to the Bench of the Kerala High Court as an Additional Judge on 18th September, 1980. Thereafter, he became a Permanent Judge of the said High Court on 16th September, 1982. Subsequently, His Lordship was appointed as the Chief Justice of the Gauhati High Court and later, became the Chief Justice of the High Court of Madhya Pradesh on 15th December, 1993. His Lordship accomplished significant work in the State, leaving behind a lasting legacy through the establishment of the Judicial Officers' Training Institute (as it was then known) and the JOTI Journal. It might interest our readers to know what His Lordship wrote about the inception of the Academy and this Journal. The relevant extract from His Lordship's autobiography "***Story of a Chief Justice***" at pages 308 and 309 reads:

> "Another initiative I took in Jabalpur was to set up Judicial Officers Training Institute (JOTI). Even in Kerala, under Chief Justice V.S. Malimath's leadership, I had taken the initiative in laying ground work for such an Institute. Even to the present day, the Kerala Institute (now named Kerala Judicial Academy) continues to be enterprising and successful. As a matter of fact, a few years ago, the Chief Justice of Kerala, Justice Subhashan Reddy invited me to deliver the inaugural lecture on "Appreciation of Evidence in Criminal Cases" on the occasion of the inauguration of the Kerala Academy. In Jabalpur, the Training Institute was started with a skeleton staff consisting of a Director and Additional Director, assisted by a lower division clerk and a couple of Class IV staff. I formed a Training Committee of five Judges headed by Justice A.K. Mathur. I remained the Patron of the Committee. Shri B.K. Srivastava, a very competent District Judge with an academic bent of mind was chosen as the first Director. With his help, we drew up a detailed programme for in-service training to existing Civil Judges both grades, as also District Judges. Conduct of training became a herculean task in view of large number of Judicial Officers. We were able to persuade many sitting and retired Judges of High Court as also several senior lawyers (who do not appear before subordinate Judges) to help us.
>
> For training of Civil Judges, we were able to secure assistance of sitting and retired District Judges. I myself delivered a large number of lectures in all the courses conducted by the Institute. In Jabalpur, we also decided to publish a bi-monthly Journal (called JOTI JOURNAL) containing articles on various aspects of law, substance of important decisions of M.P. High Court and Supreme Court and a question and answer column. It has been a successful venture.
>
> Sometime after I left Jabalpur, JOTI was renamed, Judicial Officers Training and Research Institute (JOTRI)."

On the work front, Justice Bhat is considered a foremost expert in evidence law. His Lordship's judicial pronouncements, recorded in Law Journals, reflect his wisdom, scholarship and legal acumen.

His Lordship demitted the office of the Chief Justice of the High Court of Madhya Pradesh on 13th October, 1995. Following his retirement from the judiciary, he was appointed as the President of the Central Excise and Gold (Control) Appellate Tribunal for a tenure of three years. Later, he practiced as a senior advocate in the Karnataka High Court at Bangalore. His Lordship passed away on 6th June, 2024.

Late Hon'ble Shri Justice U.L. Bhat's legacy and contributions have left an indelible mark on the legal community, inspiring countless individuals and shaping the course of jurisprudence. His distinguished career exemplified a commitment to justice, integrity and service, making him a respected figure in the legal world. Through his work and dedication, Hon'ble Shri Justice U. L. Bhat's impact will continue to be felt for generations to come, serving as a beacon of excellence and a reminder of the importance of upholding the principles of law and justice.

The Academy shall always be indebted to His Lordship for his painstaking efforts in its initial years of establishment. His visionary leadership and unwavering dedication laid the foundation for an institution that has since become a pillar of judicial training and excellence. Justice Bhat's foresight in creating a comprehensive training programme for Judicial Officers and his active participation in delivering lectures demonstrated his commitment to nurturing a competent and ethical judiciary.

It is only proper to say that Hon'ble Shri Justice U.L. Bhat's contributions have not only enriched the legal landscape but also set a standard of excellence that will continue to influence and inspire future generations in the legal field for many years to come. His work has left an enduring legacy that will serve as a guiding light for those who seek to uphold the principles of justice and the rule of law.

We, on behalf of JOTI JOURNAL, pray for the eternal peace of his soul and extend our heartfelt condolences to his family. His memory will continue to inspire us and his contributions will always be remembered with deep respect and gratitude. May his soul rest in peace and may his family find solace in the enduring legacy he has left behind.

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PART – I

OUR LEGENDS
HON'BLE SHRI JUSTICE G.L. OZA
9th CHIEF JUSTICE OF HIGH COURT OF MADHYA PRADESH

In the series of OUR LEGENDS, we are going to be narrating the life journey of a legend who was son of this soil and became the 5th Chief Justice to be elevated to the Supreme Court. His Lordship is also known for delivering the very famous judgment in *Ratlam Municipality case*.

His Lordship was born on 12th December, 1924 in an illustrious family. His Lordship received early education at Madhav College, Ujjain and higher education at Indore. His Lordship had been a born leader as is demonstrated by the fact that during his college days, he was the trusted leader of all sections of the student community. His Lordship's father Late Shri Jamnalalji Oza, was a popular figure in the city known for his humanity and simplicity. It is said that His Lordship imbibed the same qualities and went on to participate in the freedom struggle. Famously, in the student days he took active part in student politics and the freedom movement called 'Quit India' under the leadership of Mahatma Gandhi. As a student, he also led the agitation against the rulers of the Holkar State who did not want to merge with the Indian Union and ultimately, the ruler accepted the merger of the State in the Indian Union.

His Lordship was a great debator and won many prizes during his college education. He joined the Indore Bar in 1948, practiced under the able guidance of Shri K.A. Chitale, Ex-Advocate General, Madhya Pradesh and soon made great mark in the profession. He was popular amongst his colleagues and was elected Secretary of the Indore Bar Association for two consecutive terms. It is noteworthy that on the formation of the High Court Bar Association, His Lordship was also elected as its first Secretary and thereafter, adorned the office of the Vice President.

His Lordship's activities, while at the Bar, were not exclusively confined to the field of law but its canvas was wide enough and contours were varied enough to make His Lordship a prominent figure of the State. His Lordship attended the Asian Socialists Conference at Rangoon in December, 1952. He also appeared before the Wanchoo Commission in the year 1955 on behalf of the Indore public and in gratitude, the citizens of Indore accorded a grand felicitation. His Lordship's interest in education, social activities and devotion to the cause of free legal aid and advice won laurels. Owing to the firm grasp on the law and having garnered an impeccable image, at the age of 43, His Lordship was elevated as a Judge of the High Court of Madhya Pradesh on 29th July, 1968. On 3rd January, 1984 he took over as the Chief Justice of the State and was Acting Chief Justice till 1st December, 1984 when he was appointed as the permanent Chief Justice of the High Court of Madhya Pradesh.

At the ovation, His Lordship's legal acumen, courtesy towards the members of the Bar and fairness was reiterated. An excerpt is reproduced below:

> "Yet I venture to say that your Lordship's judgments are well known for their pointed approach to the legal aspects involved in doing full justice to the questions raised by either side. Each party feels satisfied that he has been heard at length and heard patiently without ruffle and raising of blood pressure. Your Lordship has always been unsparing towards executive's callous approach and Government's apathy but at the same time your Lordship has always upheld the legislations and *bonafide* Government actions dealing with common good. Your Lordship's courtesy towards the members of the Bar, whether senior or junior is unfailing. Young lawyers do not feel shy entering your Lordship's Court and have their say."

His Lordship is recognized for his landmark judgment rendered in the case of ***Municipal Council, Ratlam v. Shri Vardhichand & ors, AIR 1980 SC 1622*** which was acknowledged at the ovation as such:

> *"*Symbolically speaking, your Lordship reacts with judicious sensitivity to the *Jahangiri Bell of Insaf*. This noble trait was aptly demonstrated in *Ratlam Municipality's case*, which was not only upheld by the Supreme Court but was also subsequently, appreciated by the International Conference of Jurists. With your Lordship's gracious indulgence, may I venture to submit with justifiable pride that the *Ratlam Municipal case* judgment delivered by your Lordship gave a new dimension to the epitaph that ends of justice

are greater than that of laws although justice has to be administered in accordance with law."

His Lordship was elevated to Supreme Court after a year of working. He was given a felicitation on 27th October, 1985. While replying to the ovation address, His Lordship reiterated the glorious past of the High Court and the legal luminaries who held the posts and in his reply to the felicitation said:

> "To this profession, I was a new comer as no one in my family had anything to do with the profession of law but the feelings that I had developed during the struggle for freedom and the conditions existing in society that inspired me to this profession. I did not have the advantage of support or backing of big houses either business or political but had the good fortune of fighting for the poor, down-trodden and suffering masses, and even as a lawyer I had the pleasure to fight for justice for these people. I cannot forget the lessons that I took in the profession from Shri K.A. Chitale with whom I started in the profession. I had the privilege of appearing before illustrious Chief Justices like Justice Hidayatullah and Justice P.V. Dixit and it is because of Hon'ble Shri Justice P.V. Dixit that I am here.
>
> As a lawyer and a Judge, it had always been causing anxiety in my mind that justice should be accessible to all and sundry. A citizen should not be deprived of the remedy of law merely because he is not possessed of sufficient means to get the services of a counsellor to spend for the court-fees and other expenses of litigation and it has been my effort to see that no one is deprived of justice merely for these limitations for which he is helpless or, in other words unfortunately. "

On 29th of October, 1985 he took the oath of office as a Judge of the Supreme Court of India and retired on 11th December, 1989.

His Lordship was known to be soft spoken, endowed with pleasant manners and a gentleman's disposition. He was often regarded as a person carrying sharp conscious, liberal philosophy of life sustained by constant endeavour to study and understand with a detached objectivity what is right and what is wrong in every sphere of human life. As a Judge, he was the pioneer in starting the work of legal aid and founded a voluntary legal aid and education society. It continued to function till the State Government took over the legal aid programme. His Lordship's long lasting legacy in form of legal aid initiations and judgments affirm that he was not only a legal luminary but also a mentor and a guiding light to countless aspiring lawyers.

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BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: A BIRD'S EYE VIEW

– Institutional Article

This write-up deals with the implementation of Bharatiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS") which has repealed the Criminal Procedure Code, 1973 (for short Cr.P.C.) and came into force on 1st July, 2024. The BNSS is Act No. 46 of 2023 and it was passed in the Lok Sabha and Rajya Sabha on 20th and 21st December, 2023, respectively. It received the assent of the President on 25th December, 2023 and on the same day, it was notified in the Gazzette. The date of enforcement was notified in the Gazette Notification dated 23rd February, 2024.

The main focus of this new procedural law is to ensure prompt justice and utilizing advancements in forensic science and technological communication for the investigation and prosecution of criminals. These modifications establish clear and specific timeframes for each step of the criminal process and address the important inclusion of forensic tool, electronic communication, audio-video methods during investigation, summons delivery, document provision, trial and other legal actions. The Academy earnestly anticipates that it will aid judges in comprehending the new legislation more effectively and implementing them with greater efficacy, so as to advance the cause of justice.

Striking Features of BNSS:

- Focused on achieving prompt justice in accordance with constitutional and democratic ideals.
- The application of technology and forensic science in the examination of criminal cases.
- Employing electronic communication in court proceedings and submission of information, delivery of legal notices and other related purposes.
- Establishment of specific deadlines for the investigation, trial and delivery of judgments.
- Providing the victim with a copy of the First Information Report (FIR) and updating them on the progress of the inquiry through digital methods as well.
- Victims shall have the opportunity to be heard before the Government withdraws the case, but only in circumstances where the punishment is 7 years or more.
- Compulsory summary trial for minor offences.

- The utilization of audio-video technological methods, such as video conferencing to conduct examinations of the accused.
- The hierarchy of criminal courts has been simplified.

Following provisions of Cr.P.C. are deleted and no concurrent provision is provided in BNSS:

S. No.	Section	Title
1.	2(f)	India
2.	2(k)	Metropolitan area
3.	2(q)	Pleader
4.	2(t)	Prescribed
5.	8	Metropolitan area
6.	10	Subordination of Assistant Sessions Judges
7.	16	Courts of Metropolitan Magistrates
8.	17	Chief Metropolitan Magistrate & Additional Chief Metropolitan Magistrate
9.	18	Special Metropolitan Magistrates
10.	19	Subordination of Metropolitan Magistrate
11.	27	Jurisdiction in the case of Juveniles
12.	144(a)	Power to Prohibit carrying arms in procession or mass drill or mass training with arms
13.	153	Inspection of weights and measures
14.	355	Metropolitan Magistrate's Judgment
15.	404	Statement by Metropolitan Magistrate or grounds of his decision to be considered by High Court

Following Sections are newly introduced in BNSS which were not there in Cr.P.C.:

S. No.	Section	Title
1.	2(1)(a)	Audio-video electronic means
2.	2(1)(b)	Bail
3.	2(1)(d)	Bail bond
4.	2(1)(e)	Bond
5.	2(1)(i)	Electronic communication

S. No.	Section	Title
6.	15	State Government has the power to designate a police officer of at least the rank of Superintendent of Police or equivalent as a Special Executive Magistrate, in addition to an Executive Magistrate.
7.	35(7)	No arrest shall be made without prior permission of police officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age
8.	43(3)	Police Officer may, keeping in view the nature and gravity of the offence, use handcuff while making the arrest or producing before the Court
9.	86	Identification and attachment of property of proclaimed person
10.	105	Recording of search and seizure through audio-video electronic means
11.	107	Attachment, forfeiture and restoration of property
12.	172	Persons bound to confirm to lawful directions of Police
13.	336	Evidence of public servants, experts, police officers in certain cases
14.	356	Inquiry, trial or judgment in absentia of proclaimed offender
15.	398	Witness Protection Scheme
16.	472	Mercy petition in death sentence cases
17.	530	Trial and proceedings to be held in electronic mode

Power of Courts:

- Section 23 of the BNSS increased the authority of a Class I Magistrate to levy fines ranging from ₹10,000 to ₹ 50,000, and a Class II Magistrate to impose fines ranging from ₹ 5,000 to ₹ 10,000. Both categories of Magistrates have been granted the authority to impose community service as a means of punishment. Community service is a form of work mandated by a court that serves the community and does not involve any payment or compensation.
- Section 25 of the BNSS stipulates that if multiple sentences are being served concurrently in a trial, the total duration of imprisonment cannot exceed 20 years. This is an increase from the previous limit of 14 years stated in Section 31 Cr.P.C.

Prosecution authorities:

The State's Directorate of Prosecution consists of a Director of Prosecution who is supported by Deputy Directors of Prosecution. Furthermore, a Directorate of Prosecution would be established in every district. The Directorate will be led by the Deputy Director of Prosecution and supported by Assistant Directors of Prosecution. The authorities have a range of powers and functions, which include:

- The Director of Prosecution is responsible for providing legal opinions on the filing of appeals and overseeing cases that involve offences carrying a punishment of 10 years or more, life imprisonment or death penalty.
- The Deputy Director of prosecution is responsible for reviewing police reports and overseeing cases that involve offences carrying a penalty of 7 to 10 years.
- The Assistant Director of Prosecution is responsible for overseeing cases containing offences that carry a punishment of less than 7 years.

Arrest and Remand:

There are some important changes in powers of police relating to arrest and remand which are as under:

- Section 35(7) of the BNSS provides protection for individuals who are elderly (over 60 years) or physically weak, preventing their arrest for offences that carry a punishment of less than 3 years. Under such circumstances, it is imperative to obtain prior authorization from the Deputy Superintendent of Police (DSP) before making any arrests.
- Section 37 of the BNSS stipulates the establishment of a District Police Control Room, which is staffed by an Assistant Sub-Inspector (ASI) and equipped with an electronic display board. This board shows pertinent information about the arrestee, such as their name, residence and the nature of the offence committed.
- Handcuffing is permitted under Section 43(3) of the BNSS in cases of serious crimes and for individuals who are repeated or habitual offenders.
- According to Section 40 of the BNSS, if a private individual makes an arrest, the person being arrested must be brought before the police within 6 hours.
- According to Section 190 of the BNSS, if the accused is not detained, the police officer is required to obtain a guarantee from the person to ensure their appearance before the Judicial Magistrate. The clause aligns with the instructions of the Supreme Court in ***Siddharth v. State of Uttar Pradesh and***

anr., (2022) 1 SCC 676, which were re-affirmed in ***Satender Kumar Antil v. Central Bureau of Investigation and anr., (2022) 10 SCC 51***.

- According to Section 187(2) of the BNSS, police custody can be requested for a maximum of 15 days, however this can be done in a phased manner if needed, within either 40 or 60 days of detention, depending on the specific case.
- Section 187(3)(i) establishes a maximum detention period of 90 days for crimes that carry the punishment of death or life imprisonment, particularly for offences with a minimum sentence of 10 years or more, rather than a sentence of at least 10 years.
- According to Section 51(3) of the BNSS, the registered medical practitioner is required to promptly send the examination report to the investigating officer.

Procedure for compelling presence:

Several technology-driven modifications have been implemented regarding summoning procedures:

- According to Section 63 of the BNSS, summons with court seals or digital signatures can be issued using electronic communication.
- Section 64 of the BNSS requires the police station to keep a register including the contact information (address, phone number and email) of individuals who may be summoned.
- According to Section 66 of the BNSS, summons can be delivered to any adult member of the family, regardless of their gender.
- According to Section 70 of the BNSS, the act of delivering a summons using electronic means will be treated as valid service.

Attachment and Forfeiture of Property:

The BNSS grants the Magistrate the authority, similar to the PMLA Act, to seize property that is determined to be 'proceeds of crime' [Section 111(c) BNSS]. The Magistrate is also empowered to dispose of such property, even without the involvement of the other party.

Maintenance:

Prior to the amendment in the Cr.P.C., parents did not have a specific Jurisdiction to institute a maintenance case against their children at their place of residence. Jurisdiction aspect was limited. However, this matter is also addressed as Section 145 of the BNSS gives parents the authority to submit cases at their place of residence.

First Information Report (FIR):

- Section 173(1) of the BNSS allows for the submission of a Zero FIR, as stated in the case of ***Satvinder Kaur v. State (Govt. of NCT of Delhi) and anr., (1998) 8 SCC 728***. This provision allows for the submission of information by electronic communication (e-FIR), as long as the informant signs the records within a 3-day period.
- Section 173(2) of the BNSS grants the victim the entitlement to obtain, at no expense, a duplicate of the First Information Report (FIR).
- Section 173(4) of the BNSS allows for submitting an application to the Magistrate if the FIR is not recorded even after the Superintendent of Police's involvement.

Investigation:

- The scope of Section 91 of the Criminal Procedure Code (Cr.P.C.) has been expanded. Furthermore, under Section 94 BNSS, a Court or an officer in-charge of a police station has the authority to instruct a party to provide electronic communication, including communication devices that are likely to include digital evidence.
- In accordance with the case of ***Lalita Kumari v. Government of Uttar Pradesh and ors., (2014) 2 SCC 1***, Section 173(3) of the BNSS provides legal acknowledgement of a 'preliminary enquiry' in circumstances where the punishment is between 3 and 7 years. The timeline for completing this preliminary inquiry is set at 14 days and can only be done with the prior approval of an officer of at least the rank of DSP. The registration of First Information Report (FIR) for such offences shall also require the consent of the Deputy Superintendent of Police (DSP).
- Section 105 of the BNSS requires the use of videography to document search and seizure activities, as well as the creation of a seizure list that is signed by witnesses. The provision grants legal acknowledgment to the instructions of the Supreme Court in the cases of ***Shafhi Mohammad v. State of Himachal Pradesh, (2018) 5 SCC 311*** and ***Paramvir Singh Saini v. Baljit Singh and ors., (2021) 1 SCC 184***.
- According to Section 175(3) of the BNSS, if a serious crime has been committed, the Magistrate can order an investigation based on an application supported by an affidavit [as stated in the case of ***Priyanka Srivastava and anr. v. State of Uttar Pradesh and ors., (2015) 6 SCC 287***] and after reviewing the police report.

- Section 174 of the BNSS states that in the event of a non-cognizable offence, the police officer must not only direct the complainant to the Magistrate but also submit the daily diary record of such cases to the Magistrate.
- Section 175(1) of the BNSS grants the SP, the authority to assign a Deputy Superintendent of Police (DSP) to carry out an inquiry taking into account the severity and nature of the offence.
- According to Section 176(3) of the BNSS, when dealing with crimes that carry a punishment of 7 years or more, it is required for forensic professionals to attend the crime scene and gather trace evidence for forensic analysis.
- According to Section 183(6)(a) of the BNSS, if a witness is temporarily or permanently mentally or physically incapacitated, the statement recorded by a magistrate can be considered as their examination-in-chief in cases where the offences are punishable by 10 years imprisonment, life imprisonment, or death.
- According to Section 184 of the BNSS, the medical examination report must be sent to the investigating officer within a period of 7 days.
- According to Section 193(3)(ii) of the BNSS, police officers are required to provide a report to the victim or informant within 90 days detailing the progress of the investigation. This report can be delivered by any means, including electronic methods. Section 193(3)(i)(i) stipulates that the report must include the sequence of custody for electronic devices and be presented to the Magistrate.
- The proviso to Section 193(9) of the BNSS provides that during a trial, additional investigation can only be conducted with the court's approval. The further inquiry must be concluded within a maximum of 90 days, or within a timeframe that the court may extend.
- The Proviso to Section 193(8) of the BNSS permits the transmission of police reports and related documentation to the accused through electronic communication.
- According to Section 349 of the BNSS, voice samples can be requested from the accused without requiring their detention.

Jurisdiction of the Courts in Inquiry/Trial:

- According to Section 202 of the BNSS, if someone commits a crime such as cheating using electronic communication, the trial will take place in the location where the communication was transmitted or received.

- According to Section 208 of the BNSS, if a crime is committed outside of India, the trial will take place either where the accused is located or where the offence is committed in India.

Noteworthy features of Complaint and police case:

- Section 193(8) of the BNSS allows for the delivery of papers to the accused using electronic methods. According to Section 230 of the BNSS, the supply of documents must be made within 14 days of the accused person's production or appearance.
- Section 232 of the BNSS requires a committal to be made within 90 days from the moment the Magistrate takes cognizance.
- According to Section 223 of the BNSS, the accused must be given the opportunity to be heard while taking cognizance.

Prosecution against Public Servant:

- According to Section 175(4) of the BNSS, no action can be taken against a public servant if he commits an offence while discharging his official duties, unless the Magistrate hears the accused public servant and receives a report from his official supervisor.
- According to Section 218 of the BNSS, if the government's approval is required to prosecute judges and public servants, the government must make a decision within 120 days of receiving the request for approval. If the government fails to do so, it will be assumed that the approval has been granted.

Trials:

Sessions Trial

- The timeline for filing a discharge petition under Section 250 of the BNSS shall be 60 days from the date of commitment.
- The timeline for the framing of charges, as specified in Sections 251 of the BNSS, is set at 60 days from the date of the first hearing. The charge shall be read and explained to the accused either physically or through audio-video methods.
- Witness examination can be conducted using audio-video methods, as stated in Section 254 of the BNSS.

Warrant Trial

- The timeline for preferring an application for discharge under Section 262 of the BNSS is 60 days from the date of supply of the documents.

- The timeline for the framing of charges under Section 263 of the BNSS shall be 60 days from the date of the first hearing.
- Both the prosecution and defence have the right to examine their witnesses using audio-video electronic methods at a location specified by the State Government, as outlined in Sections 265 and 266 of the BNSS.
- According to Section 269(7) of the BNSS, if the attendance of the prosecution witnesses cannot be secured for cross-examination, it shall be deemed that such witness has been examined for not being available. In such cases, the prosecution will proceed based on the evidence already available in the records.
- According to Section 272 of the BNSS, in a case instituted on complaint the complainant is absent, the Magistrate is required to give the complainant a 30-day time period to appear before discharging the accused.

Summons Trial

- According to Section 274 of the BNSS, the Magistrate has the authority to release the accused in a summons case if the accusation seems groundless.
- Witness examination can be conducted using audio-video methods, as stated in Section 277 of the BNSS.

Summary Trial

- According to Section 283 of the BNSS, summary trial is required for minor and less serious offences listed in that provision.

Timeline given in BNSS for Discharge, Framing of Charge and Delivery of Judgment:

S. No.	Stage and time limit	Sessions Trial (Sections 248-260)	Warrant Trial (Sections 261-273)	Summon Trial (Sections 274-282)	Summary Trial (Sections 283-288)
1.	Discharge 60 days	Section 250	Section 262	Section 274 (Discharge is included but no specific time line)	Not applicable
2.	Charge 60 days	Section 251	Section 263	Not applicable	Not applicable
3.	Judgment 45 days	Section 258 (30 days which may extend to 45	Section 392 (45 days)	Section 392 (45 days)	Section 392 (45 days)

		days for reason to be recorded in writing)			
4.	Uploading of judgment	Proviso of Section 392 (4) (7 days)	Proviso of Section 392 (4) (7 days)	Proviso of Section 392 (4) (7 days)	Proviso of Section 392 (4) (7 days)

General Changes in Trial:

- According to Section 346 of the BNSS, a party can only be granted a maximum of two adjournments if they can prove that the circumstances preventing them from proceeding are beyond their control. This decision will be made after taking into account any objections raised by the other party.
- The term 'Magistrate' as used in Section 309 of the Criminal Procedure Code (Cr.P.C.) is substituted with the term 'Court' in this particular provision. Even a Sessions Court does not have the authority to detain the accused for more than 15 days at a time.
- According to Section 84 of the BNSS, any person who has absconded and is accused of a crime that carries a punishment of 10 years or more would be officially declared as proclaimed offender.
- According to Section 356(1) of the BNSS, a trial can proceed against a proclaimed offender even if he is not present, and a sentence can be imposed. This clause has been included in response to the directions given by the Supreme Court in the case of ***Hussain and another v. Union of India, (2017) 5 SCC 702.***

Plea Bargaining:

- According to Section 290 of the BNSS, the accused can submit an application for plea bargaining within 30 days date of framing of the charge. Within 60 days, both the public prosecutor/complainant and the accused are expected to come to a mutually agreeable resolution.
- According to Section 293 of the BNSS, the court has the authority to impose a sentence of one -fourth of the minimum panishment specified by law for the first-time offender with no prior criminal record. The court did not have such liberty under Section 265E of Cr.P.C.

Recording of Evidence:

- Section 308 of the BNSS allows for the examination of the accused using audio-video methods. In such situation, it is necessary to take his signature

within a time period of 72 hours (as stated in Section 316 of the BNSS) of such examination.

- Section 330 of the BNSS lays down that within 30-day period of supply of documents, prosecution or accused may question the authenticity of a document. However, the court has the authority to extend this time, if deemed appropriate.

Government scientific experts:

Section 329(g) of the BNSS grants the Government the authority to designate individuals who are not government employees as "Government scientific experts" by notifying them as such. This allows private individuals to be recognized and notified as Government scientific experts.

Bail:

- According to Section 479 of the BNSS, bail can be granted to a first-time offender who has served one-third of the maximum incarceration period specified by law. Alternatively, under some situations, the duration of detention should be reduced to fifty percent of the maximum allowable time.
- The Superintendent of the Jail is tasked with submitting a written application to the Court for the release of a person on bail once they have served either one-half or one-third (depending on the circumstances) of their imprisonment.
- The proviso to Section 480 of the BNSS states that in the case of non-bailable offences, an accused person cannot be denied bail on the basis that they may need to be identified by witnesses during the investigation or that their police custody will exceed 15 days.

Withdrawal of Prosecution:

According to Section 360 of the BNSS, it is not permissible to discontinue a prosecution without providing the victim with an opportunity to be heard.

Witness Protection:

According to Section 398 BNSS, the State Government is required to officially announce a witness protection scheme. The provision has been incorporated in the light of the judgment as pronounced in ***Mahender Chawla and ors. v. Union of India and ors., (2019) 14 SCC 615***.

Judgment Delivery:

- In a summons case, as per Section 258 of the BNSS, the judgment must be delivered within 30 days, but it can be extended up to 45 days (with written reasons) from the date when the arguments are concluded.

- For other criminal trials, Section 392(1) of the BNSS specifies that the judgment must be pronounced within 45 days after the trial has concluded.
- According to the Proviso to Section 392(4) of the BNSS, the judgment must be uploaded within a period of 7 days.
- According to Section 392(5), the accused shall be brought up before the court using audio-video technology in order to hear the judgment.

Mercy petition:

- According to Section 472 of the BNSS, in order to present mercy petition, a specified time limit of 30 days and 60 days to the Governor and President respectively is provided. The time limit shall commence from the date of intimation to the accused about dismisssl of appeal or confirmation of sentence by the High Court.

Disposal of property:

- According to Section 497 of BNSS, Court or Magistrate shall within period of 14 days from production of property prepare a statement containing description according to rules prepared by state government, and photograph or video-graph the property, which shall be used as evidence.
- Court or Magistrate shall also dispose, destroy, confiscate or deliver the property within the period of 30 days after the aforementioned statement has been prepared.

Miscellaneous Provision:

- In accordance with Section 530 of BNSS, trials and proceedings can be conducted in electronic mode.

Repeal and Savings:

- According to Section 531(1) BNSS, the Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.
- In accordance with Section 531 (2) of BNSS, notwithstanding such repeal immediately before the date on which Sanhita comes into force where there is any appeal, application, trial, inquiry or investigation is pending then they shall be disposed of, continued, held or made, as the case may be in accordance with the provisions of Cr.P.C.
- Provisions of Section 531 BNSS, is *pari materia* with Section 484 Cr.P.C. Therefore, we can take the assistance of earlier judgments of Hon'ble Apex Court and Hon'ble High Courts regarding the interpretation of this Section.

Stages of a case may be summarized according to the following tables:

Table - 1

Date of Offence	Investigation started on	Trial started on	Status
Before 1st July	Before 1st July	Before 1st July	Trial in Cr.P.C.
Before 1st July	Before 1st July	On or after 1st July	Trial in B.N.S.S.
Before 1st July	On or after 1st July	On or after 1st July	Trial in B.N.S.S.
On or after 1st July	On or after 1st July	On or after 1st July	Trial in B.N.S.S.

Table - 2

Date of Offence	Application other than Trial/Investigation	Status
Before 1st July	Before 1st July	Cr.P.C.
Before 1st July	On or after 1st July	B.N.S.S.

Table - 3

Date of Offence	Date of presentation of complaint and inquiry	Trial started on	Status
Before 1st July	Before 1st July	On or after 1st July	Inquiry in Cr.P.C. Trial in B.N.S.S.
Before 1st July	On or after 1st July	On or after 1st July	Inquiry in Cr.P.C. Trial in B.N.S.S.

Table - 4

Date of end of trial	Date of Appeal/Revision	Status
Before 1st July	Before 1st July	Cr.P.C.
Before 1st July	After 1st July	B.N.S.S.

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PART – II

NOTES ON IMPORTANT JUDGMENTS

101. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 12 (1) (f) Suit for eviction – Plaintiff filed a suit for eviction on the ground of *bona fide* requirement – Defendants alleged that the plaintiff wants to build a commercial building on the premises and there is no *bona fide* requirement to run his own business – Plaintiff has clearly pleaded that he is working from two flats and except the suit shops, he has no other alternative accommodation to start his printing business – Plaintiff has sought eviction of three shops adjacent to each other which he requires for his business purposes – No suppression on part of plaintiff/landlord as to availability of suitable non-residential accommodation available to him to start his printing business – Courts can always see the suitability of an accommodation of the landlord – Mere planning of use of property in a particular manner which has not materialized would also not disentitle landlord to evict a tenant on any ground available to him under the Act – Decree for eviction upheld.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धारा 12 (1)(च)
निष्कासन हेतु वाद – वादी ने वास्तविक आवश्यकता के आधार पर निष्कासन का वाद प्रस्तुत किया – प्रतिवादीगण द्वारा आक्षेपित किया गया कि वादी परिसर में एक व्यावसायिक भवन का निर्माण करना चाहता है और उसे स्वयं का व्यवसाय करने हेतु कोई वास्तविक आवश्यकता नहीं है – वादी ने स्पष्ट अभिवचन किया कि वह दो फ्लैट से काम कर रहा है और वादग्रस्त दुकानों को छोड़कर उसके पास मुद्रण व्यवसाय प्रारम्भ करने के लिए कोई अन्य वैकल्पिक स्थान नहीं है – वादी ने एक दूसरे से लगी तीन दुकानों से बेदखली की मांग की, जिनकी उसे उसके व्यावसायिक उद्देश्यों के लिए आवश्यकता है – वादी/भवन स्वामी की ओर से उसके मुद्रण व्यवसाय को प्रारंभ करने के लिए उपलब्ध उपयुक्त गैर–आवासीय स्थान की उपलब्धता के बारे में कोई तथ्य छिपाया नहीं गया है – न्यायालय भवन स्वामी के स्थान की उपयुक्तता पर सदैव विचार कर सकता है – किसी विशेष तरीके से संपत्ति के उपयोग की योजना बनाना, जो साकार नहीं हुई, भी भवन स्वामी को अधिनियम के अंतर्गत उपलब्ध किसी भी आधार पर किरायेदार को बेदखल करने के अधिकार से वंचित नहीं करेगा – निष्कासन की आज्ञप्ति यथावत रखी गयी।

Govind v. Pankaj Kumar

Judgment dated 20.10.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 271 of 2014, reported in 2024 (2) MPLJ 94

Relevant extracts from the judgment:

So far as question of law regarding the availability of the alternative accommodation is concerned, plaintiff has clearly stated that he is presently working from two flats at Bansi Palaza and has no other alternative accommodation to start his Printing business. It is also found that although in his cross-examination, he has admitted that he is also running a business in name and style of Rudraksh Printers in basement, in part-A of 22/1 Sanyogitaganj, Indore. In para 12 of his cross-examination, plaintiff has admitted that he is not the sole owner of 22/1 Sanyogitaganj, Indore, but he is the owner of part-C of the said property, which has been partitioned amongst his brothers. It is also found that the plaintiff has filed a map of the building in which the plaintiff is shown as the owner of part-C. It is also found that in para 24 of his cross-examination plaintiff Pw/1 has also stated that there is no printing machine installed in the basement of the building, and also that for screen printing the machines are not required. In Para 42 of his cross examination, plaintiff has admitted that he is in possession of a shop behind the tenanted shop, but surprisingly, the counsel for the defendant could not dare to ask him if the said shop is suitable for his purposes.

It is also required for the landlord to show that he has no other reasonably suitable nonresidential accommodation of his own in his occupation in the city or the town concerned and in the present case the respondent and landlord has clearly averred that he has three shops adjacent to each other, which he requires for his business purposes and in such circumstances, non-mentioning of the shop which according to the plaintiff-landlord was not suitable and was not to his purpose, would not make any difference. In such facts and circumstances, the aforesaid decision as relied upon by the senior counsel for the appellant would not be applicable, and is distinguishable.

The Supreme Court, in the case of ***Meenal Eknath Kshirsagar (Mrs.) v. Traders & Agencies and anr.,(1996) 5 SCC 344*** has held as under:-

> "In view of the rival submissions, what we have to consider is whether the appellate bench and the High Court applied the correct

test while determining the question whether the appellant requires the suit premises bona fide and reasonably for her occupation. The fact that the appellant is the owner of the suit premises and that she does not own any other premises in the city of Bombay is not in dispute. She does not possess, even as a tenant, any premises in Bombay. No doubt, she would be entitled to stay in the premises of which her husband is a tenant but if for any reason her husband had parted with possession of such premises and the same were occupied by her husband's brother, it cannot be said that the said premises were available to her and by not referring to those facts she had come to the Court with unclean hands and that by itself was sufficient to disentitle her from getting a decree of eviction. If the appellant believed that the Olympus flat of which her husband was a tenant was not available for occupation as the same was vacated by her husband many years back and was occupied by Sridhar and his family and that it was not possible or convenient for her and her family to go and stay there, it was not absolutely necessary for her to refer to those facts in her plaint. It would have been better if she had referred to those facts but mere omission to state them in the plaint cannot be regarded as sufficient for disentitling her from claiming a decree for eviction, if otherwise she is able to prove that she requires reasonably the suit premises for her occupation. We are, therefore, of the opinion that the appellate bench and the High Court clearly went wrong in holding that the said omission was sufficient to disentitle her from getting a decree of eviction and it also disclosed that her claim was mala fide and not bona fide as required by law.

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As regards the 'Olympus' flat the evidence discloses, and it is not in dispute, that Eknath left that flat in October 1972 and since then only Sridhar and his family members have been staying in that flat. It is a two bedroom flat having an area of 1100 sq. ft. Sridhar has a wife and two children and the family of appellant also consists of four persons. In the suit for eviction filed by the landlady of that flat a partial decree has been passed and Eknath has been ordered to hand over half the portion of that flat. Both Eknath and landlady have challenged the said partial decree and their respective appeals

are pending before the Appellate Court. In this context the courts had to consider whether it can be said that the appellant and Eknath are having suitable alternative accommodation and, therefore, the appellant's claim that she requires the suit premises for her occupation is not reasonable and bona fide. The Appellate Bench and the High Court considered the possibility of Eknath going back to that flat and occupying it along with Sridhar and also the possibility that in case the landlady's appeal is dismissed and Eknath's appeal is allowed the flat in its entirety, will become available to Eknath and on that basis held that the appellant's claim that she requires the suit premises reasonably and bona fide is not true. As pointed out by this Court it is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement. If the landlord desires to beneficially enjoy his own property when the other property occupied by his as a tenant or on any other basis is either insecure or inconvenient it is not for the courts to dictate. Him to continue to occupy such premises. Though Eknath continues to be the tenant of the 'Olympus' flat, as a matter of fact, it is being occupied exclusively by Sridhar and his family since October 1972. For this reason and also for the reason that because of the partial decree passed against him Eknath is now entitled to occupy the area of 550 sq. ft. only, it is difficult to appreciate how the Appellate Bench and the High Court could record a finding that the 'Olympus' flat is readily available to the appellant's husband and that the said accommodation will be quite sufficient and suitable for the appellant and her family.

In view of the facts and circumstances of the case we are of the view that the appellant has proved her case of bona fide requirement and, therefore, the Small Causes Court was right in passing the decree in her favour. The Appellate Bench committed a grave error in reversing the same and the High Court also committed an error in confirming the judgment and order passed by the Appellate Bench. We, therefore, allow this appeal, set aside the judgment and order passed by the High Court and also by the Appellate Bench and restore the judgment and decree passed by the Small Causes Court. The respondents shall pay the cost of this appeal to the appellant."

In such circumstances, it cannot be said that there was any suppression on the part of the plaintiff that he had no other reasonably suitable non-residential accommodation available to him to start his printing business, and thus the contention of Shri Jain, that non-disclosure of the availability of an accommodation, whether suitable or unsuitable is fatal to the case of the plaintiff, is without any basis and is hereby rejected, as this Court is of the considered opinion that the courts can always see the suitability of an accommodation of the landlord, not disclosed earlier by him/her, and even brought to its notice by the tenant only. The decisions cited by Shri Jain on behalf of the appellant are distinguishable and are of no avail to the appellant. Thus, the substantial question of law No.1 is answered in favour of respondent/plaintiff and against the appellant/defendant.

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102. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Sections 12(1)(f), 23-A(b) and 23-D(3)

***Bonafide* requirement – Whether a separate suit for *bonafide* requirement of accommodation for daughter can be filed when suit for *bonafide* requirement of accommodation for son is already pending? Held, Yes – The word "or" used in the Section by the legislature denotes either one or the other or both – There is no such restraint in filing another suit.**

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धाराएं 12(1)(च), 23–क(ख) एवं 23–घ(3)

वास्तविक आवश्यकता – क्या पुत्री के लिए आवास की वास्तविक आवश्यकता हेतु एक पृथक वाद संस्थित किया जा सकता है जब पुत्र के लिए आवास की वास्तविक आवश्यकता के लिए वाद पूर्व से लंबित है? अभिनिर्धारित, हाँ – विधायिका द्वारा उक्त धारा में उपयोग किया गया शब्द "या" एक या अन्य या दोनों को दर्शाता है – अन्य वाद संस्थित करने में ऐसा कोई प्रतिबंध नहीं है।

Kishan Chand (M/s) v. Smt. Sangita Jain

Order dated 25.09.2023 passed by the High Court of Madhya Pradesh in Civil Revision No. 650 of 2017, reported in ILR 2024 MP 524

Relevant extracts from the order:

In all most similar situation of facts, the Supreme Court in the case of ***Dhannalal v. Kalawatibai and ors., (2002) 6 SCC 16*** (pr. 14 and 15) has held as under:-

"We will first note how the issue has been dealt with by the High Court of Madhya Pradesh. In ***Shivraj Jat v. Smt. Asha Lata Yadav and ors., 1989 MPLJ 202 (DB)*** a widow filed an application under Section 23-A of the Act for eviction of the tenant from the leased premises on the ground that the same was bona fide required for the purpose of starting the business of her major son who was also arrayed as a co-plaintiff. One of the pleas raised on behalf of the tenant was that only one of the applicants being a widow - a 'landlord' as defined by section 23-J of the Act, while the other applicant was not such a landlord, the special procedure provided by section 23-A of the Act was not available to them. It was held by the division bench that the provisions of section 23-A (b) were unambiguous. The legislation enables a "landlord" to seek eviction if the leased premises are bona fide required by the landlord for starting the business of a major son or daughter of the landlord; there can be no logic or justification for denying that relief to the landlord because the major son or daughter of the landlord also happens to be co-owner of the leased premises. The case was held to be covered by section 23-A(b) of the Act, A similar issue arose for consideration by a full bench of Madhya Pradesh High Court in ***Harbans Singh v. Smt. Margrat G. Bhingardive, AIR 1990 MP 191.*** The question posed before the full bench was: "Whether out of several landlords of an accommodation including a widow, an application for eviction of the tenant by the widow alone, on the ground of her own bona fide need or joint need of herself and that of her married sons and their children, would be competent before the rent controlling authority under section 23-A(a) read with section 23-J(iii) of the Act". The premises in question were let out by the late husband of the landlady and after his death the widow as well as her children succeeded to the tenanted premises by inheritance and therefore the widow and her children all became co-owners and joint landlords thereof. The application for eviction was filed by the widow alone. It was urged that the widow alone cannot maintain an application under section 23-A of the Act either for her own bona fide need or for the joint need of herself and her married sons who are also joint landlords but do not belong to the special class envisaged in section 23-J of the Act and have not joined the

widow in making application for eviction. The full bench held that application filed by the widow alone as one of the landlords was competent. The full bench further held:-

> "If we examine the language of section 23-A and clause (a) thereof it would be clear from the plain and unambiguous words and language used therein that they are capable of only one construction that the person who falls in the category of special class of landlords is authorized to take action for eviction of the tenant either for his own bona fide need or for the bona fide need of any member of his family who may not belong to any of the special class of landlords. If we accept the submissions advanced by the learned counsel for the tenant/applicant then in that event we would be doing violence to the plain language and words used in the provisions under consideration by reading into the said provisions the words that the member of the family for whose bona fide need, the application has been filed by the special class of landlord, should also belong to that category. But law of interpretation of statute does not permit such a course. Consequently the result is that the application made by the widow/non-applicant under section 23-A(a) of the Act for eviction of the tenant/applicant herein on the ground of her bona fide need and that of her married sons who are members of his family is competent and maintainable before the rent controlling authority (para 17).

> "Out of several landlords of an accommodation including a widow, an application for eviction of the tenant by the widow alone, on the ground of her own bona fide need or joint need of herself and that of her married sons and their children, who are members of his family would be competent before the rent controlling authority under section 23-A(a) read with section 23-J of the Act" (para 18).

We find ourselves in agreement with the view of the law taken by the High Court of M.P. in ***Shivraj Jat's case*** (supra) and ***Harbans Singh's case*** (supra). An analysis of section 23-A(b) of the Act shows that an application seeking eviction of tenant there under is maintainable if:- (i) the accommodation is let for non-residential purpose; (ii) it is required bona fide by the landlord for the purpose of continuing or starting (a) his business, or (b) business of any of his major sons or unmarried daughters; (iii) the landlord is the owner of such

accommodation or is holding accommodation for benefit of any person who requires the accommodation; and (iv) the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned."

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103. ADVERSE POSSESSION:

Adverse possession – Whether tenant of original owner can claim adverse possession against transferee of such owner's title? Held, No – Such tenant cannot claim adverse possession against transferee of such owner from time of permissive possession – He can only claim adverse possession, if at all, against such transferee from date on which title stood transferred to such transferee and not prior thereto.

प्रतिकूल कब्जा:

प्रतिकूल कब्जा – क्या मूल स्वामी का किराएदार ऐसे स्वामी के स्वामित्व के अंतरिती के विरूद्ध प्रतिकूल कब्जे का दावा कर सकता है? अभिनिर्धारित, नहीं – ऐसा किराएदार ऐसे स्वामी के स्वत्व के अंतरिती के विरूद्ध प्रतिकूल कब्जे का दावा अनुज्ञेय कब्जे के समय से नहीं करा सकता – वह ऐसे अंतरिती के विरूद्ध प्रतिकूल कब्जे का दावा उस दिनांक को कर सकता है जब स्वत्व ऐसे अंतरिती को अंतरित हुआ था और उससे पूर्व नहीं।

Brij Narayan Shukla (dead) through L.Rs. v. Sudesh Kumar @ Suresh Kumar (dead) through L.Rs. and ors.

Judgment dated 03.01.2024 passed by the Supreme Court in Civil Appeal No. 7502 of 2012, reported in (2024) 2 SCC 590

Relevant extracts from the judgment:

The High Court dismissed the suit of the appellant on the ground of limitation as according to it, the respondent-defendants had matured their rights or rather perfected their rights by adverse possession having continued so since 1944 when the first suit for arrears of rent was filed.

We are, of the firm view that the High Court fell in serious error in holding so, for the following reasons:

(iv) The suit of the year 1944 was for the arrears of rent and not relating to any dispute of possession. The defendant respondents were tenants and therefore their

possession was permissive as against the then landlords. There was no question of them claiming any adverse possession from 1944.

(v) In our considered view, the plaintiff appellants got their ownership/title under the registered sale deed on 21.01.1966. The dispute for possession vis-à-vis the defendant respondents would arise only after the said date and not on any date prior to it. Admittedly from the date of the sale deed, the suit was filed within the period of 12 years in May, 1975. Even if it is assumed that the defendant respondents were in possession from prior to 1944, their possession could not have been adverse even to the Zamindars as they were tenants and their tenancy would be permissible in nature and not adverse. There were no proceedings for possession prior to 1966.

(vi) Further, the first appellate court having recorded a specific finding that the land in suit was not covered by Zamindari Abolition as it was non- agricultural land, the claim of ownership from the date of abolition of Zamindari was also without any merit. The finding has not been disturbed by the High Court. The defendant respondents thus having failed to establish their title, would have no right to retain the possession.

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104. CIVIL PROCEDURE CODE, 1908 – Section 11

***Res judicata* – Doctrine of merger – Decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and capable of enforcement – Effect – There cannot be, at the same time, more than one operative order governing the same subject-matter – Judgment passed by the High Court in the first round of litigation has attained finality – In the second round of litigation which is with respect to the same subject-matter, the earlier judgment would be of binding effect for maintaining judicial discipline. [*Kunhayammed v. State of Kerala, (2000) 6 SCC 359* followed.]**

सिविल प्रक्रिया संहिता, 1908 – धारा 11

पूर्व न्याय – विलयन का सिद्धांत – अधीनस्थ न्यायालय का निर्णय वरिष्ठ न्यायालय के निर्णय में विलीन हो जाता है एवं वरिष्ठ न्यायालय का यही वह निर्णय होता है, जो अस्तित्व में रहते हुए प्रवर्तनशील रहता है एवं लागू करने योग्य होता है – प्रभाव – एक समय पर एक ही विषय-वस्तु के संबंध में एक से अधिक प्रवर्तनशील आदेश नहीं हो सकते – प्रथम बार की विधिक कार्यवाही

में उच्च न्यायालय द्वारा पारित निर्णय अंतिम हो गया – समान विषय-वस्तु के संदर्भ में दूसरी बार की विधिक कार्यवाही में, न्यायिक अनुशासन को बनाए रखने हेतु पूर्ववर्ती निर्णय आबद्धकारी प्रभाव रखेगा। [*कुनहईयामद वि. केरल राज्य, (2000) 6 एससीसी 359* अनुसरित]

Mary Pushpam v. Telvi Curusumary and ors.

Judgment dated 03.01.2024 passed by the Supreme Court in Civil Appeal No. 9941 of 2016, reported in (2024) 3 SCC 224

Relevant extracts from the judgment:

The doctrine of merger is a common law doctrine that is rooted in the idea of maintenance of the decorum of hierarchy of courts and tribunals. The doctrine is based on the simple reasoning that there cannot be, at the same time, more than one operative order governing the same subject matter. The same was aptly summed up by this Court when it described the said doctrine in ***Kunhayammed & ors. v. State of Kerala & anr., (2000) 6 SCC 359***:

> "Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the Law."

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

(i) Amendment of plaint – Factors to be considered – Fundamental change in the nature of claim sought to be incorporated by way of amendment, time barred nature of amendment, lack of due diligence and potential prejudice to the opposite party are key factors.

(ii) Due diligence – Burden to establish – Pleading of due diligence is must in the application, as burden is on the applicant to show that inspite of due diligence, such amendment could not be sought earlier – Mere pleading of 'oversight' for not seeking the relief earlier is not sufficient.

(iii) Compromise or consent decree – Mode and manner permissible to challenge – Consent decree is nothing but a contract between parties – No appeal lies and no separate suit can be filed challenging the said decree – Only remedy available to challenge it, is to approach the Court which recorded such compromise to establish that there was no compromise.

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17

(i) वादपत्र का संशोधन – विचार योग्य कारक – संशोधन के माध्यम से समाविष्ट वाद की प्रकृति में होने वाला तात्विक परिवर्तन, समय बाधित प्रकृति का संशोधन, सम्यक तत्परता का अभाव एवं विपक्षी को होने वाली संभावित हानि महत्वपूर्ण कारक है।

(ii) सम्यक तत्परता – प्रमाण का भार – आवेदन में सम्यक तत्परता का अभिवचन होना आवश्यक है, क्योंकि यह दर्शित करने का भार आवेदक पर होता है कि सम्यक तत्परता के बावजूद ऐसा संशोधन पूर्व में नहीं लाया जा सका – पूर्व में अनुतोष की मांग न करने के लिए केवल 'नजरचूक' का अभिवचन पर्याप्त नहीं है।

(iii) राजीनामा या सहमति डिक्री – आक्षेपित करने का अनुमत तरीका एवं माध्यम – सहमति डिक्री, पक्षकारों के मध्य संविदा के अतिरिक्त कुछ नहीं – इसकी अपील नहीं होती तथा ऐसी डिक्री को चुनौती देते हुए पृथक वाद प्रस्तुत नहीं किया जा सकता – इसे चुनौती देने हेतु एक मात्र उपचार उसी न्यायालय में, जिसने राजीनामा को लेखबद्ध किया था, में यह प्रमाणित करना है कि कोई राजीनामा नहीं हुआ।

Basavaraj v. Indra and ors.

Judgment dated 29.02.2024 passed by the Supreme Court in Civil Appeal No. 2886 of 2012, reported in (2024) 3 SCC 705

Relevant extracts from the judgment:

The only remedy available to a party to a consent decree is to approach the Court which recorded the compromise as it was opined to be nothing else but a contract between the parties superimposed with the seal of approval of the Court. which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract

between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made.

The proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. All what was pleaded was oversight. The same cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial especially when admittedly the facts were in knowledge of the respondents No. 1 and 2/plaintiffs.

The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right.

Even if on any ground the amendment could be permitted, still no relief could be claimed with reference to setting aside of the compromise decree as all the parties thereto were not before the Court in the suit in question.

Initially, the suit was filed for partition and separate possession. By way of amendment, relief of declaration of the compromise decree being null and void was also sought. The same would certainly change the nature of the suit, which may be impermissible.

In the case in hand, the compromise decree was passed on 14.10.2004 in which the plaintiffs were party. The application for amendment of the plaint was filed on 08.02.2010 i.e. 5 years and 03 months after passing of the compromise decree, which is sought to be challenged by way of amendment. The limitation for challenging any decree is three years (Reference can be made to Article 59 in Part-IV of the Schedule attached to the Limitation Act, 1963). A fresh suit to challenge the same may not be maintainable. Meaning thereby, the relief sought by way of amendment was time barred. As with the passage of time, right had accrued in favour of the appellant with reference to challenge to the compromise decree, the same cannot be taken away. In case the amendment in the plaint is allowed, this will certainly cause prejudice to the appellant. What cannot be done directly, cannot be allowed to be done indirectly.

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***106. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11**

Preliminary issue – Consideration of an issue as a preliminary issue is permissible in limited cases – Issues of law relating to jurisdiction of the Court and bar of the suit created by any law for the time being in force can be decided as a preliminary issue – Application under Order 7 Rule 11 of the Code is maintainable for the suit being barred by law.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11

प्रारंभिक वादप्रश्न – किसी वादप्रश्न को प्रारंभिक वादप्रश्न के रूप में विचार करना सीमित मामलों में अनुमत है – न्यायालय के क्षेत्राधिकार और प्रभावशील विधि द्वारा वर्जित वाद से संबंधित विधि के प्रश्नों को प्रारंभिक वादप्रश्न के रूप में निर्धारित किया जा सकता है – विधि द्वारा वर्जित वाद के लिए संहिता के आदेश 7 नियम 11 के अंतर्गत आवेदन पत्र प्रचलन योग्य होगा।

Brajvasilal Patel and ors. v. Jagdish and ors.

Order dated 09.01.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 3957 of 2018, reported in 2024 (1) MPLJ 565

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

COURT FEES ACT, 1870 – Section 7(v) and 7(vi)

Rejection of plaint – Plaintiff filed a suit for declaration, permanent injunction, partition and possession – Defendants filed an application under Order 7 Rule 11 of the Code challenging the suit valuation and court fees calculation done by the plaintiff – Held, multiple reliefs are being claimed by the plaintiff therefore, suit is required to be valued as per section 7(v), (vi) of the Court Fees Act – Order of the Trial Court dismissing the application upheld.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11

न्यायालय फीस अधिनियम, 1870 – धारा 7(v) एवं 7 (vi)

वादपत्र का नामंजूर किया जाना – वादी ने घोषणा, स्थायी निषेधाज्ञा, विभाजन एवं आधिपत्य के लिये वाद संस्थित किया – प्रतिवादीगण ने वादी द्वारा किये गये वाद मूल्यांकन एवं न्यायालय शुल्क की गणना को चुनौती देते हुये वादपत्र नामंजूर किए जाने के लिए संहिता के आदेश 7 नियम 11 के अंतर्गत आवेदन प्रस्तुत किया – अभिनिर्धारित, वादी द्वारा अनेक अनुतोषों का दावा किया जा रहा

है, इसीलिये वाद का मूल्यांकन न्यायालय शुल्क अधिनियम की धारा 7(v) एवं 7(vi) के अनुसार करना आवश्यक है – आवेदन निरस्त करने का विचारण न्यायालय का आदेश यथावत रखा गया।

Ramchandra Banarsi and ors. v. Radhabai @ Devkabai and ors.

Order dated 02.01.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 3176 of 2023, reported in 2024 (1) MPLJ 510

Relevant extracts from the order:

The Suits Valuation Act, of 1887 prescribes the mode of determining the jurisdiction of the Court. Part 1 deals with the suit relating to the land. Section 3 gives power to the State Government to make rules for determining the value of the land for jurisdictional purposes. Sub-section (1) says that the State Government makes rules for determining the value of the land for jurisdiction in the suits mentioned in the Court Fees Act, 1870 Section 7 paragraph No.(v), (vi) & (x)(d). Section 4 of the Suit valuation Act of 1887 says that the valuation of the relief in certain suits relating to land is not to exceed the value of land. Section 8 says the Court-fee value and jurisdictional value to be the same in certain suits wherein suits other than those referred to in the Court Fee Act, 1870 section 7, paragraphs (v) (vi) and (ix) and paragraph (x), clause (d), Court-fees are payable ad valorem under the Court Fees Act, 1870 the value as determinable for the computation of court fees and the value for purposes of jurisdiction shall be the same.

In a civil suit if a decree of partition of house/shop/garden is being sought then the valuation would be certainly based on the market value of the suit property but as per Section 7(v) of Act of 1887, the court fees is liable to be paid on the basis of 20 times of the land revenue for the relief of possession. In case multiple reliefs are being claimed like partition, possession or declaration then the suit is required to be valued as per Section 7(v) and (vi) of the Court Fees Act of 1870 accordingly. Where the relief of possession of land, house, and garden is sought then the valuation would be as per Section 7(v) of Act of 1887 and coupled with the aforesaid partition is also sought then for the purpose of partition the provision of Section 7(vi-a) would apply. Section 7(vi-a) only says that according to the value of such share and value of share and the value of subject matter shall be decided as per Section 7(v).

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108. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11
THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 – Section 34

Jurisdiction of Civil Court – Bar created by section 34 of the Act – Scope – Suit for declaration of title and for issuance of permanent injunction – Plaintiff instituted the suit on specific plea as regards fraud and deceit having been practiced upon her by the defendant so as to usurp her property – Jurisdiction of civil court can be invoked to a limited extent where action of the secured creditor is alleged to be fraudulent – Plaintiff has not instituted the claim in respect of any measures taken or proposed to be taken by the defendant u/s 17 of the Act – Held, if fraud is being alleged then Civil Court shall have jurisdiction – Application filed by defendant under Order 7 Rule 11 rightly rejected. [*Mardia Chemicals Ltd. & ors. v. Union of India and ors., (2004) 4 SCC 31* followed.]

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11
वित्तीय आस्तियों का प्रतिभूतिकरण एवं पुनर्गठन और प्रतिभूति हित प्रवर्तन अधिनियम, 2002 – धारा 34

सिविल न्यायालय का क्षेत्राधिकार – अधिनियम की धारा 34 द्वारा निर्मित वर्जन – विस्तार – स्वत्व घोषणा और स्थायी निषेधाज्ञा का वाद – वादी ने इस विशिष्ट आधार पर वाद प्रस्तुत किया कि उसकी संपत्ति हड़पने के आशय से प्रतिवादी ने उसके साथ कपट और छल किया – सिविल न्यायालय के क्षेत्राधिकार का सीमित रूप से वहाँ अवलंब लिया जा सकता है, जहां प्रतिभूत लेनदार की कार्यवाही कपटपूर्ण होने का आक्षेप लगाया गया है – वादी ने प्रतिवादी द्वारा अधिनियम की धारा 17 के अंतर्गत उठाए गए या संभावित रूप से उठाए जाने वाले किसी भी उपाय के संबंध में वाद प्रस्तुत नहीं किया – अभिनिर्धारित, यदि धोखाधड़ी का आक्षेप लगाया गया है, तो सिविल न्यायालय को क्षेत्राधिकार होगा – आदेश 7 नियम 11 के तहत प्रतिवादी द्वारा प्रस्तुत आवेदन पत्र उचित रूप से निरस्त किया गया। [*मार्डिया केमिकल्स लिमिटेड और अन्य बनाम भारत संघ और अन्य (2004) 4 एससीसी 31* अनुसरित]

Aavas Financiers Ltd. v. Bhagwanti Mahawar

Order dated 26.09.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 549 of 2022, reported in 2024 (1) MPLJ 627

Relevant extracts from the order:

It is well settled that while considering an application under Order 7 Rule 11 of the Code only the plaint allegations and the documents filed along with the plaint can be seen. The plaint allegations have to be taken to be true at this stage. The suit has been instituted by plaintiff on specific plea as regards fraud and deceit having been practiced upon her by the defendant. She has categorically pleaded that the defendant has committed certain acts fraudulently with the purpose of usurping the suit house which are null and void to begin with and not binding upon her. The suit would hence be maintainable in view of the decision in the case of ***Mardiya Chemicals Limited and ors. v. Union of India and ors., 2004 (4) SCC 31*** in which it has been held that to a very limited extent, jurisdiction of the Civil Court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent.

In ***Jagdish Singh v. Heeralal and ors., 2014 (1) SCC 479*** it was held that any person aggrieved against any measure taken or to be taken by the secured creditor can approach the DRT or appellate tribunal and not the Civil Court which will have no jurisdiction in such matters. In the present case, the plaintiff has not instituted the claim in respect of any measures taken or proposed to be taken by the defendant under Section 17 of Act, but has alleged fraud on its part resulting in threat to her title to the suit house. The judgment relied upon by the counsel for the applicant hence does not help him in any manner.

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109. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 90

Execution proceedings – Setting aside of sale on the ground of irregularity or fraud – Mandatory requirement of fulfilment of twin conditions of material irregularity or fraud and substantial injury has to be satisfied before an auction sale can be set aside – Satisfaction of only one of the two conditions is not sufficient – In fact specific charge must be made regarding fraud or material irregularity with sufficient particulars. [*Saheb Khan v. Mohd. Yousufuddin, (2006) 4 SCC 476* followed].

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 90

निष्पादन कार्यवाहियां –विक्रय को अनियमितता या कपट के आधार पर अपास्त करना – नीलामी विक्रय को अपास्त किये जाने के पूर्व तात्विक अनियमितता या कपट एवं सारवान क्षति होने की दोहरी आज्ञापक शर्तों की पूर्ति के संबंध में संतुष्टि आवश्यक – दोनों शर्तों में से केवल एक की संतुष्टि पर्याप्त नहीं –

वास्तव में कपट या तात्विक अनियमितता के संबंध में पर्याप्त विवरण सहित विशिष्ट आरोप लगाया जाना चाहिए। [*साहेब खान वि. मो. युसुफुद्दीन, (2006) 4 एससीसी 476* अनुसरित]।

Jagan Singh and Company v. Ludhiana Improvement Trust and ors.

Judgment dated 02.09.2022 passed by the Supreme Court in Civil Appeal No. 371 of 2022, reported in (2024) 3 SCC 308 (Three Judge Bench)

Relevant extracts from the judgment:

No specific fraud or misrepresentation has been mentioned in the objections by the objector nor any substantial irregularities have been pointed out. The objector has neither deposited the decreetal amount nor the amount equal to 5% of the purchase amount for payment to the auction purchaser as is required under Order 21 Rule 89 of the said Code. Thus, the objections were not even maintainable. In view of the said provision, no sale could be set aside unless the Court is satisfied that the applicant has sustained substantial injury by reason of irregularity or fraud in completing or conducting the sale.

The mandatory nature of the twin conditions to be satisfied before an auction sale can be set aside as provided under Order 21 Rule 90(3) of the said Code which has been discussed by this Court in various judicial pronouncements. Satisfaction of only one of the two conditions was not sufficient. Charge of fraud or material irregularity must be specifically made with sufficient particulars and bald allegations would not do.

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110. CIVIL PROCEDURE CODE, 1908 – Order 26 Rule 9 and Order 41 Rule 23 Remand – Dispute of survey numbers and location of the suit property – Appellate Court gave a finding that dispute between the parties can be resolved by way of appointment of commissioner – Appellate Court remanded the matter for the said purpose – Order of remand was challenged – Held, Appellate Court for deciding the appeal could also appoint a commissioner and summon local inspection report – Order of remand found not necessary hence, set aside.

सिविल प्रक्रिया संहिता, 1908 – आदेश 26 नियम 9 एवं आदेश 41 नियम 23 प्रतिप्रेषण – सर्वे क्रमांक और वादग्रस्त संपत्ति की अवस्थिति का विवाद – अपीलीय न्यायालय ने निष्कर्ष दिया कि पक्षकारों के मध्य विवाद को कमिश्नर की नियुक्ति के माध्यम से निराकृत किया जा सकता है – अपीलीय न्यायालय ने उक्त उद्देश्य से मामले को प्रतिप्रेषित कर दिया – प्रतिप्रेषण आदेश को चुनौती दी गई – अभिनिर्धारित किया गया कि अपील के विनिश्चय हेतु अपील न्यायालय कमिश्नर की नियुक्ति भी कर सकता था और स्थानीय निरीक्षण प्रतिवेदन भी आहूत कर सकता था – प्रतिप्रेषण आदेश आवश्यक नहीं पाया गया, अतः अपास्त किया गया।

Rajaram Mali and anr. v. Indraj and ors.

Order dated 02.11.2023 passed by High Court of Madhya Pradesh in Miscellaneous Appeal No. 1282 of 2005, reported in 2024 (1) MPLJ 705

Relevant extracts from the order:

In the case of ***Raghunath v. Chandrakala & ors., 2023 MPLJ OnLine 27*** decided on 05.10.2023 this Court has also taken the same view and held as under:

> "It is well settled that the dispute of boundaries, survey numbers and location of land/property cannot be decided on the basis of oral evidence and without demarcation of the land by some competent revenue officer. As such in my considered opinion, learned first appellate Court has not committed any illegality in directing demarcation of the land in question but for that purpose only, matter is not required to be remanded for deciding the suit afresh. Please see ***Satish & ors. v. Hanumant Singh and anr., 2014 SCC OnLine MP 4685***."

In view of the aforesaid decisions in the case ***of Gajraj and ors. v. Ramadhar and ors., AIR 1975 Allahabad 406*** and ***Raghunath v. Chandrakala and ors.,*** **in M.A. No. 2882/2022** decided on **05.10.2023**, the impugned judgment of remand passed only upon requirement of demarcation of the suit property, is not sustainable because the exercise of getting the suit property demarcated can be done by the first appellate court itself.

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111. CRIMINAL PROCEDURE CODE, 1973 – Section 125

Maintenance – Determination of amount – Neither party filed affidavit according to guidelines issued by the Supreme Court in case of *Rajnesh v. Neha, (2021) 2 SCC 324* – Presiding Officer also failed to take notice of the guidelines before finalizing the maintenance amount – Order set aside and matter remitted with directions to reconsider it as per the guidelines.

दण्ड प्रक्रिया संहिता, 1973 – धारा 125

भरणपोषण – राशि का निर्धारण – किसी भी पक्ष ने उच्चतम न्यायालय द्वारा *रजनेश वि0 नेहा, (2021)2 एससीसी* 324 में जारी दिशानिर्देशों के अनुसार शपथपत्र प्रस्तुत नहीं किये – पीठासीन अधिकारी भी भरणपोषण राशि का अंतिम रूप से निर्धारण करने के पूर्व उक्त दिशानिर्देशों की ओर ध्यान देने में विफल रहे – आदेश अपास्त कर मामला उक्त दिशानिर्देशों के अनुसार पुनर्विचार करने के निर्देश के साथ वापिस कर दिया गया ।

Aditi alias Mithi v. Jitesh Sharma

Judgment dated 06.11.2023 passed by the Supreme Court in Criminal Appeal No. 3446 of 2023, reported in 2024 CriLJ 769 (SC)

Relevant extracts from the judgment:

Nothing is evident from the record or even pointed out by the learned counsel for the appellant at the time of hearing that affidavits were filed by both the parties in terms of judgment of this Court in ***Rajnesh v. Neha, (2021)2 SCC 324***, which was directed to be communicated to all the High Courts for further circulation to all the Judicial Officers for awareness and implementation. The case in hand is not in isolation. Even after pronouncement of the aforesaid judgment, this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without there being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance. Comprehensive guidelines were issued pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of maintenance are available under the Special Marriage Act, 1954, Section 125 Cr.P.C., the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act, 1956, and Criteria for determining quantum of maintenance, date from which maintenance is to be

awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. As a result, the litigation which should close at the trial level is taken up to this Court and the parties are forced to litigate.

Considering the facts of the case in hand and the other similar cases coming across before this Court not adhering to the guidelines given in ***Rajnesh's case*** (supra), we deem it appropriate to direct the Secretary General of this Court to re-circulate the aforesaid judgment not only to all the Judicial Officers through the High Courts concerned but also to the National Judicial Academy and the State Judicial Academies, to be taken note of during the training programmes as well.

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112. CRIMINAL PROCEDURE CODE, 1973 – Sections 125 and 127

Maintenance amount – Quantum of – The appropriate test is to see whether the wife is able to maintain herself in the same way as she was living with her husband – Wife is entitled to a financial status equivalent to that of her husband – The socio-economic status of the wife as per the standard of her husband should be considered – The amount of maintenance should be neither luxurious nor penurious – Phrase "unable to maintain herself", does not mean that the wife should be absolutely destitute.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 125 एवं 127

भरण पोषण राशि – परिमाण – यह देखने के लिए उपयुक्त परीक्षण यह है, कि क्या पत्नी उसी तरह स्वयं का भरण पोषण करने में सक्षम है जैसे वह उसके पति के साथ निवास कर रही थी – पत्नी उसके पति के समान आर्थिक स्तर की अधिकारी है – पति के मानक के आधार पर पत्नी की सामाजिक-आर्थिक स्थिति पर विचार किया जाना चाहिए – भरण पोषण की राशि न तो विलासितापूर्ण होनी चाहिए और न ही दयनीय–वाक्यांश "स्वयं का भरण पोषण करने में असमर्थ" का आशय यह नहीं है कि पत्नी को पूर्णतः निःसहाय होना चाहिए।

Mamta @ Dimple v. Manish

Order dated 22.08.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Revision No. 4004 of 2019, reported in ILR 2024 MP 538

Relevant extracts from the order:

In view of the impugned order, it is crystal clear that the respondent/husband is living in his life style and maintaining the standards, therefore, as per the settled

provisions of law, the wife is certainly entitled to live her life as per the standards of her husband. On this aspect, it is asserted in ***Badshah v. Sou. Urmila Badshah Godse, AIR (2014) SCW 256*** the purposive interpretation needs to be given to provision of Section 125 of Cr.P.C. and it is bounden duty of Courts to advance cause of social justice. It is time honoured principle that the wife is entitled to a financial status equivalent to that of the husband. Under Section 125 Cr.P.C. the test is whether the wife is in a position to maintain herself in the way she was used to live with her husband. In ***Bhagwan v. Kamla Devi, AIR 1975 SC 83*** it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance

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113. CRIMINAL PROCEDURE CODE, 1973 – Sections 161 and 313
EVIDENCE ACT, 1872 – Section 3

(i) Police statement – Failure of witness to mention about involvement of particular accused – Effect of – Subsequent statement before Court regarding involvement of the said accused cannot be relied upon.

(ii) Examination of accused – Standard of proof – Burden lies on prosecution to prove the charge – But when accused takes any defence during examination u/s 313 of Cr.P.C., he has merely to create a doubt and need not to prove the said defence beyond all reasonable doubt – It is for the prosecution to establish beyond reasonable doubt that no benefit of such defence can be given to the accused.

(iii) Rustic/illiterate witness – Appreciation of evidence – Such witness has to be treated differently without subjecting to hyper-technical inquiry and without giving much emphasis to imprecise details brought out in evidence – Evidence of such witness must not be disregarded on the basis of minor contradictions or inconsistencies.

दंड प्रक्रिया संहिता, 1973 – धाराएं 161 एवं 313
साक्ष्य अधिनियम, 1872 – धारा 3

(i) पुलिस कथन – विशिष्ट अभियुक्त के संलिप्त होने का उल्लेख करने में साक्षी का असफल रहना – प्रभाव – न्यायालय के समक्ष उक्त अभियुक्त

की संलिप्तता के संबंध में पश्चावर्ती कथन पर विश्वास नहीं किया जा सकता।

(ii) अभियुक्त का परीक्षण – प्रमाण का स्तर – आरोप को प्रमाणित करने का भार अभियोजन पर होता है – किंतु जब अभियुक्त दंड प्रकिया संहिता की धारा 313 के अधीन किये गये परीक्षण में कोई प्रतिरक्षा लेता है, तब उसे केवल संदेह उत्पन्न करना होता है एवं उक्त प्रतिरक्षा को समस्त युक्ति–युक्त संदेह से परे प्रमाणित करना आवश्यक नहीं होता – यह अभियोजन के लिए है कि वह युक्ति–युक्त संदेह से परे यह स्थापित करे कि ऐसी प्रतिरक्षा का कोई लाभ अभियुक्त को नहीं दिया जा सकता।

(iii) ग्रामीण/अशिक्षित साक्षी – साक्ष्य का मूल्यांकन – ऐसे साक्षी के साथ, बिना अति-तकनीकी जांच एवं साक्ष्य में आए अस्पष्ट विवरण पर अधिक बल दिये, भिन्न व्यवहार किया जाना चाहिए – सूक्ष्म विरोधाभास एवं विसंगतियों के आधार पर ऐसे साक्षी की साक्ष्य की अवहेलना नहीं की जानी चाहिए।

Darshan Singh v. State of Punjab

Judgment dated 04.01.2024 passed by the Supreme Court in Criminal Appeal No. 163 of 2010, reported in (2024) 3 SCC 164 (Three Judge Bench)

Relevant extracts from the judgment:

If the PWs had failed to mention in their statements u/s 161 CrPC about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. Prosecution cannot seek to prove a fact during trial through a witness which such witness had not stated to police during investigation. The evidence of that witness regarding the said improved fact is of no significance.

Of course, PW-3 claims to be an illiterate witness and therefore, her testimony must be interpreted in that light. We are cognizant that the appreciation of evidence led by such a witness has to be treated differently from other kinds of witnesses. It cannot be subjected to a hyper-technical inquiry and much emphasis ought not to be given to imprecise details that may have been brought out in the evidence. This Court has held that the evidence of a rustic/illiterate witness must not be disregarded if there were to be certain minor contradictions or inconsistencies in the deposition.

The standard of proof to be met by an accused in support of the defence taken by him under Section 313 of Code of Criminal Procedure is not beyond all

reasonable doubt, as such, a burden lies on the prosecution to prove the charge. The accused has merely to create a doubt and it is for the prosecution then to establish beyond reasonable doubt that no benefit can flow from the same to the accused.

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114. CRIMINAL PROCEDURE CODE, 1973 – Sections 164-A and 173

Medical examination of victim – In offences relating to sexual and bodily crimes, medical examination of victim should be conducted immediately after registration of FIR, which may lead to recovery of evidence and discovery of relevant facts – It would enable the prosecution to correctly identify the accused person(s) – Importance of speedy and fair justice system reiterated.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 164-क एवं 173

पीड़ित की चिकित्सा जांच – लैंगिक और शरीर से संबंधित अपराधों में, प्राथमिकी दर्ज होने के तुरंत बाद पीड़ित की चिकित्सा जांच की जानी चाहिए, जिससे साक्ष्य की बरामदगी हो सकती है और सुसंगत तथ्यों का पता चल सकता है – इससे अभियोजन पक्ष अभियुक्त व्यक्ति (व्यक्तियों) की सही पहचान करने में सक्षम हो सकेगा – त्वरित और निष्पक्ष न्याय प्रणाली का महत्व दोहराया गया।

Dinganglung Gangmei v. Mutum Churamani Meetei & ors.

Judgment dated 07.08.2023 passed by the Supreme Court in Special Leave Petition (Civil) Diary No. 19206 of 2023, reported in 2023 (3) Crimes 257 (SC) (Three Judge Bench)

Relevant extracts from the judgment:

The importance of a speedy and fair justice system should need no reiteration but the magnitude of the offences that we are dealing with prompts this Court to reiterate their importance:

a. When a bodily or sexual offence is complained of, it is necessary to conduct a medical examination of the victim immediately after the FIR is registered, without any delay (subject to the victim consenting to such examination). This is because one of the crucial pieces of evidence which has great probative value in a trial is the nature and severity of the injuries sustained by the victim. The existence of that injury has to be proved to the satisfaction of the court. A medical examination by a registered medical practitioner appropriately authorised in this regard is necessary to prove that an injury was sustained. As time passes, some injuries heal and it is difficult (and in some cases, not possible) for a registered medical practitioner to

accurately assess the severity of the injury. It is also difficult for the registered medical practitioner to develop an opinion on the nature of the weapon or the type of trauma which caused the injury. These aspects attain importance during the trial when a weapon recovered from the accused may be found to be connected to the injury sustained by the victim. If the prosecution fails to prove that the injury sustained by the victim/survivor was a result of the weapon recovered from the accused, a person who is guilty of an offence may be unjustly acquitted. Conversely, if the injury sustained by the victim/survivor is incorrectly found to be linked to the weapon recovered from the accused, an innocent person may be wrongfully convicted. Time is especially of the essence when a sexual offence is complained of. A medical examination may result in the recovery of the DNA of the accused from the clothing or body of the victim/survivor. It may also result in the identification and recording of the nature and severity injuries sustained by the victim/survivor. This is one of the reasons that Section 164-A CrPC requires the medical examination of rape victims to take place within twenty-four hours from the time that information about the commission of the offence is received (subject to the victim/survivor consenting to such examination). Undoubtedly, the absence of such evidence ought not to lead to an acquittal as a matter of course. However, there is no reason to deprive the prosecution of evidence which has significant probative value or to deviate from the investigative procedures prescribed by law;

b. The statements under Sections 161 and 164 CrPC must be recorded as soon as possible. Such statements often lead to the recovery of evidence or the identification of accused persons or witnesses. The statement under Section 161 CrPC may attain relevance during the trial, where the defence may rely on it to contradict a witness in terms of Section 145 of the Indian Evidence Act 1872;

c. The statements under Sections 161 and 164 CrPC coupled with the medical examination of the victim may lead to the recovery of evidence and the discovery of relevant facts, which will enable the prosecution to correctly identify the accused person(s) and arrest them. This, in turn, will enable the trial to commence as soon as possible and for justice to be done. Justice delayed is indeed justice denied;

d. It is crucial for the police to identify and arrest the accused person expeditiously because the accused person may be required for the completion of investigation. Further, the accused may attempt to tamper with or destroy the evidence, intimidate witnesses, and flee from the place of the crime. Whether or not

a person who is arrested in a particular case is likely to do this is a matter left to be determined by the court seized of the matter (during proceedings for bail, if any) but a significant delay in the identification and arrest of the accused for no reason at all cannot be countenanced by this Court;

e. The importance of identifying, arresting, prosecuting, and convicting the person who is actually responsible for the commission of an offence cannot be overstated. If the police arrests a person who is not actually responsible for the offence complained of, it results in injustice which is two-fold: the actual perpetrator is not brought to justice and an innocent person is unjustly prosecuted; and

f. A speedy investigation is necessary to secure a just and proper outcome in a trial and to instil and maintain confidence in the administration of criminal justice in our country. A speedy investigation also serves a preventive function in that the persons who witness the swiftness and accuracy with which the criminal justice system punishes the perpetrator, will be deterred from committing similar crimes. Last but not least, an expeditious investigation and trial ensures that the trauma of victims / survivors is not prolonged because of the length of the proceedings.

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115. CRIMINAL PROCEDURE CODE, 1973 – Section 389
INDIAN PENAL CODE, 1860 – Section 500
Imposition of maximum sentence – Accused was given maximum sentence of two years for an offence u/s 500 of IPC – Where offence is non-cognizable, bailable and compoundable, the trial Judge must assign reasons as to why maximum sentence was necessary to be imposed.
दण्ड प्रक्रिया संहिता, 1973 – धारा 389
भारतीय दण्ड संहिता, 1860 – धारा 500
अधिकतम दण्ड का अधिरोपण – अभियुक्त को भारतीय दण्ड संहिता की धारा 500 के अंतर्गत अपराध के लिये अधिकतम दो वर्ष का दण्ड दिया गया था – जहां, अपराध असंज्ञेय, जमानती व शमनीय है, वहां विचारण न्यायाधीश को कारण दर्शित करना चाहिए कि अधिकतम दण्ड अधिरोपित करने की आवश्यकता क्यों थी?

Rahul Gandhi v. Purnesh Inshwarbhai Modi and anr.

Order dated 04.08.2023 passed by the Supreme Court in Special Leave Petition (Crl.) No. 8644 of 2023, reported in (2024) 2 SCC 595 (Three Judge Bench)

Relevant extracts from the order:

When an offence is non-cognizable, bailable and compoundable, the least that the Trial Judge was expected to do was to give some reasons as to why, in the facts and circumstances, he found it necessary to impose the maximum sentence of two years.

Though the learned Appellate Court and the learned High Court have spent voluminous pages while rejecting the application for stay of conviction, these aspects have not even been touched in their orders.

No doubt that the alleged utterances by the appellant are not in good taste. A person in public life is expected to exercise a degree of restraint while making public speeches. However, as has been observed by this Court while accepting affidavit of the appellant herein in aforementioned contempt proceedings, the appellant herein ought to have been more careful while making the public speech.

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116. CRIMINAL PROCEDURE CODE, 1973 – Section 429
UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 – Section 43-D (5) r/w/s 17, 18 and 19

(i) Bail application – Exercise of general power to grant bail under UAP Act is severely restrictive in scope – Conventional doctrine 'bail is a rule, jail is an exception' is not applicable – Bail must be rejected as a rule, if after hearing public prosecutor and after perusing final report/case diary, Court arrives at a conclusion that there are reasonable grounds for believing that accusations are *prima facie* true.

(ii) Delay in trial – Whether a ground for bail? Trial is underway and 22 witnesses including the protected witnesses have been examined – Accused has been in jail for the last 5 years – Mere delay in trial pertaining to grave offences under the UAP Act cannot be based as a ground for granting bail.

दण्ड प्रक्रिया संहिता, 1973 – धारा 429
विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 – धारा 43-घ(5) सहपठित धाराएं 17, 18 एवं 19

(i) जमानत आवेदन – यूएपी अधिनियम के अंतर्गत जमानत देने की सामान्य शक्ति के उपयोग का दायरा अत्यधिक सीमित है – पारंपरिक सिद्धांत

'जमानत एक नियम है, जेल अपवाद है' लागू नहीं होता – यदि लोक अभियोजक को सुनने के उपरांत और अंतिम रिपोर्ट/केस डायरी के अवलोकन पश्चात् न्यायालय इस निष्कर्ष पर पहुंचता है कि यह मानने हेतु युक्तियुक्त आधार हैं कि आरोप प्रथम दृष्टया सही हैं तो नियमानुसार जमानत अस्वीकार कर देना चाहिए।

(ii) विचारण में देरी – क्या जमानत हेतु एक आधार है? विचारण चल रहा है और संरक्षित साक्षीगण सहित 22 साक्षियों का परीक्षण किया जा चुका है – अभियुक्त पिछले 5 वर्ष से कारागार में है – यूएपी अधिनियम के अंतर्गत गंभीर अपराधों से संबंधित मामलों में एकमात्र विचारण के विलंब को जमानत देने का आधार नहीं बनाया जा सकता ।

Gurwinder Singh v. State of Punjab and anr.

Judgment dated 07.02.2024 passed by the Supreme Court in Criminal Appeal No. 704 of 2024, reported in 2024 (1) Crimes 129 (SC)

Relevant extracts from the judgment:

The conventional idea in bail jurisprudence *vis-à-vis* ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase – 'bail is the rule, jail is the exception' - unless circumstances justify otherwise –does not find any place while dealing with bail applications under UAP Act. The 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)- 'shall not be released' in contrast with the form of the words as found in Section 437(1) CrPC - 'may be released' - suggests the intention of the Legislature to make bail, the exception and jail, the rule.

The courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the courts are merely examining if there is justification to reject bail. The 'justifications' must be searched from the case diary and the final report submitted before the Special Court.

The legislature has prescribed a low, 'prima facie' standard, as a measure of the degree of satisfaction, to be recorded by Court when scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of 'strong suspicion', which is used by Courts while hearing applications for 'discharge'. In fact, the Supreme Court in ***NIA v. Zahoor Ali Watali, (2019) 5 SCC 1*** has noticed this difference, where it said:

"In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act."

In this background, the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true.

It is only if the test for rejection of bail is not satisfied - that the Courts would proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence). This position is made clear by sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.

However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice.

Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on behalf of the appellant cannot be accepted.

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117. EVIDENCE ACT, 1872 – Section 113-A
INDIAN PENAL CODE, 1860 – Sections 306 r/w/s 107 and 498-A

(i) Offence of abetment of suicide – Essential ingredients – Clear *mens rea* to commit the offence is necessary – Mere harassment is not sufficient – It also requires active or direct act which led the

deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position – *Mens rea* cannot be assumed to be ostensibly present but has to be visible and conspicuous.

(ii) Presumption as to abetment of suicide – The presumption is discretionary and would not apply automatically – Merely because wife committed suicide within 7 years of her marriage, presumption would not attract if there is no evidence of cruelty.

(iii) Appreciation of evidence – Duty of Court – The Court must remain very careful and vigilant in applying correct legal principles while appreciating the evidence on record – Court should look for cogent and convincing proof of the act of incitement to commission of the act and such offending action should be proximate to the time of occurrence.

साक्ष्य अधिनियम, 1872 – धारा 113–क

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

(i) आत्महत्या के दुष्प्रेरण का अपराध – आवश्यक तत्व – अपराध कारित करने के लिए स्पष्ट आपराधिक मनःस्थिति का होना आवश्यक – केवल उत्पीडन पर्याप्त नहीं – सक्रिय या प्रत्यक्ष कृत्य आवश्यक है, जिसने मृतक को अन्य कोई विकल्प न दिखने पर आत्महत्या करने की ओर अग्रसर किया एवं ऐसा कृत्य इस आशय से किया गया कि मृतक को ऐसी स्थिति में पहुँचा दे कि वह आत्महत्या कर ले – आपराधिक मनःस्थिति के मौजूद होने की परिकल्पना नहीं की जा सकती, अपितु वह विशिष्टतः दृश्यमान होनी चाहिए।

(ii) आत्महत्या के दुष्प्रेरण की उपधारणा – यह उपधारणा विवेकाधीन है एवं स्वतः लागू नहीं होगी – केवल इसलिए कि पत्नी ने उसके विवाह के सात वर्ष के भीतर आत्महत्या की, उपधारणा लागू नहीं होगी यदि क्रूरता के संबंध में कोई साक्ष्य उपलब्ध नहीं है।

(iii) साक्ष्य का मूल्यांकन – न्यायालय का कर्तव्य – न्यायालय को अभिलेख पर उपलब्ध साक्ष्य का मूल्यांकन करते समय सही विधिक सिद्धांत लागू करने में अत्यन्त सावधान एवं सजग रहना होगा – न्यायालय को आत्महत्या कारित करने के लिए उत्प्रेरित करने वाले कृत्य के संबंध में ठोस एवं विश्वासजनक प्रमाण की तलाश करना होगी एवं ऐसा आपराधिक कृत्य घटना के समय से निकटता लिये हुए होना चाहिए।

Naresh Kumar v. State of Haryana

Order dated 22.02.2024 passed by the Supreme Court in Criminal Appeal No. 1722 of 2010, reported in (2024) 3 SCC 573

Relevant extracts from the order:

It is now well settled that in order to convict a person under Section 306 of the IPC there has to be a clear *mens rea* to commit the offence. Mere harassment is not sufficient to hold an accused guilty of abetting the commission of suicide. It also requires an active act or direct act which led the deceased to commit suicide. The ingredient of *mens rea* cannot be assumed to be ostensibly present but has to be visible and conspicuous.

The mere fact that the deceased committed suicide within a period of seven years of her marriage, the presumption under Section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, the presumption under Section 113A of the Evidence Act may be raised, having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

What is important to note is that the term 'the Court may presume having regard to all other circumstances of the case that such suicide had been abetted by her husband' would indicate that the presumption is discretionary, unlike the presumption under Section 113B of the Evidence Act, which is mandatory. Therefore, before the presumption under Section 113A is raised, the prosecution must show evidence of cruelty or incessant harassment in that regard.

The court should be extremely careful in assessing evidence under section 113A for finding out if cruelty was meted out. If it transpires that a victim committing suicide was hyper sensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court would not be satisfied for holding that the accused charged of abetting the offence of suicide was guilty.

In the case of accusation for abetment of suicide, the court should look for cogent and convincing proof of the act of incitement to the commission of suicide and such an offending action should be proximate to the time of occurrence. Appreciation of evidence in criminal matters is a tough task and when it comes to appreciating the evidence in cases of abetment of suicide punishable under Section 306 of the IPC, it is more arduous. The court must remain very careful and vigilant in applying the correct principles of law governing the subject of abetment of suicide while appreciating the evidence on record. Otherwise it may give an impression that the conviction is not legal but rather moral.

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118. EVIDENCE ACT, 1872 – Section 165
CRIMINAL PROCEDURE CODE, 1973 – Section 162

(i) Examining police records by Court – Nothing in section 162 Cr.P.C. prevents the Trial Judge from putting questions to prosecution witness otherwise permissible – Trial Judge in the interest of justice ought to acquaint himself with important material and charge-sheet and *suo motu* use the statement for proving the contradictions of prosecution witness – Trial Judge should also look at the police paper to ascertain whether person implicated by witness at trial had been implicated at investigation stage also.

(ii) Serious lapses in investigation – Accused was not examined by a medical practitioner – No explanation for such a serious flaw – Free and fair trial is *sine qua non* of Article 21 of the Constitution of India – Denial of fair trial is as much injustice to accused as to victim and society.

साक्ष्य अधिनियम, 1872 – धारा 165
दण्ड प्रक्रिया संहिता, 1973 – धारा 162

(i) न्यायालय द्वारा पुलिस अभिलेखों का परीक्षण – धारा 162 दं.प्र.सं. में ऐसा कुछ भी नहीं है जो विचारण न्यायाधीश को अभियोजन साक्षी से ऐसे प्रश्न पूछने से निवारित करता हो, जो अन्यथा अनुज्ञेय है – विचारण न्यायाधीश को न्याय हित में महत्वपूर्ण सामग्री एवं आरोप पत्र से स्वयं परिचित होना चाहिए और स्वतः अभियोजन पक्ष के साक्षी के विरोधाभास को प्रमाणित करने के लिए कथनों का उपयोग करना चाहिए – विचारण न्यायाधीश को यह ज्ञात करने के लिए भी पुलिस के दस्तावेजों को देखना चाहिए कि क्या

विचारण के दौरान साक्षी द्वारा आलिप्त किये गए व्यक्ति को अनुसंधान के स्तर पर भी आलिप्त किया गया था।

(ii) अन्वेषण में गंभीर त्रुटियाँ – अभियुक्त का चिकित्सक द्वारा परीक्षण नहीं किया गया – इस तरह की गंभीर त्रुटि के लिए कोई स्पष्टीकरण नहीं – स्वतंत्र और निष्पक्ष विचारण भारत के संविधान के अनुच्छेद 21 की अनिवार्यता है – निष्पक्ष विचारण न होना अभियुक्त के प्रति उतना ही अन्यायपूर्ण है जितना कि पीड़ित और समाज के लिए।

Munna Pandey v. State of Bihar

Judgment dated 04.09.2023 passed by the Supreme Court in Criminal Appeal No. 1271 of 2018, reported in 2023 (3) Crimes 373 (SC) (Three Judge Bench)

Relevant extracts from the judgment:

The presiding officer of the Trial Court remained a mute spectator. It was the duty of the presiding officer to put relevant questions to these witnesses in exercise of his powers under Section 165 of the Evidence Act. Section 162 of the CrPC does not prevent a Judge from looking into the record of the police investigation. Being a case of rape and murder and as the evidence was not free from doubt, the Trial Judge ought to have acquainted himself, in the interest of justice, with the important material and also with what the only important witnesses of the prosecution had said during the police investigation. Had he done so, he could without any impropriety have caught the discrepancies between the statements made by these witnesses to the investigating officer and their evidence at the trial, to be brought on the record by himself putting questions to the witnesses under Section 165 of the Evidence Act. There is, in our opinion, nothing in Section 162 CrPC to prevent a Trial Judge, as distinct from the prosecution or the defence, from putting to prosecution witnesses the questions otherwise permissible, if the justice obviously demands such a course. In the present case, we are strongly of the opinion that is what, in the interests of justice, the Trial Judge should have done but he did not look at the record of the police investigation until after the investigating officer had been examined and discharged as a witness. Even at this stage, the Trial Judge could have recalled the officer and other witnesses and questioned them in the manner provided by Section 165 of the Evidence Act. It is regrettable that he did not do so.

There is in our opinion nothing in Section 162 of the CrPC which prevents a Trial Judge from looking into the papers of the charge-sheet suo motu and himself using the statement of a person examined by the police recorded therein for the purpose of contradicting such person when he gives evidence in favour of the State as a prosecution witness. The Judge may do this or he may make over the recorded statement to the lawyer for the accused so that he may use it for this purpose. We also wish to emphasise that in many sessions cases when an advocate appointed by the Court appears and particularly when a junior advocate, who has not much experience of the procedure of the Court, has been appointed to conduct the defence of an accused person, it is the duty of the Presiding Judge to draw his attention to the statutory provisions of Section 145 of the Evidence Act, as explained in ***Tara Singh v. State, AIR 1951 SC 441*** and no Court should allow a witness to be contradicted by reference to the previous statement in writing or reduced to writing unless the procedure set out in Section 145 of the Evidence Act has been followed. It is possible that if the attention of the witness is drawn to these portions with reference to which it is proposed to contradict him, he may be able to give a perfectly satisfactory explanation and in that event the portion in the previous statement which would otherwise be contradictory would no longer go to contradict or challenge the testimony of the witness.

In our opinion, in a case of the present description where the evidence given in a Court implicates persons who are not mentioned in the first information report or police statements, it is always advisable and far more important for the Trial Judge to look into the police papers in order to ascertain whether the persons implicated by witnesses, at the trial had been implicated by them during the investigation.

Free and fair trial is sinequanon of Article 21 of the Constitution of India. If the criminal trial is not free and fair, then the confidence of the public in the judicial fairness of a judge and the justice delivery system would be shaken. Denial to fair trial is as much injustice to the accused as to the victim and the society. No trial can be treated as a fair trial unless there is an impartial judge conducting the trial, an honest, able and fair defence counsel and equally honest, able and fair public prosecutor. A fair trial necessarily includes fair and proper opportunity to the prosecutor to prove the guilt of the accused and opportunity to the accused to prove his innocence.

The role of a judge in dispensation of justice after ascertaining the true facts no doubt is very difficult one. In the pious process of unravelling the truth so as to achieve the ultimate goal of dispensing justice between the parties the judge cannot keep himself unconcerned and oblivious to the various happenings taking place during the progress of trial of any case. No doubt he has to remain very vigilant, cautious, fair and impartial, and not to give even a slightest of impression that he is biased or prejudiced either due to his own personal convictions or views in favour of one or the other party. This, however, would not mean that the Judge will simply shut his own eyes and be a mute spectator, acting like a robot or a recording machine to just deliver what stands feeded by the parties.

If the Courts are to impart justice in a free, fair and effective manner, then the presiding judge cannot afford to remain a mute spectator totally oblivious to the various happenings taking place around him, more particularly, concerning a particular case being tried by him. The fair trial is possible only when the court takes active interest and elicit all relevant information and material necessary so as to find out the truth for achieving the ultimate goal of dispensing justice with all fairness and impartiality to both the parties.

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119. HINDU MARRIAGE ACT, 1955 – Sections 13 and 13 (1)(i-a)

(i) Mental cruelty – Determination of – Non-consummation of marriage from the date of marriage itself without any physical incapacity or valid reason by wife – Non-appearance of wife in the case filed by the husband itself amounts to cruelty – There cannot be a straight jacket formula for deciding mental cruelty – It has to be adjudicated as per the peculiar facts and circumstances of each case.

(ii) Irretrievable breakdown of marriage – Grounds – Section 13 does not provide this ground for grant of decree of divorce – No decree of divorce can be granted on the ground that the marriage has been broken down irretrievably.

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

(i) मानसिक क्रूरता – निर्धारण – विवाह दिनांक से ही पत्नी द्वारा किसी भी शारीरिक अक्षमता या वैध कारण के बिना विवाहोत्तर संभोग न करना – पति द्वारा दायर प्रकरण में पत्नी का उपस्थित न होना क्रूरता के तुल्य है

– मानसिक क्रूरता अभिनिर्धारित करने के लिए कोई सीधा सूत्र नहीं हो सकता है – इसका निर्धारण प्रत्येक मामले के विशिष्ट तथ्यों और परिस्थितियों के अनुसार किया जाना चाहिए।

(ii) विवाह का अपरिवर्तनीय विघटन – आधार – धारा 13 इस आधार पर विवाह विच्छेद की डिक्री देने का प्रावधान नहीं करती है – विवाह विच्छेद की कोई डिक्री इस आधार पर नहीं दी जा सकती है कि विवाह का अपरिवर्तनीय विघटन हो गया है।

Sudeepto Saha v. Moumita Saha

Judgment dated 03.01.2024 passed by the High Court of Madhya Pradesh in First Appeal No. 896 of 2014, reported in ILR 2024 MP 490 (DB)

Relevant extracts from the judgment:

The non-consummation of marriage and denial of physical intimacy amounts to mental cruelty. This allegation of the appellant-husband remained unrebutted as the respondent-wife did not appear before the trial court and did not file any reply to the petition filed by the appellant. The appellant narrated the factum of mental cruelty on account of non consummation of marriage in his affidavit of chief-examination filed under Order 18 Rule 4 of the CPC and the same could not be controverted in the absence of the respondent. The fact which was pleaded and stated in chief-examination in the absence of any rebuttal can be accepted as proved. Meaning thereby, the allegation of mental cruelty levelled by the appellant-husband on account of denial by the respondent-wife for physical intimacy was proved and the learned trial court ought to have considered the same at the time of passing the impugned judgment.

The Supreme Court in ***Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511*** narrated several illustrations enumerated from instances for human behavior which may be relevant in dealing with the cases of mental cruelty. Some illustrations were given in paragraph 101, as was said to be not exhaustive. Illustration No.XII is reproduced below:

> "(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty."

We understand that unilateral refusal to have sexual intercourse for considerable period without any physical incapacity or valid reason can amount to mental cruelty. In the present matter, it is specifically alleged by the appellant in the petition and stated in the affidavit that the respondent denied consummation of marriage from the date of marriage till he left India and the marriage was never consummated, due to unilateral decision of the respondent to refuse sexual intercourse for considerable period without having any valid reason. In the absence of any contrary version or any rebuttal on the part of the respondent, the statement of the appellant cannot be discarded and has to be accepted as it is.

In view of the aforesaid, we are unable to accept the findings of the trial court on the issue of absence of consummation of marriage or physical intimacy. The trial court has wrongly held that failure on the part of the wife to consummate the marriage cannot be a ground for divorce whereas in the matter of ***Samar Ghosh*** (supra), the Apex Court has accepted the said act of wife as mental cruelty. There can never be any straight jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking the relevant factors in consideration. The appellant solemnized the marriage. It was already decided that he will leave India in a short period. During this period, the appellant was hopeful to consummate the marriage but the same was denied by the respondent and certainly the said act of the respondent amounts to mental cruelty. The ground of divorce enumerated in Clause (i-a) under Section 13 (1) is made out. The appellant is entitled for the decree of divorce.

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120. HINDU MARRIAGE ACT, 1955 – Section 13 (1)(i-a)

Divorce – Grounds of harassment and cruelty by wife – Baseless allegations made by wife regarding character and behaviour of the husband – Complaints to higher authorities for initiating disciplinary action and false criminal cases for demand of dowry were also made so that her husband may be removed from service and sent to jail – All these acts were considered as cruelty and harassment – Decree of divorce granted.

हिन्दू विवाह अधिनियम, 1955 – धारा 13(1)(i-क)

विवाह विच्छेद – पत्नी द्वारा कारित उत्पीड़न और क्रूरता के आधार – पति के चरित्र और व्यवहार के संबंध में पत्नी द्वारा निराधार आरोप लगाए गये –

अनुशासनात्मक कार्यवाही प्रारंभ करने के लिए उच्च अधिकारियों को शिकायतें की गईं और दहेज की मांग के संबंध में असत्य आपराधिक मामले भी संस्थित किए गए ताकि उसके पति को सेवा से हटा दिया जावे और जेल भेजा जावे – इन सभी कृत्यों को क्रूरता और उत्पीड़न माना गया – विवाह विच्छेद की डिक्री पारित की गई।

Avinash Kumar Tripathi v. Smt. Priyanka Tripathi

Judgement dated 13.12.2023 passed by the High Court of Madhya Pradesh in First Appeal No. 1664 of 2018, reported in ILR 2024 MP 475 (DB)

Relevant extracts from the judgment:

It is clear that the acts/conduct of respondent constitute cruelty and they cannot be treated as a normal wear and tear of matrimonial life. In this factual position of case at hand the principle laid down in Judgment in ***Anil Kumar Rathore v. Sashi Rathore, 2011 SCC Online MP 2261*** is not applicable in this case. The conduct of the respondent cannot be said that she was protecting her rights only so the judgment relied by respondent is not applicable in the case before this Court. In the following case, the parties were living away from each other for a long time but yet the Apex Court in ***K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226*** held thus:-

> "In our opinion, the High Court wrongly held that because the appellant husband and the respondent wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable..."

Thus, in the light of above judgments, it is proved that wife/respondent harassed her husband/appellant by doubting his character, blaming him of being drunkard womanizer, a person of loose character, assaulting him, lodged criminal cases for demand of dowry, filed writ petitions and also made complaints to his higher authorities for disciplinary action so that he may be terminated from his

service and sent to jail. Thus, the above acts of the respondent looking to the status and society of the parties constitute cruelty.

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121. INDIAN PENAL CODE, 1860 – Sections 34 and 302

Common intention – Determination – Offence of murder – It is a psychological fact as it requires prior meeting of minds and it can be formed a minute before or even during the occurrence of the incidence – All the accused persons were armed when they came to place of occurrence – They simultaneously attacked the deceased and left together – Collective action of all the accused persons indicated sharing of common intention – Accused person rightly convicted for the offence of murder with the aid of Section 34 IPC.

भारतीय दण्ड संहिता, 1860 – धाराएं 34 एवं 302

सामान्य आशय – अवधारण – हत्या का अपराध – यह एक मनोवैज्ञानिक तथ्य है क्योंकि इसके लिये मस्तिष्कों के पूर्व मिलन की आवश्यकता होती है और यह घटना घटित होने के एक मिनिट पूर्व या घटना के दौरान भी निर्मित हो सकता है – सभी अभियुक्तगण सशस्त्र थे जब वे घटनास्थल पर आऐ – उन्होंने एक साथ मृतक पर हमला किया और एक साथ चले गये – सभी अभियुक्तगण का सामूहिक कार्य सामान्य आशय साझा करने का संकेत देता है – अभियुक्त को भारतीय दण्ड संहिता की धारा 34 की सहायता से हत्या के अपराध हेतु उचित ही दोषी ठहराया गया है ।

Ram Naresh v. State of U.P.

Judgment dated 01.12.2023 passed by the Supreme Court in Criminal Appeal No. 3577 of 2023, reported in 2024 CriLJ 628 (SC)

Relevant extracts from the judgment:

The trial court recorded a finding that all accused persons belonged to village Chaurahat and that the evidence on record establishes beyond doubt that the accused persons attacked the deceased Ram Kishore with the intention to kill him. The intention to kill him is discernible from the very fact that all of them are related to each other and were armed when they came to the place of occurrence. All the accused persons, on the instigation of Rajaram simultaneously attacked the deceased Ram Kishore and thereafter left together. Thus, according to the findings of the trial court all the four accused persons had come to the place of occurrence together armed with weapons, assaulted the deceased Ram Kishore simultaneously and left the place together.

The High Court while dealing with the submission that there was no material available on record to establish common intention on part of the appellant-Ram Naresh and hence the appellant is not liable to be convicted with the aid of Section 34 IPC held that the argument has no substance inasmuch as the accused persons had come on the spot collectively and gave serious vital blows to the deceased with the weapons they were armed with causing his death. The collective action of all the accused persons indicated sharing of common intention.

A plain reading of the above paragraph reveals that for applying Section 34 IPC there should be a common intention of all the co-accused persons which means community of purpose and common design. Common intention does not mean that the co-accused persons should have engaged in any discussion or agreement so as to prepare a plan or hatch a conspiracy for committing the offence. Common intention is a psychological fact and it can be formed a minute before the actual happening of the incidence or as stated earlier even during the occurrence of the incidence.

In view of the evidence on record and the findings of the trial court and the High Court as narrated above, the submission that the appellant cannot be convicted with the aid of Section 34 IPC is bereft of merit and cannot be sustained. Accordingly, appeal sans merit and is dismissed.

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122. INDIAN PENAL CODE, 1860 – Sections 34 and 324

Common intention – Conduct of accused – At the time of incident, main accused suddenly drew knife from his pocket and assaulted the victim – Role of co-accused is attributed only to reach the place of incident and thereafter co-operating with main accused in causing injury with kicks and fists – Assault by main accused with knife is not found to be premeditated, pre-planned or pre-arranged incident – Co-accused cannot be held liable for the offence punishable u/s 324 with the aid of Section 34.

भारतीय दण्ड संहिता, 1860 – धाराएं 34 एवं 324

सामान्य आशय – अभियुक्त का आचरण – घटना के समय मुख्य अभियुक्त ने अचानक उसके जेब से चाकू निकाल कर पीड़ित पर हमला कर दिया – सह-अभियुक्तों की भूमिका केवल घटना स्थल पर पहुंचने और उसके बाद लात घूंसो से चोट पहुंचाने में मुख्य अभियुक्त को सहयोग करने की थी – मुख्य

अभियुक्त द्वारा चाकू से हमला करने की घटना को पूर्वविचारित, पूर्वनियोजित या पूर्वरचित नहीं पाया गया – सह-अभियुक्त को धारा 34 की सहायता से धारा 324 के अंतर्गत दण्डनीय अपराध हेतु उत्तरदायी नहीं ठहराया जा सकता।

Vijay Tolaram v. State of Madhya Pradesh

Judgment dated 12.09.2023 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 8763 of 2023, reported in 2024 CriLJ 507 (M.P.) (Bench at Indore)

Relevant extracts from the judgment:

Complainant Dilip (PW-1) has stated that there is a dispute of path way between the accused persons and complainant party. On the date of incident, the accused persons Mukesh and Vijay came and started altercation. He and his brother tried to intervene the accused persons but they have started brain teasing (Magajmari). Thereafter, the accused Mukesh has picked out knife and assaulted Vikas. Statement of this witness finds support from the testimony of another witness Vikas (PW-2). Other witnesses Dharmendra (PW-3) and Sunil(PW-4), have also deposed about the injuries caused to Vikas. Dharmendra Vania (PW-3) specifically stated that Vikas had received the injury of knife and blood was oozing thereof. Dr. Devesh (PW-6) has also supported the facts of said injury. He has found injuries on the person of Vikas and Dilip which were caused by sharp and blunt object. Testimonies of these witnesses remained unshaken in their cross-examination. Dr. Rajendra Bansal (PW-10) has also supported the aforesaid fact that the injuries found on the persons of injured. The said knife was seized by ASI Sunil Gond (PW-13) although he has admitted that the said knife was a knife which is used in the kitchen. Omprakash Ahir (PW-14), Investigating Officer has also supported the case of prosecution.

In view of the aforesaid legal position, the evidence available on record has been examined. As per the testimony of injured witness Dilip (PW-1), Vikas (PW-2), it is revealed that the role of appellant Vijay is only to reach the place of incident and thereafter cooperating with another accused Mukesh in causing injury with kicks and fists. Suddenly, accused Mukesh has assaulted with knife upon the injured persons but it cannot be assumed that it was a pre-meditated, preplanned or pre-arranged incident. In this regard, the genesis of crime is also required to be explored in respect of this incident. There is nothing on record which suggests that

there was an animosity between the accused Vijay and complainant party. Nevertheless, as per the statement of injured Vikas, accused Vijay has used kicks and fists on the basis of this act, it cannot be envisaged that there was a pre-arranged plan for causing injury with knife between the accused Mukesh and Vijay. Therefore, it is not established beyond the reasonable doubt that the appellant Vijay has developed any common intention for causing injury to injured persons and in furtherance of that, the appellant Mukesh has assaulted both the injured with knife.

In these circumstances, it can be held that accused Vijay was certainly present with the main accused Mukesh but they have not premeditated, preplanned or prearranged the scene of crime regarding causing injury with knife. Accordingly, the appellant Vijay cannot be held liable for causing injury with knife to the injured persons. At the most, he may only be liable for causing injury by kicks and fists to Vikas and therefore, he may be convicted only for the offence punishable under Section 323 of IPC for causing injury to the injured Vikas. Whereas, the prosecution succeeds to prove its case against appellant Mukesh beyond the reasonable doubt that he has caused simple injury to complainant Dilip and Vikas using sharp edged knife and therefore, he is entitled to be convicted for the offence punishable under Section 324/34 (two counts) of IPC.

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123. INDIAN PENAL CODE, 1860 – Sections 120B and 411

Criminal conspiracy – Agreement of two or more persons is *sine qua non* to constitute offence of criminal conspiracy – Other accused persons already acquitted of the offence u/s 120B – Only one accused cannot be convicted for conspiracy – Conviction of single accused set aside.

भारतीय दण्ड संहिता, 1860 – धाराएं 120ख एवं 411

आपराधिक षड्यंत्र – आपराधिक षड्यंत्र के अपराध के गठन हेतु दो या अधिक व्यक्तियों का सहमत होना अपरिहार्य घटक है – अन्य अभियुक्त धारा 120बी के अपराध से पहले ही दोषमुक्त हो गये – केवल एक अभियुक्त को षड्यंत्र के लिए दोषी नहीं ठहराया जा सकता है – एकल अभियुक्त की दोषसिद्धि को अपास्त किया गया।

Balla @ Farhat v. State of Madhya Pradesh

Judgment dated 10.08.2023 passed by the Supreme Court in Criminal Appeal No. 2256 of 2011, reported in 2023 (3) Crimes 414 (SC)

Relevant extracts from the judgment:

As regards the conviction of accused no.5 – Balla @ Farhat under Section 120-B of IPC is concerned, we find that the High Court has set aside the conviction of all six other accused persons under Section 120B and accused no.5 – Balla @ Farhat is the only accused who has been convicted for the offence under Section 120-B. The ground on which he was convicted was that he was the only person who knew about the availability of huge amounts of money in the Truck. Section 120-A of the IPC defines criminal conspiracy. An agreement by two or three persons is required to constitute a criminal conspiracy. There cannot be a conspiracy by only one accused, and it is necessary for the applicability of Section 120-B of the IPC that there must be two or more persons agreeing for the purpose of the conspiracy. This proposition of law finds support in a decision of a Bench of three Hon'ble Judges of this Court in ***Topandas v. The State of Bombay, (1955) 2 SCR 881***. Therefore, the conviction of accused no.5 - Balla @ Farhat for the offence under Section 120-B of the IPC cannot be sustained.

As far as Nirmal Kumar (PW-6) is concerned, during the examination-in-chief, he had not deposed that he had seen a sum of Rs.18,000/- being recovered from accused no.5-Balla @ Farhat. He claims that recovery of a sum of Rs.50,000/- was made from accused no.7-Imran. He stated that he saw that Police had come to the house of accused nos.6-Habib and 7- Imran. However, in the cross-examination, he stated that he did not enter the house of accused nos.6-Habib and 7-Imran and in fact, he stated that he was not aware who was staying in said house. Therefore, this witness has not proved the recovery of the amount from any of the three accused with which we are concerned. As far as Rakesh Jain (PW-7) is concerned, firstly, he has been declared hostile. Secondly, he has not deposed that the aforesaid amounts were recovered in his presence from the appellants in these two appeals. Hence, the prosecution failed to prove the recovery of the alleged stolen cash from accused nos. 5 and 7.

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124. INDIAN PENAL CODE, 1860 – Section 193
CRIMINAL PROCEDURE CODE, 1973 – Section 195(1)(b)(i)
Cognizance – Whether court can direct to lodge FIR for the offence punishable u/s 193 of IPC? Held, No – Court may take cognizance only when a complaint is filed by the court or by the officer authorised by the court.

भारतीय दण्ड संहिता, 1860 – धारा 193
दण्ड प्रक्रिया संहिता, 1973 – धारा 195(1)(ख)(i)
संज्ञान – क्या न्यायालय भा.द.सं. की धारा 193 के अंतर्गत दण्डनीय अपराध के लिए प्राथमिकी दर्ज करने का निर्देश दे सकता है? अभिनिर्धारित, नहीं – न्यायालय केवल तभी संज्ञान ले सकता है जब न्यायालय द्वारा या न्यायालय द्वारा अधिकृत अधिकारी द्वारा परिवाद संस्थित किया गया हो।

Gopal Krishna Gehlot v. State of M.P. & ors.

Order dated 25.08.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Criminal Case No. 8753 of 2023, reported in ILR 2024 MP 549

Relevant extracts from the order:

It is clear from aforesaid provision of S.195(1)(b)(i) that if the offence punishable u/s 193 of IPC, false evidence given in the Court, no Court shall take cognizance except on the complaint in writing of that Court or by officer of the Court authorized by that Court in writing in this behalf. Admittedly, the trial Court in place of filing complaint, directed the Police to lodge an FIR against the applicant, which is not permissible in law.

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125. INDIAN PENAL CODE, 1860 – Sections 201 r/w/s 120-B and 302

(i) Circumstantial evidence – Essential requirement – It is a primary principle that the accused 'must be' and not merely 'may be' proved guilty, prior to the conviction of the accused by the Court – Facts established should be consistent only with the guilt of the accused, excluding every possible hypothesis of his innocence.

(ii) Standard of proof – Strong suspicion cannot take the place of proof beyond reasonable doubt for convicting an accused.

(iii) Examination of accused – False explanation or non-explanation of accused could be taken into consideration only to fortify the conclusion of guilt already arrived at on the basis of other proven circumstances – Otherwise, it cannot be used as an additional link to complete the chain of circumstances.

भारतीय दंड संहिता, 1860 – धाराएं 201 सहपठित धारा 120-ख एवं 302

(i) परिस्थितिजन्य साक्ष्य – महत्वपूर्ण आवश्यकताएं – यह प्राथमिक सिद्धांत है कि न्यायालय द्वारा अभियुक्त को दोष सिद्ध किये जाने के पूर्व यह

साबित होना चाहिए कि अभियुक्त पर 'दोष साबित है', न कि वह 'दोषी हो सकता है' – स्थापित हुए तथ्य अभियुक्त की निर्दोषिता की प्रत्येक संभव परिकल्पना को छोड़कर, केवल अभियुक्त की दोषिता से संगत होना चाहिए।

(ii) प्रमाण का मानक – अभियुक्त को दोषसिद्ध करने हेतु प्रबल संदेह युक्ति–युक्त संदेह से परे साबित किए जाने का स्थान नहीं ले सकता।

(iii) अभियुक्त का परीक्षण – अभियुक्त द्वारा दिया गया गलत स्पष्टीकरण अथवा स्पष्टीकरण का न दिया जाना केवल अन्य प्रमाणित परिस्थितियों के आधार पर अभियुक्त के दोषी होने के निष्कर्ष को बल प्रदान करने के लिए विचार में लिया जा सकता है – अन्यथा इसका उपयोग साक्ष्य की श्रृंखला पूर्ण करने हेतु अतिरिक्त कड़ी के रूप में नहीं किया जा सकता।

Raja Naykar v. State of Chhattisgarh

Judgment dated 24.01.2024 passed by the Supreme Court in Criminal Appeal No. 902 of 2023, reported in (2024) 3 SCC 481

Relevant extracts from the judgment:

It is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be'and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities the act must have been done by the accused.

It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

It is only after the prosecution discharges its duty of proving the case beyond all reasonable doubt that the false explanation or non-explanation of the accused could be taken into consideration. In any case, as held by this Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*****,** in a case based on circumstantial evidence, the non- explanation or false explanation of the accused under Section 313 Cr.P.C. cannot be used as an additional link to complete the chain of circumstances. It can only be used to fortify the conclusion of guilt already arrived at on the basis of other proven circumstances.

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126. INDIAN PENAL CODE, 1860 – Section 302

Murder – If there is no eyewitness to incident, prosecution has to prove the motive of commission of crime – Material contradictions in the statement of witnesses – Medical evidence related to weapon of assault did not support prosecution version – Defence version found probable that deceased was under the influence of alcohol and could have tripped and fallen on sharp object – Explanation for delay in lodging FIR also found satisfactory – Prosecution story does not inspire confidence – Conviction set aside.

भारतीय दण्ड संहिता, 1860 – धारा 302

हत्या – यदि घटना का कोई प्रत्यक्षदर्शी साक्षी नहीं है, तो अभियोजन पक्ष को अपराध करने का हेतु साबित करना होगा – साक्षीगण के कथनों में तात्विक विरोधाभास – हमले में प्रयोग किये गये हथियार से संबंधित चिकित्सीय साक्ष्य अभियोजन पक्ष के कथन का समर्थन नहीं करती – बचाव पक्ष का कथन कि मृतक शराब के प्रभाव में था और वह नुकीली वस्तु पर गिर सकता था अधिसंभाव्य पाया गया – प्राथमिकी दर्ज करने में हुए विलम्ब के लिए प्रस्तुत स्पष्टीकरण भी संतोषजनक पाया गया – अभियोजन की कहानी विश्वास प्रेरित नहीं करती – दोषसिद्धि को अपास्त किया गया।

Shatrughan v. The State of Chhattisgarh

Judgment dated 20.07.2023 passed by the Supreme Court in Criminal Appeal No. 437 of 2016, reported in 2023 (3) Crimes 406 (SC)

Relevant extracts from the judgment:

The prosecution story as set out does not appear to be a probable story and the supporting evidence led during trial of the witnesses of fact also does not inspire confidence. Rather there are material contradictions.

On the other hand, the defence has been successful in making a serious dent in the prosecution case for the following reasons:

a) The first point is that no motive has been set up by the prosecution as to why the appellant would assault the deceased. All the witnesses of fact who are family members have stated that there was no enmity between the appellant and the deceased. Once there is no eye-witness of the incident the prosecution will have to establish a motive for the commission of the crime inasmuch as in a case of direct evidence, motive may not have a major role. If there is no motive setup or proved and there are direct eye-witnesses, motive may loose its importance but in the present case as admittedly no one has seen the occurrence, the motive has an important role to play.

b) The defence during the cross-examination has elicited that the Sarpanch Khemraj had grouse against the appellant for the reason that the appellant had made a complaint regarding misappropriation of government funds and also of committing major illegality in distribution of essential commodities. On the said complaint an enquiry was made where the Sarpanch Khemraj PW 11 had to tender public apology.

c) Defence has also suggested that in the night itself after the deceased was taken to the hospital, a meeting was called by the Sarpanch Khemraj where the appellant was forced to confess. The said meeting has been admitted by PW-5. It was suggested that appellant in the meeting had stated that he had seen the deceased tripping and falling on the sharp object resulting into the injury which proved fatal.

d) It is possible that on account of the influence of the Sarpanch Khemraj that the appellant has been falsely implicated.

e) The defence also had elicited during cross-examination of PW 6 that the weapon of assault recovered and produced before him could not have caused the injury in view of the size of the weapon of assault and the size of the injury which had no match.

f) The defence had also suggested that in fact the deceased was heavily drunk and had fallen on a sharp-edged object because of

which he had received the injury. This appears probable for two reasons: firstly, that PW 6 had stated that there was sufficient alcohol in the body of the deceased and secondly that the weapon of assault produced by the prosecution did not match with the injury. The injury could have been caused by the deceased slipping and falling on a sharp object.

In view of the above discussion, the prosecution had failed to establish the charge.

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127. INDIAN PENAL CODE, 1860 – Section 302
CRIMINAL PROCEDURE CODE, 1973 – Section 156

(i) Murder by poisoning – Requisite ingredients for proving murder by poisoning summarised – In the absence of requisite ingredients, conviction cannot be sustained.

(ii) Delay in filing FIR – FIR was lodged after one year of the incident – A part of investigation had already commenced on the day deceased had died – FSL took almost one year in giving the report – Prosecution explained the cause of delay as doctor who carried out post-mortem could not assign cause of death – No *malafide* intention found on the part of any witness or police to delay registration of FIR – Held, such delay is not fatal.

भारतीय दण्ड संहिता, 1860 – धारा 302
दण्ड प्रक्रिया संहिता, 1973 – धारा 156

(i) जहर देकर हत्या – जहर देकर हत्या किया जाना साबित करने के लिये आवश्यक तत्व सारांशित – आवश्यक तत्वों के अभाव में दोष सिद्धि कायम/यथावत नहीं रखी जा सकती।

(ii) प्रथम सूचना रिपोर्ट दर्ज करने में विलंब – घटना के एक वर्ष पश्चात् प्रथम सूचना रिपोर्ट दर्ज की गई थी – मृतक की मृत्यु दिनांक को ही अन्वेषण का एक भाग प्रारम्भ हो चुका था – एफ.एस.एल. को प्रतिवेदन देने में लगभग एक वर्ष लग गया – अभियोजन द्वारा विलंब का कारण पोस्टमार्टम करने वाले चिकित्सक द्वारा मृत्यु के कारण का उल्लेख न करना बताया गया – प्रथम सूचना रिपोर्ट के विलंब से दर्ज कराने में किसी साक्षी या पुलिस का दुर्भावनापूर्ण आशय नहीं पाया गया – अभिनिर्धारित, ऐसा विलंब घातक नहीं।

Hariprasad alias Kishan Sahu v. State of Chhattisgarh

Judgment dated 07.11.2023 passed by the Supreme Court in Criminal Appeal No. 1182 of 2012, reported in (2024) 2 SCC 557

Relevant extracts from the judgment:

Before delving into the evidence adduced by the prosecution, it may be noted that this Court way back in 1984, in ***Sharad Birdhi Chand Sarda v. State of Maharashtra, (1984) 4 SCC 116*** which has been followed in catena of decisions, had observed that in the case of murder by poison, the prosecution must prove following four circumstances:

> "(1) there is a clear motive for an accused to administer poison to the deceased,
>
> (2) that the deceased died of poison said to have been administered,
>
> (3) that the accused had the poison in his possession,
>
> (4) that he had an opportunity to administer the poison to the deceased."

Hence, let us see whether the prosecution had proved the said four circumstances in the instant case. So far as the motive part is concerned, there is hardly any evidence adduced by the prosecution to show that there was any motive for the appellant to administer poison to the deceased. Though, PW 2 Ganeshi Bai and PW 3 her daughter Anita had stated that there was some land dispute going on between the accused and the deceased, except their bare version there was no other evidence produced to substantiate that allegation. That apart, if there was enmity between the accused and the deceased, the deceased would not have gone to the house of the accused for consuming liquor.

The second circumstance that the deceased died of poison also does not seem to have been proved by the prosecution. PW 1 Dr. Sudesh Verma, who was called by the wife of the deceased Bisahu Singh when he was found lying in the Verandah on 23.07.2003, had stated that the patient i.e. Bisahu Singh was in semi-conscious state of mind and was not in a position to speak properly. Wheezing sound and pungent smell of liquor was coming from his mouth. According to him, Bisahu Singh told him that he consumed small quantity of liquor along with some of his mates. PW 2 Ganeshi Bai, wife of the deceased Bisahu Singh had stated that in the

evening hours of 22.07.2003, her husband Bisahu had gone to the forest to bring woods, however he did not come back in the night. At 7 O'clock on the next day morning, she saw that Bisahu was sleeping in the Verandah and some wheezing sound was coming from his neck. She and her daughter Anita Bai tried to wake him up but his condition was very serious. He spoke in a low voice to call the Kotwar. The Kotwar having come, her husband told that Hari Ram had given two glasses of liquor to him, and then he mixed something in the third glass. He further told them that upon his asking, Hari Ram told him that he was mixing medicine to subside the effect of the liquor. PW 3 Ms. Anita Porte, the daughter of the deceased also stated the same version as stated by her mother. PW 7, the Kotwar Bhagwati also supported the version of PW 2 Ganeshi Bai. Similarly, PW 4 Ms. Sukwara Bai, PW 5 Rajesh Kumar, younger brother of the deceased also stated the same thing as stated by the PW 2 and others.

Having regard to the said evidence, it appears that though all the witnesses have stated the same story, none of the witnesses had any personal knowledge about the alleged incident and about the cause of the deteriorating health condition of Bisahu Singh. Even if the said version of the deceased before his wife, his daughter, his brother, the Kotwar and others is treated as his dying declaration, it would be very risky to convict the accused on such a weak piece of evidence.

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128. INDIAN PENAL CODE, 1860 – Section 306
CRIMINAL PROCEDURE CODE, 1973 – Section 204
Offence of abetment to commit suicide – Summoning of accused – Propriety – Wife of deceased borrowed money from accused which was not repaid – On 15th June, 2017 accused allegedly abused and assaulted her husband when on demand borrowed amount was not repaid – Accused is alleged to have issued notice u/s 138 of NI Act also to her husband – On 27th June her husband wrote a suicide note and on 30th June he committed suicide – Whether accused instigated the deceased to commit suicide? Held, No – Abusing and assaulting the deceased for non-payment of borrowed amount cannot be said to be an instigation within the meaning of Section 107 – The said incident happened more than two weeks before the date of suicide – No allegation that any act was done by the accused in the close proximity to the date of suicide – Offence punishable u/s 306 is not made out – Summoning order quashed.

भारतीय दण्ड संहिता, 1860 – धारा 306
दण्ड प्रक्रिया संहिता, 1973 – धारा 204
आत्महत्या के दुष्प्रेरण का अपराध – अभियुक्त को समन करना – औचित्य– मृतक की पत्नी ने अभियुक्त से धन उधार लिया था जिसे चुकाया नहीं गया – 15 जून 2017 को जब मांग करने पर उधार ली गई रकम नहीं चुकाई गई तब अभियुक्त ने कथित तौर पर उसके पति के साथ दुर्व्यवहार और मारपीट की – अभियुक्त पर उसके पति को एनआई एक्ट की धारा 138 के अंतर्गत नोटिस जारी करने का भी आक्षेप है – 27 जून को उसके पति ने एक सुसाइड नोट लिखा और 30 जून को आत्महत्या कर ली थी – क्या अभियुक्त ने मृतक को आत्महत्या हेतु उकसाया था? अभिनिर्धारित, नहीं – उधार ली गई राशि का भुगतान न करने पर मृतक के साथ दुर्व्यवहार और मारपीट करने को धारा 107 के अतंर्गत उकसाना नहीं कहा जा सकता है – उक्त घटना आत्महत्या की दिनांक से दो सप्ताह पूर्व को घटित हुई थी – ऐसा कोई आक्षेप नहीं है कि अभियुक्त द्वारा आत्महत्या की दिनांक के नजदीक कोई कृत्य किया गया – धारा 306 के अंतर्गत दण्डनीय अपराध गठित नहीं होता – समन का आदेश निरस्त।

Mohit Singhal and anr. v. State of Uttarakhand and ors.

Judgment dated 01.12.2023 passed by the Supreme Court in Criminal Appeal No. 3578 of 2023, reported in 2024 CriLJ 679 (SC)

Relevant extracts from the judgment:

According to the complaint of the third respondent, the incident in her shop of the first appellant threatening and assaulting her and her husband was on 15th June 2017. After that, notice under Section 138 of the Negotiable Instruments Act, 1881, was issued by Sandeep to the deceased on 27th June 2017. The suicide note was written three days after that, on 30th June 2017. The deceased committed suicide three days thereafter. Neither in the complaint of the third respondent nor in the suicide note, it is alleged that after 15th June 2017, the appellants or Sandeep either met or spoke to the third respondent and her deceased husband. Section 306 of the IPC makes abetment to commit suicide as an offence. Section 107 of the IPC defines the abetment of a thing.

In the facts of the case, secondly and thirdly in Section 107, will have no application. Hence, the question is whether the appellants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have *mens rea* to instigate the deceased to commit suicide. The act of

instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose.

The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in the close proximity to the date of suicide. By no stretch of the imagination, the alleged acts of the appellants can amount to instigation to commit suicide. The deceased has blamed the third respondent for landing in trouble due to her bad habits.

Therefore, in our considered view, the offence punishable under Section 306 of IPC was not made out against the appellants. Therefore, the continuation of their prosecution will be nothing but an abuse of the process of law.

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129. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Sections 27, 30 and 37

Child in need of care and protection – Welfare and safety of child is the legal responsibility of Board/Child Welfare Committee – Where child is sufficiently mature, the magistrate/committee must give credence to her wishes/desire while passing order under Section 37 of the Act.

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, 2015 – धाराएं 27, 30 एवं 37

देखरेख और संरक्षण का जरूरतमंद बालक – बालक का कल्याण और सुरक्षा बोर्ड/बाल कल्याण समिति का विधिक दायित्व है – जहां बालक पर्याप्त रूप से परिपक्व है, मजिस्ट्रेट/समिति को अधिनियम की धारा 37 के अंतर्गत आदेश पारित करते समय उसकी इच्छाओं/आकांक्षाओं को ध्यान में रखना चाहिए।

Vatsalyapuram Jain Welfare Society, Indore v. State of M.P. and ors.

Order dated 18.01.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Writ Petition No. 1220 of 2024, reported in 2024 (2) MPLJ 110 (DB)

Relevant extracts from the order:

Under the J.J. Act, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and the Magistrate/Committee must give credence to her wishes. As per Section 37 of the J.J. Act the Committee, on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the orders mentioned in Section 37 (1) (a) to (h) of the J.J. Act.

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***130.JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) Act, 2015 – Section 94**

Claim of juvenility – Determination of – *Inter se* priority of documents and medical test for age determination – Priority should be given to the admission register/transfer certificate from school, in its absence, birth certificate given by Corporation shall be preferred – Only in absence of both, an ossification test determines age of accused on the date of offence.

किशोर न्याय (बालकों की देख–रेख एवं संरक्षण) अधिनियम, 2015 – धारा 94 किशोरावस्था का दावा – निर्धारण – आयु निर्धारण के लिए दस्तावेजों एवं मेडिकल परीक्षण की परस्पर प्राथमिकता – शाला के भर्ती रजिस्टर/स्थानान्तरण प्रमाण पत्र को प्राथमिकता देनी होगी, इनकी अनुपलब्धता में निगम द्वारा प्रदत्त जन्म प्रमाण पत्र को प्राथमिकता देनी चाहिए – उपरोक्त दोनों की अनुपलब्धता की दशा में ओसिफिकेशन परीक्षण से अपराध दिनांक को अभियुक्त की आयु का निर्धारण होगा।

Vinod Katara v. State of Uttar Pradesh

Judgment dated 05.03.2024 passed by the Supreme Court in Writ Petition (Crl.) No. 121 of 2022, reported in (2024) 4 SCC 150

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***131.LAND REVENUE CODE, 1959 (M.P.) – Section 110**

Mutation on the basis of Will – Whether revenue authorities have jurisdiction to mutate the name of a beneficiary on the basis of Will? Held, No – Party shall have to seek a declaration from the Civil Court of competent jurisdiction – Revenue authorities do not have jurisdiction.

भू–राजस्व संहिता, 1959 (म.प्र.) – धारा 110

वसीयत के आधार पर नामांतरण – क्या राजस्व अधिकारियों को वसीयत के आधार पर हितधारी के नाम का नामांतरण करने का अधिकार है? अभिनिर्धारित, नहीं – पक्षकार को सक्षम क्षेत्राधिकार वाले सिविल न्यायालय से घोषणा प्राप्त करना होगा – राजस्व अधिकारियों को क्षेत्राधिकार प्राप्त नहीं है।

Jai Sharma and anr. v. Kailash Narayan and ors.

Order dated 13.03.2024 passed by the High Court of Madhya Pradesh(Gwalior Bench) in Miscellaneous Petition No. 2833 of 2021, reported in 2024 (2) MPLJ 185

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132. LIMITATION ACT, 1963 – Article 136

(i) Subsequent suit for possession – Maintainability – Earlier suit for possession was compromised in the year 1965 – Plaintiff alleged that in terms of compromise decree, he was put in possession of the land by the defendant voluntarily but later on he was dispossessed in the year 1977 – Plea of plaintiff regarding handing over possession not found proved – Whether subsequent suit which was filed in the year 1980 is maintainable? Held, No – After expiry of period available for execution of such decree, plaintiff cannot be permitted to file suit for restoration of possession of the same property.

(ii) Power of attorney holder – Acceptability of his deposition – He cannot depose in place of plaintiff or defendant – Fact of delivery of actual possession voluntarily by the defendant to the plaintiff cannot be proved by the power of attorney holder and it was for the plaintiff himself to depose in support of his case. [*Janki Vashdeo Bhojwani and ors. v. Indusind Bank Ltd., (2005) 2 SCC 217* relied]

परिसीमा अधिनियम, 1963 – अनुच्छेद 136

(i) आधिपत्य वापसी हेतु पश्चात्वर्ती वाद – पोषणीयता – आधिपत्य की सहायता हेतु पूर्व संस्थित वाद में वर्ष 1965 में समझौता हो गया था – वादी का यह आक्षेप है कि समझौता आज्ञप्ति की शर्तों के अनुसार उसे प्रतिवादी ने स्वेच्छापूर्वक भूमि का आधिपत्य सौंपा था किन्तु बाद में वर्ष 1977 में उसे आधिपत्यच्युत कर दिया गया – आधिपत्य सौंपने के संबंध में वादी का अभिवाक् प्रमाणित नहीं पाया गया – क्या पश्चातवर्ती वाद जो वर्ष 1980 में संस्थित किया गया, पोषणीय है? अभिनिर्धारित, नहीं – ऐसी

आज्ञप्ति के निष्पादन हेतु उपलब्ध अवधि के अवसान उपरांत, वादी को उसी संपत्ति के आधिपत्य की पुनर्स्थापना हेतु वाद लाने की अनुमति नहीं दी जा सकती।

(ii) मुख्तारनामा धारक – उसके अभिसाक्ष्य की स्वीकार्यता – वह वादी या प्रतिवादी के स्थान पर कथन नहीं दे सकता – प्रतिवादी द्वारा वादी को स्वेच्छया वास्तविक आधिपत्य सौंपने का तथ्य, मुख्तारनामा धारक द्वारा साबित नहीं किया जा सकता और इस हेतु वादी को उसके प्रकरण के समर्थन में स्वयं ही अभिसाक्ष्य देना होगा। (*जानकी वसदेव भोजवानी एवं अन्य विरूद्ध इंडसइंड बैंक लिमिटेड, (2005) 2 एससीसी* अवलंबित)

Vinay Kumar v. Yaseen Mohammad through her L.Rs. Firoz D/o Yaseen Mohammad and ors.

Judgment dated 25.10.2023 passed by the High Court of Madhya Pradesh in Second Appeal No. 912 of 1998, reported in 2024 (1) MPLJ 274

Relevant extracts from the judgment:

In the present case a compromise decree was passed in favour of the plaintiff on 07.08.1965 (Ex.P/5). As per Article 136 of the Limitation Act, 1963 limitation to execute a decree of possession is 12 years and it is well settled that a compromise decree is as good as a decree passed on merits. At the same time there is no quarrel between the parties about executability of the compromise decree.

The plaintiff has come with the case that in pursuance of the compromise decree dated 07.08.1965 he was put in possession but upon deciding issue No. 6-A framed in that regard, learned Courts below have vide (paragraph 28 of appellate Court and 12 to 17 of trial Court) their judgment and decree recorded finding that the plaintiff has failed to establish the factum of delivery of possession by the defendant voluntarily to the plaintiff.

Upon perusal of the entire record, findings recorded in the judgment and decree passed by learned Courts below neither appear to be perverse or illegal nor any substantial question of law in that regard has been formulated by this Court. As such, it cannot be said that in pursuance of the compromise decree, the plaintiff was put in possession by the defendant voluntarily i.e. without process of the Court.

As such, in presence of the available period of 12 years for executing the decree of possession (Ex.P/5), if the plaintiff did/could not execute the decree, then after expiry of period available for execution of such decree, he cannot be permitted

to file civil suit for restoration of possession of the same property taking false plea of delivery of possession by the defendant voluntarily.

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133. MOTOR VEHICLES ACT, 1988 – Section 166

Compensation – Fatal accident – Claim for death of daughter who was a student of B.Tech. – Notional Income @ 20,000/- p.m. assessed by High Court, found appropriate – Future prospects were also duly calculated however, no amount was granted under conventional heads – Compensation was awarded for filial consortium, loss of love and affection and also under the heads of loss of estate and funeral expenses – Compensation enhanced.

मोटर यान अधिनियम, 1988 – धारा 166

प्रतिकर – घातक दुर्घटना – पुत्री की मृत्यु के लिए दावा दायर किया जो बी–टेक की छात्रा थी – उच्च न्यायालय द्वारा 20,000/– रूपये प्रति माह की दर से आंकलित की गई अनुमानित आय उचित पाई गई – भविष्य की संभावनाओं की भी विधिवत गणना की गई थी, परन्तु, पारंपरिक शीर्षों में कोई राशि नहीं दी गई थी – संतान के साहचर्य की हानि, प्रेम और स्नेह की हानि, संपदा की हानि और अंतिम संस्कार व्यय के शीर्ष के अंतर्गत भी प्रतिकर दिया गया – प्रतिकर में वृद्धि की गई।

Kumud Gupta and anr. v. Iffco-Tokio General Ins. Co. Ltd. and ors.

Judgment dated 31.01.2024 passed by the Supreme Court in Civil Appeal No. 1448 of 2024, reported in 2024 ACJ 658

Relevant extracts from the judgment:

We have considered the rival submissions in light of the impugned judgment of the High Court as well as the judgment of the Tribunal and in light of the material on record. While we find that the High Court was justified in computing the monthly notional income of the deceased at Rs. 20,000 per month and adding 40 per cent increase to the said income towards future prospects and since the deceased was not married by deducting 50 percent of the monthly income towards personal expenses and awarding Rs. 30,24,000 towards the loss of dependency, we however find that the High Court has not awarded compensation on the head of loss of filial consortium and also on the head of loss of love and affection. Hence, we award

compensation on the aforesaid heads to an extent of Rs. 88,000 and Rs. 50,000 having regard to the judgment of this court in the case of ***National Insurance Co. Ltd. v. Pranay Sethi, 2017 ACJ 2700 (SC)*** and ***Magma General Ins. Co. Ltd. v. Nanu Ram, 2018 ACJ 2782 (SC)***. We also award a sum of Rs. 18,000 on each of the heads of funeral expenses and loss of estate. Thus the enhanced compensation would be Rs. 1,74,000 which shall carry interest at the rate of 7.5 per cent per annum from the date of the claim petition till realization.

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134. MOTOR VEHICLES ACT, 1988 – Section 166

Compensation – Quantum of – Deceased was a homemaker aged 50 years – Contribution of a homemaker to the family is equally important as an earning member – Income cannot be computed less than the wages payble to daily wagers – Income was assessed @ 4000/- p.m. – However, due to relation between the rival parties and considering the fact that the offending vehicle was not insured, lump sum amount of 6,00,000/- was awarded.

मोटर यान अधिनियम, 1988 – धारा 166

प्रतिकर – परिमाण – मृतिका 50 वर्ष की आयु की एक गृहिणी थी – परिवार में एक गृहिणी का योगदान एक आय अर्जित करने वाले सदस्य के समान महत्वपूर्ण है – आय की गणना दैनिक मजदूरों को देय मजदूरी से कम नहीं की जा सकती – आय का आकलन 4000/– प्रति माह की दर से किया गया – परन्तु विरोधी पक्षों के मध्य संबंध होने के कारण और इस तथ्य को ध्यान में रखते हुए कि अतिलंघनकारी वाहन का बीमा नहीं था, रू. 6,00,000/– की एकमुश्त राशि प्रदान की गई।

Arvind Kumar Pandey and ors. v. Girish Pandey and anr.

Judgment dated 16.02.2024 passed by the Supreme Court of India in Civil Appeal No. 2512 of 2024, reported in 2024 ACJ 567

Relevant extracts from the judgment:

It goes without saying that the role of a homemaker is as important as that of a family member whose income is tangible as a source of livelihood for the family. The activities performed by a home-maker, if counted one by one, there will hardly be any doubt that the contribution of a home-maker is of a high order and invaluable. In fact, it is difficult to assess such a contribution in monetary terms.

Taking into consideration all the attending circumstances, it appears to us that the monthly income of the deceased, at the relevant time, could not be less than Rs. 4,000/- p.m. or so. However, instead of calculating the compensation under different heads, and also keeping in mind the fact that the appellants and the respondents are closely related, and the delinquent vehicle was not insured, we deem it appropriate to allow this appeal in part to the extent that the appellants are granted a lump sum compensation of Rs. 6,00,000/- (Rupees six lakhs). Since the respondents have already paid the amount of Rs. 2,50,000/- to the appellants, the balance amount of Rs. 3,50,000/- shall be paid by them within six weeks, failing which they shall be liable to pay interest as awarded by the Tribunal.

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135. MOTOR VEHICLES ACT, 1988 – Sections 166 and 166 (1) (c)

(i) Compensation – Entitlement of – Legal representative or dependent – The word "dependent" is nowhere defined in the Act – If a person is a legal representative then he can be the claimant – Earning widow cannot be said to be completely dependent on the deceased – Dependency assessed as one half of the income of the deceased.

(ii) Future prospects – Calculation of – Relevance of age – If the deceased was between 40-50 years of age, the future prospects will be calculated as 30% of the income and if the age was between 50-60 years then it would be calculated at 15%.

मोटर यान अधिनियम, 1988 – धाराएं 166 एवं 166 (1)(ग)

(i) प्रतिकर – पात्रता – विधिक प्रतिनिधि या आश्रित –"आश्रित" शब्द को अधिनियम में कहीं भी परिभाषित नहीं किया गया है – यदि कोई व्यक्ति विधिक प्रतिनिधि है तो वह दावेदार हो सकता है – आय अर्जन करने वाली विधवा को पूरी तरह से मृतक पर आश्रित नहीं कहा जा सकता – आश्रितता, मृतक की आय के आधे भाग के अनुसार आंकलित की गई।

(ii) भविष्य की संभावनाएँ – गणना – आयु की सुसंगतता – यदि मृतक 40–50 वर्ष के मध्य की आयु का था, तो भविष्य की संभावनाओं की गणना आय के 30% के अनुसार की जाएगी और यदि आयु 50–60 वर्ष के मध्य थी तो इसकी गणना 15% के अनुसार की जाएगी।

Aysha Be & ors. v. Mohinder & anr.

Order dated 02.11.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 1487 of 2022, reported in ILR 2024 MP 467

Relevant extracts from the order:

It is true that Aysha Be is working as a Teacher and her gross salary is Rs.43000/. In this regard it will also be material to consider the relevant provisions of the Motor Vehicles Act. Section 166 of the Act lays down the category of persons who can apply for the compensation. It categorizes the legal representatives in case of death. It is important to note that section nowhere uses the word 'dependent'. So also the word 'dependent' is not defined under the Act. Meaning thereby, when a person falls under the category of 'legal representative', he can be the claimant. The word 'legal representative' has not been defined under the Motor Vehicles Act. Section 2(11) of the Civil Procedure Code lays down the meaning of said word. There are number of judgments opining that meaning given to the 'legal representative' under Civil Procedure Code can be borrowed while interpreting the provisions of Motor Vehicles Act. Some of them are ***Smt. Manjuri Bera v. The Oriental Insurance Company Ltd. & anr., (2007) 10 SCC 643*** and ***Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and anr., (1987) 3 SCC 234.*** Widow is certainly one of the heir, on which property of a Hindu devolves as per intestate succession. It has been judicially recognized that- (a) age of the deceased, (b) income of the deceased and number of dependents are three factors to be considered while fixing the quantum of compensation. From his earning the deceased will spend on himself and on his near relatives/dependents. So when a person dies in a vehicular accident, the dependents losses the amount contributed by the deceased towards them. The Apex Court in order to have uniformity has laid down some guidelines how to calculate contribution to personal expenses and contribution towards dependents. It depends upon the status of the deceased (married/unmarried) and on number of dependents.

In the present case widow of deceased is an earning lady. She is not totally dependent upon the earning of the deceased. So in the considered opinion of this Court, she is entitled to get compensation, but her dependency is one half of the earning of deceased.

On perusal of record of the Tribunal, the appellants/claimants filed photocopy of Samagra portal, in which, age of deceased-Mohd.Hajik is mentioned as 57 years. So according to the decision of ***National Insurance Company Ltd. v. Pranay Sethi, (2017) 16 SCC 680*** wherein the Apex Court held that while determining the income, an addition of 50% of actual salary to the income of the deceased would be made towards future prospects, where the deceased had a permanent job and was

below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40- 50 years. In case the deceased was between age of 50-60 years, the addition should be 15%. The actual salary should be read as actual salary less tax.

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

Accident claim – Contributory negligence – Accident took place between bus and motorcycle – Tribunal apportioned 20% contributory negligence on the rider of motor cycle – Deceased was pillion rider of motor cycle driven by his friend – No evidence adduced by insurance company that deceased contributed to the negligence to cause accident – Accident took place on account of rash and negligent driving by the driver of offending vehicle – Deceased sustained severe injuries and succumbed to injuries on the spot – No evidence on record to show wrongful act on the part of deceased – Deceased cannot be held guilty of contributory negligence – Reduction of 20% out of total compensation towards contributory negligence was set aside.

मोटर यान अधिनियम, 1988 – धाराएं 166 एवं 168

दुर्घटना दावा – योगदायी उपेक्षा – दुर्घटना बस और मोटरसाइकिल के मध्य हुई – अधिकरण ने मोटर साइकिल चालक की 20 प्रतिशत योगदायी उपेक्षा निर्धारित की – मृतक अपने मित्र द्वारा चलाई जा रही मोटर साइकिल पर पीछे बैठा था – बीमा कंपनी द्वारा कोई साक्ष्य प्रस्तुत नहीं किया गया कि मृतक के लापरवाही में योगदान के कारण दुर्घटना हुई – दुर्घटना, आक्षेपित वाहन के चालक द्वारा उपेक्षा एवं उतावलेपन से वाहन चलाने के कारण हुई – मृतक को गंभीर चोटें आईं और उसकी मौके पर ही मृत्यु हो गई – मृतक की ओर से दोषपूर्ण कार्य को दर्शाने के लिए अभिलेख पर कोई साक्ष्य नहीं – मृतक को योगदायी उपेक्षा का दोषी नहीं ठहराया जा सकता – योगदायी उपेक्षा के लिए की गई कुल मुआवजे में से 20 प्रतिशत की कटौती को अपास्त किया गया।

United Insurance Company Ltd., Jabalpur v. Anil Kumar Gour and ors.

Judgment dated 09.02.2024 passed by High Court of Madhya Pradesh in Miscellaneous Appeal No. 3533 of 2018, reported in 2024 (1) MPLJ 128

Relevant extracts from the judgment:

On perusal of the judgment of ***Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and ors., 2002 MPLJ (2002) 6 SCC 455*** if the contribution of the deceased in the accident is not proved by the respondents by producing evidence, the finding of the Tribunal regarding contributory negligence cannot be upheld. In the present case, there was no evidence adduced by the respondent/insurance company that the deceased contributed the negligence to cause the accident. So far as the contributory negligence on the part of the appellant/Insurance Company is concerned, since the criminal case was registered against the respondent no.1(driver) and he did not turn up to explain in what circumstances the accident occurred, this Court is of the view that the learned Tribunal was not justified in holding that the deceased contributed the negligence to cause the accident, is clearly unjustified in the absence of any evidence to show that the wrongful act on the part of the deceased/victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence, the reduction of 20% towards contributory negligence is clearly unjustified and the same has to be set aside. In view of the principles laid down by the Apex Court in the above judgment, the finding of the Tribunal below is found to be contrary to the settled principle in respect of contributory negligence of the deceased, therefore, the accident took place on account of rash and negligent driving of the vehicle by the driver of the offending vehicle and caused the accident, due to which the deceased sustained severe injuries and died on spot. Therefore, the reduction of 20% towards contributory negligence is clearly unjustified and same has to be set aside.

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

Motor Accident Claim – Delay in lodging FIR – Effect of – Claimant explained the delay of three months saying that he was hospitalised and under treatment and the owner of the offending vehicle assured him that he will bear the medical expenses – Police filed the chargesheet after due investigation – Such investigation cannot be discarded just on the ground of delay and in absence of any other materal in rebuttal.

मोटर यान अधिनियम, 1988 – धाराएं 166 एवं 168

मोटर दुर्घटना दावा – एफ. आई. आर. दर्ज करने में विलंब – प्रभाव – दावेदार ने तीन महीने के विलंब के विषय में बताया कि वह अस्पताल में भर्ती था और

उसका इलाज चल रहा था और अतिलंघनकारी वाहन के मालिक ने उसे आश्वासन दिया था कि वह चिकित्सा खर्च वहन करेगा – पुलिस ने उचित अन्वेषण के बाद अभियोग पत्र प्रस्तुत किया – ऐसे अन्वेषण को केवल विलंब के आधार पर तथा किसी अन्य खंडनकारी सामग्री के अभाव में खारिज नहीं किया जा सकता।

Oriental Insurance Co. Ltd. v. Anil and ors.

Judgment dated 10.04.2023 passed by the High Court of Madhya Pradesh (Inodre Bench) in Miscellaneous Appeal No. 1454 of 2022, reported in 2024 ACJ 655

Relevant extracts from the judgment:

So far as delay in lodging the FIR is concerned, the reasons are given in para 8 of FIR that he was under treatment therefore, report could not be lodged and the owner/non-applicant of the motorcycle assured him that he would incur the expenses, hence, FIR was not lodged. The aforesaid evidence remained unrebutted. The respondent No.1 and 2 did not appear before the MACT. There is no dispute that claimant suffered the injuries because of the motor accident, therefore only on the ground of delay in lodging the FIR, the entire claim cannot be rejected.

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138. NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 8(b) r/w/s 15(c) and 52A

(i) Compliance of mandatory provision regarding disposal of seized narcotic drugs and psychotropic substances – Section 52A is a mandatory rule of evidence which requires physical presence of a Magistrate followed by certifying an inventory, photograph, list of samples – Guidelines issued by way of notification in consonance with provisions as contained in section 52A has to be followed mandatorily – Non-compliance of the same renders the recovery doubtful.

(ii) Production of seized material is a factor to establish seizure followed by recovery – Non-production would lead to negative inference within the meaning of section 114(g) of the Evidence Act.

स्वापक ओषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 8(ख) सहपठित धारा 15(ग) एवं 52क

(i) जब्तशुदा स्वापक औषधि एवं मनःप्रभावी पदार्थों के व्ययन के संबंध में आज्ञापक प्रावधान का अनुपालन – धारा 52क साक्ष्य का एक आज्ञापक

नियम है, जिसमें मजिस्ट्रेट की भौतिक उपस्थिति की आवश्यकता होती है, जिसके पश्चात् संपत्ति की सूची, छायाचित्र, नमूनों की सूची को प्रमाणित किया जाता है – धारा 52क में वर्णित प्रावधान के अनुरूप अधिसूचना के माध्यम से जारी दिशानिर्देशों का अनिवार्य रूप से पालन किया जाना चाहिए – इसका पालन न करने से बरामदगी संदिग्ध हो जाती है।

(ii) जब्त की गई सामग्री का प्रस्तुतीकरण, जब्ती और बरामदगी स्थापित करने के लिए एक कारक है – संपत्ति प्रस्तुत न करना साक्ष्य अधिनियम की धारा 114 (छ) के अनुसार नकारात्मक निष्कर्ष की ओर ले जाएगा।

Mangilal v. State of Madhya Pradesh

Judgment dated 12.07.2023 passed by the Supreme Court in Criminal Appeal No. 1651 of 2023, reported in 2023 (3) Crimes 298 (SC)

Relevant extracts from the judgment:

Before any proposed disposal/destruction, mandate of Section 52A of the NPDS Act requires to be duly complied with starting with an application to that effect. A Court should be satisfied with such compliance while deciding the case. The onus is entirely on the prosecution in a given case to satisfy the Court when such an issue arises for consideration. Production of seized material is a factor to establish seizure followed by recovery. One has to remember that the provisions of the NDPS Act are both stringent and rigorous and therefore the burden heavily lies on the prosecution. Non-production of a physical evidence would lead to a negative inference within the meaning of Section 114(g) of the Indian Evidence Act, 1872 (hereinafter referred to as the Evidence Act). The procedure contemplated through the notification has an element of fair play such as the deposit of the seal, numbering the containers in seriatim wise and keeping them in lots preceded by compliance of the procedure for drawing samples. The afore-stated principles of law are dealt with in extenso in ***Noor Aga v. State of Punjab, (2008) 16 SCC 417***:

> "Guidelines issued should not only be substantially complied with, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.

> Recently, this Court in State of ***Kerala v. Kurian Abraham (P) Ltd., (2008) 3 SCC 582*** following the earlier decision of this Court in ***Union of India v. Azadi Bachao Andolan, (2004) 10 SCC 1*** held that statutory instructions are mandatory in nature.
>
> The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact."

Memorandum under Section 27 of the Act, as witnessed by the two witnesses, P.W.3 and P.W.4 would be of no value in evidence as there is no discovery of new fact involved. Be that as it may, these witnesses also turned hostile. The record would also indicate that an order was passed by the trial Judge permitting the prosecution to keep the seized materials within the police station, to be produced at a later point of time. This itself is a sufficient indication that the mandate of Section 52A has not been followed. There is no explanation either for non-production of the seized materials or the manner in which they are disposed of. No order passed by the Magistrate allowing the application, if any, filed under Section 52A of the NDPS Act. P.W.10, Executive Magistrate has deposed to the fact that he did not pass any order for the disposal of the narcotics substance allegedly seized. Similarly, P.W.12 who is In-charge of Malkhana also did not remember any such order having been passed.

There is a serious doubt with respect to the seizure. P.W.5 who was a police officer himself had deposed on the existence of the very same seized materials even before the occurrence. This testimony which destroys the very basis of the prosecution case has not even been challenged.

Both the Courts have mechanically placed reliance on the FSL Report while taking the statement of P.W.11 as the gospel truth. The views expressed by him can at best be taken as opinion at least on certain aspects. There are too many material irregularities which create a serious doubt on the very case of the prosecution. On a proper analysis we have no hesitation in holding that the impugned judgments are liable to be set aside and the appellant is to be acquitted by rendering the benefit of doubt.

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139. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 142
CONTRACT ACT, 1872 – Section 25(3)
LIMITATION ACT, 1963 – Article 34

Dishonour of cheque – Cheque alleged to have been issued against time barred debt – Maintainability of complaint – Promissory note was issued in the year 2012, which indicates that amount shall be payable at a fixed time in December 2016 – The period of limitation being three years would begin to run from December 2016 and end after next three years – In partial discharge of the said liability, cheque was issued in the year 2017, which was well within the period of limitation – Amount was legally recoverable and the complaint was also filed within time, hence the same is found to be maintainable.

परक्राम्य लिखित अधिनियम, 1881 – धाराएं 138 एवं 142
संविदा अधिनियम, 1872 – धारा 25(3)
परिसीमा अधिनियम, 1963 – अनुच्छेद 34

चैक का अनादरण – कथित रूप से अवधि बाधित ऋण के भुगतान हेतु जारी किया गया – परिवाद की पोषणीयता – वचन पत्र वर्ष 2012 में जारी किया गया था, जो इंगित करता है कि राशि दिसंबर 2016 में एक निश्चित समय पर देय होगी – तीन वर्ष की परिसीमा की अवधि दिसंबर 2016 से प्रारंभ होगी और अगले तीन वर्षों के पश्चात् समाप्त होगी – उक्त दायित्व के आंशिक निर्वहन में, चैक वर्ष 2017 में जारी किया गया था, जो समयावधि के पर्याप्त भीतर था – राशि विधिक रूप से वसूली योग्य थी और परिवाद भी समयावधि में प्रस्तुत किया गया था, इसलिए इसे पोषणीय पाया गया।

K. Hymavathi v. The State of Andhra Pradesh & anr.

Judgment dated 06.09.2023 passed by the Supreme Court in Criminal Appeal No. 2473 of 2023, reported in 2023 (3) Crimes 290 (SC)

Relevant extracts from the judgment:

The promise is to repay the principal amount with the interest accrued within December, 2016. Hence, when the respondent had agreed to repay the amount within December, 2016, the cause of action to initiate proceedings to recover the said amount if not paid within December 2016 would arise only in the month of December, 2016. In that light, the limitation would be as provided under Article 34 to the Schedule in the Limitation Act, 1963.

The provision would indicate that in respect of a promissory note payable at a fixed time, the period of limitation being three years would begin to run when the fixed time expires. Therefore, in the instant case, the time would begin to run from the month of December, 2016 and the period of limitation would expire at the end of three years thereto i.e. during December, 2019. In that light, the cheque issued for Rs.10,00,000/- which is the subject matter herein is dated 28.04.2017 which is well within the period of limitation. The complaint in CC No.681 of 2017 was filed in the Court of the Chief Metropolitan Magistrate on 11.07.2017. So is the case in the analogous complaints. Therefore, in the instant case not only the amount was a legally recoverable debt which is evident on the face of it, the complaint was also filed within time. Hence there was no occasion whatsoever in the instant case to exercise the power under Section 482 to quash the complaint.

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***140.NOTARIES ACT, 1952 – Section 13**

NOTARIES RULE, 1956 – Rule 13

INDIAN PENAL CODE, 1860 – Sections 420, 467, 468 and 471

CRIMINAL PROCEDURE CODE, 1973 – Section 227

Cognizance of offence – Complaint case – Necessity of written complaint – Section 13 of the Notaries Act, 1952 is mandatory in nature – If the offence is committed by a person while exercising functions under the Notaries Act, cognizance shall always be taken only on the written complaint by the officer authorized by the Central or State Government – If the act is not connected with notarial function then cognizance can be taken otherwise also.

नोटरी अधिनियम, 1952 – धारा 13

नोटरी नियम, 1956 – नियम 13

भारतीय दण्ड संहिता, 1860 – धाराएं 420, 467, 468 एवं 471

दण्ड प्रक्रिया संहिता, 1973 – धारा 227

अपराध का संज्ञान – परिवाद प्रकरण – लिखित परिवाद की आवश्यकता – नोटरी अधिनियम, 1952 की धारा 13 आज्ञापक प्रकृति की है – यदि अपराध नोटरी अधिनियम के अंतर्गत कार्यों को करते हुए किसी व्यक्ति द्वारा किया जाता है, तो केंद्र या राज्य सरकार द्वारा अधिकृत अधिकारी द्वारा लिखित परिवाद पर ही संज्ञान लिया जाएगा – यदि कार्य नोटरी कार्य से भिन्न है, तो संज्ञान अन्यथा भी लिया जा सकता है।

Ramayan Prasad Kacher v. State of M.P. & anr.

Order dated 11.12.2023 passed by the High Court of Madhya Pradesh in Criminal Revision No. 1296 of 2020, reported in ILR 2024 MP 544

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141. PREVENTION OF CORRUPTION ACT, 1988 – Sections 13(1)(d) and 13(2) CRIMINAL PROCEDURE CODE, 1973 – Sections 227 and 228
Stage of taking cognizance and framing of charge – Relevant factors – Extent/veracity/gravity of *mens rea* whether can be tested at this stage? Held, No – *Prima facie,* establishment of element of *mens rea* is sufficient; rest is to be deciphered during trial.

भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 13(1)(घ) एवं 13(2)
दण्ड प्रक्रिया संहिता, 1973 – धाराएं 227 एवं 228
संज्ञान लेने और आरोप की विरचना का प्रक्रम – सुसंगत कारक – दुराशय का विस्तार/सत्यता/गुरुत्व का क्या इस स्तर पर परीक्षण किया जा सकता है? अभिनिर्धारित, नहीं – प्रथम दृष्टया दुराशय के तत्व को स्थापित करना पर्याप्त है; शेष प्रकरण के विचारण के दौरान समझा जाना है।

U.S. (Upjeet Singh) Arora v. State of M.P. & anr.

Order dated 15.12.2023 passed by the High Court of Madhya Pradesh is Miscellaneous Criminal Case No. 24473 of 2023, reported in ILR 2024 MP 570 (DB)

Relevant extracts from the order:

As regards the other grounds of absence of mens rea for the transaction being purely contractual in nature is concerned, it is seen from the record that petitioner was though not involved in the process of receipt, consideration of tender and award of contract but has submitted a false report as regards receipt of certain number of Lantern which was found to be incorrect. The inspection report submitted by petitioner was found to be at variance to the actual number of Lanterns delivered. Any false report exposes the signatory of the report to civil as well as criminal action. During investigation, petitioner did not submit any clarification justifying the inspection report. Thus, the Investigating Agency prima facie found that the said false report was prepared with *malafide* intention and with criminal intent of causing loss to government and corresponding financial advantage to the private person.

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***142. PREVENTION OF MONEY LAUNDERING ACT, 2002 – Section 45D**
CRIMINAL PROCEDURE CODE, 1973 – Section 439

Bail – Petitioner has spent more than one year of incarceration – Charge-sheet filed and after framing of charge, trial started – Out of 42 witnesses, 5 witnesses were examined – Considering all the aspects, bail was granted subject to conditions to participate in trial without interfering in course of justice and other conditions to be imposed by trial Court.

धन शोधन निवारण अधिनियम, 2002 – धारा 45घ
दण्ड प्रक्रिया संहिता, 1973 – धारा 439

जमानत – आवेदक ने एक साल से अधिक समय कारावास में बिताया है – आरोप पत्र प्रस्तुत किया गया और आरोप तय होने के बाद विचारण प्रारंभ हुआ – 42 गवाहों में से 5 गवाहों का परीक्षण हुआ – सभी पहलुओं पर विचार करते हुए, न्याय प्रक्रिया में हस्तक्षेप किए बिना विचारण कार्यवाही में भाग लेने की शर्तों और विचारण न्यायालय द्वारा लगाई जाने वाली अन्य शर्तों के अधीन जमानत प्रदान की गई।

Bachhu Yadav v. Directorate of Enforcement Government of India represented by its Assistant Director (PMLA) and anr.

Order dated 06.09.2023 passed by the Supreme Court in Special Leave Petition (Crl.) No. 7561 of 2023, reported in 2023 (3) Crimes 296 (SC)

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143. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 3/4 and 5(d)/6
INDIAN PENAL CODE, 1860 – Section 376 AB

(i) Sentence – Fine – Reasonableness – When a sentence of imprisonment for a term not less than 20 years which may extend upto life imprisonment is imposed – Court should impose such amount of fine which shall be just and reasonable to meet the medical expenses and rehabilitation of the victim.

(ii) Alternative punishment – Same offence – If accused is found guilty of offence punishable under POCSO Act as well as IPC, punishment shall be given only under that Act which provides punishment of greater degree.

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धाराएं 3/4 एवं 5(घ)/6

भारतीय दण्ड संहिता, 1860 – धारा 376 कख

(i) दण्ड – अर्थदण्ड – युक्तियुक्तता – जब 20 वर्ष से अन्यून अवधि का कारावास जिसे आजीवन कारावास तक विस्तारित किया जा सकता है, अधिरोपित किया जाता है – तब न्यायालय को इतनी राशि का अर्थदण्ड लगाना चाहिए जो कि पीड़िता के चिकित्सीय खर्चे एवं पुनर्वास की पूर्ति हेतु उचित और युक्तियुक्त हो।

(ii) वैकल्पिक दण्ड – समान अपराध – यदि अभियुक्त को पॉक्सो अधिनियम के साथ ही साथ भारतीय दण्ड संहिता के अंतर्गत दंडनीय अपराध का भी दोषी पाया जाता है – सजा केवल उस अधिनियम के अंतर्गत दी जाएगी जिसमें अधिक दण्ड का प्रावधान है।

Bhaggi @ Bhagirath @ Naran v. State of Madhya Pradesh

Order dated 05.02.2024 passed by the Supreme Court in Special Leave Petition (Crl.) No. 2888 of 2023, reported in 2024 (1) Crimes 121 (SC)

Relevant extracts from the order:

We have already taken note of the fact that while commuting the capital sentence to life imprisonment, the High Court had lost sight of the fact that despite conviction under Section 376 (2) (i) and under Sections 3/4, Sections 5(d)/6 of the POCSO Act, no separate sentences were imposed on the petitioner for the offence under Section 3/4 and 5(m)/6 of the POCSO Act by the Trial Court, evidently, only on the ground that capital sentence is imposed on the petitioner for the offence under Section 376 AB, IPC. However, it is a fact that the said aspect escaped the attention of the High Court. That apart, in terms of the provisions under Section 376 AB, IPC when a sentence of imprisonment for a term not less than 20 years which may extend upto life imprisonment is imposed, the convict is also liable to suffer a sentence of fine which shall be just and reasonable to meet the medical expenses and rehabilitation of the victim which we quantify as Rupees One Lakh and the same shall be paid to the victim with respect to the conviction under Section 363 IPC. In that regard also, there is absolutely no consideration in the impugned judgment.

It is submitted by the learned counsel, with reference to paragraph 1 of the impugned judgment that the order in paragraph 35 of the impugned judgment that

the conviction and sentence under Section 366 IPC is maintained, can also be in relation to the conviction under Section 363 IPC and the sentence imposed therefor.

We fully endorse the said contention as paragraph 1 of the impugned judgment itself would reveal that the High Court had actually taken into consideration the fact that the petitioner-convict was convicted only under Section 376 AB IPC as amended by Act No.22 of 2018 and under Section 363 IPC. In such circumstances, the conviction and sentence imposed on the petitioner-convict is confirmed. We have taken note of the fact that though the petitioner-convict was convicted for the offence under Section 3/4 and 5 (m)/6 of the POCSO Act, no separate sentence was imposed on the petitioner-convict by the Trial Court taking note of the provision under Section 42 of the POCSO Act.

Since, even after the interference with the sentence imposed for the conviction of the petitioner-convict under Section 376 AB, IPC and modified sentence imposed on commutation by the High Court, we have awarded 30 years of rigorous imprisonment with a fine of Rupees One Lakh, no separate sentence for the aforesaid offence under POCSO Act is to be imposed on the petitioner-convict. While maintaining the conviction of the petitioner-convict under Section 376 AB IPC, the sentence imposed thereunder is modified to a sentence of rigorous imprisonment for a term of 30 years, making it clear that this will also include the period of sentence already undergone and the period, if any ordered by the Trial Court for set off. The imprisonment awarded for the conviction under Section 363, IPC shall run concurrently. The amount of fine imposed thereunder shall be added to the fine imposed by us *viz*., Rupees One Lakh.

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144. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Section 39
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES RULES, 2020 – Rule 12
Justice to victims of sexual offences – In crimes against children, true justice is achieved not merely by nabbing culprit and bringing him to justice but support, care and security to victim is vital during the period of investigation and trial – Justice can be done only when victims are brought back to society, made to feel secure and their worth and dignity is restored – Directions and guidelines issued.

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धारा 39
लैंगिक अपराधों से बालकों का संरक्षण नियम, 2020 – नियम 12
लैंगिक अपराधों के पीड़ितों को न्याय – बालकों के विरूद्ध अपराधों में, न केवल अपराधी को पकड़कर और उसे न्याय के दायरे में लाने से वास्तविक न्याय होगा, अपितु जांच और विचारण की अवधि के दौरान पीड़ित का समर्थन, देखभाल और सुरक्षा महत्वपूर्ण है – न्याय तभी किया जा सकता है जब पीड़ितों को समाज में वापस लाया जाये, सुरक्षित महसूस कराया जाये और उनकी योग्यता और गरिमा को बहाल किया जावे – निर्देश और मार्गदर्शन जारी किए गये।

Bachpan Bachao Andolan v. Union of India & ors.

Judgment dated 18.08.2023 passed by the Supreme Court in Writ Petition (Civil) No. 427 of 2022, reported in 2023 (3) Crimes 281 (SC)

Relevant extracts from the judgment:

In view of what is required under the POCSO Rules, this court hereby issues the following directions:

"In furtherance of the mandate of Section 39 of the POCSO Act, the Principal Secretary to the Department of Women and Child Welfare, in the State of Uttar Pradesh shall convene a meeting within the next six weeks to review the facts, take action, and frame rules/guidelines as necessary, on the following:

i. Assess capabilities in the state with respect to the support persons ecosystem for the selection, appointment, need for special rules/guidelines/Standard Operating Procedure in regard to their appointment/empanelment, training, career advancement and terms and conditions of employment;

ii. To achieve the purpose in (i) above, require the presence of the Chairperson, of the State Commission for the Protection of Child Rights (SCPCR), Secretary, State Legal Service Authority, senior-most President of a JJB and senior-most Chairperson of a CWC in the state, and a representative from the State Commission for Women;

iii. Prior to this meeting, details may be called from each District Child Protection Unit (DCPU), as to the list of support persons maintained by it as per Rule 5(1) - which is to include the names of persons or organizations working in the field of child rights or child protection, officials of children's homes or shelter homes having custody of children, and other eligible persons employed by the DCPU [as prescribed under Rule 5(6)];

iv. After due consultations, frame such rules, or guidelines, as are necessary, relating to the educational qualifications and/or training required of a support person [over and above the stipulation in Rule 5(6)], and parameters to identify the eligible institutions or NGOs in the state, which can be accredited to depute qualified support persons, and consequently be added to the District Child Protection Unit (DCPU) directory as contemplated in Rule 5(1);

v. Ensure that the DCPU or CWC, as the State authorities may deem fit, is tasked with conducting periodic training for all support persons in the DCPU directory to impart knowledge not only on the Act, Rules, and the legal and court procedures involved in prosecuting a POCSO case, but also more fundamentally on communicating and assisting the children of various ages and backgrounds, with the sensitivity the role demands;

vi. In the guidelines framed, ensure that a reporting mechanism through appropriate formats are prepared, to enable the support persons to send monthly reports as per Rule 4(12) to the concerned CWC, which should then be compiled and sent to the SCPCR, and the state government;

vii. Prepare a framework, in the form of a Standard Operating Procedure (SOP) to ensure proper implementation of Rule 12 of the POCSO Rules, 2020, for reporting by the respective CWCs on the specific heads of information collected by them, on monthly basis. This shall include the number of cases, where support persons have been engaged in trials and inquiries throughout the state. The information should also reflect whether they were from the DCPU directory, or with external help from an NGO. Such list shall be reviewed on monthly basis by the SCPCR;

viii. The SOP prepared, and guidelines framed, are to be communicated to all JJBs and CWCs within a week of its preparation;

ix. Lastly, it is important to acknowledge that support persons who are independent trained professionals, would need to take up tasks which require intensive interactions in often, hostile environments, and consequently deserve to be paid adequate remuneration. Therefore, though the Rules state that such personnel should be paid equivalent to a skilled worker as per the Minimum Wages Act, 1948, this court is of the opinion that the remuneration paid for the duration of the work, should be commensurate to the qualifications and experience of these

independent professionals, having regard to the salaries paid to those with comparable qualifications employed by the government, in PSUs, or other institutions run by the government (e.g. hospitals), and this too may be considered in the meeting to be convened by the Principal Secretary.

The Model Guidelines (supra) issued by the Ministry of Women and Child Development, Government of India, albeit prepared prior to the amended POCSO Rules, 2020, may offer some assistance in the framing of guidelines as directed above.

In crimes against children, it is not only the initiating horror or trauma that is deeply scarring; that is aggravated by the lack of support and handholding in the days that follow. In such crimes, true justice is achieved not merely by nabbing the culprit and bringing him to justice, or the severity of punishment meted out, but the support, care, and security to the victim (or vulnerable witness), as provided by the state and all its authorities in assuring a painless, as less an ordeal an experience as is possible, during the entire process of investigation, and trial. The support and care provided through state institutions and offices is vital during this period. Furthermore, justice can be said to have been approximated only when the victims are brought back to society, made to feel secure, their worth and dignity, restored. Without this, justice is an empty phrase, an illusion. The POCSO Rules 2020, offer an effective framework in this regard, it is now left to the State as the biggest stakeholder in it– to ensure its strict implementation, in letter and spirit.

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145. REGISTRATION ACT, 1908 – Sections 17 (1)(f) and proviso of 49
STAMP ACT, 1899 – Section 33
Suit for specific performance of contract – Plaintiff tendered agreement to sell in evidence – Defendant filed application for impounding the said document on the grounds that the same was neither registered nor sufficiently stamped – Agreement to sell was without delivery of possession – Since possession was not delivered under agreement to sell, same was not required to be stamped as conveyance deed – Held, as per Proviso to Section 49 of the Act, agreement to sell can be received as evidence in suit for specific performance of contract even if it is not registered – Document was rightly admitted in evidence.

रजिस्ट्रीकरण अधिनियम, 1908 – धारा 17 (1)(च) एवं 49 का परंतुक
स्टाम्प अधिनियम, 1899 – धारा 33
संविदा के विनिर्दिष्ट पालन हेतु वाद – वादी ने साक्ष्य में विक्रय अनुबंध प्रस्तुत किया – प्रतिवादी ने इस आधार पर उक्त दस्तावेज को परिबद्ध करने के लिए आवेदन प्रस्तुत किया कि उक्त दस्तावेज न तो पंजीकृत था और न ही पर्याप्त रूप से स्टाम्पित – विक्रय अनुबंध के आधार पर संपत्ति के आधिपत्य का अंतरण नहीं हुआ था – चूंकि विक्रय अनुबंध के तहत आधिपत्य नहीं सौंपा गया था, अतः उसे हस्तांतरण विलेख के रूप में स्टाम्पित करने की आवश्यकता नहीं थी – अधिनियम की धारा 49 के परंतुक के अनुसार, विक्रय अनुबंध को संविदा के विर्निदिष्ट अनुपालन के लिए प्रस्तुत वाद में साक्ष्य के रूप में ग्राह्य किया जा सकता है, भले ही वह पंजीकृत न हो – दस्तावेज को साक्ष्य में उचित रूप से ग्राह्य किया गया था।

Tahir Khan and anr. v. Monesh Kataria and anr.

Order dated 13.10.2023 passed by High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 6299 of 2022, reported in 2024 (2) MPLJ 78

Relevant extracts from the order:

In the agreement to sale dated 04.06.2018, there is no recital that possession of the land covered there under is being delivered to the intending purchaser. The defendant No.1 himself in his application under Section 33 of the Stamp Act categorically stated that the agreement to sale is without delivery of possession. Thus, now he cannot contend that possession under the agreement to sale was delivered. Since possession was not delivered under the agreement to sale, the same was not required to be stamped as a conveyance and the Trial Court has rightly held the same to be properly stamped.

Though the agreement to sale is unregistered and as per Section 17(f) of Indian Registration Act the same was required to be registered but as per the proviso to Section 49 thereof an unregistered document effecting immovable property and required by that Act or the Transfer of Property Act to be registered may be received as evidence of a contract in a suit for specific performance. Thus, as per the aforesaid proviso the agreement to sale can be received as evidence of a contract in this suit for specific performance. This aspect of the matter has already been considered by this Court in the case of ***Manish and anr. v. Anil Kumar, (2015) 2 MPLJ 645*** in which it has been held as under:-

"Section 17(f) of the Act has been inserted by the Registration (Madhya Pradesh Amendment) Act, 2009 with assent of the President by way of notification dated 14th January, 2010. The relevant part of amended Section 17 of Act reads as under:

> 17**. Documents of which registration is compulsory** – (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act, XVI of 1864, or the Indian Registration Act. 1866, or the Indian Registration Act, 1871 or the or this Act came or comes into force, namely:
>
> .....
>
> 17(f) any document which purports or operates to effect any contract for sale of any immovable property."
>
> In terms of the above provision an agreement to sale is required to be registered.
>
> Section 49 of The Registration Act, which is relevant for the present purpose provides as under:
>
> "49. **Effect of non-registration of document required to be registered** – No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall –
>
> (a) affect any immovable property comprised therein, or
>
> (b) confer any power to adopt, or
>
> (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered : Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), [***] or as evidence of any collateral transaction not required to be effected by registered instrument.

Under section 49 of the Act a document required to be registered under section 17 of Act or by any provision of Transfer of Property Act, 1882 cannot be received as evidence of any transaction affecting such property or conferring

such power, unless it has been registered, but an exception has been carved out by way of proviso in respect of suit for specific performance to the effect that such a document can be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument.

Supreme Court in the matter of ***S. Kaladevi v. V. R. Somasundaram and ors., 2010(3) MPLJ (S.C.) 500*** while considering similar issue in respect of an unregistered sale deed filed in a suit for specific performance has held as under:

> "The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. Proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs. 100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of 1908 Act."

Thus in view of the relevant provisions and the pronouncement as aforesaid, the agreement to sale even though not registered can very well be received as evidence in the present suit which is for specific performance of contract. The document is also sufficiently stamped. The Trial Court has rightly held so. The judgment relied upon by the learned counsel for the petitioners are distinguishable on facts and do not help them in any manner.

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146. REGISTRATION ACT, 1908 – Section 47

TRANSFER OF PROPERTY ACT, 1882 – Section 54

Registration of sale deed – Effective date of operation – Where sale deed is executed and entire consideration is paid on or before execution of the sale deed – Held, after registration of such sale deed, it will operate from the date of its execution.

रजिस्ट्रीकरण अधिनियम, 1908 – धारा 47

संपत्ति अंतरण अधिनियम, 1882 – धारा 54

विक्रय पत्र का पंजीकरण – प्रवर्तन की प्रभावी तिथि – जहां विक्रय पत्र का निष्पादन कर दिया गया हो और सम्पूर्ण प्रतिफल विक्रय पत्र के निष्पादन के समय या उसके पूर्व अदा किया जा चुका हो – अभिनिर्धारित, ऐसे विक्रय पत्र के पंजीकरण के पश्चात् वह उसके निष्पादन की तारीख से प्रभावी होगा।

Kanwar Raj Singh (d) through L.Rs. v. Gejo (d) through L.Rs. and ors.

Judgment dated 02.01.2024 passed by the Supreme Court in Civil Appeal No. 9098 of 2013, reported in (2024) 2 SCC 416

Relevant extracts from the judgment:

On plain reading of section 47, it provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof was required. Thus, when a compulsorily registerable document is registered according to the Registration Act, it can operate from a date before the date of its registration. The date of the operation will depend on the nature of the transaction. If, in a given case, a sale deed is executed and the entire agreed consideration is paid on or before execution of the sale deed, after it is registered, it will operate from the date of its execution. The reason is that if its registration was not required, it would have operated from the date of its execution.

Now, we come to the decision of the Constitution Bench in the case of ***Ram Saran Lall v. Domini Kuer, AIR 1961 SC 1747.*** In paragraph 8 of the judgment, the Constitution Bench held thus:

> "We do not think that the learned Attorney General's contention is well founded. We will assume that the learned Attorney-General's construction of the instrument of sale that the property was intended to pass under it on the date of the instrument is correct. Section 47

> of the Registration Act does not, however, say when a sale would be deemed to be complete. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date. Therefore we do not think that the sale in this case can be said, in view of Section 47, to have been completed on January 31, 1946. The view that we have taken of Section 47 of the Registration Act seems to have been taken in ***Tilakdhari Singh v. Gour Narain, AIR 1921 Pat 150***. We believe that the same view was expressed in ***Nareshchandra Datta v. Gireeshchandra Das, ILR (1935) 62 Cal 979*** and ***Gobardhan Bar v. Guna Dhar Bar, ILR (1940) 2 Cal 270"***.

The Constitution Bench held that Section 47 of the Registration Act does not deal with the issue when the sale is complete. The Constitution Bench held that Section 47 applies to a document only after it has been registered, and it has nothing to do with the completion of the sale when the instrument is one of sale. It was also held that once a document is registered, it will operate from an earlier date, as provided in Section 47 of the Registration Act.

Every sale deed in respect of property worth more than Rs. 100/- is compulsorily registerable under Section 54 of the Transfer of Property Act. Thus, a sale deed executed by the vendor becomes an instrument of sale only after it is registered. The decision of the Constitution Bench only deals with the question of when the sale is complete; it does not deal with the issue of the date from which the sale deed would operate. Section 47 of the Registration Act does not deal with the completion of the sale; it only lays down the time from which a registered document would operate.

Now, coming to the facts of this case, the consideration was entirely paid on the date of the execution of the sale deed. The sale deed was registered with the interpolation made about the description/area of the property sold. The first defendant admittedly made the said interpolation after it was executed but before it was registered. In terms of Section 47 of the Registration Act, a registered sale deed where entire consideration is paid would operate from the date of its execution. Thus, the sale deed as originally executed will operate.

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147. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 3(1)(xi)

Caste certificate – Necessity of – Prosecution did not produce and prove caste certificate by leading evidence – It was not stated by the victim that she belonged to scheduled caste or scheduled tribe and the accused belonged to elite caste – Prosecution failed to prove the essential ingredients of the offence – Conviction set aside.

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचरण निवारण) अधिनियम, 1989 – धारा 3(1)(xi)

जाति प्रमाण पत्र – आवश्यकता – अभियोजन ने जाति प्रमाण पत्र साक्ष्य में प्रस्तुत और प्रमाणित नहीं किया – पीड़िता द्वारा यह नहीं कहा गया था कि वह अनुसूचित जाति या अनुसूचित जनजाति की थी और अभियुक्त कुलीन जाति से संबंधित था – अभियोजन अपराध के आवश्यक तत्वों को प्रमाणित करने में विफल रहा – दोषसिद्धि अपास्त की गई।

Anil Kumar & ors. v. State of M.P.

Judgment dated 18.12.2023 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 1507 of 2000, reported in ILR 2024 MP 505

Relevant extracts from the judgment:

Apart from the investigating officers, even did not obtain certificate from the competent authority to establish that the complainant-Sharmila belongs to scheduled castes and scheduled tribes community shows that the Investigating Officer was not aware of the provision of the Act and the Rules and investigated the matter in a routine manner and the investigation ought to have been done by designated police officer he would have probably first ascertained whether the

complainant comes within the category of scheduled caste or scheduled tribe community. In view of foregoing legal and factual analysis, this Court is of the view the conviction and sentence passed by the Court below is not sustainable.

Assuming that it is established that the prosecutrix belongs to scheduled caste and scheduled tribes community, still it is difficult to hold that the offence u/s 3(1)(xi) of the Act is established, there is no evidence to show that the appellants used criminal force to the prosecutrix to outrage her modesty only she belongs to particular community. There is no such circumstances to suggest that her modesty was intended or tried to be outraged. It is, thus, clear that ingredients of section 3(1)(xi) of Act is not proved and conviction of the appellants u/s 3(1)(xi) deserves to be set aside.

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148. SPECIFIC RELIEF ACT, 1963 – Section 16 (c)

Suit for specific performance of agreement to sell – Readiness and willingness – Proof of – Appellant nos. 1, 2 and 4 entered into an agreement to sell immovable property with the respondents – Six months time was specified for completion of transaction – Later, appellants sold the suit property to third party – Suit for specific performance on the basis of agreement to sale filed by the respondents – Held, agreement specified fixed time frame for full payment by the respondents and they failed to make full payment within time fixed in the agreement – Sale deed was executed by the appellants in favour of the third person much prior to issuance of any notice and institution of suit – Respondents did not seek relief for cancellation of the said sale deed – Readiness and willingness was found missing – Suit dismissed.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 16 (ग)

विक्रय अनुबंध के विर्निदिष्ट अनुपालन हेतु वाद – तैयारी एवं तत्परता – सबूत – अपीलार्थी क्रमांक 1, 2 और 4 ने प्रत्यर्थीगण के साथ अचल संपत्ति के विक्रय हेतु अनुबंध किया – संव्यवहार को पूर्ण करने के लिए छह माह का समय निर्दिष्ट किया गया था – बाद में अपीलार्थीगण ने वादग्रस्त संपत्ति तृतीय पक्ष को विक्रय कर दी – प्रत्यर्थीगण द्वारा विक्रय अनुबंध के आधार पर विर्निदिष्ट अनुपालन का वाद प्रस्तुत किया गया – अभिनिर्धारित किया गया कि, अनुबंध में प्रत्यर्थीगण द्वारा पूर्ण भुगतान किये जाने हेतु निश्चित समय सीमा निर्दिष्ट की गई थी और वे अनुबंध में निर्धारित समयसीमा के भीतर पूर्ण भुगतान करने में विफल रहे –

सूचना पत्र जारी करने और वाद संस्थित होने के बहुत पूर्व ही अपीलार्थीगण द्वारा तृतीय व्यक्ति के पक्ष में विक्रय पत्र निष्पादित कर दिया गया था – प्रत्यर्थीगण द्वारा उक्त विक्रय पत्र को रद्द करने के अनुतोष की वांछा नहीं की गई – तैयारी एवं तत्परता नहीं पाई गई – वाद निरस्त किया गया।

Alagammal and ors. v. Ganesh and anr.

Judgment dated 10.01.2024 passed by the Supreme Court in Civil Appeal No. 8185 of 2009, reported in 2024 (2) MPLJ 11

Relevant extracts from the judgment:

The Court would indicate that within six months there existed the onus of paying the entire balance amount of Rs.18,000/- by the respondent no.1 to the appellant no.1. It is not the case of the respondents that they had even offered to pay the remaining/balance amount before the expiry of the six-month period. Thus, payment of Rs.3,000/- only out of Rs.21,000/- having been made, or at best Rs.7,000/- out of Rs.21,000/-, which is the amount indicated in the Legal Notice sent by the respondents to the appellants, the obvious import would be that the respondents had not complied with their obligation under the Agreement within the six-month period.

Pausing here, it is notable that the appellant no.1 having accepted payment of Rs.1,000/- on 21.04.1997 i.e., after appellant no.1 had executed a Sale Deed in favour of appellant no.7 on 05.11.1997, coupled with the fact that the forensic expert found the two thumb-impressions purportedly acknowledging payment after the expiry of the time fixed not matching the fingerprints of appellant no.1 is clearly indicative that time having not been extended, no enforceable right accrued to the respondents for getting relief under the 1963 Act. At the highest, if the appellant no.1 had accepted money from respondent no.1 after the expiry of the time-limit, which itself has not been conclusively proved during trial or even at the first or second appellate stages, the remedy available to the defendants was to seek recovery of such money(ies) paid along with damages or interest to compensate such loss but a suit for specific performance to execute the Sale Deed would not be available, in the prevalent facts and circumstances. In the present case, there is also no explanation, as to why, an excess amount of Rs.425/-, as claimed, was paid by respondent no.1 to the appellant no.1, when the respondents' specific stand is that due to the appellants not being in possession of the property so as to hand over possession to the respondents, delay was occasioned. The submission that no adverse effect could be saddled on the respondents as decree for declaration and

recovery of possession was obtained by appellant no.1 in her favour only on 27.04.1996 is not acceptable for the reason that there is no averment that pursuant to such decree, she had also obtained possession through execution. Thus, the decree dated 27.04.1996 also remained only a decree on paper without actual possession to appellant no.1. The contention of the respondents becomes self-contradictory especially with regard to cause of action having arisen after such decree in favour of the appellant no.1 since even at the time of filing the underlying suit, actual possession not being with appellant no.1, the Sale Deed could not have been executed.

Another important aspect that the Court is expected to consider is the fact that the appellant no.7 in whose favour there was a Sale Deed with regard to the suit premises, much prior to issuance of any Legal Notice and the institution of the suit in question and that no relief had been sought for cancellation of such Sale Deed, a suit for specific performance for execution of sale deed qua the very same property could not be maintained. The matter becomes worse for the respondents since such relief was also not sought even at the First Appeal stage or at the Second Appeal stage, despite the law permitting and providing for such course of action. Even the Legal Notice dated 18.11.1997 has been issued after almost seven months from the alleged last payment of Rs.1.000/-, as claimed by the respondents to have been made on 21.04.1997.

For reasons afore-noted, the impugned judgment of the High Court as also the judgment of the First Appellate Court stand set aside. The judgment/order of the Trial Court is revived and restored.

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149. SPECIFIC RELIEF ACT, 1963 – Section 20

Suit for specific performance – Entitlement to relief – It is discretionary and equitable – Conduct of plaintiff is an important factor while exercising discretion – Plaintiffs made false and/or incorrect statements in the plaint, which were very material – Held, plaintiffs are not entitled to discretionary relief of specific performance.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20

विनिर्दिष्ट पालन का वाद – अनुतोष की पात्रता – यह विवेकाधीन एवं साम्यापूर्ण है – विवेकाधिकार का उपयोग करते समय वादी का आचरण एक महत्वपूर्ण कारक है – वादीगण द्वारा वादपत्र में मिथ्या एवं/अथवा असत्य कथन किये गये, जो अत्यन्त तात्विक थे – अभिनिर्धारित, वादीगण विनिर्दिष्ट पालन के वैवेकिक अनुतोष को प्राप्त करने के अधिकारी नहीं है।

Major Gen. Darshan Singh (D) by L.Rs. and anr. v. Brij Bhushan Chaudhary (D) by L.Rs.

Judgment dated 01.03.2024 passed by the Supreme Court in Civil Appeal No. 9360 of 2013, reported in (2024) 3 SCC 489

Relevant extracts from the judgment:

Under Section 20 of the 1963 Act, the grant of a decree for specific performance is always discretionary. The exercise of discretion depends on several factors. One of the factors is the conduct of the plaintiff. The reason is that relief of a decree of specific performance is an equitable relief. A person who seeks equity must do equity.

The relief of specific performance is discretionary and equitable. Considering the plaintiffs' conduct of making false and/or incorrect statements in the plaint, which were very material, we hold that the plaintiffs are disentitled to relief of specific performance.

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***150.TRANSFER OF PROPERTY ACT, 1882 – Sections 106 and 109**

Tenancy – Respondent purchased property by way of sale deed – The original landlord had given the said property on tenancy – The respondent issued a notice of eviction to the appellant u/s 106 of the Act – Validity of – Respondent has stepped into the shoes of purchaser and therefore, notice was proper.

संपत्ति अंतरण अधिनियम, 1882 – धाराएं 106 एवं 109

किराएदारी – प्रत्यर्थी ने विक्रय पत्र के माध्यम से सम्पत्ति क्रय की – मूल स्वामी ने उक्त सम्पत्ति किराए पर दी थी – प्रत्यर्थी ने अपीलार्थी को सम्पत्ति अंतरण अधिनियम की धारा 106 के अतंर्गत बेदखली का सूचना–पत्र जारी किया – वैधता – प्रत्यर्थी, क्रेता के स्थान पर आ चुका था और इसलिए सूचना–पत्र उचित था।

Mohideen Abdul Khadar (dead) through L.Rs. v. Rahmath Beevi (dead) through her L.Rs. and ors.

Judgment dated 01.11.2023 passed by the Supreme Court in Special Leave Petition (C) No. 24748 of 2023, reported in (2024) 1 SCC 698

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PART – IIA

GUIDELINES ISSUED BY HON'BLE SUPREME COURT TO BE FOLLOWED WHILE SUMMONING PUBLIC OFFICIALS

In the case of ***State of Uttar Pradesh & ors. v. Association of Retired Supreme Court and High Court Judges at Allahabad & ors., 2024 INSC 4***, the Supreme Court has issued a Standard Operating Procedure (SOP) on Personal Appearance of Government Officials in Court proceedings. This procedure is applicable to all the court proceedings involving the government in cases before the Supreme Court, High Courts and all other courts acting under their respective appellate and/or original jurisdiction or proceedings related to contempt of court. The same is reproduced as below:

1. Personal presence pending adjudication of a dispute

1.1 Based on the nature of the evidence taken on record, proceedings may broadly be classified into three categories:

a. ***Evidence-based Adjudication*:** These proceedings involve evidence such as documents or oral statements. In these proceedings, a government official may be required to be physically present for testimony or to present relevant documents. Rules of procedure, such as the Code of Civil Procedure, 1908 or Criminal Procedure Code, 1973, govern these proceedings.

b. ***Summary Proceedings*:** These proceedings, often called summary proceedings, rely on affidavits, documents or reports. They are typically governed by the Rules of the Court set by the High Court and principles of Natural Justice.

c. ***Non-adversarial Proceedings*:** While hearing non-adversarial proceedings, the court may require the presence of government officials to understand a complex policy or technical matter that the law officers of the government may not be able to address.

1.2 Other than in cases falling under para 1.1(a) above, if the issues can be addressed through affidavits and other documents, physical presence may not be necessary and should not be directed as a routine measure.

1.3 The presence of a government official may be directed, *inter alia*, in cases where the court is *prima facie* satisfied that specific information is not being provided or is intentionally withheld or if the correct position is being suppressed or misrepresented.

1.4 The court should not direct the presence of an official solely because the official's stance in the affidavit differs from the court's view. In such cases, if the matter can be resolved based on existing records, it should be decided on merits accordingly.

2. Procedure prior to directing personal presence

2.1 In exceptional cases wherein the in-person appearance of a government official is called for by the court, the court should allow as a first option, the officer to appear before it through video conferencing.

2.2 The Invitation Link for VC appearance and viewing, as the case may be, must be sent by the Registry of the court to the given mobile no(s)/e-mail id(s) by SMS/email/WhatsApp of the concerned official at least one day before the scheduled hearing.

2.3 When the personal presence of an official is directed, reasons should be recorded as to why such presence is required.

2.4 Due notice for in-person appearance, giving sufficient time for such appearance, must be served in advance to the official. This would enable the official to come prepared and render due assistance to the court for proper adjudication of the matter for which they have been summoned.

3. Procedure during the personal presence of government officials

In instances where the court directs the personal presence of an official or a party, the following procedures are recommended:

3.1 ***Scheduled Time Slot*:** The court should, to the extent possible, designate a specific time slot for addressing matters where the personal presence of an official or a party is mandated.

3.2 ***The conduct of officials*:** Government officials participating in the proceedings need not stand throughout the hearing. Standing should be required only when the official is responding to or making statements in court.

3.3 During the course of proceedings, oral remarks with the potential to humiliate the official should be avoided.

3.4 The court must refrain from making comments on the physical appearance, educational background or social standing of the official appearing before it.

3.5 Courts must cultivate an environment of respect and professionalism. Comments on the dress of the official appearing before the court should be avoided unless there is a violation of the specified dress code applicable to their office.

4. Time Period for compliance with judicial orders by the Government

4.1 Ensuring compliance with judicial orders involving intricate policy matters necessitates navigating various levels of decision making by the Government. The court must consider these complexities before establishing specific timelines for compliance with its orders. The court should acknowledge and accommodate a reasonable timeframe, as per the specifics of the case.

4.2 If an order has already been passed and the government seeks a revision of the specified timeframe, the court may entertain such requests and permit a revised, reasonable timeframe for the compliance of judicial orders, allowing for a hearing to consider modifications.

5. Personal presence for enforcement/contempt of court proceedings

5.1 The court should exercise caution and restraint when initiating contempt proceedings, ensuring a judicious and fair process.

5.2 ***Preliminary Determination of Contempt*:** In a proceeding instituted for contempt by wilful disobedience of its order, the court should ordinarily issue a notice to the alleged contemnor, seeking an explanation for their actions, instead of immediately directing personal presence.

5.3 ***Notice and Subsequent Actions*:** Following the issuance of the notice, the court should carefully consider the response from the alleged contemnor. Based on their response or absence thereof, it should decide on the appropriate course of action. Depending on the severity of the allegation, the court may direct the personal presence of the contemnor.

5.4 ***Procedure when personal presence is directed*:** In cases requiring the physical presence of a government official, it should provide advance notice for an in-person appearance, allowing ample time for preparation. However, the court should allow the officer as a first option, to appear before it through video conferencing.

5.5 ***Addressing non-compliance*:** The court should evaluate instances of non-compliance, taking into account procedural delays or technical reasons. If the original order lacks a specified compliance timeframe, it should consider granting an appropriate extension to facilitate compliance.

5.6 When the order specifies a compliance deadline and difficulties arise, the court should permit the contemnor to submit an application for an extension or stay before the issuing court or the relevant appellate/higher court.

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"The principle of "judicial calm" in the context of a fair trial needs to be elaborated for its observance in letter and spirit. In our view, in the hallowed halls of justice, the essence of a fair and impartial trial lies in the steadfast embrace of judicial calm. It is incumbent upon a judge to exude an aura of tranquillity, offering a sanctuary of reason and measured deliberation. In the halls of justice, the gavel strikes not in haste, but in a deliberate cadence ensuring every voice, every piece of evidence, is accorded its due weight. The expanse of judicial calm serves not only as a pillar of constitutional integrity, but as the very bedrock upon which trust in a legal system is forged. It is a beacon that illuminates the path towards a verdict untainted by haste or prejudice, thus upholding the sanctity of justice for all".

Prashant Kumar Mishra J. in Para 17 of Naveen@ Ajay v. The State of Madhya Pradesh 2023 INSC 936

PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE PUBLIC EXAMINATIONS (PREVENTION OF UNFAIR MEANS) ACT, 2024

New Delhi, the 12th February 2024

The Public Examinations (Prevention of Unfair Means) Act, 2024 has been notified on 12th February, 2024. The relevant extract from the Act are reproduced below –

9. Cognizable offences.—All offences under this Act, shall be cognizable, non-bailable and non-compoundable.

10. Punishment for offences under this Act.—

(1) Any person or persons resorting to unfair means and offences under this Act, shall be punished with imprisonment for a term not less than three years but which may extend to five years and with fine up to ten lakh rupees. In case of default of payment of fine, an additional punishment of imprisonment shall be imposed, as per the provisions of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023):

Provided that until the Bharatiya Nyaya Sanhita, 2023 (45 of 2023) is brought into force, the provisions of the Indian Penal Code (45 of 1860), shall be applicable in place of the said Act.

(2) The service provider shall also be liable to be punished with imposition of a fine upto one crore rupees and proportionate cost of examination shall also be recovered from such service provider and he shall also be barred from being assigned with any responsibility for the conduct of any public examination for a period of four years.

(3) Where it is established during the investigation that offence under this Act has been committed with the consent or connivance of any Director, Senior Management or the persons in-charge of the service provider firm, he shall be liable for imprisonment for a term not less than three years but which may extend to ten years and with fine of one crore rupees. In case of default of payment of fine, an additional

punishment of imprisonment shall be imposed as per the provisions of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023):

Provided that until the Bharatiya Nyaya Sanhita, 2023 (45 of 2023) is brought into force, the provisions of the Indian Penal Code (45 of 1860), shall be applicable in place of the said Act.

(4) Nothing contained in this section shall render any such person liable to any punishment under the Act, if he proves, that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

In addition, a QR Code for full view of the Act is also reproduced below.

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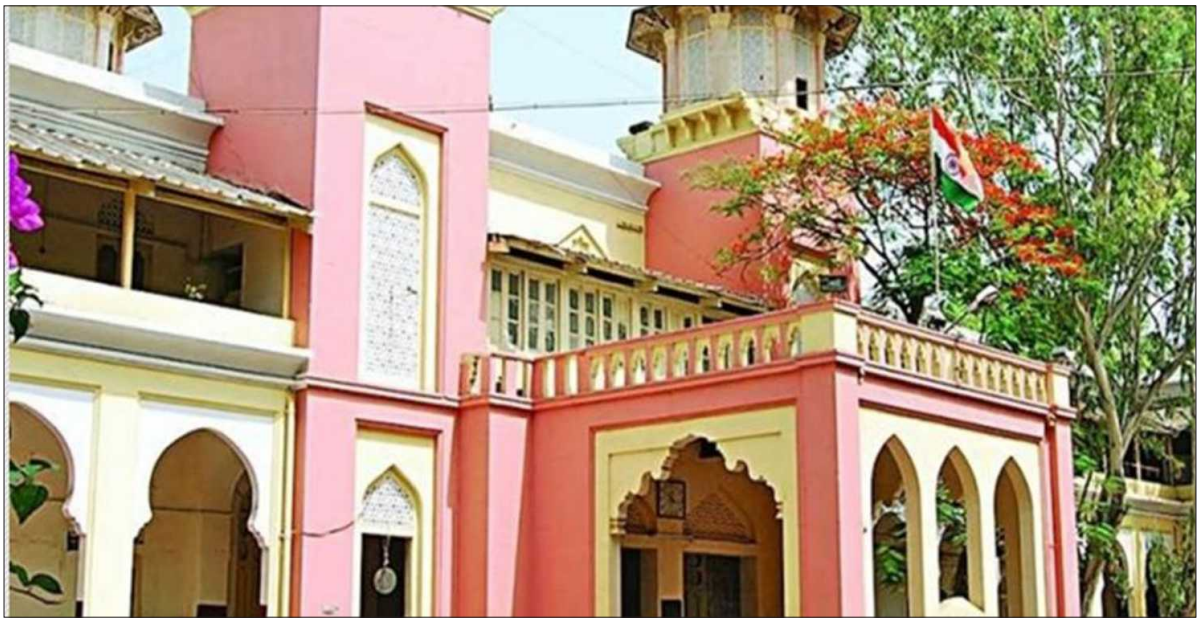
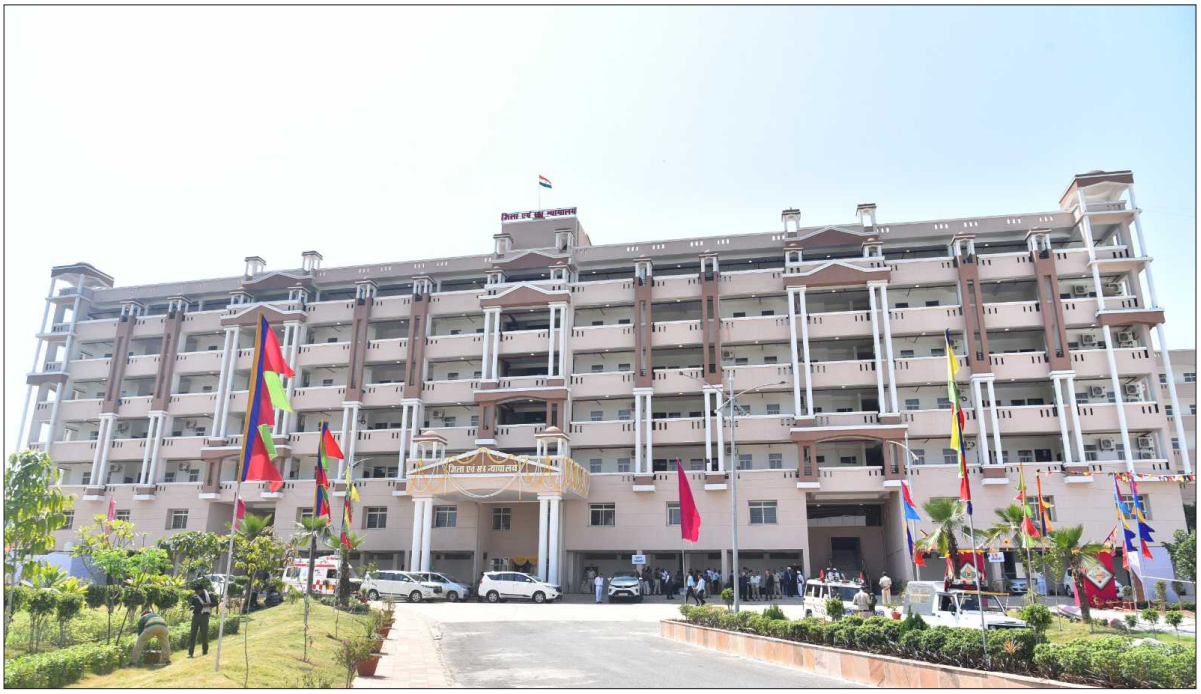
Be more dedicated to making solid achievements than in running after swift but synthetic happiness.

– *Dr. A.P.J. Abdul Kalam*



जिला एवं सत्र न्यायालय, इन्दौर (म.प्र.)



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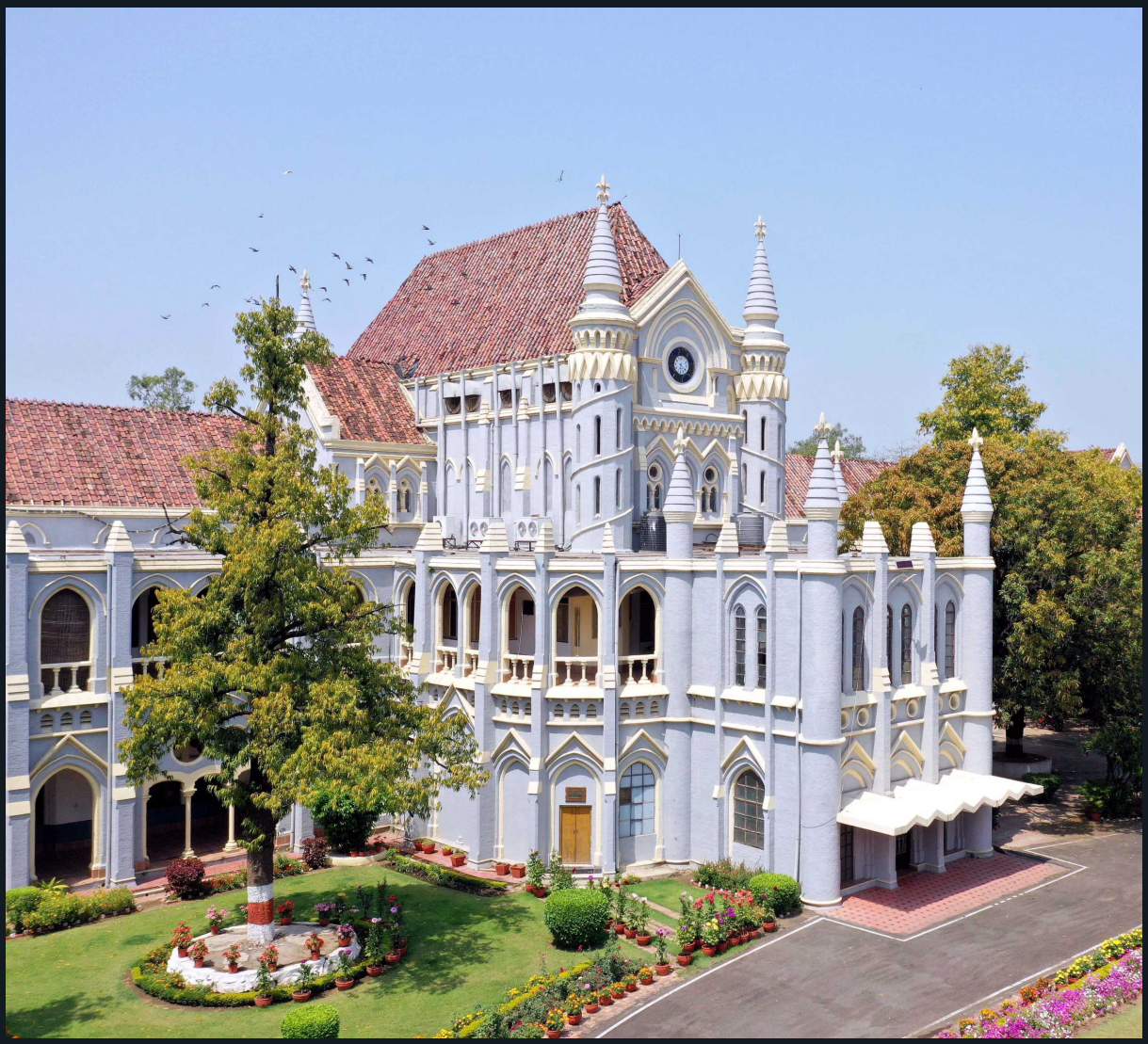

मध्यप्रदेश उच्च न्यायालय, जबलपुर

मध्यप्रदेश राज्य न्यायिक अकादमी

ब्योहारबाग, जबलपुर (म.प्र.) - 482 007

Website : www.mpsja.mphc.gov.in, E-mail : dirmpsja@mp.gov.in, Ph. : 0761-2628679