Pursuit of Excellence

JOTI JOURNAL

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OCTOBER 2022

MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

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Former Chief Justice, High Court of M.P.

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Editorial

Esteemed Readers,

Season's greetings and best wishes.

The month of October has come to an end with a programme on Attributes of a Judge at Indore. For the last four months, I have had the opportunity to listen on attributes of judges and the qualities, judges must possess. I have learned that the most important and essential of all the attributes of a judge is 'humility'. It is the fundamental quality for being a good human being and mostly, this marks a distinguishing feature between a great person and others. The great Nobel Laureate for Peace; Nelson Mandela, when asked about humility and its importance had responded, "You have a limited time to stay on earth and you must try and use this period for the purpose of transforming your country into what you desired to be." He added that "humility is one of the most important qualities which you must have it. If you make people realise that you are no threat to them, they will embrace you and they will listen to you".

For Judges, humility is even more obligatory. It is a virtue which relates to behaviour of a Judge on and off dais. It is not only the most important attribute in itself but it also amplifies other attributes like reliability, magnanimity and generosity. It signifies open-mindedness towards the possibilities of everything around and makes us welcoming to our views being challenged. Therefore, humility is a quality every Judge must possess. It is experienced that though humility is crucial yet it remains to be an underrated quality. It is a quality, which is not heeded much often. It is time, we must strive to rate the quality higher and strive to inculcate the same in us.

Now, coming to the activities of the Academy, an online training programme has been organised by the Academy for nominated Courts on 15.10.2022 in compliance of the directions of Hon'ble Supreme Court, passed in *Suo Motu* Writ Petition (Crl.) No. 4/2021 in re: *Policy Strategy for Grant of Bail*. These nominated Courts, as pilot courts, are expected to identify the cases for disposal under plea bargaining, compounding of offences and applying Probation of Offenders Act, 1958. In a series of judgments like *Arnesh Kumar, Satender Kumar Antil* and the one, mentioned above, the guidelines in the matters of bail have clearly been demarcated. Now, it is on us to take the call and act in consonance with the spirit of the said guidelines, which needless to say, we too are duty bound.

In the months of September and October, the Academy has conducted Workshop on – Working of Commercial Courts, Specialized Educational Programmes at State Forensic Science Laboratory, Sagar and at State Medico

Legal Institute, Bhopal and Motor Accident Claim Cases for HJS cadre. The Academy has also conducted Refresher Course for 62 District Judges (Entry Level). A programme on Attributes of a Judge was organized for Civil Judges Junior Division of Indore Zone at Indore. A special programme of Training of Trainers was also organized for 25 judicial officers of all. In addition to that, the Academy has conducted one programme for Technical Staff of District Courts under the e-Committee Special Drive Training and Outreach Programme.

Hon'ble Chief Justice envisioned training programmes for the advocates of the district judiciary also. In pursuance to the same and as per His Lordship's instructions, the Academy conducted two programmes: one at district level and the other on clusters of district basis. The cluster basis training is given by officers of the Academy through online mode while the district level training is imparted by the Judges of the district judiciary. In these training programmes, subjects like pleading and drafting, art of cross-examination, legal research etc. have been included. I am happy to apprise that one of the training programmes i.e. the programme on cluster basis has been completed and the target set in this regard is accomplished and as regards the other one, almost all the districts have completed second phase.

Now, a new series of lectures for the newly enrolled advocates, practicing at High Court, Bench at Jabalpur, having experience of 0 to 5 years of legal practice, has been started. Sessions on topics like High Court Rules, Writ matters; Key issues to Civil and Criminal Appeals etc. have been included. The resource persons for these sessions will be Senior Members of the Bar, Hon'ble sitting and retired Judges of the High Court and Officers of the Academy. In this series, three workshops have already been conducted as per the scheme.

In all these programmes, 535 Judges, 1931 Advocates and 318 Ministerial Staff were benefitted.

As I put down my pen, a book 'Does he know a mother's heart' has come to my mind. I am deeply touched with the sentiments manifested therein by the author; the sentiments of mother for her child. It is a feeling that cannot be matched. Absolute purity, absolute honesty, absolute selflessness; mother's love is the singular personification. If we are able to develop these attributes within us and inculcate tenderness towards the victims of crime, juveniles, innocent accused of the crime, we can better serve the cause of justice and thereby the society at large.

I entreat you to join hands in our pursuit of excellence.

Padmesh Shah
Additional Director

GLIMPSES OF EDUCATIONAL PROGRAMMES

Special Workshop for Advocates (10.09.2022)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Special Workshop for Advocates (10.09.2022)

Special Workshop for Advocates (24.09.2022)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Workshop on – Commercial Courts (10.09.2022 & 11.09.2022)

Workshop on – Training of Trainers (26.09.2022 to 30.09.2022)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Refresher Course for District Judges (Entry Level)
(11.10.2022 to 15.10.2022)

Programme on the Guidelines issued by the Supreme Court in *Suo Motu* Writ Petition (Crl.) No. 4/2021 In Re: Policy Strategy for Grant of Bail (15.10.2022)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR


Awareness Programme on – Attributes of a Judge: An Interaction (29.10.2022) (at Indore)


Special Workshop for Advocates (29.10.2022)

HON'BLE SHRI JUSTICE RAJEEV KUMAR DUBEY DEMITS OFFICE

Hon'ble Shri Justice Rajeev Kumar Dubey demitted office on His Lordship's attaining superannuation.

His Lordship was born on 11th October, 1960. After obtaining degrees of B.Sc. and LL.B., His Lordship joined M.P. State Judicial Services as Civil Judge Class-II on 7th November, 1985 and was promoted to Higher Judicial Services on 30th May, 1997.

His Lordship, as Judicial Officer, worked in different capacities at Bhind, Ujjain, Agar, Neemuch, Dewas, Rewa, Biaora, Guna, Chattarpur; Jhabua, Jabalpur, Bhopal and was District & Sessions Judge, Bhopal at the time of elevation.

His Lordship took oath as Additional Judge, High Court of Madhya Pradesh on 13th October, 2016 and as Permanent Judge on 17th March, 2018.

Apart from judicial work, His Lordship was Member of various Executive Committees of High Court. His Lordship was also Member of Governing Council of the Madhya Pradesh State Judicial Education. His Lordship took keen interest in the academic activities of the Academy and provided all round motivation, support and guidance for diversifying the academic activities of the Academy.

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

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PART - I

मध्यप्रदेश भण्डार क्रय तथा सेवा उपार्जन नियम, 2015

सतीश चन्द्र राय
विशेष न्यायाधीश,
सतना

मध्य प्रदेश भण्डार क्रय तथा सेवा उपार्जन नियम, 2015 (जिसे आगे सुविधा की दृष्टि से संक्षेप में नियम, 2015 से सम्बोधित किया जायेगा), मध्य प्रदेश भण्डार क्रय एवं सेवा उपार्जन हेतु पूर्व में जारी समस्त आदेश, निर्देश/नियम को निष्प्रभावी करते हुए मध्य प्रदेश शासन, वाणिज्य, उद्योग और रोजगार विभाग, मंत्रालय, बल्लभ भवन भोपाल के आदेश क्रमांक–एफ 6–14/2012/अ–ग्यारह भोपाल, दिनांक 28.07.2015 के द्वारा तत्काल प्रभाव से लागू किया गया है। नियम–4 के अनुसार इस नियम का मूल सिद्धांत यह है कि लोकहित में क्रय हेतु सक्षम प्राधिकारी की यह जिम्मेदारी एवं जवाबदेही होगी कि वह क्रय से संबंधित प्रकरण में कार्य कुशलता, समयबद्धता, मितव्ययिता, पारदर्शिता एवं प्रतिस्पर्धा सुनिश्चित करने के साथ–साथ प्रदेश के सूक्ष्म तथा लघु उद्योगों को बढ़ावा देते हुए समस्त आपूर्तिकर्ताओं के साथ उचित और समान व्यवहार रखे। नियम–2 के अनुसार ये नियम मध्य प्रदेश शासन के समस्त विभागों पर लागू होते हैं तथा नियम–34 के अनुसार इन नियमों का उल्लंघन मध्य प्रदेश सिविल सेवा (आचरण) नियम, 1965 के अंतर्गत ''कदाचरण'' माना जायेगा। अतः मध्य प्रदेश के समस्त जिला न्यायालयों द्वारा कोई भी सामग्री क्रय करने के पूर्व यह सुनिश्चित किया जाना आवश्यक है कि उक्त सामग्री का क्रय नियम–2015 के अनुरूप है या नहीं।

किसी भी सामग्री को क्रय किये जाने के पूर्व सर्वप्रथम यह सुनिश्चित किया जाना चाहिए कि उक्त सामग्री नियम, 2015 के अंतर्गत आरक्षित सामग्री है अथवा अनारक्षित सामग्री है तथा उसके अनुरूप क्रय करने की प्रक्रिया को अपनाया जाना चाहिए। नियम–6 के अनुसार नियम–2015 के परिशिष्ट ''अ'' एवं परिशिष्ट ''ब'' में उल्लिखित वस्तुएं आरक्षित सामग्री के अंतर्गत आती हैं तथा इसके अतिरिक्त अन्य सभी वस्तुएं अनारक्षित सामग्री के अंतर्गत आती हैं।

मध्य प्रदेश नियम, 2015 में निम्न 04 प्रकार की वस्तुओं का क्रय करने के संबंध में प्रावधान एवं प्रक्रिया निर्धारित की गयी है :–

(A) परिशिष्ट ''अ'' में वर्णित वस्तुएं :–

(i) मध्य प्रदेश लघु उद्योग निगम मर्यादित के माध्यम से (नियम–6, नियम–26.1)

(ii) GeM (Government e-Market Place) पोर्टल के माध्यम से
(मध्य प्रदेश शासन सूक्ष्म लघु और मध्यम उद्यम विभाग) मंत्रालय भोपाल के परिपत्र क्रमांक–एफ 6–9/2015/अ–73, भोपाल, दिनांक 05.09.2018)

(iii) नियम 10 और 11 के प्रावधानों के अनुसार अनारक्षित सामग्री की तरह (मध्य प्रदेश शासन सूक्ष्म, लघु और मध्यम उद्यम विभाग मंत्रालय भोपाल के परिपत्र क्रमांक–एफ 6–9/2015/अ–73, भोपाल, दिनांक 05.09.2018)

(B) परिशिष्ट ''ब'' में वर्णित वस्तुएं :–

परिशिष्ट ''ब'' में वर्णित वस्तुओं का क्रय उसमें उल्लिखित 04 उर्पाजनकर्ता अभिकरण से नियम–26.1 के प्रावधानों के अनुसार सीधे क्रय आदेश जारी कर के किया जा सकता है। (नियम–6, नियम–26.1)

(C) अनारक्षित वस्तुओं का क्रय :–

नियम–8 से 11 के प्रावधानों के अनुसार किया जा सकता है।

(D) कारागार में निरूद्ध व्यक्तियों द्वारा उत्पादित सामग्रियों का क्रय जेल विभाग द्वारा निर्धारित दरों पर बिना निविदा बुलाये किया जा सकता है – नियम–27 (i)

(A) परिशिष्ट ''अ'' में वर्णित वस्तुओं का क्रय :–

(i) मध्य प्रदेश लघु उद्योग निगम मर्यादित के माध्यम से परिशिष्ट ''अ'' की वस्तुऐं क्रय करने की प्रक्रिया :–

नियम–26.1 के अनुसार परिशिष्ट ''अ'' में वर्णित वस्तुऐं मध्य प्रदेश लघु उद्योग निगम, मर्यादित के माध्यम से क्रय की जायेंगी, जिन सामग्री की दरें निगम द्वारा निर्धारित की जाती हैं, उन्हें क्रय करने हेतु सक्षम प्राधिकारी द्वारा निविदा (Tender) आमंत्रित नहीं की जायेंगी।

मध्य प्रदेश लद्यु उद्योग निगम समय–समय पर समस्त विभागाध्यक्षों को परिशिष्ट ''अ'' में वर्णित वस्तुओं की सूची प्रेषित करता है, परन्तु यदि ऐसी सूची प्रेषित नहीं की जाती है तो निगम की साइट से इसे प्राप्त किया जा सकता है। सभी शासकीय विभागों को वर्ष के प्रारम्भ में सूची में सम्मिलित सामग्री के लिए अपनी वार्षिक आवश्यकता अनुसार क्रय आदेश लघु उद्योग निगम को प्रेषित करना चाहिए तथा यदि कोई विभाग विशिष्ट आकार प्रकार की वस्तुएं लघु उद्योग निगम विभाग के माध्यम से क्रय करना चाहता है तो इस संबंध में भी क्रय आदेश जारी कर सकता है। मध्य प्रदेश लघु उद्योग निगम उक्त वांछित वस्तुओं की निविदायें आमंत्रित करेगा तथा क्रय आदेश के संबंध में जानकारी 30 दिन के अन्दर संबंधित विभाग को देगा।

(ii) GeM (Government e-Market Place) पोर्टल के माध्यम से क्रय की प्रक्रिया :–

मध्य प्रदेश शासन सूक्ष्म लघु और मध्यम उद्यम विभाग मंत्रालय भोपाल के परिपत्र क्रमांक–एफ 6–9/2015/अ–73, भोपाल, दिनांक 05.09.2018 के अनुसार परिशिष्ट ''अ'' में वर्णित वस्तुओं अथवा अनारक्षित वस्तुओं का क्रय GeM पोर्टल से किया जा सकता है, परन्तु GeM पोर्टल से क्रय किये जाने की दशा में दरों की युक्तियुक्तता (Reasonability of Rates) क्रयकर्ता द्वारा प्रमाणित की जायेगी। GeM पोर्टल से क्रय की स्थिति में क्रय की जाने वाली सामग्री का कुल अनुमानित रूपये 5.00,000/–(पांच लाख रूपये) से अधिक होने पर GeM पोर्टल पर निविदा द्वारा क्रय किया जा सकेगा। इस दशा में निविदा की प्रतिभूति (Earnest Money Deposit) एवं निष्पादन प्रतिभूति (Performance Guarantee) GeM के प्रचलित प्रावधान के अनुसार स्वीकार की जायेगी।

(iii) नियम 10 और 11 के प्रावधानों के अनुसार अनारक्षित सामग्री की दर क्रय करने की प्रक्रिया :–

इस प्रक्रिया का उल्लेख आगे अनारक्षित सामग्री के क्रय किये जाने की प्रक्रिया में किया गया है।

(B) परिशिष्ट ''ब'' में वर्णित वस्तुओं का क्रय :–

परिशिष्ट ''ब'' में वर्णित वस्तुएं बिना निविदा बुलाये सीधे आयुक्त/संचालक हाथकरघा एवं हस्तशिल्प के माध्यम से तथा मध्य प्रदेश खादी ग्रामोद्योग बोर्ड से उनके द्वारा निर्धारित दरों पर क्रय किया जायेगा। इसके लिए 85 प्रतिशत अग्रिम राशि शासकीय विभाग के द्वारा RTGS/NEFT के माध्यम से आयुक्त हाथकरघा के पी.डी. खाता (Personal Deposit Account) या खादी ग्रामोद्योग बोर्ड के खाते में जमा करायी जायेगी तथा शेष 15 प्रतिशत राशि का भुगतान वस्त्र/सामग्री के पूर्ण प्रदाय के एक माह के अन्दर सीधे प्रदायकर्ता अभिकरण को किया जायेगा। भुगतान में विलम्ब होने पर शासन द्वारा निर्धारित दर से ब्याज राशि का भुगतान संबंधित क्रयकर्ता विभाग द्वारा प्रदायकर्ता अभिकरण को किया जायेगा।

बिना अग्रिम राशि के वस्त्र/सामग्री प्रदाय आदेश मान्य नहीं किया जायेगा। परिशिष्ट ''ब'' में वर्णित वस्त्र/सामग्री का क्रय उक्त परिशिष्ट में वर्णित 04 उपार्जनकर्ता अभिकरणों– (i) संत रविदास मध्य प्रदेश हस्तशिल्प एवं हाथकरघा विकास निगम (ii) मध्य प्रदेश राज्य हाथकरघा बुनकर सहकारी संघ मर्यादित (iii) मध्य प्रदेश खादी तथा ग्रामोद्योग बोर्ड एवं (iv) मध्य प्रदेश राज्य पावरलूम बुनकर सहकारी संघ, बुनहानपुर के माध्यम से किया जायेगा। मध्य प्रदेश राज्य पावरलूम बुनकर सहकारी संघ बुरहानपुर को मध्य प्रदेश शासन वाणिज्य, उद्योग और रोजगार विभाग, मंत्रालय, भोपाल के आदेश क्रमांक–एफ 6–14/2012/अ–ग्यारह भोपाल, दिनांक 04.01.2016 के द्वारा उपार्जनकर्ता अभिकरण के रूप में उसमें उल्लिखित वस्तुओं के प्रदाय हेतु जोड़ा गया है। यहां यह उल्लेख किया जाना समीचीन होगा कि किसी भी अभिकरण से परिशिष्ट ''ब'' की कोई भी सामग्री क्रय नहीं की जा सकती, बल्कि जिस अभिकरण को जिस वस्तु के प्रदाय के लिए अधिकृत किया गया है केवल उसी अभिकरण से उक्त वस्तु क्रय की जा सकती है।

नियम–28 के अनुसार प्रत्येक विभाग अपने स्तर पर एक वार्षिक प्रोक्योरमेंट प्लान बनायेगा तथा यथासंभव त्रैमासिक रूप से उपार्जनकर्ता अभिकरण को क्रय की जाने वाली सामग्री का मांग पत्र भेजा जायेगा, जिससे समय सीमा में अभिकरण के द्वारा वस्तुओं का प्रदाय किया जा सके। विभाग द्वारा वस्तुओं के प्रदाय हेतु उपार्जानकर्ता अभिकरण को कम से कम 45 दिवस का समय दिया जायेगा।

(C) अनारक्षित वस्तुओं के क्रय की प्रक्रिया :–

अनारक्षित वस्तुओं के क्रय के संबंध में प्रावधान नियम–2015 के नियम 8 से 11 तक में किये गये हैं। नियम–8 के अनुसार अनारक्षित वस्तुओं का क्रय नियम–9, 10 एवं 11 के प्रावधानों के अनुसार क्रयकर्ता द्वारा सीधे किया जा सकेगा। यदि क्रय की जाने वाली सामग्री की दर D G S & D (Directorate General of Supplies and Disposals) (भारत सरकार का केंद्रीय क्रय संगठन)

और/या मध्य प्रदेश लघु उद्योग निगम में उपलब्ध है तो इन संस्थानों से भी उक्त सामग्री क्रय की जा सकेगी।

अनारक्षित वस्तुओं को क्रय करने के लिए 05 पद्धति का निर्धारण नियमों में किया गया है :–

(i) बिना कोटेशन एवं निविदा के सीधे क्रय (नियम–9)

(ii) विभागीय क्रय समिति के माध्यम से क्रय (नियम–10)

(iii) सीमित निविदा के माध्यम से क्रय (नियम–11.1)

(iv) खुली निविदा के माध्यम से क्रय (नियम–11.2)

(v) GeM पोर्टल के माध्यम से क्रय

(i) बिना कोटेशन एवं निविदा के सीधे क्रय :–

रूपये 20,000/–(बीस हजार रूपये) तक की सामग्री का क्रय सक्षम अधिकारी द्वारा निम्न प्रमाण पत्र के आधार पर कोटेशन या निविदा आमंत्रित किये बगैर 01 माह में अधिकतम 05 बार (पांच बार) तक किया जा सकता है। इस हेतु संबंधित अधिकारी को निम्नलिखित आशय का प्रमाण पत्र रिकार्ड करेंगे :–

''मैं, ... व्यक्तिगत तौर पर संतुष्ट हूं कि क्रय की गई सामग्री अपेक्षित गुणवत्ता और विनिर्देशनों (स्पेसिफिकेशन) के अनुसार है और इसका क्रय विश्वस्त आपूर्तिकर्ता से उचित कीमत पर किया गया है।''

(ii) विभागीय क्रय समिति के माध्यम से क्रय :–

यदि क्रय की जाने वाली सामग्री की अनुमानित कीमत रूपये 20,000/– (बीस हजार रूपये) से अधिक और रूपये 1,00,000/– (एक लाख रूपये) तक है तो कार्यालय प्रमुख द्वारा इस हेतु विभागीय क्रय समिति का गठन किया जायेगा तथा विभागीय क्रय समिति की अनुशंसा पर इस प्रकार की सामग्री क्रय की जा सकेगी। विभागीय क्रय समिति में न्यूनतम 03 सदस्य होंगे, जिनमें से यथासंभव 01 सदस्य वित्तीय मामलों का जानकार होगा (मेरे मत में समिति में लेखापाल अथवा प्रशासनिक अधिकारी को एक सदस्य के रूप में रखा जाना उचित होगा)। यह समिति दर की उपयुक्तता, गुणवत्ता और विनिर्देश (Specification) सुनिश्चित करने के लिए बाजार का सर्वेक्षण करेगी और उपयुक्तता एवं आपूर्तिकर्ता की पहचान करेगी। क्रय/प्रदाय आदेश जारी करने की अनुशंसा करने के पूर्व समिति के सदस्य संयुक्त रूप से निम्नानुसार एक प्रमाण पत्र रिकार्ड करेंगे :–

''प्रमाणित किया जाता है कि हम ..... क्रय समिति के सदस्य संयुक्त रूप से और व्यक्तिगत तौर पर इस बात से संतुष्ट हैं कि जिस सामग्री के क्रय की अनुशंसा की गई है वह अपेक्षित विनिर्देशनों (Specification) और गुणवत्ता के अनुरूप है, इसकी कीमत प्रचलित बाजार दर के अनुसार है और जिस आपूर्तिकर्ता की सिफारिश की गई है वह प्रश्नगत सामग्री की अपूर्ति करने के लिए विश्वसनीय और सक्षम है।''

इस पद्धति का उपयोग एक माह में 02 बार से अधिक नहीं किया जा सकेगा।

(i) सीमित निविदा के माध्यम से क्रय :–

सीमित निविदा की पद्धति निम्न मामलों में अपनायी जाती है :–

(i) जब क्रय की जाने वाली सामग्री का अनुमानित मूल्य रूपये 1,00,000/– (एक लाख रूपये) से अधिक एवं रूपये 5,00,000/– (पांच लाख रूपये) तक है।

(ii) जब क्रय की जाने वाली सामग्री का मूल्य रूपये 1,00,000/– (एक लाख रूपये) से कम हो, परन्तु नियम 9 एवं 10 में निर्धारित पद्धति से क्रय करना संभव या वांछनीय नहीं हो।

(iii) जब क्रय की जाने वाली सामग्री का अनुमानित मूल्य रूपये 5,00,000/– (पांच लाख रूपये) से अधिक हो, परन्तु प्रशासकीय विभाग यह प्रमाणित करे कि आपातकालिक परिस्थितियां विद्यमान हैं, जिनके कारण अतिरिक्त व्यय न्यायोचित है। इसके अतिरिक्त जहां आपूर्ति का स्रोत निश्चित रूप से ज्ञात है तथा नए स्रोत की संभावना उससे काफी कम है।

(iv) सीमित निविदा के मामले में निविदा दस्तावेज की प्रतियां उन सभी फर्मों को जो कि उस सामग्री के प्रदाय हेतु पंजीकृत आपूर्तिकर्ता की सूची में शामिल हैं, सीधे ही स्पीड पोस्ट/पंजीकृत डाक/कोरियर/ई.–मेल, से भेजी जायेंगी। इसके अतिरिक्त सीमित निविदा को वेब आधारित प्रचार भी दिया जायेगा। निविदा के लिए न्यूनतम 07 दिन का समय दिया जायेगा तथा इसके लिए 03 से अधिक पंजीकृत आपूर्तिकर्ताओं से निविदा प्राप्त होना आवश्यक है। सीमित निविदा के माध्यम से ई.–कॉमर्स साइट्स से क्रय का विकल्प भी उपलब्ध रहेगा।

(iv) खुली निविदा के माध्यम से क्रय :–

क्रय की जाने वाली सामग्री का अनुमानित मूल्य रूपये 5,00,000/– (पांच लाख रूपये) से अधिक होने पर अथवा नियम–9, 10, 11.1 में निर्धारित पद्धति से क्रय करना संभव अथवा वांछनीय न होने की दशा में खुली निविदा के माध्यम से क्रय की कार्यवाही की जायेगी।

खुली निविदा हेतु ई.–टेंडरिंग प्रणाली का उपयोग करना अनिवार्य होगा। यदि विभाग के पास स्वयं की वेबसाइट हो तो उसके द्वारा अपने सभी विज्ञापित निविदाओं को अपने वेबसाइट पर प्रदर्शित करते हुए एन.आई.सी. वेबसाइट के माध्यम से लिंक प्रदान की जायेंगी तथा विभाग के पास स्वयं की ई.–पोर्टल सुविधा नहीं होने की दशा में उनके द्वारा ई.–टेंडरिंग प्रणाली हेतु केंद्र अथवा राज्य शासन के शासकीय/अर्द्धशासकीय संस्थान के पोर्टल का उपयोग किया जा सकेगा। इसके अतिरिक्त कम से कम एक राष्ट्रीय दैनिक समाचार पत्र एवं दो राज्य स्तरीय दैनिक समाचार पत्रों में संक्षिप्त विज्ञापन प्रकाशित कराया जायेगा।

खुली निविदा निम्नानुसार दो बिड प्रणाली पर आधारित होगी :–

(i) वाणिज्यिक शर्त और निबंधनों के साथ सभी तकनीकी ब्यौरे वाली तकनीकी बिड।

(ii) वित्तीय बिड (Financial Bid), जिसमें तकनीकी बिड में उल्लिखित उत्पादों के लिए, उत्पाद वार कीमत दर्शायी गयी हो।

निविदा में वित्तीय बिड को खोलने के पूर्व सामग्री प्रदर्शन (Demonstration) के प्रावधान का समावेश किया जा सकेगा।

निविदाएं प्रस्तुत करने के लिए निविदा के अंतिम प्रकाशन की तिथि से न्यूनतम 21 दिन का समय प्रदान करना होगा, परन्तु विशेष परिस्थिति में कारण दर्शित करते हुए इसे घटाकर 14 दिन भी किया जा सकता है।

आमंत्रित निविदा में एकमात्र पात्र निविदाकर्ता की दरें भी दरों की उपयुक्तता के परीक्षण के उपरांत बाजार दर के अनुरूप पाये जाने पर स्वीकार की जा सकती हैं **(नियम–12)**।

क्रय/उपार्जन की जाने वाली सामग्री की लागत और स्वरूप के आधार पर आवश्यकतानुसार सामग्री की आपूर्तिकर्ता अथवा किसी अन्य सक्षम फर्म के साथ रख–रखाव की संविदा भी की जा सकती है **(नियम–14)**।

सफल निविदाकर्ता को सामग्री के प्रदाय की अवधि निर्धारित करते हुए क्रयकर्ता संस्था द्वारा प्रदाय आदेश जारी किया जायेगा। प्रदायकर्ता का यह दायित्व होगा कि वह निर्धारित समयावधि में अपेक्षित गुणवत्ता की सामग्री का प्रदाय, प्रदाय आदेश में अंकित स्थान पर सुनिश्चित करे अन्यथा निविदा की शर्तो के अनुसार प्रदायकर्ता पर शास्ति अधिरोपित की जा सकेगी **(नियम–18)**।

गुणवत्ता का परीक्षण नियम–19 :–

उपार्जनकर्ता अभिकरण के माध्यम से क्रय की जाने वाली सामग्रियों की गुणवत्ता सुनिश्चित करने के लिए प्रदाय पूर्व निरीक्षण का उत्तरदायित्व उपार्जनकर्ता अभिकरण का है। भुगतान के पूर्व अनिवार्यतः यह सुनिश्चित किया जायेगा कि सामग्री का निरीक्षण किया गया है तथा विनिर्देशों के अनुरूप है। इस संबंध में निरीक्षणकर्ता एजेंसी द्वारा निरीक्षित सामग्री पर क्वालिटी कंट्रोल संबंधित सील/स्टीकर लगाया जायेगा तथा क्रयकर्ता के द्वारा अनिरीक्षित सामग्री प्राप्त नहीं की जायेगी। सामग्री के प्रदाय के उपरांत क्रयकर्ता द्वारा प्रदाय स्थल पर रैण्डम निरीक्षण भी किया जायेगा जिससे यह सुनिश्चित हो कि सामग्री विनिर्देशन के अनुरूप प्रदाय हुई है। सामग्री की गुणवत्ता विनिर्देशों के अनुरूप नहीं होने की स्थिति में सामग्री प्राप्ति के 07 दिवस के अन्दर उपार्जनकर्ता अभिकरण को ई.–मेल/ई.–पोर्टल के माध्यम से अवगत कराया जाना आवश्यक होगा। **भुगतान उपरांत गुणवत्ता की शिकायत होने पर उसकी जवाबदारी प्रदायकर्ता के अतिरिक्त क्रयकर्ता विभाग एवं निरीक्षणकर्ता एजेंसी की भी होगी।**

पुनरावृत्ति आदेश (Repeat Order) :– (नियम–22)

पुनरावृत्ति आदेश प्रारंभिक आदेश के छः माह के बाद नहीं दिया जायेगा तथा नवीन मांग, मूल मांग की 50 प्रतिशत मात्रा से अधिक नहीं होगी। यदि मूल आदेश तय आवश्यकता या आकस्मिक मांग

की पूर्ति हेतु दिया गया था तो पुनरावृत्ति आदेश नहीं दिया जायेगा। सक्षम अधिकारी द्वारा यह भी सुविशित किया जायेगा कि मूल आदेश देने के बाद से मूल्यों में गिरावट नहीं आयी है तथा पुनरावृत्ति आदेश दिया जाना शासन के हित में है। इसके साथ ही प्रदायकर्ता से भी इस आशय का प्रमाण पत्र प्राप्त किया जायेगा कि उसके द्वारा निर्धारित दरों से कम दर पर इस अवधि में कहीं अन्यत्र न तो सामग्री प्रदान की गयी है और न ही प्रदान किये जाने हेतु दरें आफर की गयी हैं।

विलंबित भुगतान – (नियम – 21)

भारत सरकार के सूक्ष्म, लघु और मध्यम उद्यम, विकास अधिनियम 2006 की धारा–15 के अंतर्गत सूक्ष्म एवं लघु उद्यम से क्रय का भुगतान अधिकतम 45 दिवस में करने की बाध्यता है अन्यथा अधिनियम की धारा–16 के अंतर्गत रिजर्व बैंक द्वारा बैंक हेतुक अधिसूचित ब्याज दरों से 3 गुना ब्याज देय होगा। ब्याज का भुगतान किए जाने की दशा में इसकी वसूली जवाबदार पाये गये कर्मचारी/अधिकारी से की जाएगी।

GeM पोर्टल के माध्यम से क्रय :–

नियम–2015 के नियम–6 के अनुसार इन नियमों के परिशिष्ट ''अ'' में वर्णित वस्तुएं मध्य प्रदेश लघु उद्योम निगम के माध्ये से क्रय हेतु आरक्षित की गयी हैं। उक्त अनिवार्यता (मध्य प्रदेश शासन सूक्ष्म लघु और मध्यम उद्यम विभाग) मंत्रालय भोपाल के परिपत्र क्रमांक–एफ 6–9/2015/अ–73, भोपाल, दिनांक 05.09.2018) के परिपत्र द्वारा समाप्त करते हुए यह प्रावधान किया गया है कि परिशिष्ट ''अ'' में वर्णित वस्तुओं अथवा अन्य अनारक्षित वस्तुओं का क्रय, क्रय कर्ताओं द्वारा नियम–9, 10 एवं 11 में उल्लिखित प्रावधानों के अनुसार GeM पोर्टल के माध्यम से भी किया जा सकता है। उपरोक्त वस्तुओं का GeM पोर्टल से क्रय किये जाने की दशा में दरों की युक्तियुक्तता (Reasonability of Rates) क्रयकर्ता द्वारा प्रमाणित की जायेगी। GeM पोर्टल से क्रय की स्थिति में क्रय की जाने वाली सामग्री का कुल अनुमानित रूपये 5.00,000/–(पांच लाख रूपये) से अधिक हाने पर GeM पोर्टल पर निविदा द्वारा क्रय किया जा सकेगा। इस दशा में निविदा की प्रतिभूति (Earnest Money Deposit) एवं निष्पादन प्रतिभूति (Performance Guarantee) GeM के प्रचलित प्रावधान के अनुसार स्वीकार की जायेगी।

इसके अतिरिक्त निविदा के माध्यम से वस्तुओं को क्रय किये जाने की दशा में नियम–11.3 (एकल निविदा), नियम–15 (निविदा की प्रतिभूति), नियम–18 (निष्पादन प्रतिभूति) एवं नियम–23 (क्रय/उपार्जन प्रक्रिया में पारदर्शिता, प्रतिस्पर्धा, औचित्य एवं मितव्ययिता) का भी अवलोकन किया जाना उपयोगी रहेगा।

भण्डार क्रय नियमों के पालन से छूट (नियम–31)

भण्डार क्रय नियमों के प्रावधानों के पालन से विभागाध्यक्षों तथा प्रशासकीय विभागों को एक वित्तीय वर्ष के अंतर्गत निम्नानुसार सीमा तक छूट रहेगी :–

क्र.	विवरण	अधिकृत प्राधिकारी
1.	रूपये 1.00 लाख तक	विभागाध्यक्ष
2.	रूपये 5.00 लाख तक	प्रशासकीय विभाग

नियम –33 के अनुसार क्रयकर्ता द्वारा प्रदायकर्ता अभिकरणों को क्रय आदेश ई.–मेल अथवा पोर्टल के माध्यम से भेजा जायेगा।

क्रय हेतु सक्षम प्राधिकारी :–

नियम–2015 के नियम–5 के अनुसार क्रय हेतु स्वीकृति प्रदान करने का अधिकार राज्य शासन द्वारा किये गये वित्तीय अधिकारों के प्रत्यायोजन के अनुसार अथवा सामान्य या विशिष्ट आदेश से अधिकृत अधिकारी को रहेंगे। इस संबंध में मध्य प्रदेश वित्त विभाग, बल्लभ भवन, मंत्रालय, भोपाल के आदेश क्रमांक–एफ 3–4/2017/नियम/चार, भोपाल, दिनांक 23 नवम्बर 2017 के द्वारा मध्य प्रदेश बुक आफ फाईनेंशियल पावर 1995 भाग–2 में विधि एवं विधायी कार्य विभाग के अंतर्गत दिये गये वित्तीय अधिकार में निम्नानुसार संशोधन किया गया है :–

Department of Law and Legislative Affairs
Financial powers in respect of District and Sessions Judges

S. No.	Description	Authority competent to exercise the powers	Extent of delegation	Conditions
1	2	3	4	5
1.	Sanction purchase of Spare parts, accessories and other equipment for working of machine. (including Transport Vehicle)	District and Sessions Judge	Full Power	
2.	Purchase of office supplies and equipment	District and Sessions Judge	Up to Rs.10.00 Lakh in a year	Details of items given in Annexure 3 of Book of Financial Powers volume-2012

उक्त आदेश को अनुमोदित करते हुए माननीय मध्य प्रदेश उच्च न्यायालय द्वारा ज्ञापन क्रमांक–D/488 Jabalpur दिनांक 20.07.2018 के द्वारा समस्त जिला एवं सत्र न्यायाधीश को मध्य प्रदेश वित्त विभाग, बल्लभ भवन, मंत्रालय, भोपाल के आदेश क्रमांक–एफ 3–4/2017/नियम/चार, भोपाल, दिनांक 23 नवम्बर 2017 के द्वारा मध्य प्रदेश बुक आफ फाईनेंशियल पावर 1995 भाग–2 के अनुसार कार्यवाही किये जाने का निर्देश दिया गया है। बुक आफ फाईनेंशियल पावर वॉल्यूम 2012 के एनेक्सर की प्रति माननीय उच्च न्यायालय के ज्ञापन के साथ संलग्न की गयी है, जिसमें सक्षम प्राधिकारी की वित्तीय शक्तियों का उल्लेख किया गया है।

मध्य प्रदेश भण्डार, क्रय तथा सेवा उपार्जन नियम 2015 से संबंधित सुसंगत स्पष्टीकरण, परिपत्र, आदेश एवं ज्ञापन निम्नानुसार हैं, जिनका अवलोकन किया जाना उपयोगी रहेगा :–

(I) मध्य प्रदेश शासन, वाणिज्य, उद्योग और रोजगार विभाग, मंत्रालय, भोपाल के परिपत्र क्रमांक एफ 6–14/2012/अ–ग्यारह, भोपाल दिनांक 07.01.2016 (मध्य प्रदेश भण्डार, क्रय तथा सेवा उपार्जन नियम 2015 के संबंध में उठाये गये प्रश्नों के संबंध में नियम–36 के अंतर्गत स्पष्टीकरण)

(II) मध्य प्रदेश राज्य पावरलूम बुनकर सहकारी संघ, बुरहानपुर को मध्य प्रदेश शासन वाणिज्य, उद्योग और रोजगार विभाग, मंत्रालय, भोपाल के आदेश क्रमांक–एफ 6–14/2012/अ–ग्यारह भोपाल, दिनांक 04.01.2016 के द्वारा उपार्जनकर्ता अभिकरण के रूप में उसमें उल्लिखित वस्तुओं के प्रदाय हेतु जोड़ा गया है।

(मध्य प्रदेश भण्डार क्रय तथा सेवा उपार्जन नियम 2015 में संशोधन)

(III) मध्य प्रदेश शासन सूक्ष्म लघु और मध्यम उद्यम विभाग, मंत्रालय, भोपाल के परिपत्र क्रमांक–एफ 6–9/2015/अ–73, भोपाल, दिनांक 05.09.2018

(मध्य प्रदेश भण्डार क्रय तथा सेवा उपार्जन नियम 2015 में संशोधन)

(IV) मध्य प्रदेश वित्त विभाग, बल्लभ भवन, मंत्रालय, भोपाल के आदेश क्रमांक–एफ 3–4/2017/नियम/चार, भोपाल, दिनांक 23 नवम्बर 2017

(जिला एवं सत्र न्यायाधीश के वित्तीय अधिकार में संशोधन)

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भू–अर्जन संबंधित विधिः एक सिंहावलोकन

पदमेश शाह
अतिरिक्त संचालक,
म.प्र. राज्य न्यायिक अकादमी

राष्ट्र को उन्नति और प्रगति के पथ पर अग्रसर करने के लिये लगातार निजी भूमियों के अधिग्रहण की आवश्यकता होती है। इस संबंध में वर्षों से भूमि अधिग्रहण के संबंध में विधि बनती रही है। ब्रिटिश शासन काल में सर्वप्रथम सन् 1824 में बंगाल रिजोलुशन, 1824 के द्वारा सड़कों, नहरों तथा अन्य प्रयोजनों के लिये भूमि अधिग्रहण के प्रावधान किये गये। इसका विस्तार 1850 में कलकत्ता के संबंध में भी किया गया। इसके पूर्व 1839 में मुबंई और 1852 में मद्रास के संबंध में भी समरूप विधि का निर्माण हुआ। वर्ष 1870 में प्रथम बार भूमि अधिग्रहण के संबंध में बनाई गई विधि में प्रतिकर निर्धारण के अधिकार सिविल न्यायालय को प्रदान किये गये। वर्ष 1893 में भारत में रेलवे लाइन विस्तारित किये जाने की रूपरेखा तैयार होने लगी थी जिसके लिये सम्पूर्ण भारतवर्ष में भूमि के अधिग्रहण की आवश्यकता होने लगी थी। इस हेतु भूमि अधिग्रहण अधिनियम 1894 का निर्माण हुआ जिसे दिनांक 01.03.1894 से लागू किया गया। भारत में स्वतंत्रता उपरांत Indian independence (Adaptation of Central Acts and Ordinance) Order, 1948 के द्वारा इस अधिनियम को ग्रहण किया गया। इसके पश्चात् वर्ष 1998 में भूमि अधिग्रहण के संबंध में नवीन विधि की आवश्यकता दर्शित होने पर इस संबंध में विचार मंथन प्रारम्भ हुआ। वर्ष 2007 एवं 2011 में इस संबंध में संसद में बिल भी प्रस्तुत हुए। अंततोगत्वा वर्ष 2013 में नवीन अधिनियम पारित हुआ जिस पर राष्ट्रपति की स्वीकृति दिनांक 26.09.2013 को प्राप्त हुई। दिनांक 27.09.2013 को इसका राजपत्र में प्रकाशन हुआ। अधिसूचना क्रमांक आ. 3729 (अ) दिनांक 19.12.2013 द्वारा इसे दिनांक 01.01.2014 से लागू किया गया है। पूर्व में यह अधिनियम जम्मूकश्मीर को छोड़कर शेष भारत में लागू था परंतु दिनांक 21.10.2019 से इसे सम्पूर्ण भारतवर्ष के लिये लागू किया गया है। इस आलेख में सुविधा की दृष्टि से आगे भूमि अधिग्रहण अधिनियम, 1894 को पूर्व अधिनियम एवं भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार अधिनियम, 2013 को नवीन अधिनियम के रूप में संबोधित किया गया है।

नवीन अधिनियम की आवश्यकता

परिवर्तन संसार का नियम है। समय के साथ–साथ परिस्थितियों में परिवर्तन होता है और आवश्यकता के आधार पर नवीन तथ्यों का समावेश और अनावश्यक तथ्यों को हटाने का काम भी निरंतर चलता रहता है। पूर्व अधिनियम में निर्वचन खण्ड अत्यंत सीमित था। हर शब्द के अर्थान्वयन के लिये सर्वोच्च और उच्च न्यायालयों की ओर अग्रसर होना पड़ता था। वहीं पूर्व अधिनियम में भूमि अधिग्रहण में हितधारकों की सहभागिता के संबंध में कोई प्रावधान नहीं था। पूर्व अधिनियम में विस्थापितों के पुनर्वासन और पुर्नव्यवस्थापन के संबंध में भी कोई व्यवस्था नहीं थी। भूमि अधिग्रहण के पश्चात् उसके विकास से होने वाले लाभ के लाभार्थी के रूप में भूमि स्वामियों को लाभांश दिये जाने का कोई प्रावधान नहीं था। पूर्व अधिनियम में लोकप्रयोजन की परिभाषा अत्यंत सीमित थी और इसके अंतर्गत केवल राज्य की परियोजनाओं के लिये ही भूमि अधिग्रहण की व्यवस्था की गई थी

जबकि वर्तमान परिदृश्य में जब राज्य निजीकरण की ओर बढ़ रहे हैं, तब निजी कम्पनियों को उनके विस्तार के लिये भूमि उपलब्ध कराना भी समय की आवश्यकता बन जाती है। कृषि भूमि के अधिग्रहण की स्थिति में भी कृषि योग्य भूमि का रकबा लगातार कम होना भविष्य के लिये शुभ संकेत नहीं है। ऐसी स्थिति में कृषि भूमि का रकबा कम न हो इस संबंध में भी उचित प्रावधान किये जाने की आवश्यकता थी। पूर्व अधिनियम में समाज के कमजोर वर्ग जिसमें अनुसूचित जाति और जनजाति तथा भूमिहीन व्यक्ति भी सम्मिलित हैं, के लिये भूमि अधिग्रहण की दशा में उन पर पड़ने वाले विपरीत प्रभाव के संबंध में उन्हें प्रतिकर दिये जाने का कोई प्रावधान नहीं था। इसके अतिरिक्त महत्वपूर्ण रूप से पूर्व अधिनियम में भूमि अधिग्रहण की प्रक्रिया के दौरान हुए अपराध के लिये दण्ड की कोई व्यवस्था नहीं थी। इन सभी विसंगतियों को दूर करने के लिये पूर्व अधिनियम में संशोधन की आवश्यकता दर्शित होने लगी थी जिसका परिणाम नवीन अधिनियम के रूप में हमारे सामने आया।

नवीन अधिनियम में किये गये प्रावधानों के संबंध में विचार किया जावे तो पूर्व अधिनियम में दिये गये प्रावधानों के अतिरिक्त जिन नवीन प्रावधानों को जोड़ा गया है या पूर्व प्रावधानों को संशोधन के साथ नवीन अधिनियम में सम्मिलित किया गया है उनके संबंध में पृथक–पृथक विचार किया जाना उचित प्रतीत होता है।

नवीन अधिनियम का निर्वचन खण्ड

किसी अधिनियम की स्पष्टता उसके निर्वचन खण्ड से दर्शित होती है। निवर्चन खण्ड जितना विस्तृत होगा, अधिनियम उतना ही स्पष्ट होगा। वहीं इसके सीमित होने पर हर शब्द की व्याख्या के लिये उच्चतर न्यायालयों के न्याय दृष्टांतों का सहारा लेना होगा। पूर्व अधिनियम में जहां केवल 9 शब्दों को परिभाषित किया गया था वहीं नवीन अधिनियम में धारा–3 के अतंर्गत 31 शब्दों को परिभाषित किया गया है। जिन महत्वपूर्ण शब्दों को परिभाषित किया गया है उनमें से कुछ के संबंध में स्थिति स्पष्ट की जा रही है।

1. बाजार मूल्य –

भूमि अधिग्रहण विधि में बाजार मूल्य उस विधि का हृदय होता है क्योंकि भूमि अधिग्रहण के संबंध में सर्वाधिक विवाद प्रतिकर के संबंध में होता है जिसका सीधा संबंध अधिग्रहीत भूमि के बाजार मूल्य से होता है। पूर्व अधिनियम में बाजार मूल्य को कहीं भी परिभाषित नहीं किया गया था जिसके अभाव में बाजार मूल्य की गणना की रीति के संबंध में विभिन्न न्याय दृष्टांतों का सहारा लेना होता था। कतिपय न्याय दृष्टांतों में विपरीत मत इस कार्य को और दुष्कर बनाते थे। बाजार मूल्य के संबंध में उभयपक्षों की साक्ष्य और प्रतिपरीक्षा में अनावश्यक न्यायालयीन समय का अपव्यय होता था। नवीन अधिनियम में इस विसंगति को दूर करते हुए अधिनियम की धारा 3 (प) में बाजार मूल्य को इस प्रकार परिभाषित किया गया कि :–

''बाजार मूल्य से धारा 26 के अनुसार अवधारित भूमि का मूल्य अभिप्रेत है''

नवीन अधिनियम की धारा–26 बाजार मूल्य की गणना की रीति की विस्तृत विवेचना करती है। धारा–26 (1) उन तीन मापदण्डों का चार स्पष्टीकरण सहित प्रावधान करती है जिसके आधार पर बाजार मूल्य की गणना की जावेगी। धारा–26 (1) (क) के अनुसार जहां भूमि स्थित है, वहां के लिये

भारतीय स्टाम्प अधिनियम के अंतर्गत विक्रय विलेखों या विक्रय के करारों के रजिस्ट्रीकरण के लिये विहित बाजार मूल्य, वहीं धारा–26 (1)(ख) के अनुसार ऐसे विक्रय विलेखों के अभाव में निकटवर्ती ग्राम या निकटवर्ती सामीप्य क्षेत्र की उसी प्रकार की भूमि की औसत विक्रय कीमत या धारा–26 (1)(ग) के अनुसार प्रायवेट कंपनियों के लिये या पब्लिक प्रायवेट भागीदारी परियोजनाओं के लिये प्रतिकर उनके बीच करार पायी गई राशि के अनुसार होगा। इस धारा में जिन चार स्पष्टीकरण का लेख किया गया है उनमें से प्रथम के अनुसार केवल ऐसे विक्रय विलेखों को लेख में लिया जायेगा जो भूमि अर्जन वर्ष के पूर्ववर्ती 3 वर्षों के हैं। द्वितीय स्पष्टीकरण के अनुसार विक्रय विलेखों का औसत निकालते समय आधे विक्रय पत्र उच्चतर कीमत दर्शाने वाले लिये जायेंगे वहीं स्पष्टीकरण तीन के अनुसार ऐसा करते समय किसी पूर्ववर्ती अवसर पर अर्जित भूमि के प्रतिकर को विचार में नहीं लिया जायेगा और स्पष्टीकरण चार के अनुसार कलेक्टर को यह अधिकार दिया गया कि यदि किसी विक्रय विलेख में उसे वास्तविक कीमत होना प्रतीत नहीं हो रही हो तो वह उसे गणना से पृथक भी कर सकता है।

धारा–26 की उपधारा–2 के अनुसार ऐसे बाजार मूल्य का नवीन अधिनियम की प्रथम अनुसूची में विर्निदिष्ट कारक से गुणा किया जायेगा और इस प्रकार प्राप्त राशि अर्जित की गई भूमि का बाजार मूल्य होगी। वर्तमान में मध्यप्रदेश राज्य के द्वारा जारी नोटिफिकेशन क्रमांक एफ 16–15–(9)–2014–सात–षा.–2 ए अनुसार ऐसा गुणक 1 प्रभावशील है।

धारा–26 (3) यह भी प्रावधान करती है कि यदि धारा– 26 (1) की रीति के अनुसार बाजार मूल्य निकालना संभव न हो तब राज्य सरकार लगे हुए क्षेत्रों में उसी प्रकार की भूमि के बाबत् उपधारा 1 में बताई गई रीति से निकाले गये मूल्य के आधार पर न्यूनतम कीमत तय करेगी परंतु किसी अर्जित भूमि के संबंध में भूस्वामियों को शेयर दिये जाने की प्रस्थापना की जाती है वहां ऐसा शेयर ऊपर वर्णित रीति से निकाली गई राशि के 25 प्रतिशत से अधिक नहीं होगा और न ही भूमि स्वामी को ऐसा शेयर लेने के लिये बाध्य करेगा जिसका मूल्य कटौती योग्य हो।

2. लोकप्रयोजन –

बाजार मूल्य से भिन्न लोक प्रयोजन शब्द जहां पूर्व अधिनियम में भी परिभाषित था वहीं इसे नवीन अधिनियम में भी परिभाषित किया गया है परंतु पूर्व अधिनियम में लोक प्रयोजन को संकुचित रूप से परिभाषित किया गया था वहीं नवीन अधिनियम की धारा–3 (यक) में इसे निम्नानुसार परिभाषित किया गया है कि :–

''लोकप्रयोजन से धारा 2 की उपधारा 1 के अधीन विनिर्दिष्ट क्रियाकलाप अभिप्रेत हैं''

धारा–2 (1) में समुचित सरकार का स्वयं और पब्लिक सेक्टर उपक्रमों के लिये सुरक्षा की दृष्टिकोण से, अवसंरचना परियोजनाओं के लिये, विस्थापित कुटुम्बों की परियोजनाओं के लिये, विनिर्दिष्ट आय समूह के गृह निर्माण की परियोजनाओं के लिये, ग्रामीण या नगरीय क्षेत्रों के विकास के लिये अथवा वहां रह रहे दुर्बल वर्ग के लिये आवासीय परियोजनाओं हेतु भूमि के अर्जन को लोक प्रयोजन की श्रेणी में होना प्रावधानित किया गया है वहीं उपधारा (2) के अनुसार प्रायवेट कम्पनी अथवा पब्लिक प्रायवेट कंपनी की आवश्यकता के लिये भी भूमि की आवश्यकता को लोक प्रयोजन में सम्मिलित किया गया है। परंतु प्रायवेट कंपनी के लिये प्रभावित कुटुंबों के 80 प्रतिशत और पब्लिक प्रायवेट भागीदारी परियोजनाओं के लिये 70 प्रतिशत कुटुंबों की पूर्व सहमति की शर्त अधिरोपित की

गई है साथ ही यह अवरोध भी लगाया गया है कि अधिसूचित क्षेत्रों में कोई अर्जन किसी विद्यमान विधि के उल्लंघन में नहीं किया जायेगा।

3. प्राधिकरण–

पूर्व अधिनियम में जहां निदेश धारा–2 (डी) में यथा परिभाषित न्यायालय को किये जाने की व्यवस्था थी वहीं नवीन अधिनियम में न्यायालय शब्द का प्रयोग नहीं किया गया है और धारा–3 (च) में प्राधिकरण के संबंध में लेख करते हुए यह प्रावधान किया गया है कि –

''प्राधिकरण से धारा–51 के अधीन स्थापित भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन प्राधिकरण अभिप्रेत है।''

धारा–51 समुचित सरकार द्वारा प्राधिकरण की स्थापना का प्रावधान करती है और धारा–52 में ऐसे प्राधिकरण की एकल सदस्यीय होने और धारा–53 नियुक्ति के लिये अर्हताओं के संबंध में यह प्रावधान करती है कि ऐसे पीठासीन अधिकारी का जिला न्यायाधीश होना अथवा रहा होना या कम से कम सात वर्ष तक विधि व्यवसाय करने के लिये योग्य होना आवश्यक है।

पूर्व अधिनियम में जो शक्तियाँ न्यायालय को प्रदान की गई थीं वही शक्तियाँ नवीन अधिनियम में प्राधिकरण को प्रदान की गई हैं। प्राधिकरण के सदस्यों को भारतीय दण्ड संहिता की धारा–21 के अधीन लोक सेवक माना गया है और उसके समक्ष की गई कार्यवाहियों को न्यायिक कार्यवाही मानते हुये उसे सिविल न्यायालय की संज्ञा प्रदान की गई है। प्राधिकरण को यद्यपि सिविल प्रक्रिया संहिता, 1908 के प्रावधानों से आबद्ध नहीं किया गया है, परंतु उसे किसी व्यक्ति को समन कर हाजिर कराना, शपथ पर उसकी परीक्षा लेना, दस्तावेजों या अन्य सामग्री को प्रस्तुत करने का आदेश देना, शपथ पत्रों पर साक्ष्य ग्रहण करना, लोक अभिलेख को आहूत करना, साक्षी की परीक्षा के लिये कमीशन निकालना, एवं आदेशों का पुर्नविलोकन करने की शक्तियाँ दी गई हैं। ये शक्तियाँ समय–समय पर पुनरीक्षित की जा सकती हैं। प्राधिकरण से निर्देश प्राप्त होने के पश्चात् 6 माह के अंदर निराकृत करने की आज्ञापक अपेक्षा की गई है।

मध्यप्रदेश राज्य की अधिसूचना क्रमांक एफ 12–2–2014–सात–शाखा–2ए दिनांक 08.09.2016 के द्वारा सभी जिला न्यायाधीशों को उनकी अपनी अपनी क्षेत्रीय अधिकारिता के भीतर नवीन अधिनियम के अधीन सौंपी गई अधिकारिता एवं शक्तियों का प्रयोग करने के लिये प्राधिकरण का पीठासीन अधिकारी नियुक्त किया गया है।

4. हितबद्ध व्यक्ति–

पूर्व अधिनियम की धारा–2 (बी) में हितबद्ध व्यक्ति को प्रतिकर में अथवा भूमि में सुखाधिकार के रूप में हित रखने वाले व्यक्ति के रूप में परिभाषित किया गया था वहीं नवीन अधिनियम में हितबद्ध व्यक्ति से आशय उपरोक्त दोनों के अतिरिक्त ऐसी अनुसूचित जनजातियों और परम्परागत वन निवासियों, जिन्होंने अनुसूचित जाति और अन्य परम्परागत वन निवासी (वन अधिकारों की मान्यता) अधिनियम, 2006 के अधीन किन्हीं वन्य अधिकारों को खो दिया है तथा अभिधृति अधिकार रखने वाले व्यक्तियों, जिनके अंतर्गत बंटाईदार भी शामिल हैं, के साथ–साथ ऐसे व्यक्तियों को भी शामिल किया था जिन पर भूमि अधिग्रहण के कारण जीविका के स्त्रोत पर प्रतिकूल प्रभाव पड़ने की सम्भावना है।

उपरोक्त हितबद्ध व्यक्ति की परिभाषा अत्यंत विस्तृत है। नवीन अधिनियम के अंतर्गत इस विस्तृत परिभाषित हितबद्ध व्यक्ति में उन सभी व्यक्तियों को प्रतिकर के संबंध में कार्यवाही करने का अधिकार प्राप्त हो जाता है जो भूमि अधिग्रहण की कार्यवाही से प्रभावित हुए हैं क्योंकि नवीन अधिनियम की धारा–64 में हितबद्ध व्यक्ति जो कि ऊपर परिभाषित है, को निर्देश करने की अधिकारिता प्रदान की गई है वहीं प्रतिकर निर्धारण के पूर्व धारा 21 में कलेक्टर को हितबद्ध व्यक्तियों को सूचनापत्र दिये जाने का प्रावधान किया गया है। हितबद्ध व्यक्तियों की विस्तृत परिभाषा लोकहित में है। इस परिभाषा में उन सभी व्यक्तियों को सम्मिलित किया गया है जो अधिग्रहित भूमि का उपयोग करते हुए लाभ अर्जित करते हैं अथवा आजीविका चलाते हैं। उदाहरण के लिये किसी तालाब में मतस्य पालन करने वाले व्यक्ति को उस तालाब के अधिग्रहण होने की स्थिति में प्रतिकर हेतु कार्यवाही करने का अधिकार होगा वहीं अनुसूचित जनजाति के व्यक्ति को, जो वन से वन सम्पदा एकत्रित कर उसके विक्रय द्वारा अपनी आजीविका का निर्वहन करता था, को वन के अधिग्रहण की दशा में प्रतिकर राशि प्राप्त करने का अधिकार होगा।

5. कुटुम्ब, विस्थापित कुटम्ब, प्रभावित कुटुम्ब–

उपरोक्त तीनों पदों को नवीन अधिनियम, 2013 की धारा–3 के अंतर्गत क्रमशः (ड) (ट) एवं (ग) में परिभाषित किया गया है। नवीन अधिनियम, 2013 में कुटुम्ब के अंतर्गत ऐसे व्यक्ति और उस पर आश्रित पत्नि/पति, अवयस्क संताने और अवयस्क भाई–बहनों को सम्मिलित रूप से माना है परंतु विधवा, तलाकशुदा और अधित्यज्य स्त्रियों को पृथक कुटुम्ब के रूप में लिया गया है वहीं वयस्क व्यक्ति चाहे पुरूष हो या महिला, विवाहित हो अथवा अविवाहित, संतान हो अथवा रहित हो, उस पर कोई आश्रित हो अथवा नहीं, को पृथक कुटुम्ब माना गया है। कुटुम्ब की उपरोक्त विस्तृत परिभाषा जिसे अत्यंत विस्तार दिया गया है लोक हित में है। कुटुम्ब की उपरोक्त विस्तारित परिभाषा का लोकहित में होना नवीन अधिनियम की धारा–31 से दर्शित होता है जहां प्रत्येक प्रभावित कुटुम्ब के लिये पुनर्वासन और पुनर्व्यवस्थापन की आवश्यकता बताई गई है।

विस्थापित कुटुम्ब के अंतर्गत ऐसे कुटुम्ब को लिया गया है जिसे भूमि अर्जन के कारण प्रभावित क्षेत्र से पुनर्व्यवस्थापन क्षेत्र में पुनर्वासन और पुनर्व्यवस्थापन किया जाना है। इस परिभाषा से यह स्पष्ट है कि विस्थापित कुटुम्ब की परिभाषा में आने के लिये यह आवश्यक नहीं है कि उस कुटुम्ब की भूमि का अधिग्रहण किया गया हो। ऐसा कुटुम्ब जिसकी भूमि का अधिग्रहण नहीं किया गया है वह भी नवीन अधिनियम, 2013 के प्रावधानों के अंतर्गत विस्थापन की दशा में पुर्नवास और पुनर्व्यवस्थापन के अधिकार को प्राप्त करता है।

विस्थापित कुटुम्ब को और अधिक विस्तृत रूप से समझने के लिये प्रभावित कुटुम्ब की परिभाषा की सहायता ली जा सकती है। नवीन अधिनियम, 2013 में प्रभावित कुटुम्ब के अतंर्गत ऐसे कुटुम्ब को लिया गया है जिसकी भूमि या अन्य अचल संपत्ति का अर्जन किया गया है अथवा जो भूमिहीन होते हुए कृषि श्रमिक, किरायेदार, बटाईदार अथवा कारीगर हो, जो भूमि के अर्जन से तीन वर्ष पूर्व तक प्रभावित क्षेत्र में कार्य कर रहे हों और भूमि के अर्जन के कारण उनका कार्य प्रभावित हुआ हो। इस परिभाषा के अंतर्गत ऐसी अनुसूचित जनजातियों और पारम्परिक वन निवासियों को भी सम्मिलित किया

गया है जिन्होंने मान्यता प्राप्त किसी वन अधिकार को भूअर्जन के कारण खो दिया है अथवा ऐसे व्यक्ति जो भूमि के अर्जन के तीन वर्ष पूर्व तक वनों एवं जलराशियों पर अपनी जीविका के मुख्य स्त्रोत के रूप में निर्भर थे या जिन्होंने राज्य या केन्द्र सरकार की किसी योजना के अधीन भूमि प्राप्त की है और ऐसी भूमि का अर्जन हो रहा है। अंतिम रूप से नगरीय क्षेत्र में निवास करने वाले ऐसे व्यक्तियों को भी प्रभावित कुटुम्ब की श्रेणी में लिया गया है जो अर्जन के पूर्ववर्ती तीन वर्ष या उससे अधिक की अवधि में किसी भूमि पर निवास कर रहे हैं या उनकी जीविका का मुख्य स्त्रोत भूमि के अर्जन से प्रभावित हुआ है।

सामाजिक समाघात और लोक प्रयोजन का अवधारण

पूर्व अधिनियम से भिन्न नवीन अधिनियम में भूमि अर्जन के पूर्व ऐसे अर्जन से उस क्षेत्र में पड़ने वाले प्रभाव के संबंध में सर्वे कर उसकी रिपोर्ट तैयार करने और उस पर आपत्ति आहूत कर तत्पश्चात् उस पर विचार करते हुए भूमि अर्जन के संबंध में कार्यवाही करने के प्रावधान किये गये हैं। इस संबंध में नवीन अधिनियम के अध्याय–2 में धारा–4 से धारा–9 एवं अध्याय–4 की धारा–14 तथा भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार (सामाजिक समाघात निर्धारण और सहमति) नियम, 2014 के नियम 1 से नियम 20 के प्रावधान अवलोकनीय हैं। नवीन अधिनियम, 2013 की धारा 4 लोक प्रयोजन के लिये भूमि अर्जन करने के पूर्व समुचित सरकार का सामाजिक समाघात निर्धारण अध्ययन कराये जाने का प्रावधान करती है। इस हेतु 6 मास का समय दिया जाने का प्रावधान किया गया है। इसके अंतर्गत इन तथ्यों का अध्ययन किया जायेगा कि :–

1. अर्जन और उसके लोक प्रयोजन के बीच संबंध।
2. विस्थापित होने वाले कुटुम्बों की संख्या।
3. अर्जन से प्रभावित होने वाली भूमि।
4. परियोजना के लिये न्यूनतम आवश्यक भूमि का अर्जन।
5. भूमि के अर्जन के लिये कोई अन्य स्थान की उपलब्धता अथवा ऐसे स्थान का योग्य न पाया जाना।
6. अर्जन से उत्पन्न होने वाले अन्य अनुषांगिक व्यय।

ऐसी रिपोर्ट तैयार होने पर समुचित सरकार प्रभावित कुटुम्बों के मत को जानने के लिये लोक सुनवाई करेगी और ऐसी रिपोर्ट का प्रकाशन कर उसे उपलब्ध करायेगी। आपत्तियों पर विचार करने के पश्चात विशेषज्ञ समूह द्वारा उस रिपोर्ट का अध्ययन कर सरकार अर्जन के संबंध में कार्यवाही करेगी परंतु धारा–9 में समुचित सरकार को यह अधिकार दिया गया है कि जहां भूमि अर्जन की अत्यंत आवश्यकता है वहां धारा–40 नवीन अधिनियम, 2013 का उपयोग करते हुए ऐसे अर्जन से छूट प्रदान कर सकेगी। वहीं धारा–14 में यह व्यवस्था की गई है कि यदि ऐसी रिपोर्ट के विशेषज्ञ समूह द्वारा किये गये आंकलन पश्चात दी गई रिपोर्ट पर 12 माह तक प्रारंभिक अधिसूचना जारी नहीं होती है तब ऐसी सामाजिक समाघात रिपोर्ट व्यपगत हो जायेगी और इसके पश्चात समुचित सरकार को नये सिरे से कार्यवाही करनी होगी परंतु समुचित सरकार अधिसूचना द्वारा इस 12 मास की अवधि को बढ़ाने का कार्य कर सकती है।

खाद्य सुरक्षा

नवीन अधिनियम, 2013 में औद्योगीकरण के साथ–साथ कृषि कार्य को भी समान रूप से महत्वता प्रदान की थी और इस बात का ध्यान रखा गया था कि औद्योगीकरण की कीमत पर कृषि भूमि और उससे जुड़े कार्य समाप्त न हो जायें। इस हेतु नवीन अधिनियम, 2013 की धारा–10 में यह प्रावधान किया गया कि सिंचित बहुफसलीय भूमि का अधिग्रहण नहीं होगा और यदि ऐसा अधिग्रहण किया जाना आवश्यक हो तो इसे अंतिम उपाय के रूप में अर्जित करते हुए उतने ही रकबे की समान क्षेत्र की बंजर भूमि को कृषि के प्रयोजनों हेतु विकसित किया जावेगा अथवा अर्जित भूमि के मूल्य की बराबर रकम कृषि कार्य की उन्नति में व्यय करने हेतु समुचित सरकार के पास जमा की जायेगी और बहुफसलीय भूमि के अतिरिक्त अन्य कृषि भूमि का अर्जन उस जिले या राज्य के कुल शुद्ध बुवाई क्षेत्र की सरकार द्वारा अधिसूचित सीमा से अधिक नहीं होगा अर्थात् समुचित सरकार किसी जिले अथवा राज्य में अर्जित की जाने वाली कृषि भूमि की सीमा तय कर सकती है परंतु उपरोक्त सभी उपबंध दीर्घकालीन प्रकृति की परियोजनाओं पर लागू नहीं होंगे।

अधिनियम का भूतलक्षी प्रभाव

नवीन अधिनियम की धारा–24 पूर्व अधिनियम के अंतर्गत की गई कार्यवाहियों के व्यपगत होने के संबंध में प्रावधान करती है जिसके अनुसार पूर्व अधिनियम के अधीन आरंभ की गई भूअर्जन की कार्यवाहियों में यदि :–

1. धारा–11 पूर्व अधिनियम के अधीन कोई अधिनिर्णय नहीं दिया गया है वहां पर नवीन अधिनियम के प्रावधान लागू होंगे।
2. जहां धारा–11 पूर्व अधिनियम के अधीन कोई अधिनिर्णय दिया गया है वहां पर पूर्व अधिनियम के प्रावधान ही लागू होंगे।

इस धारा–24 की उपधारा–2 के अनुसार पूर्व अधिनियम के अधीन की गई कार्यवाहियों में यदि धारा–11 के अधीन अधिनिर्णय नवीन अधिनियम के प्रारम्भ के पांच वर्ष या उससे अधिक पूर्व किया गया है, किंतु भूमि का भौतिक कब्जा नहीं दिया गया है या प्रतिकर का संदाय नहीं किया गया है वहां ऐसी सारी कार्यवाहियां व्यपगत हो जाएंगी और नये सिरे से भूअर्जन की कार्यवाहियों आरम्भ की जाएंगी।

उपरोक्त परिस्थितियों के संबंध में विचार करते हुए पुणे ***म्युनिशिपल कार्पोरेशन वि. हरकचंद सोलंकी, 2014 SCC ONLINE SC 59*** में माननीय सर्वोच्च न्यायालय की तीन न्यायमूर्तिगण की पीठ ने प्रतिकर राशि का शासकीय कोषालय में जमा होना भूस्वामी को राशि अदायगी के समरूप नहीं माना वहीं ***इंदौर डेवलपमेंट अथारिटी वि. शैलेन्द्र, 2018 SCC ONLINE SC 100*** में इसे पर्याप्त माना गया। यह निर्णय भी सर्वोच्च न्यायालय की तीन सदस्यीय पीठ द्वारा दिया गया था। दो समान पीठों द्वारा परस्पर विरोधी निर्णय के कारण इस बिंदु को वृहद पीठ के लिये रेफर किया गया और माननीय सर्वोच्च न्यायालय ने ***इंदौर डेवलपमेंट अथारिटी वि. मनोहर लाल, 2020 SCC ONLINE SC 316*** के निर्णय में शासकीय कोषालय में राशि जमा होने के तथ्य को पर्याप्त मानते हुए पूर्व अधिनियम की

कार्यवाही व्यपगत न होने का न्यायिक सिद्धांत प्रतिपादित किया जिसके पश्चात इस बिंदु पर न्यायिक स्थिति स्पष्ट हो चुकी है।

अपराध और शास्तियाँ

पूर्व अधिनियम से भिन्न नवीन अधिनियम के अध्याय 12 में भूमि अर्जन से संबंधित कार्यवाहियों में हुए अपराधों के लिये दण्ड का प्रावधान करती है। नवीन अधिनियम की धारा 84 इस अधिनियम की अपेक्षा या निदेश के संबंध में मिथ्या या भ्रामक जानकारी उपलब्ध कराने अथवा मिथ्या दस्तावेज प्रस्तुत करने की दशा में 6 माह की सजा या जुर्माना जो एक लाख रूपये तक का हो सकेगा या दोनों से दण्ड का प्रावधान करती है और यदि ऐसे कार्य से कोई लाभ अर्जित किया गया है तो वह वसूल किये जाने के दायित्वाधीन होगा। ऐसी कार्यवाहियों से किसी सरकारी सेवक को भी उन्मुक्त नहीं किया गया है वहीं धारा–85 यह प्रावधान करती है कि प्रतिकर के संदाय, पुनर्वास और पुनर्वयवस्थापन से संबंधित किन्ही उपबंधों का उल्लंघन 6 माह के दण्ड से जो तीन वर्ष तक का हो सकेगा या जुर्माना या दोनों से दण्डनीय बनायेगा। ऐसे अपराधों का संज्ञान महानगर मजिस्ट्रेट या न्यायिक मजिस्ट्रेट प्रथम श्रेणी से अन्यून न्यायालय लेने के लिये सक्षम होगा और ऐसा अपराध संज्ञेय होगा। सक्षम न्यायालय कलेक्टर या समुचित सरकार द्वारा प्राधिकृत किसी अन्य अधिकारी या प्रभावित कुटुम्ब के किसी सदस्य की लिखित परिवाद पर ही कार्यवाही करेगा। यद्यपि इस अध्याय में सरकारी विभाग और उसके प्रमुख को भी दण्ड का पात्र बताया गया है परंतु धारा–87 में यह भी प्रावधान किया गया है कि यदि अपराध विभाग प्रमुख की जानकारी के बिना किया गया हो या उसने निवारण हेतु सभी सम्यक तत्परता बरती हो तब वह दण्ड का पात्र नहीं होगा। इसी धारा में विभाग प्रमुख से भिन्न किसी अधिकारी की सहमति मौनानुकूलता या उपेक्षा के कारण अपराध होने में उस व्यक्ति को भी दण्ड का पात्र होना बताया गया है।

तोषण और ब्याज

नवीन अधिनियम की धारा–30 (1) जहां तोषण के संबंध में प्रावधान करती है वहीं धारा–30 (3), 69 (2) 72 एवं 80 में विभिन्न प्रक्रमों में प्रतिकर राशि पर ब्याज का प्रावधान करती है। जहां तक तोषण का प्रश्न है, पूर्व अधिनियम में यह प्रतिकर की रकम का तीस प्रतिशत के समतुल्य था परंतु नवीन अधिनियम में इसे प्रतिकर के रकम के समतुल्य शतप्रतिशत कर दिया गया है। इसी प्रकार ब्याज के संबंध में नवीन अधिनियम में तीन जगह प्रावधान किये गये हैं। प्रथम अवसर भूमि अधिग्रहण के समय कलेक्टर द्वारा निर्धारित प्रतिकर से समय का है जिसके संबंध में धारा–30 (3) में प्रावधान किया गया है जिसके अनुसार सामाजिक समाघात निर्धारण अध्ययन के अधिसूचना के प्रकाशन की तारीख से प्रारम्भ होकर कलेक्टर के निर्णय की तारीख तक या भूमि का कब्जा लेने की तारीख तक जो भी पूर्व हो, की अवधि के लिये 12 प्रतिशत प्रतिवर्ष की दर से बाजार मूल्य पर ब्याज प्रदाय किया जाएगा। ऐसा ही प्रावधान प्राधिकरण के लिये धारा–69 (2) में दिया गया है।

धारा–72 के अनुसार यदि प्राधिकरण ने प्रतिकर की राशि में वृद्धि की है तब वह ब्याज के संबंध में यह लेख करेगा कि भूमि पर कब्जा लेने की दिनांक से ऐसे आधिक्य प्रतिकर के संदाय किये जाने की तारीख तक 9 प्रतिशत वार्षिक की दर से ब्याज की अदायगी की जाए परंतु आधिक्य की

राशि के संदाय में एक वर्ष की अवधि से अधिक व्यतीत होने पर जितनी राशि की अदायगी शेष रहेगी, उस पर 15 प्रतिशत की दर से ब्याज की अदायगी होगी। ऐसा ही प्रावधान धारा–80 में कलेक्टर के लिये है जहां प्रतिकर पर प्रथम ब्याज की दर 9 प्रतिशत है परंतु एक वर्ष के अंदर सम्पूर्ण राशि की अदायगी न होने पर शेष बची राशि पर उक्त ब्याज की दर 15 प्रतिशत होने का लेख है।

उच्च न्यायालय को अपील

पूर्व अधिनियम में जहां न्यायालय द्वारा निर्देश पर पारित आदेश के विरूद्ध अपील का प्रावधान धारा–54 में था वहीं नवीन अधिनियम में धारा–74 में अपील का प्रावधान किया गया है जिसके अनुसार प्राधिकरण द्वारा पारित अधिनिर्णय के विरूद्ध 60 दिवस के भीतर उच्च न्यायालय में अपील कर सकेगा इस अवधि को उच्च न्यायालय समाधानप्रद कारणों से 60 दिन की अतिरिक्त अवधि के लिये बढ़ा सकता है। नवीन अधिनियम में इस अपील का निराकरण 6 माह के अंदर किये जाने के प्रयास किये जाने की अपेक्षा की गई है।

सिविल न्यायालय के अधिकारिता का वर्जन

पूर्व अधिनियम में भूमि अधिग्रहण से संबंधित किसी विवाद के संबंध में सुनवाई की क्षेत्राधिकारिता सिविल न्यायालय को न होने का प्रावधान किया गया था। ऐसा ही वर्जन नवीन अधिनियम की धारा–63 में भी किया गया है जिसके अनुसार ऐसा कोई भी कार्य, जिसके संबंध में कलेक्टर या प्राधिकरण को इस अधिनिमय में सशक्त किया गया है, उस संबंध में किसी विवाद को ग्रहण करने और व्यादेश जारी करने की अधिकारिता सिविल न्यायालय को नहीं होगी।

भू–अर्जन और प्रतिकर निर्धारण की प्रक्रिया

भूमि अधिग्रहण और ऐसे अधिग्रहण के संबंध में प्रतिकर निर्धारण की सुनवाई की प्रक्रिया के संबंध में पूर्व अधिनियम में भी स्पष्ट प्रावधान थे। पूर्व अधिनियम में जो प्रावधान इस संबंध में किये गये थे उन सभी को नवीन अधिनियम में स्थान प्रदान किया गया है केवल अंतर यह है कि नवीन अधिनियम में पूर्व उपबंधों के साथ–साथ समय के परिवर्तन के समय के साथ उद्भूत अथवा भविष्य के आवश्यकताओं को ध्यान मे रखते हुये उन उपबंधों को लिया गया। उदाहरण के लिये नीवन अधिनियम की धारा–11 जो कि पूर्व अधिनियम की धारा–4 के समकक्ष है में पूर्व अधिनियम के धारा–4 के साथ यह भी जोड़ा गया कि की अधिसूचना का प्रकाशन समूचित सरकार की वेबसाइट पर अपलोड किया जायेगा और ग्राम सभा, नगर पालिका या स्वायत्त संस्था, जैसी भी स्थिति हो, की बैठक बुलाकर उन्हें सूचित किया जायेगा। नवीन अधिनियम की धारा–12 में यह परंतुक जोड़ा गया कि भूमि की स्थिति में कोई भी कार्य भूमि स्वामी या उसकी ओर से प्राधिकृत व्यक्ति की अनुपस्थिति में नहीं किया जायेगा परंतु अनुपस्थिति में कम से कम 60 दिन पूर्व का नोटिस देकर किया जा सकेगा। नवीन अधिनियम में प्रथम अधिसूचना के प्रकाशन से 60 दिन के अंदर अधिग्रहण के संबंध में आक्षेप करने की व्यवस्था की गई है जो कि पूर्व अधिनियम की धारा–5क में 30 दिन थी। भूमि अधिग्रहण की प्रथम अधिसूचना से कलेक्टर द्वारा प्रतिकर राशि के अवधारण करने तक के प्रावधानों के संबंध में एक तालिका नीचे दी जा रही है जिससे यह समझने में सुविधा होगी कि इस संबंध में जो प्रावधान पूर्व अधिनियम में थे वही प्रावधान यथोचित आवश्यक संशोधन के साथ नवीन अधिनियम में है।

क्र.	कार्य	पूर्व अधिनियम का सुसंगत प्रावधान	नवीन अधिनियम का सुसंगत प्रावधान
1.	प्रारम्भिक अधिसूचना का प्रकाशन और अधिकारियों की शक्ति	धारा 4	धारा 11
2.	नुकसानी का संदाय	धारा 5	धारा 13
3.	आक्षेपों की सुनवाई	धारा 5 ए	धारा 15
4.	लोक प्रयोजन हेतु आवश्यकता होने की घोषणा	धारा 6	धारा 19
5.	घोषणा उपरांत अर्जन आदेश	धारा 7	धारा 19 (6)
6.	भूमि का चिन्हांकन माप और रेखांकन	धारा 8	धारा 20
7.	हितबद्ध व्यक्तियों को सूचना	धारा 9	धारा 21
8.	कलेक्टर द्वारा नामों और हितों के बारे में कथन करने की अपेक्षा करने की शक्ति	धारा 10	धारा 22
9.	कलेक्टर द्वारा जांच और अधिनिर्णय	धारा 11	धारा 23
10.	अवधि जिसके भीतर अधिनिर्णय किया जायेगा	धारा 11ए	धारा 25
11.	कलेक्टर का अधिनिर्णय कब अंतिम होगा	धारा 12	धारा 37
12.	जांच का स्थगन	धारा 13	धारा 34
13.	साक्षियों को समन करने, हाजिर करने और दस्तावेज पेश कराने की शक्ति	धारा 14	धारा 35
14.	अभिलेख आदि मंगाने की शक्ति	धारा 15ए	धारा 36
15.	कब्जा लेने की शक्ति	धारा 16	धारा 38
16.	कतिपय दशाओं में भूमिअर्जन की अत्यावश्यकता की दशा में विशेष शक्तियां	धारा 17	धारा 40

उक्त तालिका के अवलोकन से यह स्पष्ट है कि पूर्व अधिनियम में जो प्रावधान धारा–4 से 17 में कलेक्टर के कार्यालय में निर्देश किये जाने के पूर्व से संबंधित थे वे सभी नवीन अधिनियम में समाहित किये गये हैं।

जहां तक प्राधिकरण के समक्ष निर्देश की प्रक्रिया है, उसकी स्थिति भी इसी प्रकार की है कि पूर्व अधिनियम के प्रावधानों को यथोचित संशोधन के साथ नवीन क्रमांक देते हुये उन्हें यथावत रखा गया है। सर्वाधिक महत्वूपर्ण अंतर प्रक्रिया के संबंध में यह है कि जहां पूर्व अधिनियम में न्यायालय को कलेक्टर के समक्ष प्रस्तुत निर्देश याचिका को आहूत करने की अधिकारिता नहीं थी वहीं नवीन अधिनियम में धारा–64 के प्रथम परंतुक में कलेक्टर के लिये यह आज्ञापक प्रावधान किया गया है की वह 30 दिन के अंदर निदेश को समुचित प्राधिकारी के समक्ष भेजेगा। वहीं प्राधिकरण को द्वितीय परंतुक

के अधीन यह अधिकारिता प्रदान की गई है कि वह आवेदक के आवेदन पर कलेक्टर को निर्देश भेजने के लिये निर्देश कर सके। पूर्व अधिनियम में जहां कलेक्टर के समक्ष आवेदन करने के लिये परिसीमा अवधि निर्धारित थी जिसके पश्चात् आवेदन लेने की समयावधि विस्तारित करने के लिये कलेक्टर को कोई अधिकार नहीं था परंतु नवीन अधिनियम में धारा–64 (2) के अधीन कलेक्टर को यह अधिकारिता प्रदान की गई है कि वह इस अवधि को पर्याप्त कारण का समय होने पर 1 वर्ष की अतिरिक्त अवधि में ग्रहण कर सकता है। पूर्व अधिनियम और नवीन अधिनियम में निर्देश के संबंध में समानता को दर्शाने के लिये नीचे दी गई तालिका से सहायता प्राप्त हो सकती है –

क्र.	कार्य	पूर्व अधिनियम का सुसंगत प्रावधान	नवीन अधिनियम का सुसंगत प्रावधान
1.	निर्देश	धारा 18	धारा 64
2.	प्राधिकरण को कलेक्टर का कथन	धारा 19	धारा 65
3.	प्राधिकरण द्वारा सूचना की तामील	धारा 20	धारा 66
4.	कार्यवाहियों की परिधि पर निर्बंधन	धारा 21	धारा 67
5.	कार्यवाहियों का सार्वजनिक होना	धारा 22	धारा 68
6.	अधिनिर्णय का प्रारूप	धारा 26	धारा 70
7.	खर्चे	धारा 27	धारा 71
8.	आधिक्य प्रतिकर पर ब्याज	धारा 28	धारा 72
9.	प्राधिकरण के अधिनिर्णय के आधार पर प्रतिकर की रकम का पुनः अवधारण	धारा 28ए	धारा 73

ऊपर वर्णित तालिका से यह स्पष्ट है कि नवीन अधिनियम के अंतर्गत प्राधिकरण के सदस्य के रूप में अथवा पूर्व अधिनियम में न्यायालय के पीठासीन अधिकारी के रूप में किये जाने वाले कार्यों में कोई विशेष अथवा महत्वपूर्ण अंतर नहीं है। नवीन अधिनियम का निर्माण इस उद्देश्य से किया गया है कि भूमि अधिग्रहण संबंधी विषयों में उन व्यक्तियों की भी सहभागिता हो जिनकी भूमि का अधिग्रहण हो रहा है। ऐसी स्थिति में नवीन अधिनियम के अंतर्गत प्रस्तुत प्रकरणों के निराकरण के समय इस उद्देश्य को भी विचार में लेना चाहिए। इसके अतिरिक्त सबसे महत्वपूर्ण रूप से प्रतिकर संबंधी प्रकरणों के निराकरण के प्रति भी संवेदनशीलता होनी चाहिए ताकि जिस व्यक्ति की भूमि का अधिग्रहण हुआ है वह प्रतिकर से प्राप्त होने वाली राशि का उपयोग अपने भविष्य की योजनाओं के लिये करते हुए भूमि अधिग्रहण से हुई क्षति की पूर्ति कर सके।

सुविधा के लिये पूर्व अधिनियम एवं नवीन अधिनियम के हिन्दी एवं अंग्रेजी संस्करण क्यू आर कोड के रूप में दिये जा रहे हैं।

THE LAND ACQUISITION ACT 1894 (1 OF 1894)

THE RIGHT TO FAIR COMPENSATION AND TRA NSPARENCY IN LAND

ORDER OF ACQUITTAL UNDER SECTION 232 OF CR.P.C.

Tajinder Singh Ajmani
OSD, MPSJA

OBJECT

Section 232 of Criminal Procedure Code 1973 (hereinafter referred to as ''CrPC'') is an enabling provision whereby the trial Judge can record an order of acquittal before asking the accused to enter into his defence. The prime objective is to expedite the trial and to avoid unnecessary prolongation. The provision of section 232 CrPC impliedly encompasses with the well settled principles of criminal trial that the prosecution must succeed on its own and cannot depend the weakness of the defence evidence. The word no evidence is significant and under these circumstances only, the trial court may acquit the accused persons.

RELEVANT PROVISION

Section 232 CrPC – Acquittal.– If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.

Section 233 CrPC – Entering upon defence. – (I) Where the accused is not acquitted under Section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

AFTER TAKING THE EVIDENCE FOR THE PROSECUTION

Section 225 of the CrPC provides that trial is to be conducted by the Public Prosecutor. The first question that arises here is whether Public Prosecutor has sole privilege to close prosecution evidence and Court is bound to accept his will. This aspect is considered by the Supreme Court in ***Bablu Kumar v. State of Bihar, (2015) 8 SCC 787*** wherein it was observed that the court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial has a statutory duty to perform. He cannot afford to take things in a lighter manner. The court also is not expected to accept the version of the prosecution as if it is sacred. It has to apply its mind on every occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial as laid down in ***Bablu Kumar*** (supra) and held as under:

> ‘‘In fact the record and proceedings must demonstrate on face of it that before the purshis for closing the evidence is filed and accepted, all the three, that is to say, the investigating agency, the learned Public Prosecutor in charge of the case and the learned trial Judge had put in their respective hard. honest, and sincere efforts, in short done their best to examine material witnesses before the Court. If this is not done, the whole system would he reduced to “justice show”, without doing any substantial justice, and which in turn could be nothing less than a mere farce and rank judicial hypocrisy. Such lapses and remissness on the part of either the Investigating Agency, the learned Public Prosecutor or the learned trial Judge cannot be countenanced lightly and they are liable to explanation. This is to be noted for the future only. We hope this case and this judgment will serve as an example to all Investigating Officers, Public Prosecutors and the learned Judges dealing with the cases where some material witnesses are not examined on some flimsy hearsay ground of he/she having gone abroad, and was not likely to return or not available at given address, etc’’.

In case where superior court directs that trial in a particular case shall conclude within time frame. In ***Mahendra Yadav v. State of Bihar***, Criminal Misc. No. 23806 of 2007, order dated 17-7-2007 (Pat) it has been observed as under:

> ‘‘That for finalisation of the trial within a fixed duration and the learned trial Judge, in all possibility, harboured the impression that even if the prosecution witnesses had not been served the notice to depose in court, and the prosecution had not taken any affirmative steps to make them available for adducing evidence in court, yet he must conclude the trial by the target date as if it is a mechanical and routine act. The learned trial Judge, as it appears to us, has totally forgotten that he could have asked for extension of time from the High Court, for the High Court, and we are totally convinced, could never have meant to conclude the trial either at the pleasure of the prosecution or the desire of the accused’’.

EXAMINING THE ACCUSED

Whether the term ‘examine the accused’ used in section 232, CrPC means examination in general or examination as provided under section 313 CrPC and

whether before recording of order of acquittal, compliance of section 313 CrPC is mandatory? This aspect has been considered by the Supreme Court in ***State of Maharashtra v. Sukhdev Singh, (1992) 3 SCC 700.*** The manner of examination of the accused is provided in Section 313 CrPC. So far as section 232 CrPC is concerned, such examination of the evidence of the prosecution is not an examination for the purpose of recording a judgment but it is for *prima facie* arriving at a conclusion whether there is any necessity for further proceeding with the case. It was observed thus:

> "It is, therefore, true that the purpose of the examination of the accused under Section 313 CrPC is to give the accused an opportunity to explain the incriminating material which has surfaced on record. The stage of examination of the accused under clause (b) of sub-section (1) of Section 313 CrPC is reached only after the witnesses for the prosecution have been examined and before the accused is called on to enter upon his defence. At the stage of closure of the prosecution evidence and before recording of statement under Section 313, CrPC the learned Judge is not expected to evaluate the evidence for the purpose of deciding whether or not he should question the accused. The learned trial Judge is not expected before he examines the accused under Section 313 CrPC to sift the evidence and pronounce on whether or not he would accept the evidence regarding any incriminating material to determine whether or not to examine the accused on that material. To do so would be to prejudge the evidence without hearing the prosecution under Section 314 CrPC. Therefore, no matter how weak or scanty the prosecution evidence is in regard to a certain incriminating material, it is the duty of the court to examine the accused and seek his explanation thereon. It is only after that stage is over that the oral arguments have to be heard before the judgment is rendered. It is only where the court finds that no incriminating material has surfaced that the accused may not be examined under Section 313. If there is material against the accused, he must be examined."

Regarding the proper stage of defence evidence, in ***Pati Ram v. State of U.P., (1970) 3 SCC 703*** while considering the provision of 342 of the Code of Criminal Procedure, 1898 (here in after refered to as ''old Code'') Supreme Court has observed that:

> "What has been done is, as is usually done in all such cases. After putting the questions that are required to be put under Section 342 of the ''old Code'', the accused was asked whether he had any defence evidence. We do not think that that procedure in any way conflicts with Section 289 of the old Code.

In ***Pintu and anr. v State of U.P., 2002 CriLJ 2241,*** (All) it has been clarified that the question whether an accused wants to adduce evidence in defence should not have been put to the accused while recording statement under Section 313 CrPC in Sessions trial. After the prosecution evidence is recorded and the statement of the accused is also recorded, an order should be passed under Section 232 CrPC. If the accused is not acquitted by that order on the ground that there is no evidence that the accused committed the offence, only then the accused should be called upon to enter into his defence and adduce any evidence, he may have in support thereof as provided under in Section 233 CrPC.

In ***Satbir Singh v. State of Haryana, (2021) 6 SCC 1***, it has been again reiterated that once the trial court decides that the accused is not eligible to be acquitted as per the provisions of Section 232 CrPC, it must move on and fix hearings specifically for "defence evidence", calling upon the accused to present his defence as per the procedure provided in Section 233 CrPC, which is also an invaluable right provided to the accused.

NO EVIDENCE

In ***Queen Empress v. Ramalingam, (1897) ILR 20 Mad 445,*** it has been guided that it is a salutary principle in a sessions trial that no final opinion as to the reliability or acceptability of the evidence should be arrived at by the Judge until the whole evidence before him has been duly considered. Although direct decisions under Section 232 CrPC on the point are very few, there are a number of decisions under Section 289 of the old Code, where Courts have considered what is meant by the expression "no evidence" in that Section.

In ***Pati Ram v. State of U.P., (1970) 3 SCC 703***, the Supreme Court has held that what Section 289 of the old Code requires to be done is that if the trial Judge comes to the conclusion that there is evidence to show that the accused had committed the offence, then the accused should be called to enter upon his defence and that the **value to be attached to that evidence is not to be considered at that stage**. After relying ***Pati Ram*** (supra) in ***Kumar Naik v. State of Karnataka, 1976 CriLJ 925*** it has been reiterated that under Section 289 of the old Code, the Sessions Judge was required to come to the conclusion that there was evidence to show that the accused had committed the offence and at that

time, he was not to decide what value was to be attached to that evidence, as Section 232 of the new Code Shows any difference in the legal position.

In ***State of Kerala v. Mundan, 1981 CriLJ 1795,*** the Division Bench of the Kerala High Court explained that the words "no evidence" in section 232 CrPC cannot be construed or interpreted to mean absence of sufficient evidence for conviction or absence of satisfactory or trustworthy or conclusive evidence in support of the charge. The judge has to see whether any evidence has been let in on behalf of the prosecution in support of their case that the accused committed the offence alleged, and whether that evidence is legal and relevant. It is not the quality or the quantity of the evidence that has to be considered at this stage. If there is any evidence to show that the accused has committed the offence, then the judge has to pass on to the next stage, It is not open to him to evaluate or consider the reliability of the evidence at this stage.

In the case of ***Santosh Kumar Mohanty v. Brajabandhu Mohanty, 2001 CriLJ 1618,*** charge had already been framed and it was open for the learned Assistant Sessions Judge to discharge the accused persons only at that stage. He could not have recorded an order of acquittal under Section 232 CrPC, as no evidence had been adduced on behalf of the prosecution and the statements of the accused persons were not recorded under Section 313 CrPC.

DUE COMPLIANCE OF SECTION 232

In ***Lal Behari Das v. State of Tripura, 1998 SCC OnLine Gau 90,*** it has been observed that it is desirable that after closure of the prosecution evidence and after recording the statement of the accused persons u/s 313 CrPC, the court records one line order, if it is not inclined to acquit the accused person at that stage, that this is not a case of acquittal u/s 232 CrPC or calling upon the accused persons to enter into their defence. This will keep the record straight and there will be no scope of any confusion whatsoever.

In ***K. Moidu v. State of Kerala, 2009 CriLJ 4045,*** the Full Bench of Kerala High Court made it clear that every Sessions Court is bound to ensure that in the order sheets maintained from the stage of Section 232 CrPC, must show the following steps clearly to satisfy the procedure prescribed:

(a) That the prosecution evidence was closed under Section 231 and hearing was held under Section 232 CrPC.

(b) That the mind of the court was applied under Section 232 CrPC and a decision was taken on the question whether it is a case where there is no evidence at all against the accused. If there is no evidence at all, a detailed and considered order of acquittal must be passed. If not, the fact that the case is not one in which there is no evidence at all must be recorded. In that event, no detailed order need to be written.

(c) If the court decides to proceed further, the accused must be called upon to enter on his defence and adduce evidence with the assistance of the court wherever necessary under Section 233 CrPC to procure the presence of the witnesses.

(d) Whether the accused has adduced evidence or not must be recorded. If the accused has not adduced evidence, it must be recorded that the accused and/or his counsel stated that they want to adduce no defence evidence. For this purpose, by way of abundant caution the statement of the accused can be recorded and his signature be obtained as has been done under Section 289(1) of the old Code.

(e) Only thereafter the court should proceed to consider the question of acquittal/conviction under Section 234 CrPC.

NON-COMPLIANCE OF SECTIONS 232 AND 233 – EFFECT

What is the effect of non compliance of Sections 232 and 233 CrPC? In ***K. Moidu*** (supra) the Full Bench laid down the correct position of law which is stated as follows :

(i) Sections 232 and 233 CrPC are mandatory in the sense that all Sessions Courts are expected to comply with those provisions strictly and earnestly and the compliance should be reflected in the proceedings.

(ii) However, non-compliance of the said provisions does not *ipso facto* vitiate the proceedings.

(iii) If it is shown that the omission to comply with the provisions has resulted in serious and substantial prejudice against the accused and consequent failure of justice, such omission vitiates the proceedings from that stage and superior courts will be justified in setting aside the final order and directing the Sessions Court to continue trial from that stage afresh.

(iv) If there be substantial compliance and if there be no serious and substantial prejudice against the accused and no resultant failure of justice flowing from the inadequacy in compliance, such inadequacy/irregularity is curable under Sec. 465 CrPC and such inadequacy/non-compliance will not vitiate the proceedings or lead to invalidation of the subsequent proceedings.

CONCLUSION

- If the pre-conditions enumerated in Section 232 CrPC, viz. (i) after taking of evidence for the prosecution; (ii) examining the accused; and (iii) no evidence, are fulfilled, it is desirable to pass an order of acquittal under the said section.
- The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued,

they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence.

- The manner of examination of the accused is provided in Sections 313 CrPC of the Code. Such examination of the evidence of the prosecution is not an examination for the purpose of recording a judgment but for *prima facie* arriving at a conclusion as to whether there is any necessity for further proceeding with the case.
- No matter how weak or scanty the prosecution evidence is in regard to certain incriminating material, it is the duty of the court to examine the accused and seek his explanation thereon. The value to be attached to that evidence is not to be considered at that stage.
- After putting the questions that are required to be put under Section 313 CrPC the accused has to be asked whether he had any defence evidence.
- The words "no evidence" in Sections 232 CrPC cannot be construed or interpreted to mean absence of sufficient evidence for conviction or absence of satisfactory or trustworthy or conclusive evidence in support of the charge.
- Under Section 232 CrPC what the Judge has to look into and consider is whether there is legal evidence adduced on behalf of the prosecution connecting the accused with the commission of the crime and not its quality and quantity. He is not to consider at this stage the sufficiency, reliability or trustworthiness of that evidence.
- It is desirable that after closure of the prosecution evidence and after recording the statement of the accused persons u/s 313 CrPC the court records one line order, if it is not inclined to acquit the accused person at that stage, that this is not a case of acquittal u/s 232 CrPC or calling upon the accused persons to enter into their defence. This will keep the record straight and there will be no scope of any confusion whatsoever.
- Sections 232 and 233 CrPC are mandatory in the sense that all Sessions Courts are expected to comply with those provisions strictly and earnestly and the compliance should be reflected in the proceedings. However, non-compliance of the said provisions does not *ipso facto* vitiate the proceedings.

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LAW OF PARTITION: PRELIMINARY DECREE AND FINAL DECREE

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Introduction:

'Partition' is a re-distribution or adjustment of pre-existing rights, among co-owners/ coparceners, resulting in division of lands or other properties jointly held by them, into different lots or portions and delivery thereof to the respective allocatees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them severally. Partition of a property can only be among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition. In a suit for partition or separation of a share, the prayer is not only for declaration of plaintiff's share in the suit properties but also division of his share by metes and bounds. This involves three issues: (a) whether the person seeking division has a share or interest in the suit property/properties? (b) whether he is entitled to the relief of division and separate possession? and (c) how and in what manner, the property/properties should be divided by metes and bounds?

In a suit for partition or separation of a share, the court at the first instance decides whether the plaintiff has a share in the suit property and whether he is entitled to a division and separate possession? The decision on these two issues is exercise of a judicial function and results in first stage decision termed as 'decree' under Order 20 Rule 18(1) and termed as 'preliminary decree' under Order 20 Rule 18(2) of the Code of Civil Procedure ('Code' for short). The consequential division by metes and bounds, is considered to be a ministerial or administrative act requiring physical inspection, measurements, calculations and considering various permutations/ combinations/alternatives of division, is referred to the Collector under Rule 18(1) of the Code and is the subject-matter of the final decree under Rule 18(2) of the Code.

'Separation of share' is a species of 'partition'. When all co-owners get separated, it is a partition. Separation of share/s refers to a division where only one or only a few among several co-owners/coparceners get separated and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds. For example, where four brothers owning a property divide it among themselves by metes and bounds, it is a partition. But if only one brother wants to get his share separated and other three brothers continue to remain joint, there is only a separation of the share of one brother.

Relevant provisions:

Decree may be of three types; preliminary, final and partly preliminary & partly final. The terms 'preliminary decree' and 'final decree' used in the said rule are defined in Explanation to section 2(2) of the Code and read thus:

> "A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

Order 20 Rule 18 of the Code deals with decrees in suits for partition or separate possession of a share therein which is extracted below:

> "***18. Decree in suit for partition of property or separate possession of a share therein***. – Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then -
>
> (1) If and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;
>
> (2) If and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties, interested in the property and giving such further directions as may be required."

Section 54 of the Code deals with partition of estate or separation of share, relevant for purposes of Rule 18(1) which reads thus:

> "Where the decree is for the partition of an undivided estate assessed to the payment of revenue of the government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted sub-ordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates."

Order 26 Rule 13 of the Code deals with Commissions to make partition of immovable property, relevant for purposes of Rule 18(2) reads thus:

> "Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree."

Order 26 Rule 14 of the Code deals with procedure of commissioner, after necessary inquiry commissioner shall divide the property into as many shares as directed and allot shares by metes and bounds to parties, and may, if authorized thereto by the said order, award sum to be paid for purpose of equliging the value of the shares and submitt his signed report. Where the court confirms or varies the report it shall pass a decree in accordance with the

report as confirmed or varied. But where the court sets aside the report or reports it shall either issue a new commission or make other order as it shall think fit.

Rule 171 of Madhya Pradesh Civil Courts Rules, 1961 deals with the procedure. In a suit where preliminary decree is followed by a final judgment, a final decree shall be drawn up in terms of the final judgment. The final decree being, an adjudication completely disposing of the suit and conclusively determine the rights of the parties, shall be full and complete in itself, so as to be capable of being understood and executed without any reference to the preliminary decree.

Distinction between Preliminary and Final Decrees :

In ***Shankar Balwant Lokhande (Dead) v. Chandrakant Shankar Lokhande, AIR 1995 SC 1211 (1212)*** case, the Supreme Court observed:

> "A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries conducted pursuant to the preliminary decree, the rights of the parties are fully determined and a decree is passed in accordance with such determination which is final. Both the decrees are in the same suit. Final decree may be said to become final in two ways:
>
> (i) when the time for appeal has expired without any appeal being filed against the preliminary decree or the matter has been decided by the highest court;
>
> (ii) when, as regards the court passing the decree, the same stands completely disposed of It is in the latter sense the word "decree" is used in, s. 2(2) of CPC. The Court also observed that until the final decree is passed, there is "no formal expression" of the court that conclusively settles all the issues in the case.''

Duty of Court :

Once a court passes a decree, it is the duty of the court to ensure that the matter is referred to the Collector or a Commissioner for division unless the parties themselves agree as to the manner of division. This duty in the normal course has to be performed by the court itself as a continuation of the preliminary decree. Sometimes either on account of the pendency of an appeal or other circumstances, the court passes the decree under Rule 18(1) the Code or a preliminary decree under Rule 18(2) the Code and the matter goes into storage to be revived only when an application is made by any of the parties, drawing its attention to the pending issue and the need for referring the matter either to the Collector or a Commissioner for actual division of the property.

Estates assessed to payment of revenue to Government (agricultural land):

The court is required to pass only one decree declaring the rights of several parties interested in the suit property with a direction to the Collector (or his

subordinate) to effect actual partition or separation in accordance with the declaration made by the court in regard to the shares of various parties and deliver the respective portions to them, in accordance with section 54 of the Code. Such entrust to the Collector under law was for two reasons. First is that Revenue Authorities are more conversant with matters relating to agricultural lands. Second is to safeguard the interests of government in regard to revenue. (The second reason, which was very important in the 19th century and early 20th century when the Code was made, has now virtually lost its relevance, as revenue from agricultural lands is negligible). Where the Collector acts in terms of the decree, the matter does not come back to the court at all. The court will not interfere with the partitions by the Collector, except to the extent of any complaint of a third party affected thereby.

In ***Bhagwansingh v. Babu Shiv Prasad and anr., AIR 1974 MP 12***, the Court observed that if final decree was actually passed and even though it was not challenged by the appellant, that would not in any way preclude the appellant from raising the objection that the civil Court had no jurisdiction to pass the final decree and execute the same after the matter was referred to the Collector under Order XX, Rule 18 read with Section 54 of the Code. The civil Court had become functus officio and it was not competent to pass a final decree which it did in terms of the partition effected by the Collector.

Immovable properties (other than agricultural lands paying land revenue), i.e. buildings, plots etc. or movable properties:

(i) where the court can conveniently and without further inquiry make the division without the assistance of any Commissioner, or where parties agree upon the manner of division, the court will pass a single decree comprising of preliminary decree declaring the rights of several parties and also a final decree dividing the suit properties by metes and bounds.

(ii) where the division by metes and bounds cannot be made without further inquiry, the court will pass a preliminary decree declaring the rights of the parties interested in the property and give further directions as may be required to effect the division. In such cases, normally a Commissioner is appointed (usually an Engineer, Draughts man, Architect or Lawyer) to physically examine the property to be divided and suggest the manner of division. The court then hears the parties on the report and passes a final decree for division by metes and bounds. The function of making a partition or separation according to the rights declared by the preliminary decree, (in regard to non-agricultural immovable properties and movables) is entrusted to a Commissioner, as it involves inspection of the property and examination of various alternatives with reference to practical utility and site conditions. When the Commissioner gives his report as to the manner of division, the proposals contained in the report are considered by the court; and after hearing objections to the report, if any, the court passes a final decree whereby the relief sought in the suit is granted by separating

the property by metes and bounds. It is also possible that if the property is incapable of proper division, the court may direct sale thereof and distribution of the proceeds as per the shares declared.

Limitation :

An application requesting the court to take necessary steps to draw up a final decree effecting a division in terms of the preliminary decree, is neither an application for execution (falling under Article 136 of the Limitation Act) nor an application seeking a fresh relief (falling under Article 137 of Limitation Act). It is only a reminder to the court to do its duty to appoint a Commissioner, get a report, and draw a final decree in the pending suit so that the suit is taken to its logical conclusion.

In case of ***Venu v. Ponnusamy Reddiar, AIR 2017 SC 2447*** it was held by the Apex Court that –

> "a preliminary decree for partition crystallizes the rights of parties for seeking partition to the extent declared, the equities remain to be worked out in final decree proceedings. Till partition is carried out and final decree is passed, there is no question of any limitation running against right to claim partition as per preliminary decree. Even when application is filed seeking appointment of Commissioner, no limitation is prescribed for this purpose, as such, it would not be barred by limitation, lis continues till preliminary decree culminates in to final decree".

Effect of Preliminary Decree in disposing of the suit:

In ***Shub Karan Bubna @ Shub Karan Prasad Bubna v. Sita Saran Bubna & ors., (2009) 9 SCC 689***, Hon'ble Apex Court held that because of the artificial division of suits into preliminary decree proceedings, final decree proceedings and execution proceedings, many trial court judges tend to believe that adjudication of the right being the judicial function, they should concentrate on that part. Consequently, adequate importance is not given to the final decree proceedings and execution proceedings which are considered to be ministerial functions. The focus is on disposing of cases rather than ensuring that the litigant gets the relief. But the focus should not only be on early disposal of cases, but also on early and easily securing relief for which the party approaches the court. When a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed. It is the duty and function of the court. Performance of such function does not require a reminder or nudge from the litigant. The mindset should be to expedite the process of dispute resolution.

Procedure in regard to the partition suit after passing preliminary decree

If a suit for a partition is filed in the court, the court will issue the decree after thorough seruting. It may be a preliminary decree, composite decree or final decree. In a few cases, the property may be put to sale and the proceeds

from the sale will be shared among the shareholders which can be termed as final decree.

The Court may direct the parties to deposit the amount which is required for non-judicial stamp paper which is in proportion to the value of their share. The preparation of a non-judicial stamp paper of a requisite value is required in the decree of a partition suit. The Court may retain the decree and the copies of the same will also be issued to the parties. Such copy of the decree will be sent to the filing in the book - Book Number 1: in his office or in the place where the property is situated. The final decree in the partition suit will be treated as a registered document. It will form part of the registration records.

When decree becomes enforceable:

In ***Dr. Chiranji Lal (D) by LRs. v. Hari Das (D) by LRs., (2005) 10 SCC 746,*** it was held by three Judges Bench of the Supreme Court that –

> "Section 2(14) of the Indian Stamp Act defines an "instrument" as including every document by which any right or liability is, or purported to be created, transferred, limited, extended, extinguished or recorded. Section 2(15) defines "instrument of partition" as any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue Authority or any civil court and an award by an arbitrator directing partition. Section 3 provides a list of instruments which shall be chargeable with duty of the amount indicated in Schedule I of the Indian Stamp Act. Article 45 of Schedule I prescribes proper stamp duty payable in case of an instrument of partition."
>
> Since a decree in a suit for partition creates rights and liabilities of the parties with respect to the immovable properties, it is considered as an instrument liable for the payment of stamp duty under the Indian Stamp Act.
>
> The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act, within the domain, purview and control of a party. No date or period is fixed for furnishing stamp papers. No rule has been shown requiring the Court to call upon or give any time for furnishing of stamp paper. A party by his own act of not furnishing stamp paper cannot stop the running of period of limitation. None can take advantage of his own wrong.
>
> Rules of limitation are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. There is

no statutory provision prescribing a time-limit for furnishing of the stamp paper for engrossing the decree or time-limit for engrossment of the decree on stamp paper and there is no statutory obligation on the court passing the decree to direct the parties to furnish the stamp paper for engrossing the decree. In the present case the Court has not passed an order directing the parties to furnish the stamp papers for the purpose of engrossing the decree. Merely because there is no direction by the Court to furnish the stamp papers for engrossing of the decree or there is no time-limit fixed by law, does not mean that the party can furnish stamp papers at its sweet will and claim that the period of limitation provided under Article 136 of the Act would start only thereafter as and when the decree is engrossed thereupon. The starting of period of limitation for execution of a partition decree cannot be made contingent upon the engrossment of the decree on the stamp paper."

Effect of final decree not duly stamped:

In ***Dr. Chiranji Lal*** (supra) it was also held that –

"The object of the Stamp Act being securing the revenue for the State, the scheme of the Stamp Act provides that a decree of partition not duly stamped can be impounded and once the requisite stamp duty along with penalty, if any, is paid the decree can be acted upon the Stamp Act is a fiscal measure enacted with an object to secure revenue for the State on certain classes of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the Revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of initial defect in the instrument. Section 33 of the Act provides for the impounding of the instrument not duly stamped and for examination of the instrument for ascertaining whether the instrument is duly stamped or not. Section 35 provides that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties, authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped. Section 40(b) provides for payment of the proper duty, if the instrument impounded is not duly stamped. Section 42(1) provides for certifying that proper duty has been paid on the impounded instrument. Sub-section (2) provides that after such certification, the instrument shall be admissible in evidence, and may be registered, acted upon and authenticated as if it had been duly stamped.

Whether there can be more than one preliminary decree?

In ***Phoolchand v. Gopal Lal, AIR 1967 SC 1470***, a suit for partition was filed against four people. A preliminary decree was passed by the lower court specifying the shares of all the parties. However, before the final decree could be passed, two parties died, and there arose a dispute with respect to the shares of these two persons. The court had to decide the dispute, re-distributing the shares indicated in the initial preliminary decree. The Court observed that there is nothing in the code which prohibits passing of more than one preliminary decree, if the circumstances justify the same and it may be necessary to do so. The Court clearly mentioned that their view is only with respect to partition suit only.

In ***S. Sai Reddy v. S. Narayana Reddy, (1991) 3 SCC 647***, the members of a joint family filed a suit for partition. At the time when preliminary decree was passed, daughters were not allowed to claim shares in the joint family property. However, the State, prior to the passing of the final decree, amended the law as a result of which unmarried daughters became entitled to claim a share. The Court held that unless the division of property is effected (i.e., final decree is passed), the daughters cannot be deprived of the benefit of this amended law. Hence, a second preliminary decree must be passed accordingly.

Preliminary decree can be amended, altered and modified:

In ***Ganduri Koteshwaramma v. Chakiri Yanidi, (2011) 9 SCC 788***, it was held that:

> "A preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree predetermining the rights and interests of the parties having regard to the changed situation."

Whether preliminary decree attains finality on confirmation in appeal?

In ***Prema v. Nanje Gowda, (2011) 6 SCC 462*** it was held that even if preliminary decree is confirmed in appeal then also it does not become final till the final decree is passed. During interregnum if rights and shares are altered by virtue of statutory amendment or otherwise. The court must give effect to the same and modify preliminary decree accordingly.

If Preliminary decree is set aside in appeal, effect on final decree :

In ***Venkata Reddy v. Pethi Reddy, AIR 1963 SC 992***, the lower court made a final decree on the lines of its preliminary decree, even though an appeal against

preliminary decree was pending. After this, the pending appeal comes on for hearing and the preliminary decree is reversed. In this case, the Court discussed preliminary decree in the light of Section 97 of the Act. Section 97 of the Act provides that,

> "Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree."

The Court held that if an appeal preferred against a preliminary decree succeeds, the final decree automatically falls to the ground for there is no preliminary decree thereafter in support of it and it is not necessary in such a case for the defendant to go to the court passing the final decree and ask it to set aside final decree.

No auction sale without initiation of final decree proceedings:

In ***Hasham Abbas Sayyad v. Usman Abbas Sayyad, (2007) 2 SCC 355,*** it was held that it is the final decree that can be executed and not preliminary decree, until and unless final decree is the part of preliminary decree. In a suit for partition where preliminary decree was passed, the property cannot be put to auction sale without initiating a formal final decree proceeding.

Withdrawal after Preliminary Decree

In ***R. Ramamurthi Iyer v. Raja V. Rajeswara Rao, 1973 SCR (1) 904***, Hon'ble the Supreme Court held that question of withdrawal of a suit in which the provisions of Sections 2 and 3 of the Partition Act have been invoked, it was found to be difficult to accede to the contention of the appellant that the suit can be withdrawn by the plaintiff after he has himself requested for a sale under Section 2 of the Partition Act and the defendant has applied to the court for leave to buy at a valuation the share of the plaintiff under Section 3. As soon as a shareholder applies for leave to buy at a valuation the share of the party asking for a sale under Section 3 of the Partition Act he obtains an advantage in that the court is bound thereafter to order a valuation and after getting the same done to offer to sell the same to such shareholder at the valuation so made. This advantage, which may or may not fulfill the juridical meaning of a right, is nevertheless a privilege or a benefit which the law confers on the shareholder. If the plaintiff is allowed to withdraw the suit after the defendant has gained or acquired the advantage or the privilege of buying the share of the plaintiff in accordance with the provisions of Section 3(1) it would only enable the plaintiff to defeat the purpose of Section 3(1) and also to deprive the defendant of the above option or privilege which he has obtained by the plaintiff initially requesting the court to sell the property under Section 2 instead of partitioning it. Apart from these considerations, it would also enable the plaintiff in a partition suit to withdraw that suit and defeat the defendant's claim which, according to

Crump J., cannot be done even in a suit where the provisions of the Partition Act have not been invoked.

Directions regarding passing final decree *suo motu*:

In ***Kattukandi Edathil Krishnan & anr. v. Kattukandi Edathil Valsan & ors., 2022 SCC OnLine SC 737***, Hon'ble Apex Court held that final decree proceedings can be initiated at any point of time. There is no limitation for initiating final decree proceedings. Either of the parties to the suit can move an application for preparation of a final decree and any of the defendants can also move application for the purpose. By mere passing of a preliminary decree, the suit is not disposed of.

Since there is no limitation for initiating final decree proceedings, the litigants tend to take their own sweet time for initiating final decree proceedings. The courts after passing a preliminary decree adjourn the suit *sine die* with liberty to the parties for applying for final decree proceedings. Once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up of the final decree *suo motu*. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter *sine die*, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, the Trial Courts were directed to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property *suo motu* and without requiring initiation of any separate proceedings.

Conclusion:

On the basis of above discussion, proceedings of preliminary and final decree in a partition suit can be summarized as under:

- A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings.
- Final decree may be said to become final in two ways: (i) when the time for appeal has expired or the matter has been decided by the highest court; (ii) When the rights of the parties are fully determined & a decree is penned in accordance with such determination which is final.
- In accordance with O 20 R 18(1) CPC, Court is duty bound to refer matter to Collector or a Commissioner for division, unless the parties themselves agree as to the manner of division after passing decree.
- The Civil Court had become *functus officio*, and it was not competent to pass a final decree when referred to Collector.
- Where the court can conveniently and without further inquiry make the division without the assistance of any Commissioner in accordance with

O 20 R 18(2) CPC, the court will pass a single decree comprising the preliminary decree declaring the rights of several parties and also a final decree dividing the suit properties by metes and bounds.

- Where the division by metes and bounds cannot be made without further inquiry, the court will pass a preliminary decree declaring the rights of the parties interested in the property and give further directions as may be required to effect the division. In such cases, normally a Commissioner is appointed to physically examine the property to be divided and suggest the manner of division.
- When the Commissioner gives his report as to the manner of division, the proposals contained in the report are considered by the court; and after hearing objections to the report, if any, the court passes a final decree whereby the relief sought in the suit is granted by separating the property by metes and bounds.
- If the property is incapable of proper division, the court may direct sale thereof and distribution of the proceeds as per the shares declared.
- An application requesting the court to take necessary steps to draw up a final decree is neither an application for execution (falling under Article 136 of the Limitation Act) nor an application seeking a fresh relief (falling under Article 137 of Limitation Act).
- When a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed.
- Since a decree in a suit for partition creates rights and liabilities of the parties with respect to the immovable properties, it is considered as an instrument liable for the payment of stamp duty under Indian Stamp Act.
- A decree of partition not duly stamped can be impounded and once the requisite stamp duty along with penalty, if any, is paid the decree can be acted upon.
- There is nothing in a Code of Civil Procedure which prohibits passing of more than one preliminary decree in partition suit, if necessary to do so.
- Preliminary decree may be amended, varied and modified in changed situation's. There can be more then one preliminary decree.
- Where any party aggrieved by a preliminary decree does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal preferred from final decree.
- It is the final decree that can be executed and not a preliminary decree, until and unless final decree is the part of preliminary decree.
- Once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree *suo motu* and without requiring initiation of any separate proceedings.

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विधिक समस्यायें एवं समाधान

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

प्रश्न 1 जिला न्यायालय स्तर पर आर्विट्रेटर की नियुक्ति के संबंध में क्या व्यवस्था है।

उत्तर माध्यस्थम एवं सुलह अधिनियम 1996 की धारा 11 आर्बिट्रेटर की नियुक्ति के संबंध में प्रावधान करती है। पूर्व में इस धारा की उपधारा 10 के अधीन उच्चतम न्यायालय या उच्च न्यायालय को आर्बिट्रेटर की नियुक्ति के संबंध में स्कीम बनाये जाने की शक्ति थी जिसके अंर्तगत माननीय मध्यप्रदेश उच्च न्यायालय द्वारा एक Scheme for appointment of Arbitrater by the Chief Justice of M.P. High Court 1996 जिसका नोटिफिकेशन नं. सी–6010–II –15–28–41 दिनांक 20.11.1996 है निर्मित की गई थी, जिसके अंतर्गत 25 लाख रू. तक के वाद मूल्य के प्रकरणों में आर्बिट्रेटर की नियुक्ति का अधिकार जिला न्यायाधीश को प्रदान किया गया था।

इस संबंध में ***एसबीपी एंड कंपनी वि. पटेल इंजीनियरिंग, (2005) 8 एससीसी 618*** अवलोकनीय है जिसमें यद्यपि यह नोटिफिकेशन विचार में नहीं था लेकिन अन्यथा माननीय सर्वोच्च न्यायालय ने आर्बिट्रेटर की नियुक्ति का अधिकार जिला न्यायाधीश को दिया जाना विधि सम्मत नहीं माना था।

इसके अतिरिक्त उपरोक्त धारा 11 में वर्ष 2019 के संशोधन अधिनियम द्वारा संशोधन किया गया है, जिसके आलोक में धारा 11 की उपधारा 10 को विलोपित किया गया है। वर्तमान में धारा 11 के अवलोकन से आर्बिट्रेटर की नियुक्ति अंर्तराष्ट्रीय वाणिज्यिक माध्यस्थम की दशा में उच्चतम न्यायालय द्वारा या इससे विभिन्न माध्यस्थमों की दशा में उच्च न्यायालय द्वारा पदाविहीत माध्यस्थम संस्था द्वारा किये जाने का प्रावधान है।

चूंकि जिस धारा 11 की उपधारा 10 के अधीन प्रदत्त शक्तियों के अंतर्गत नोटिफिकेशन किया गया था, वह विलुप्त हो चुकी है ऐसी स्थिति में ऐसा नोटिफिकेशन भी अस्तित्व में नहीं रह जाता है और संशोधन उपरांत आर्बिट्रेटर की नियुक्ति के संबंध में कोई अधिकारिता ऊपर दर्शित परिस्थिति एवं न्याय दृष्टांत के आलोक में जिला न्यायालय को नहीं रह जाती है।

प्रश्न 2 क्या आदेश 7 नियम 11 सिविल प्रक्रिया संहिता, 1908 के अंतर्गत आवेदन प्रस्तुत हुये बिना न्यायालय द्वारा वाद स्वमेव (*Suo motu*) निरस्त किया जा सकता है।

उत्तर सिविल प्रक्रिया संहिता, 1908 के आदेश 7 नियम 11 में उन छः आधारों को उपबंधित किया गया है जिसके आधार पर वाद निरस्त किया जा सकता है, जिनमें वाद हेतुक प्रकट न होना, अवसर दिये जाने पर भी वाद मूल्यांकन अथवा अपेक्षित स्टाम्प शुल्क अदा नहीं करना, वाद किसी विधि द्वारा वर्जित होना, वाद पत्र दो प्रतियों में प्रस्तुत नहीं किया जाना अथवा प्रतिवादी को समन प्रेषित किये जाने हेतु आवश्यक अपेक्षाओं की पूर्ति न करना सम्मिलित है।

नियम 12 उपबंधित करता है कि जहाँ वाद पत्र नामंजूर किया जाता है वहाँ न्यायालय इस भाव का आदेश कारणों सहित अभिलिखित करेगा। नियम 13 के अनुसार केवल वाद पत्र की

नामंजूरी के कारण ही वादी उसी वाद हेतु के बारे में नया वाद पत्र उपस्थित करने से प्रविरत नहीं हो जाता है।

आदेश 7 नियम 11 के आवेदन का निराकरण करने हेतु केवल वाद पत्र के अभिवचनों को ही विचार में लिया जाता है लिखित कथन अथवा प्रतिवादी की ओर से प्रस्तुत दस्तावेज ऐसे आवेदन को निराकृत करने के लिये विचार में नहीं लिये जाते हैं। ऐसे आवेदन को वाद संस्थित किये जाने के उपरांत किसी भी स्तर पर निराकृत किया जा सकता है।

माननीय सर्वोच्च न्यायालय ने न्याय दृष्टांत ***पाटिल आटोमेशन प्रा. लि. एवं अन्य विरूद्ध राखेजा इंजीनियर्स प्राईवेट लिमिटेड, 2022 एससीसी ऑन लाईन 1028*** निर्णय दिनांक 17 अगस्त 2022 में यह मार्गदर्शित किया है कि आदेश 7 नियम 11 यह उपबंधित नहीं करता है कि, वाद पत्र केवल आवेदन प्रस्तुत होने पर ही निरस्त किया जा सकता है। जहाँ पर वाद किसी विधि द्वारा वर्जित है तब सुनवाई का अवसर देने के उपरांत कारण अभिलिखित करते हुए न्यायालय स्वमेव बिना किसी आवेदन पत्र के प्रस्तुत हुये भी वाद पत्र को आदेश 7 नियम 11 के अंतर्गत निरस्त कर सकता है।

प्रश्न 3 क्या दण्ड प्रक्रिया संहिता, 1973 की धारा 195 में वर्णित मामलों में धारा 340 के अंतर्गत परिवाद प्रस्तुत करने के पूर्व प्रारंभिक जांच एवं प्रस्तावित अभियुक्त को सुना जाना आदेशात्मक है।

उत्तर दण्ड प्रक्रिया संहिता, 1973 की धारा 195 लोक न्याय के विरूद्ध अपराधों के लिये, साक्ष्य में दिये गये दस्तावेजों से संबंधित अपराधों के लिये लोक सेवकों के विधिपूर्ण प्राधिकार के अवमान के लिये अभियोजन प्रावधानित करती है। धारा 195 में वर्णित मामलों में परिवाद के संदर्भ में प्रक्रिया धारा 340 में उपबंधित है।

उच्चतम न्यायालय की तीन सदस्यीय पीठ ने ***प्रोतीश विरूद्ध स्टेट ऑफ महाराष्ट्र, (2002) 1 एससीसी 253*** में यह मार्गदर्शित किया था कि, ऐसी प्रारंभिक जांच के बिना भी परिवाद प्रस्तुत किया जा सकता है लेकिन न्याय दृष्टांत ***शरद पवार विरूद्ध जगमोहन डालमिया, (2010) 15 एससीसी 290*** में प्रारंभिक जांच करना आवश्यक बताया गया था।

न्यायदृष्टांत ***स्टेट ऑफ पंजाब विरूद्ध जसबीर सिंह, (2020) 12 एससीसी 96*** में समान संख्या वाली पीठों में मतभेद होने की दशा में मामला निर्देशित किया था।

उच्चतम न्यायालय ने ***स्टेट ऑफ पंजाब विरूद्ध जसबीर सिंह, 2022 SCC Online SC 1240*** में निर्देश पर अपना अभिमत दिया है जिसके अनुसार ***शरद पवार*** (पूर्वोक्त) वाले मामले में आदेश पारित किया गया था न कि निर्णय, साथ ही इस मामले में ***इकबाल सिंह मरवाह विरूद्ध मीनाक्षी मरवाह, (2005) 4 एससीसी 304*** वाले मामले को विचार में नहीं लिया गया था और यह भी अभिनिर्धारित किया गया कि धारा 195 दण्ड प्रक्रिया संहिता में उपबंधित अपराधों के संबंध में न्यायालय द्वारा धारा 340 दण्ड प्रक्रिया संहिता के अंन्तर्गत परिवाद प्रस्तुत करने से पूर्व प्रारंभिक जांच किया जाना एवं प्रस्तावित अभियुक्त को सुना जाना आदेशात्मक नहीं है।

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PART - II

NOTES ON IMPORTANT JUDGMENTS

217. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 23-A(b) Eviction under Chapter-III-A – There is a presumption of *bona fide* requirement in favour of the applicant but the same is rebuttable.

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

अध्याय 3–क के अंतर्गत निष्कासन – आवेदक के पक्ष में सदभाविक आवश्यकता की उपधारणा होती है परन्तु वह खण्डनीय है।

Prafful Kumar Jain v. Sushila Devi

Judgment dated 03.03.2022 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Civil Revision No. 265 of 2021, reported in 2022 (2) MPLJ 545

Relevant extracts from the judgment:

There is a presumption of bonafide requirement in favour of the applicant under the Chapter-III-A of the Act but the same is very well rebuttable. The applicant-Sushila Devi has pleaded bonafide requirement of the disputed shop for her own business and not for family member(s). Indisputedly, the applicant is an old lady aged about 82 years and in such an elderly age and physical condition as stated by her own witness-Ramesh Khatik, she does not appear to be capable of starting business at her own. However, for the sake of arguments, it is taken to be correct that she is capable of doing business independently, her bonafide requirement is otherwise not established due to availability of equally suitable shops in the same building.

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218. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 11 and 34 MADHYASTHAM ADHIKARAN ADHINIYAM, 1983 (M.P.) – Sections 3 and 7 Award passed with consent of parties – Effect – So long as the said award is not challenged before the higher forum, the same is binding between the parties – Subsequent fresh reference petition before Arbitral Tribunal for the very same claims which were raised before the Arbitrator – Not maintainable.

माध्यस्थम् एवं सुलह अधिनियम, 1996 – धाराएं 11 एवं 34

माध्यस्थम् अधिकरण अधिनियम, 1983 (म.प्र.) – धाराएं 3 एवं 7

पक्षकारों की सहमति से पारित अधिनिर्णय – प्रभाव – जब तक कि ऐसे अधिनिर्णय को उच्चतर मंच पर चुनौती नहीं दी जाती ऐसा अधिनिर्णय पक्षकारों के मध्य बाध्यकारी है – माध्यस्थम् अधिकरण के समक्ष, पश्चात्वर्ती नवीन निर्देश याचिका उन्हीं आधारों पर जिन्हें पूर्व में मध्यस्थ के समक्ष उठाया जा चुका था – प्रचलनशील नहीं।

M.P. Housing and Infrastructure Development Board and anr. v. K.P. Dwivedi

Judgment dated 03.12.2021 passed by the Supreme Court in Civil Appeal No. 6768 of 2021, reported in 2022 (2) MPLJ 637 (SC)

Relevant extracts from judgment:

It is required to be noted that no objection was raised by the respondent-contractor before the Arbitrator-Housing Commissioner on the jurisdiction of the Housing Commissioner to act as an Arbitrator. On the contrary as observed hereinabove the order passed by the High Court referring the dispute between the parties for adjudication to the Arbitrator-Housing Commissioner was a consent order and the respondent-contractor conceded to and accepted the said order and submitted his claim before the Arbitrator-Housing Commissioner. The Arbitrator-Housing Commissioner also passed an award on the said claim. Therefore, as no objections were raised by the respondent-contractor at the appropriate stage, the award cannot be annulled subsequently. At the cost of repetition, it is observed that at no point of time the respondent-contractor had challenged the award passed by the Arbitrator-Housing Commissioner and as observed and held hereinabove even no court has set aside the award declared by the Arbitrator-Housing Commissioner dated 07.11.2008 and the same has attained finality. Therefore, the same is binding between the parties. Hence, the subsequent fresh reference petition before the learned Arbitral Tribunal under the 1983 Act for the very same claims which were raised before the Arbitrator-Housing Commissioner would not be maintainable at all. We agree with the view taken by the Arbitral Tribunal.

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219. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 16 and 34

Application against award – Jurisdiction of court – Agreement provides that arbitration proceedings are subject to exclusive jurisdiction of Courts of Hyderabad/Secunderabad, Andhra Pradesh – Court at Indore has no jurisdiction to entertain an application filed u/s 34 of the Act against the award.

माध्यस्थम् एवं सुलह अधिनियम, 1996 – धाराएं 16 एवं 34

अधिनिर्णय के विरूद्ध आवेदन – न्यायालय का क्षेत्राधिकार – अनुबंध उपबंधित करता है कि माध्यस्थम् कार्यवाहियां केवल हैदराबाद/सिंकदराबाद, आंध्रप्रदेश के न्यायालय के आत्यंतिक क्षेत्राधिकार के विषयाधीन होगीं – अधिनर्णय के विरूद्ध अधिनियम की धारा 34 के अंतर्गत प्रस्तुत आवेदन की सुनवाई करने का क्षेत्राधिकार इंदौर के न्यायालय को नहीं होगा।

Parenteral Drugs (India) Ltd. v. Gati Kintetsu Express Pvt. Ltd.

Order dated 12.04.2022 passed by the High Court of Madhya Pradesh (Indore Bench) in Arbitration Appeal No. 16 of 2022, reported in 2022 (2) MPLJ 659

Relevant extracts from the order:

Even if the contention of the appellant is that there was no arbitration agreement between the parties, the Court at Indore would still not have jurisdiction to entertain an application filed u/s.34 of the Act of 1996 against an award passed by the arbitrator sitting at Hyderabad invoking an arbitration agreement which provides that arbitration proceedings shall be subject to the exclusive jurisdiction of Courts of Hyderabad/Secunderabad, Andhra Pradesh, INDIA only and no other court shall have jurisdiction.

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***220. CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 10**

Impleadment of parties – Suit filed by plaintiff for partition and separate possession dismissed by Trial Court – In appeal, High Court directed the parties not to sell or alienate the property until further orders – Unregistered sale agreement executed after injunction was passed and proposed purchaser filed an application to be impleaded as party in appeal – Held, unregistered sale agreement does not create any right in favour of purchaser specially when sale of property is stayed – Purchaser not entitled to be impleaded as party.

सिविल प्रक्रिया संहिता, 1908 – आदेश 1 नियम 10

पक्षकार का जोड़ा जाना – वादी द्वारा विभाजन तथा पृथक आधिपत्य के लिए प्रस्तुत वाद विचारण न्यायालय द्वारा खारिज किया गया – अपील में उच्च न्यायालय द्वारा पक्षकारों को आगामी आदेश तक सम्पत्ति को विक्रय या व्ययनित नहीं करने का निर्देश दिया गया – व्यादेश जारी होने के बाद अपंजीकृत विक्रय करार का निष्पादन किया गया और प्रस्तावित क्रेता द्वारा अपील में पक्षकार के रूप में जोड़े जाने हेतु आवेदन प्रस्तुत किया गया – उच्च न्यायालय द्वारा अभिनिर्धारित किया गया कि अपंजीकृत विक्रय का करार क्रेता के पक्ष में कोई अधिकार निर्मित नहीं करता है विशेष रूप से तब जब संपत्ति के व्ययन पर रोक है – क्रेता अपील में पक्षकार के रूप में जोड़े जाने के लिए पात्र नहीं है।

Nawabzadi Qamar Taj Rabia Sultan through LRs. v. Nawab Mehr Taj Sajida Sultan

Judgment dated 09.03.2022 passed by the High Court of Madhya Pradesh in First Appeal No. 296 of 2000, reported in AIR 2022 MP 74

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

(i) Application under Order 7 Rule 11 – Factors to be considered – Averment of plaint can only be taken into consideration – Version of defendant (s), either in their application or written statement, cannot be looked into for the purpose.

(ii) Determination of preliminary issues – Mixed issues of law and facts – Cannot be decided preliminarily – Court has to decide all the issues after evidence is adduced by the parties.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11

(i) आदेश 7 नियम 11 के अंतर्गत आवेदन – विचार में लिये जाने वाले तथ्य – केवल वादपत्र के अभिवचन ही विचार में लिये जा सकते हैं – प्रतिवादीगण के लिखित कथन अथवा आवेदन में वर्णित तथ्य इस उद्देश्य के लिये देखे नहीं जा सकते।

(ii) प्रारम्भिक विवाद्यकों का निर्धारण – विधि एवं तथ्य के मिश्रित वादप्रश्नों को प्रारम्भिक रूप से निर्धारित नहीं किया जा सकता – न्यायालय को ऐसे वादप्रश्नों का निराकरण पक्षकारों द्वारा साक्ष्य प्रस्तुत करने के उपरांत करना होगा।

Smt. Shakuntla Agrawal and ors. v. Manish Gupta and ors.

Judgment dated 07.03.2022 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Civil Revision No. 754 of 2019, reported in 2022 (2) MPLJ 505

Relevant extracts from the judgment:

For disposal of an application filed under Order 7 Rule 11 of CPC, the averment of plaint can only be taken into consideration. The version of defendant (s), either in their application or written statement, cannot be looked into for the purpose. Further, the suit or the part thereof, can be disposed of on the basis of pure legal issue whether under Order 7 Rule 11 or under Order 14 Rule 2 of Code of Civil Procedure if the same can be decided without taking evidence of the parties. However, the mixed issues of law and facts cannot be decided preliminarily and in that situation, the court has to decide all the issues after the evidence is adduced by the parties.

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

LAND REVENUE CODE, 1959 (M.P.) – Sections 250 and 257

Jurisdiction – Objection – Original defendant raised objection before the Revenue Court regarding jurisdiction which was accepted and proceedings came to be dismissed – Thereafter, the plaintiff instituted a suit before the civil court – Original defendants took objection that the suit before the civil court would be barred in view of section 257 of the Code – Held, two contradictory stands before two different courts cannot be permitted.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11

भू–राजस्व संहिता, 1959 (म.प्र.) – धाराएं 250 एवं 257

क्षेत्राधिकार – आक्षेप – मूल प्रतिवादी द्वारा राजस्व न्यायालय के समक्ष क्षेत्राधिकार के संबंध में आक्षेप किया गया जिसे स्वीकार करते हुए कार्यवाही समाप्त कर दी गई – तदोपरांत वादी द्वारा सिविल न्यायालय के समक्ष वाद संस्थित किया गया – मूल प्रतिवादी द्वारा सिविल न्यायालय के समक्ष आपत्ति ली गई कि सिविल न्यायालय के समक्ष संहिता की धारा 257 के अंतर्गत वाद वर्जित है – अभिनिर्धारित, दो भिन्न न्यायालयों के समक्ष दो परस्पर विरोधाभासी रूख की अनुमति नहीं दी जा सकती।

Premlata alias Sunita v. Naseeb Bee and ors.

Judgment dated 23.03.2022 passed by the Supreme Court in Civil Appeal No. 2055 of 2022, reported in AIR 2022 SC 1560

Relevant extracts from the judgment:

At the outset, it is required to be noted and it is not in dispute that the plaintiff instituted the proceedings before the Revenue Authority under Section 250 of the MPLRC. These very defendants raised an objection before the Revenue Authority that the Revenue Authority has no jurisdiction to deal with the matter. The Tehsildar accepted the said objection and dismissed the application under Section 250 of the MPLRC by holding that as the dispute is with respect to title the Revenue Authority would not have any jurisdiction under MPLRC. The said order passed by the Tehsildar has been affirmed by the Appellate Authority (of course during the pendency of the revision application before the High Court). That after the Tehsildar passed an order rejecting the application under Section 250 of the MPLRC on the ground that the Revenue Authority would have no jurisdiction, which was on the objection raised by the respondents herein – original defendants, the plaintiff instituted a suit before the Civil Court. Before the Civil Court the respondents-original defendants just took a contrary stand than which was taken by them before the Revenue Authority and before the Civil Court the respondents took the objection that the Civil Court would have no jurisdiction to entertain the suit. The respondents–original defendants cannot be permitted to take two contradictory stands before two different authorities/courts. They cannot be permitted to approbate and reprobate once the objection raised on behalf of the original defendants that the Revenue Authority would have no jurisdiction came to be accepted by the Revenue Authority/Tehsildar and the proceedings under Section 250 of the MPLRC came to be dismissed and thereafter when the plaintiff instituted a suit before the Civil Court it was not open for the respondents-original defendants thereafter to take an objection that the suit before the Civil Court would also be barred in view of Section 257 of the MPLRC. If the submission on behalf of the respondents-defendants is accepted in that case the original plaintiff would be remediless. The High Court has not at all appreciated the fact that when the

appellant–original plaintiff approached the Revenue Authority/Tehsildar he was non-suited on the ground that Revenue Authority/Tehsildar had no jurisdiction to decide the dispute with respect to title to the suit property. Thereafter, when the suit was filed and the respondents-defendants took a contrary stand that even the civil suit would be barred. In that case the original plaintiff would be remediless. In any case the respondents-original defendants cannot be permitted to approbate and reprobate and to take just a contrary stand than taken before the Revenue Authority. Therefore, in the facts and circumstances of the case, the learned trial Court rightly rejected the application under Order 7 Rule 11 CPC and rightly refused to reject the plaint.

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

Scope of revision in civil case – Revisional Court can only analyze jurisdictional error or any procedural irregularity or impropriety caused by the trial Court.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11

सिविल मामलों में पुनरीक्षण की सीमा – पुनरीक्षण न्यायालय केवल विचारण न्यायालय द्वारा की गई क्षेत्राधिकार की त्रुटि अथवा कोई प्रक्रियात्मक अनियमितता या अनौचित्यता का विश्लेषण कर सकता है।

Anushri Jain v. Anamika Jain and ors.

Judgment dated 26.04.2022 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Revision No. 278 of 2021, reported in 2022 (2) MPLJ 523

Relevant extracts from the judgment:

Scope of civil revision under Section 115 of CPC is very limited and this Court can only see jurisdictional error or any procedural irregularity or impropriety caused by the trial Court. Judgments referred by the petitioner move in different factual realm and are of no help to the petitioner at this stage.

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224. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11(d)
TRANSFER OF PROPERTY ACT, 1882 – Section 53A

(i) Rejection of plaint – Facts to be considered – Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines or passages and ignoring the other relevant parts of the plaint.

(ii) Grounds – Whether plaintiff is entitled to any relief or not has to be considered at the time of trial – Plaint cannot be rejected on such grounds.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11(घ)
संपत्ति–अंतरण अधिनियम, 1882 – धारा 53क

(i) वादपत्र का नामंजूर किया जाना – विचार करने योग्य तथ्य – न्यायालय को वादपत्र के समस्त अभिकथनों पर विचार करना होगा केवल कुछ पंक्तियों अथवा अंश को पढ़कर और वादपत्र के अन्य सुसंगत भागों की उपेक्षा कर वादपत्र नामंजूर नहीं किया जा सकता।

(ii) आधार – वादी किसी अनुतोष को प्राप्त करने के अधिकारी है या नहीं इस पर विचारण के समय विचार किया जाना चाहिए – वादपत्र इस आधार पर नामंजूर नहीं किया जा सकता।

Biswanath Banik and anr. v. Sulanga Bose and ors.

Judgment dated 14.03.2022 passed by the Supreme Court in Civil Appeal No. 1848 of 2022, reported in AIR 2022 SC 1519

Relevant extracts from the judgment:

This Court in a catena of decisions, while considering an application under Order VII Rule 11 CPC, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines/passages and ignoring the other relevant parts of the plaint.

x x x

While rejecting the plaint, the High Court has also observed and held that the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act against the original owner would not be maintainable and for that reliance is placed upon the decision of this Court in the case of ***Delhi Motor Company v. U.A. Basrurkar, AIR 1968 SC794***. However, it is required to be noted that even the plaintiffs have also prayed for the decree for a permanent injunction claiming to be in possession and the declaration and permanent injunction as such invoking Section 53A of the Transfer of Property Act. When the suit is for a decree of permanent injunction and it is averred that the plaintiffs are in possession of the suit property pursuant to the agreement and thereafter, they have developed the land and that they are in continuous possession since more than twelve years and they are also paying taxes to the Corporation, the cause of action can be said to have arisen on the date on which the possession is sought to be disturbed. If that be so, the suit for decree for permanent injunction cannot be said to be barred by limitation. It is the settled proposition of law that the plaint cannot be rejected partially. Even otherwise, the reliefs sought are interconnected. Whether the plaintiffs shall be entitled to any relief under Section 53A of the Transfer of Property Act or not has to be considered at the time of trial, but at this stage it cannot be said that the suit for the relief sought under Section 53A would not be maintainable at all and therefore the plaint is liable to be rejected in exercise of powers under Order VII Rule 11 CPC.

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***225. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 14**

Exercise of discretion – Courts of civil judicature also have to adhere to the procedure prescribed in the Code – Where the Code is silent about something, the court acts according to justice, equity and good conscience – The discretion conferred upon court by the Code has to be exercised in conformity with the settled judicial principles and not in a whimsical or arbitrary or capricious manner.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 14

विवेकाधिकार का प्रयोग – सिविल क्षेत्राधिकार के न्यायालय को संहिता में उल्लेखित प्रक्रिया का पालन करना होगा – जहां संहिता किसी बात के लिए मौन है वहां न्यायालय को न्याय, साम्या तथा अच्छी चेतना से कार्य करना चाहिए – न्यायालय द्वारा संहिता में सन्निहित विवेकाधिकार का प्रयोग स्थापित न्यायिक सिद्धांतो के अनुसरण में किया जाना चाहिए ना कि अस्थिर या मनमाने या मनमौजी तरीके से।

Shyamnath Sharma v. Kripal Singh Bedi and ors.

Order dated 24.03.2022 passed by the High Court of Madhya Pradesh in Misc. Petition No. 4962 of 2018, reported in AIR 2022 MP 70

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***226. CIVIL PROCEDURE CODE, 1908 – Order 8 Rule 6A**

Counter-claim – Can be filed after filing written statement – Restriction is that cause of action should have accrued before defence was open – Counter-claim filed on the cause of action which arose after filing of written statement – Not permissible.

सिविल प्रक्रिया संहिता, 1908 – आदेश 8 नियम 6क

प्रतिदावा – लिखित कथन प्रस्तुत करने के पश्चात् पेश किया जा सकता है – यह आवश्यक है कि वाद कारण बचाव प्रस्तुत करने से पहले उत्पन्न हुआ हो – प्रतिदावा जिसका वाद कारण लिखित कथन प्रस्तुत करने के पश्चात् उत्पन्न हुआ – अनुज्ञात नहीं।

Methu and ors. v. Late Leemchand and ors.

Order dated 29.04.2022 passed by the High Court of M.P. (Indore Bench) in Civil Revision No. 376 of 2021, reported in AIR 2022 MP 100

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227. CIVIL PROCEDURE CODE, 1908 – Order 14 Rule 2 and Order 41 Rules 24 and 25

(i) Preliminary issue – Issue is a mixed question of fact and law or issue of law depends on the decision of fact – Cannot be tried as preliminary issue.

(ii) Duty of court – The court should pronounce judgment on all issues so as to facilitate the Appellate Court to avoid possibility of remand back.

सिविल प्रक्रिया संहिता, 1908 – आदेश 14 नियम 2 एवं आदेश 41 नियम 24 व 25

(i) प्रारंभिक वाद प्रश्न – वाद प्रश्न तथ्य एवं विधि का मिश्रित प्रश्न है या विधि का प्रश्न तथ्यों के निष्कर्ष पर आधारित है – प्रारंभिक वाद प्रश्न के रूप में विचारित नहीं किया जा सकता।

(ii) न्यायालय का कर्तव्य – न्यायालय को सभी वाद प्रश्नों पर निर्णय सुनाना चाहिए ताकि इससे अपील न्यायालय को सुविधा हो और प्रतिप्रेषण की संभावना को टाला जा सके।

Sathyanath and anr. v. Sarojamani

Judgment dated 06.05.2022 passed by the Supreme Court in Civil Appeal No. 3680 of 2022, reported in AIR 2022 SC 2242

Relevant extracts from the judgment:

The provisions of Order XIV Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.

The plea of *res judicata* in appropriate cases may be determined as preliminary issue when it is neither a disputed question of fact nor a mixed question of law and fact.

In case where the issues of both law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force. It is only in those circumstances that the findings on other issues can be deferred.

The objective of the provisions of Order XLI Rules 24 and 25 is that if evidence is recorded by the learned Trial Court on all the issues, it would facilitate

the first Appellate Court to decide the questions of fact even by reformulating the issues. It is only when the first Appellate Court finds that there is no evidence led by the parties, the first Appellate Court can call upon the parties to lead evidence on such additional issues, either before the Appellate Court or before the Trial Court. All such provisions of law and the amendments are to ensure one objective i.e. early finality to the lis between the parties.

Keeping in view the object of substitution of Sub-rule (2) to avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court Under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues.

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228. CIVIL PROCEDURE CODE, 1908 – Order 20 Rule 18
EVIDENCE ACT, 1872 – Section 114

(i) Partition suit – Presumption in favour of wedlock – Plea of plaintiff that he was born from wedlock of his father and mother and a legitimate son – Ample evidence produced by plaintiff including birth certificate and school leaving certificate to prove his parentage – Documents and oral evidence indicate living together for long years as husband and wife – Presumption can be drawn u/s 114 of the Evidence Act.

(ii) Final decree – Limitation – There is no limitation prescribed for initiating final decree proceedings and can be initiated at any point of time – Trial Courts should initiate the proceedings for drawing up final decree *suo motu* – Once preliminary decree is passed, no need to file any application.

सिविल प्रक्रिया संहिता, 1908 – आदेश 20 नियम 18
साक्ष्य अधिनियम, 1872 – धारा 114

(i) बटवारे का दावा – विवाह बंधन के पक्ष में उपधारणा – वादी का अभिवाक् की वह अपने माता और पिता के विवाह बंधन से उत्पन्न वैध संतान है – वादी द्वारा पितृत्व प्रमाणित करने के लिये प्रचुर साक्ष्य, जिसमें जन्म प्रमाण पत्र एवं विद्यालय छोड़ने का प्रमाण पत्र सम्मिलित, प्रस्तुत किया – दस्तावेजों एवं मौखिक साक्ष्य से यह इंगित होता है कि माता–पिता पति पत्नी के रूप में लंबे समय तक साथ में रहे – धारा 114 भारतीय साक्ष्य अधिनियम के अंतर्गत उपधारणा की जा सकती है।

(ii) अंतिम डिक्री – परिसीमा – अंतिम डिक्री की कार्यवाही प्रारंभ करने के लिये कोई परिसीमा निर्धारित नहीं, किसी भी समय कार्यवाही प्रारंभ की जा सकती है – विचारण न्यायालय को प्रारंभिक डिक्री निष्पादित होने के उपरांत स्वप्रेरणा से अंतिम डिक्री तैयार करना चाहिए – किसी आवेदन की आवश्यकता नहीं।

Kattukandi Edathil Krishnan and anr. v. Kattukandi Edathil Valsan and ors.

Judgment dated 13.06.2022 passed by the Supreme Court in Civil Appeal No. 6406 of 2010, reported in AIR 2022 SC 2841

Relevant extracts from the judgment:

It is well settled that if a man and a woman live together for long years as husband and wife, there would be a presumption in favour of wedlock. Such a presumption could be drawn under section 114 of the Evidence Act. Although, the presumption is rebuttable, a heavy burden lies on him who seek to deprive the relationship of legal origin to prove that no marriage took place.

As noticed above, the contention of the Plaintiffs is that the marriage of Damodaran and Chiruthakutty was performed in the year 1940. The first Plaintiff was born on 12.05.1942 as is evident from Ext.A9. The documents produced by the Plaintiffs were in existence long before the controversy arose between the parties. These documents, coupled with the evidence of PW-2, would show the long duration of cohabitation between Damodaran and Chiruthakutty as husband and wife. The first Plaintiff joined military service in the year 1963 and retired in the year 1979. Thereafter he has taken the steps to file a suit for partition of the suit Schedule property.

It is clear from the above that a preliminary decree declares the rights or shares of the parties to the partition. Once the shares have been declared and a further inquiry still remains to be done for actually partitioning the property and placing the parties in separate possession of the divided property, then such inquiry shall be held and pursuant to the result of further inquiry, a final decree shall be passed. Thus, fundamentally, the distinction between preliminary and final decree is that: a preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions made in preliminary decree and after the inquiry having been conducted and rights of the parties being finally determined, a final decree incorporating such determination needs to be drawn up.

Final decree proceedings can be initiated at any point of time. There is no limitation for initiating final decree proceedings. Either of the parties to the suit can move an application for preparation of a final decree and, any of the Defendants can also move application for the purpose. By mere passing of a preliminary decree the suit is not disposed of. [See: ***Shub Karan Bubna v. Sita Saran Bubna, (2009) 9 SCC 689; Bimal Kumar and anr. v. Shakuntala Debi and ors., (2012) 3 SCC 548***]

Since there is no limitation for initiating final decree proceedings, the litigants tend to take their own sweet time for initiating final decree proceedings. In some States, the courts after passing a preliminary decree adjourn the suit sine die with liberty to the parties for applying for final decree proceedings like the present

case. In some other States, a fresh final decree proceedings have to be initiated under Order XX Rule 18. However, this practice is to be discouraged as there is no point in declaring the rights of the parties in one proceedings and requiring initiation of separate proceedings for quantification and ascertainment of the relief. This will only delay the realization of the fruits of the decree.

We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the Code of Civil Procedure. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the Code of Civil Procedure soon after passing of the preliminary decree for partition and separate possession of the property, *suo motu* and without requiring initiation of any separate proceedings.

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229. CIVIL PROCEDURE CODE, 1908 – Order 22
LIMITATION ACT, 1963 – Section 5

(i) Delay – Sufficient cause to condone – Principles reiterated.

(ii) Abatement – Delay in filing application – Effect – If no sufficient cause was assigned about delay in filing application, the same cannot be condoned.

सिविल प्रक्रिया संहिता, 1908 – आदेश 22
परिसीमा अधिनियम, 1963 – धारा 5

(i) विलंब – क्षमा हेतु पर्याप्त कारण – सिद्धांत दोहराये गये।

(ii) उपशमन – आवेदन दायर करने में विलंब – प्रभाव – यदि आवेदन में विलंब हेतु पर्याप्त कारण नहीं दर्शाया जाता है – तो इसे क्षमा नहीं किया जा सकता।

Ramua (dead) and anr. v. Kodulal and anr.

Judgment dated 15.03.2022 passed by the High Court of Madhya Pradesh in Second Appeal No. 1558 of 2008, reported in 2022 (2) MPLJ 331

Relevant extracts from the judgment:

It is a settled position of law that a suit or an appeal abates automatically if the legal representatives, particularly of the sole appellant, are not brought on record within the stipulated period. Relevant paragraphs of ***Balwant Singh (Dead) v. Jagdish Singh and ors., (2010) 8 SCC 684*** (37 and 38) are reproduced here as under:

"We feel that it would be useful to make a reference to the judgment of this Court in ***Perumon Bhagvathy Devaswom v. Bhargavi Amma, (2008) 8 SCC 321***. In this case, the Court, after discussing a number of judgments of this Court as well as that of the High Courts, enunciated the principles which need to be kept in mind while dealing with applications fled under the provisions of Order 22, CPC along with an application under Section 5, Limitation Act for condonation of delay in fling the application for bringing the legal representatives on record. In paragraph 13 of the judgment, the Court held as under:

> "13 (i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant."
>
> (ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decided the matter on merits. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.
>
> (iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.
>
> (iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an

appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in fling an appeal and applications for condonation of delay in re-fling the appeal after rectification of defects.

(v) Want of "diligence" or "inaction" can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.

We may also notice here that this judgment had been followed with approval by an equi-bench of this Court in the case of ***Katari Suryanarayana v. Koppisetti Subba Rao, AIR 2009 SC 2907***.

Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in fling such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the fling of such applications.

In view of the aforesaid discussion and taking into consideration the aforesaid case laws, this court finds that respondent no. 1 has totally failed to show "sufficient cause" to condone the delay and has also failed to show why

immediate steps were not taken by respondent no.1. Thus, this Court has no hesitation to reject the applications being under Section 5 of the Limitation Act and consequently, under Order 22 Rule 9 of CPC and under Order 22 Rule 3/11 of CPC.

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230. CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 3
LEGAL SERVICES AUTHORITIES ACT, 1987 – Section 21
Compromise decree – Challenged on the ground of fraud – Aggrieved party to establish before the same court that agreement on which decree is based was invalid or illegal – Allegations of fraud will have to be proved strictly.

सिविल प्रक्रिया संहिता, 1908 – आदेश 23 नियम 3
विधिक सेवा प्राधिकरण अधिनियम, 1987 – धारा 21
समझौता डिक्री – कपट के आधार पर चुनौती – व्यथित पक्षकार को उसी न्यायालय में प्रमाणित करना होगा कि अनुबंध जिसके आधार पर समझौता डिक्री पारित हुई अवैध या अमान्य था – कपट के आधार को कठोरता से प्रमाणित करना होगा।

K. Srinivasappa and ors. v. M. Mallamma and ors.
Judgment dated 18.05.2022 passed by the Supreme Court in Civil Appeal No. 3486 of 2022, reported in AIR 2022 SC 2381

Relevant extracts from the judgment:

We observe that we do not find any reason forthcoming from the judgment of the High court while setting aside the order of the Lok Adalat dated 7th July, 2012 whereby the terms of the compromise were recorded. To recall a compromise that has been recorded would call for strong reasons. This is because a compromise would result ultimately into a decree of a Court which can be enforced just as a decree passed on an adjudication of a case.

In ***Pushpa Devi Bhagat (dead) through L.R. Sadhna Rai v. Rajinder Singh and ors., (2006) 5 SCC 566***, this Court held that since no appeal would lie against a compromise decree, the only option available to a party seeking to avoid such a decree would be to challenge the consent decree before the Court that passed the same and to prove that the agreement forming the basis for the decree was invalid. It is therefore imperative that a party seeking to avoid the terms of a consent decree has to establish, before the Court that passed the same, that the agreement on which the consent decree is based, is invalid or illegal.

It is a settled position of law that where an allegation of fraud is made against a party to an agreement, the said allegation would have to be proved strictly, in order to avoid the agreement on the ground that fraud was practiced on a party in order to induce such party to enter into the agreement. Similarly, the terms of a compromise decree, cannot be avoided, unless the allegation of fraud has been proved. In the absence of any conclusive proof as to fraud on

the part of the objectors, the High Court could not have set aside the compromise decree in the instant case.

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231. CONTRACT ACT, 1872 – Sections 67 and 73

Difference between "breach of contract" and "abandonment of contract" – Explained.

संविदा अधिनियम, 1872 – धाराएं 67 एवं 73

''संविदा के भंग'' तथा ''संविदा के परित्याग'' के मध्य अंतर – व्याख्या की गई।

Shripati Lakhu Mane v. Member Secretary, Maharashtra Water Supply and Severage Board and ors.

Judgment dated 30.03.2022 passed by the Supreme Court in Civil Appeal No. 556 of 2012, reported in AIR 2022 SC 1574

Relevant extracts from the judgment:

It is fundamental to the Law of Contract that whenever a material alteration takes place in the terms of the original contract, on account of any act of omission or commission on the part of one of the parties to the contract, it is open to the other party not to perform the original contract. This will not amount to abandonment. Moreover, abandonment is normally understood, in the context of a right and not in the context of a liability or obligation. A party to a contract may abandon his rights under the contract leading to a plea of waiver by the other party, but there is no question of abandoning an obligation. In this case, the appellant refused to perform his obligations under the work– order, for reasons stated by him. This refusal to perform the obligations, can perhaps be termed as breach of contract and not abandonment.

It is interesting to note that the respondents did not choose, (i) to allege breach of contract against the appellant; and (ii) consequently to invoke the right to rescind the contract under clause 3(a). The respondents, if they were justified in doing so, could have taken recourse to the remedy available under Section 75 of the Contract Act and sought compensation for the damage sustained through the no fulfillment of the contract. On the contrary they attributed abandonment to the appellant (without understanding the true purport of the word 'abandonment') and refused to honour the claims made by the appellant.

The finding of the High Court that there was abandonment of contract, was on the basis that after the second bill was cleared in May, 1987, the work under the main contract did not progress. This finding goes completely contrary to yet another finding that the period of the contract was up to June, 1989 and that the respondents themselves granted extension of time to complete the contract up to 31.12.1989, despite there being no request from the appellant. We fail to understand as to how a person who abandoned the contract in May, 1987 could be granted extension of time up to December, 1989 on the very understanding

of the respondents that the contract was up to June, 1989. In fact, the High Court recorded a finding in paragraph 9 of the impugned judgment that according to DWs 3, 4 and 5, the power to rescind under clause 3(a) of the tender was invoked and the security deposit forfeited. This was not how the respondents pitched their claim even in the written statement. In any case such a finding cannot co–exist with the specific stand of the respondents that the period of contract was extended up to December, 1989.

The refusal of a contractor to continue to execute the work, unless the reciprocal promises are performed by the other party, cannot be termed as abandonment of contract. A refusal by one party to a contract, may entitle the other party either to sue for breach or to rescind the contract and sue on a quantum meruit for the work already done.

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232. COURT FEES ACT, 1870 – Section 7(iv)(d)

Suit for mandatory injunction – Valuation – Plaintiff seeking licensees to remove themselves and their belongings from the suit property – Suit is not required to be valued as per the market value – Valuation of suit always depends on nature of relief claimed – Market value does not become decisive of suit valuation merely because immovable property is the subject matter of litigation.

न्यायालय शुल्क अधिनियम, 1870 – धारा 7 (iv)(घ)

आज्ञापक व्यादेश हेतु वाद – मूल्यांकन – वादी द्वारा विवादित संपत्ति पर से अनुज्ञप्ति धारक को सामान के साथ हटाये जाने हेतु वाद प्रस्तुत – बाजार मूल्य के आधार पर वाद का मूल्यांकन आवश्यक नहीं – वाद का मूल्यांकन प्रार्थित किए गए अनुतोष के आधार पर निर्धारित होगा – केवल इस आधार पर कि विवादित संपत्ति अचल संपत्ति है मूल्यांकन बाजार मूल्य के आधार पर नहीं होगा।

Bharat Bhushan Gupta v. Pratap Narain Verma and anr.

Judgment dated 16.06.2022 passed by the Supreme Court in Civil Appeal No. 4577 of 2022, reported in AIR 2022 SC 2867

Relevant extracts from the judgment:

It remains trite that it is the nature of relief claimed in the plaint which is decisive of the question of suit valuation. As a necessary corollary, the market value does not become decisive of suit valuation merely because an immovable property is the subject-matter of litigation. The market value of the immovable property involved in the litigation might have its relevance depending on the nature of relief claimed but, ultimately, the valuation of any particular suit has to be decided primarily with reference to the relief/reliefs claimed.

These observations were, in fact, taken note of by the High Court in the impugned judgment too but they cannot be read to mean that in a suit for mandatory injunction concerning a property and thereby seeking certain mandates over the acts/omissions of the Defendant, the suit is required to be valued as per the market value of the property. Such a proposition, for suit valuation on the market value of the property involved, irrespective of the nature of relief claimed, if accepted, would render the whole scheme of the Court Fees Act concerning suit valuation with reference to the nature of relief going haywire. This argument is required to be rejected.

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233. CRIMINAL PROCEDURE CODE, 1973 – Section 188
INDIAN PENAL CODE, 1860 – Sections 363, 366-B, 370(4) and 506
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Section 8
Jurisdiction – Sanction for prosecution – Offence committed partly in India – Victim was lured by accused for coming to India – Without any sanction offence can be tried by courts of India.

दण्ड प्रक्रिया संहिता, 1973 – धारा 188
भारतीय दण्ड संहिता, 1860 – धाराएं 363, 366–ख, 370(4) एवं 506
लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धारा 8
क्षेत्राधिकार – अभियोजन की मंजूरी – अपराध आंशिक रूप से भारत में घटित किया गया – अभियोक्त्री को अभियुक्त द्वारा बहला–फुसलाकर भारत बुलाया गया – बिना किसी पूर्व मंजूरी के अपराध का विचारण भारत के न्यायालय द्वारा किया जा सकता है।

Sartaj Khan v. State of Uttarakhand
Judgment dated 24.03.2022 passed by the Supreme Court in Criminal Appeal No. 852 of 2022, reported in 2022 (2) Crimes 96 (SC) (Three Judge Bench)

Relevant extracts from the judgment:

In terms of Section 188, even if an offence is committed outside India, (a) by a citizen whether on the high seas or anywhere else or (b) by a non-citizen on a ship or aircraft registered in India, the offence can still be tried in India provided the conditions mentioned in said Section are satisfied. The Section gets attracted when the entirety of the offence is committed outside India; and the grant of sanction would enable such offence to be enquired into or tried in India.

As the facts and circumstances of the case indicate, a part of the offence was definitely committed on the soil of this country and as such going by the normal principles the offence could be looked into and tried by Indian courts. Since the offence was not committed in its entirety, outside India, the matter would not come

within the scope of Section 188 of the Code and there was no necessity of any sanction as mandated by the proviso to Section 188. We, therefore, reject the first submission advanced by the learned advocate for respondent.

Coming to the second submission, it is true that the victim had traveled on her own from Kathmandu to Atariya. However, the evidence on record completely establishes that she was lured into coming to India. The offences alleged against the appellant were thus rightly invoked and fully substantiated.

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234. CRIMINAL PROCEDURE CODE, 1973 – Section 190(1)(b)

Cognizance – Whether a Magistrate taking cognizance of an offence on the basis of a police report in terms of section 190(1)(b) can issue summon to any person not arraigned as an accused in police report? Held, yes – Material available before Magistrate has to be examined before reaching its conclusion and need not remain confined to police report, charge sheet or F.I.R. – Statement made u/s 164 CrPC could also be considered – Judicial Magistrate may take cognizance upon the protest petition filed.

दण्ड प्रक्रिया संहिता, 1973 – धारा 190 (1)(ख)

संज्ञान – क्या मजिस्ट्रेट धारा 190 (1)(ख) दं.प्र.सं. के अंतर्गत किसी ऐसे व्यक्ति के विरूद्ध संज्ञान ले सकता है जिसे पुलिस रिपोर्ट में अभियुक्त के रूप में संयोजित न किया गया हो – अधिनिर्धारित, हाँ – अभिलेख पर उपलब्ध समस्त सामग्री पर विचार किये जाने के उपरान्त निष्कर्ष निकाला जाना चाहिये – यह सामग्री केवल अंतिम प्रतिवेदन, पुलिस रिपोर्ट या प्रथम सूचना रिपोर्ट तक सीमित नहीं रखी जा सकती – धारा 164 दं.प्र.सं. के कथनों को भी विचार में लिया जा सकता है – विरोध याचिका के आधार पर भी संज्ञान लिया जा सकता है।

Nahar Singh v. State of Uttar Pradesh & anr.

Judgment dated 16.03.2022 passed by the Supreme Court in Criminal Appeal No. 443 of 2022, reported in 2022 (2) Crimes 51 (SC)

Relevant extracts from the judgment:

It would appear from the Code that the jurisdiction to take cognizance has been vested in the Magistrate (under Section 190 thereof) as also Court of Session under Section 193, which we have quoted above. This question has been examined in the case of ***Dharam Pal and ors. v. State of Haryana and anr., (2014) 3 SCC 306*** and on this point it has been held:

> "This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes

> cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge."

The scope of jurisdiction of the Magistrate in taking cognizance of an offence was earlier examined by a three-judge Bench of this court in the case of ***Raghubans Dubey v. State of Bihar, AIR 1967 SC 1167***. This authority was relied upon by the Coordinate Bench in the case of ***Kishun Singh & ors. v. State of Bihar, (1993) 2 SCC 16***. Dealing with broadly similar provisions of the old Code, of 1898, it was observed by this Court:

> "8. …….In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence. As pointed out by this Court in ***Pravin Chandra Mody v. State of Andhra Pradesh, (1965) 1 SCR 269*** the term "complaint" would include allegations made against persons unknown. If a Magistrate takes cognizance under Section 190(1)(a) on the basis of a complaint of facts he would take cognizance and a proceeding would be instituted even though persons who had committed the offence were not known at that time. The same position prevails, in our view, under Section 190(1)(b)."

In the case of ***Kishun Singh*** (supra), the scope of jurisdiction of the Court of Session under Section 193 of the Code was explained, relying on an authority dealing with similar provision under the 1898 Code (***P.C. Gulati v. Lajya Ram and ors., AIR 1966 SC 595***). The phrase used to explain the implication of taking cognizance by a Court of Session in the judgment of ***Kishun Singh*** (supra) was "cognizance in the limited sense." In paragraph 8 of the report (in ***Kishun Singh's*** case), it has been held observed:-

> "8. Section 193 of the old Code placed an embargo on the Court of Session from taking cognizance of any offence as a court of original jurisdiction unless the accused was committed to it by a Magistrate or there was express provision in the Code or any other law to the contrary. In the context of the said provision this Court in ***P.C. Gulati v. L.R. Kapur, AIR 1966 SC 595*** observed as under:
>
> > "When a case is committed to the Court of Session, the Court of Session has first to determine whether the commitment of the case is proper. If it be of opinion that the commitment is bad on a point of law, it has to refer the case to the High Court which is competent to quash the proceeding under Section 215 of the Code. It is only when the Sessions Court considers the commitment to be good in law that it proceeds with the trial of the case. It is in this context that the Sessions Court has to take cognizance of the offence as a court of original jurisdiction and it is such a cognizance which is referred to in Section 193 of the Code."

Jurisdiction of the Magistrate to take cognizance of an offence triable by a Court of Session is not in controversy before us. The course open to a Magistrate on submission of a police report has been discussed in the case of ***Dharam Pal*** (supra). In paragraph 39 of the report in Dharam Pal's case, such power or jurisdiction of the Magistrate has been spelt out. We have quoted this passage earlier in this judgment.

The other difference so far as this case is concerned in relation to the factual basis on which the decision of the Constitution Bench in ***Dharam Pal*** (supra) as also the judgment in the case of ***Raghubans Dubey v. State of Bihar, AIR 1967 SC 1167*** were delivered is that in both these cases, the names of the persons arraigned as accused had figured in column (2) of the charge sheet. This column, as it appears from the judgment in the case of ***Raghubans Dubey*** (supra), records the name of a person under the heading "not sent up". In that case, the person concerned was named in the F.I.R. But that factor, by itself, in our opinion ought not to be considered as a reason for the Court in not summoning an accused not named in the F.I.R. and whose name also does not

feature in chargesheet at all. These judgments were delivered in cases where the names of the persons sought to be arraigned as accused appeared in column (2) of the police report. In our opinion the legal proposition laid down while dealing with this point was not confined to the power to summon those persons only, whose names featured in column (2) of the chargesheet. In the case of ***Dharam Pal*** (supra), the second point formulated (para 7.2) related to persons named in column (2), but the issue before the Constitution Bench related to that category of persons only. This is the position of law enunciated in the cases of ***Hardeep Singh v. State of Punjab and ors., (2014) 3 SCC 92*** and ***Raghubans Dubey*** (supra). In the latter authority, the duty of the Court taking cognizance of an offence has been held "to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons". Such duty to proceed against other persons cannot be held to be confined to only those whose names figure in column (2) of the chargesheet. As we have already observed that in the aforesaid authorities, the question of summoning the persons named in column (2) of the chargesheet was involved, in our opinion inclusion in column (2) was not held to be the determinant factor for summoning persons other than those named as accused in the police report or chargesheet. The principle of law enunciated in ***Raghubans Dubey*** (supra), ***Dharam Pal*** (supra) and ***Hardeep Singh*** (supra) does not constrict exercise of such power of the Court taking cognizance in respect of this category of persons (i.e., whose names feature in column (2) of the chargesheet).

In the cases of ***Raghubans Dubey*** (supra), ***SWIL Ltd. v. State of Delhi and anr., (2001) 6 SCC 670*** and ***Dharam Pal*** (supra), the power or jurisdiction of the Court or Magistrate taking cognizance of an offence on the basis of a police report to summon an accused not named in the police report, before commitment has been analysed. The uniform view on this point, irrespective of the fact as to whether cognizance is taken by the Magistrate under Section 190 of the Code or jurisdiction exercised by the Court of Session under Section 193 thereof is that the aforesaid judicial authorities would not have to wait till the case reaches the stage when jurisdiction under Section 319 of the Code is capable of being exercised for summoning a person as accused but not named as such in police report. We have already expressed our opinion that such jurisdiction to issue summons can be exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Session in summoning an accused upon taking cognizance, whose name may not feature in the F.I.R. or police report.

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235. CRIMINAL PROCEDURE CODE, 1973 – Section 313
EVIDENCE ACT, 1872 – Sections 3 and 106

(i) Theory of last seen together – Once the theory is established, the accused is expected to offer some explanation as to under what circumstances, he had parted the company of the victim.

(ii) Circumstantial evidence – In criminal jurisprudence, the entire burden of proving the guilt of the accused, rests on the prosecution, nonetheless if the accused does not throw any light upon the facts which are proved to be within his special knowledge in view of section 106 of the Evidence Act, such failure on the part of the accused may also provide an additional link in the chain of circumstances required to be proved against him.

(iii) Duty of court – The Court conducting the trial/appeal is not only obliged to protect the rights of the accused but also the rights of the victim, and the interest of the society at large.

(iv) Examination of accused – Admission – No conviction could be based on the statement of the accused recorded u/s 313 of the CrPC and the prosecution has to prove the guilt of the accused by leading independent and cogent evidence – If an accused makes inculpatory and exculpatory statements, the inculpatory part of the statement can be taken aid of so as to lend credence to the case of prosecution.

दण्ड प्रक्रिया संहिता, 1973 – धारा 313

भारतीय साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 106

(i) अंतिम बार साथ देखे जाने का सिद्धांत – एक बार जब सिद्धांत प्रमाणित कर दिया जाता है, अभियुक्त से यह अपेक्षा की जाती है कि वह कुछ स्पष्टीकरण दे कि किन परिस्थितियों में पीड़ित की संगत पृथक हुआ।

(ii) परिस्थितिजन्य साक्ष्य – आपराधिक विधि शास्त्र में अभियुक्त की दोषिता साबित करने का भार अभियोजन पर होता है फिर भी यदि अभियुक्त ऐसे तथ्य के बारे में जो धारा 106 साक्ष्य अधिनियम में उसके विशेष ज्ञान का होना साबित किए गए है, पर कोई प्रकाश नहीं डालता है तो अभियुक्त के भाग पर ऐसी विफलता उसके विरूद्ध परिस्थितियों की श्रृंखला को साबित करने में अतिरिक्त कड़ी प्रदान करती है।

(iii) न्यायालय का कर्तव्य – विचारण/अपील का संचालन करने वाला न्यायालय ना केवल अभियुक्त के अधिकारों की सुरक्षा के लिए बाध्य है अपितु पीड़ित के अधिकारों तथा बड़े पैमाने पर समाज के हितों की भी रक्षा करने के लिए बाध्य है।

(iv) अभियुक्त की परीक्षा – स्वीकृति – अभियुक्त के केवल धारा 313 दं.प्र.सं. के अंतर्गत अभिलिखित कथन के आधार पर कोई दोषसिद्धि नहीं हो सकती है और अभियोजन को अभियुक्त की दोषिता स्वतंत्र तथा विश्वसनीय साक्ष्य प्रस्तुत करके साबित करना होती है – यदि कोई अभियुक्त फँसाने वाले या स्पष्टीकरण वाले कथन करता है तब उसके फँसाने वाला भाग को अभियोजन के मामले को विश्वसनीयता प्रदान करने के लिए विचार में लिया जा सकता है।

Mohd. Firoz v. State of Madhya Pradesh

Judgment dated 19.04.2022 passed by the Supreme Court in Criminal Appeal No. 612 of 2019, reported in AIR 2022 SC 1967 (Three Judge Bench)

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236. CRIMINAL PROCEDURE CODE, 1973 – Section 319

Summoning of accused – Exercise of discretion – There must be a strong and cogent evidence available on record against a person and one crucial test has to be applied that there is more than *prima facie* case as exercised at the time of framing of charge but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. (*Hardeep Singh v. State of Punjab and ors., (2014) 3 SCC 92* relied)

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

अभियुक्त को आहुत किया जाना – विवेकाधिकार का प्रयोग – अभिलेख पर व्यक्ति के विरूद्ध मजबूत और विश्वसनीय साक्ष्य न्यायालय के विचार हेतु उपलब्ध होना चाहिए और एक महत्वपूर्ण परीक्षण किया जाना चाहिए कि आरोप विरचित किये जाने के समय से अधिक प्रथम दृष्टया प्रकरण है परन्तु संतुष्टि इस सीमा तक विस्तारित नहीं हो कि यदि साक्ष्य अखण्डित रहे तो दोषसिद्धी होगी। (*हरदीप सिंह विरूद्ध पंजाब राज्य, (2014) 3 एससीसी 92* अवलंबित)

Sagar v. State of U.P. and anr.

Judgment dated 10.03.2022 passed by the Supreme Court in Criminal Appeal No. 397 of 2022, reported in AIR 2022 SC 1420

Relevant extracts from the judgment:

Even when the chargesheet came to be filed and the investigating officer has not found the present appellant to have participated in the commission of crime and at least at the stage when Section 319 of the Code is to be invoked, there must be a strong and cogent evidence occurred against a person from the evidence led before the Court and taking into consideration the material available on record, was not satisfied to summon the present appellant under Section 319 of the Code.

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***237. CRIMINAL PROCEDURE CODE, 1973 – Section 436-A**
JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Sections 3, 12 and 15
Child in conflict with law – Under trial prisoner – Bail – Cannot be treated as under trial prisoner as contemplated u/s 436-A of CrPC and cannot be released after completing half of total period of detention in special home to avail the benefit of section 436-A of CrPC.

दण्ड प्रक्रिया संहिता, 1973 – धारा 436–क
किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 – धाराएं 3, 12 एवं 15
विधि का उल्लंघन करने वाले बालक – विचाराधीन बन्दी – जमानत – विधि का उल्लंघन करने वाले बालक को धारा 436–क दण्ड प्रक्रिया संहिता के अन्तर्गत विचाराधीन बन्दी नहीं माना जा सकता है और धारा 436–क दण्ड प्रक्रिया संहिता का लाभ प्राप्त करने के लिए विशेष गृह के निरोध की कुल अवधि के आधे के पूर्ण होने पर छोड़ा नहीं जा सकता है।

Vidhi Ka Ulaghan Karne Wala Balak v. State of Madhya Pradesh and anr.
Order dated 03.03.2022 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Criminal Revision No. 2108 of 2021, reported in 2022 CriLJ 2162

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238. CRIMINAL PROCEDURE CODE, 1973 – Sections 437(2) and 439(2)
Cancellation of bail – Reasons to be assigned – Reason is the soul of law – Court deciding a bail application cannot completely divorce its decision from material aspects of the case.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437(2) एवं 439(2)
जमानत का निरस्त किया जाना – कारण बताना चाहिए – विवेक विधि की आत्मा है – न्यायालय जमानत का आदेश करते समय प्रकरण के आवश्यक तथ्य से स्वयं को पृथक नहीं रख सकता।

Kamla Devi v. State of Rajasthan & anr.
Judgment dated 11.03.2022 passed by the Supreme Court in Criminal Appeal No. 342 of 2022, reported in 2022 (2) Crimes 29 (SC)

Relevant extracts from the judgment:

This Court has, on several occasions has discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are:

(i) the seriousness of the offence;

(ii) the likelihood of the accused fleeing from justice;

(iii) the impact of release of the accused on the prosecution witnesses;

(iv) likelihood of the accused tampering with evidence. While such list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its discretion, vide ***Gudikanti Narasimhulu & ors. v. Public Prosecutor, High Court of Andhra Pradesh, (1978) 1 SCC 240 ; Prahlad Singh Bhati v. NCT of Delhi & ors., (2001) 4 SCC 280*** and ***Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129***.

Reference may also be had to recent decisions of this very Bench in ***Manoj Kumar Khokhar v. State of Rajasthan & anr., 2022 SCC Online SC 30*** and ***Jaibunisha v. Meharban & anr., 2022 SCC Online SC 58***, wherein, on engaging in an elaborate discussion of the case law cited supra and after duly acknowledging that liberty of individual is an invaluable right, we have held that an order granting bail to an accused, if passed in a casual and cryptic manner, *de hors* reasoning which would validate the grant of bail, is liable to be set aside by this Court while exercising jurisdiction under Article 136 of the Constitution of India.

The Latin maxim "*cessante ratione legis cessat ipsa lex*" meaning "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself," is also apposite.

We have extracted the relevant portions of the impugned order above. At the outset, we observe that the extracted portions are the only portions forming part of the "reasoning" of the High court while granting bail. As noted from the aforecited judgments, it is not necessary for a Court to give elaborate reasons while granting bail, particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystalised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. However, the Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt which would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a *prima facie* satisfaction of the Court in support of the charge against the accused.

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239. CRIMINAL PROCEDURE CODE, 1973 – Section 439

(i) Nature of victim's rights – Rights are totally independent, incomparable and are not accessory or auxiliary to those of the State under the code – The presence of 'State' in the proceedings, therefore, does not tantamount to affording hearing to a 'victim' of the crime.

(ii) Right to be heard – A 'victim' cannot be asked to await the commencement of the trial for asserting his/her right to participate in the proceedings – He/ she has a legally vested right to be heard at every step post the occurrence of an offence.

दण्ड प्रक्रिया संहिता, 1973 – धारा 439

(i) पीड़ित के अधिकार की प्रकृति – अधिकार पूर्ण रूप से स्वतंत्र, अतुलनीय है तथा दं.प्र.सं. के अन्तर्गत 'राज्य' के अधिकार के पूरक या अतिरिक्त नहीं है – कार्यवाही में राज्य की उपस्थिति अपराध के 'पीड़ित' की सुनवाई के समतुल्य नहीं है।

(ii) सुनवाई का अधिकार – पीड़ित को कार्यवाही में भाग लेने के अधिकार के उपयोग के लिए विचारण प्रारंभ होने तक इंतजार करने के लिए नहीं कहा जा सकता है – उसे अपराध घटित होने के पश्चात प्रत्येक स्तर पर सुने जाने का विधिक निहित अधिकार है।

Jagjeet Singh and ors. v. Ashish Mishra alias Monu and anr.
Judgment dated 18.04.2022 passed by the Supreme Court in Criminal Appeal No. 632 of 2022, reported in AIR 2022 SC 1918 (Three Judge Bench)

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240. CRIMINAL PROCEDURE CODE, 1973 – Section 439(2)

Cancellation of bail – Bail granted should not be cancelled in a mechanical manner – Requires cogent and overwhelming circumstances.

दण्ड प्रक्रिया संहिता, 1973 – धारा 439(2)

जमानत का निरस्त किया जाना – एक बार प्रदत्त जमानत को यांत्रिकी तरीके से निरस्त नहीं किया जाना चाहिए – प्रभावशाली एवं अभिभूत परिस्थितियाँ आवश्यक है।

Deepak Yadav v. State of U.P. and anr.
Judgment dated 20.05.2022 passed by the Supreme Court in Criminal Appeal No. 861 of 2022, reported in AIR 2022 SC 2514 (Three Judge Bench)

Relevant extracts from the judgment:

The importance of assigning reasoning for grant or denial of bail can never be undermined. There is *prima facie* need to indicate reasons particularly in cases of grant or denial of bail where the accused is charged with a serious

offence. The sound reasoning in a particular case is a reassurance that discretion has been exercised by the decision maker after considering all the relevant grounds and by disregarding extraneous considerations.

A two-Judge Bench of this Court in ***Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli) & anr., (2021) 6 SCC 230*** held that the duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court, is exercised in a judicious manner. The operative portion of the judgment reads as under:

> We disapprove of the observations of the High Court in a succession of orders in the present case recording that the Counsel for the parties "do not press for a further reasoned order". The grant of bail is a matter which implicates the liberty of the Accused, the interest of the State and the victims of crime in the proper administration of criminal justice. It is a well-settled principle that in determining as to whether bail should be granted, the High Court, or for that matter, the Sessions Court deciding an application Under Section 439 of Code of Criminal Procedure would not launch upon a detailed evaluation of the facts on merits since a criminal trial is still to take place. These observations while adjudicating upon bail would also not be binding on the outcome of the trial. But the Court granting bail cannot obviate its duty to apply a judicial mind and to record reasons, brief as they may be, for the purpose of deciding whether or not to grant bail. The consent of parties cannot obviate the duty of the High Court to indicate its reasons why it has either granted or refused bail. This is for the reason that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest. We must, therefore, disapprove of the manner in which a succession of orders in the present batch of cases has recorded that counsel for the "respective parties do not press for further reasoned order". If this is a euphemism for not recording adequate reasons, this kind of a formula cannot shield the order from judicial scrutiny.
>
> Grant of bail under Section 439 of the Code of Criminal Procedure is a matter involving the exercise of judicial

> discretion. Judicial discretion in granting or refusing bail – as in the case of any other discretion which is vested in a court as a judicial institution – is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice.

This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted). A two-Judge Bench of this Court in ***Dolat Ram and ors. v. State of Haryana, (1995) 1 SCC 349*** laid down the grounds for cancellation of bail which are:

(i) interference or attempt to interfere with the due course of administration of Justice.

(ii) evasion or attempt to evade the due course of justice.

(iii) abuse of the concession granted to the accused in any manner.

(iv) possibility of accused absconding.

(v) likelihood of/actual misuse of bail.

(vi) likelihood of the accused tampering with the evidence or threatening witnesses.

It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:

a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is *prima facie* misuse of position and power over the victim.

c) Where the past criminal record and conduct of the Accused is completely ignored while granting bail.

d) Where bail has been granted on untenable grounds.

e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

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***241. EVIDENCE ACT, 1872 – Section 3**

(i) Related witness – Evidence of witness cannot be discarded solely on the ground that they are the relatives of the deceased.

(ii) Material contradictions – Weightage should not be given to minor contradictions which are not material and does not affect the case of prosecution as a whole.

साक्ष्य अधिनियम, 1872 – धारा 3

(i) हितबद्ध साक्षी – साक्षी की साक्ष्य को केवल इस आधार पर अविश्वसनीय नहीं माना जा सकता कि वे मृतक के रिश्तेदार है।

(ii) तात्विक विरोधाभास – ऐसे सूक्ष्म विरोधाभास को महत्व नहीं दिया जाना चाहिए जो तात्विक नहीं है और अभियोजन के प्रकरण को पूर्ण रूप से प्रभावित नहीं करते हों।

M. Nageswara Reddy v. State of Andhra Pradesh and ors.

Order dated 07.03.2022 passed by the Supreme Court in Criminal Appeal No.72 of 2022, reported in 2022 CriLJ 2254 (SC)

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242. EVIDENCE ACT, 1872 – Section 32(1)

INDIAN PENAL CODE, 1860 – Section 498-A

Dying declaration – Admissibility – Even if accused was acquitted from charges of dowry death, still evidence of deceased wife can be admitted u/s 32(1) of the Act to prove charges of cruelty u/s 498-A IPC.

साक्ष्य अधिनियम, 1872 – धारा 32(1)

भारतीय दण्ड संहिता, 1860 – धारा 498–क

मृत्युकालीन कथन – ग्राह्यता – आरोपी को दहेज हत्या के आरोप से दोषमुक्त किया गया इसके उपरांत भी पत्नी के मृत्युकालीन कथनों को धारा 498–क भा.द.सं. के अपराध में क्रूरता प्रमाणित करने के लिये उपयोग में लाया जा सकता है।

Surendran v. State of Kerala

Judgment dated 13.05.2022 passed by the Supreme Court in Criminal Appeal No. 1080 of 2019, reported in AIR 2022 SC 2322 (Three Judge Bench)

Relevant extracts from the judgment:

The test for admissibility under the Section 32 (1) of the evidence Act is not that the evidence to be admitted should directly relate to a charge pertaining to the death of the individual, or that the charge relating to death could not be proved. Rather, the test appears to be that the cause of death must come into question in that case, regardless of the nature of the proceeding, and that the purpose for which such evidence is being sought to be admitted should be a part of the 'circumstances of the transaction' relating to the death.

In some circumstances, the evidence of a deceased wife with respect to cruelty could be admissible in a trial for a charge under Section 498A of the Indian Penal Code under Section 32(1) of the Evidence Act. There are, however, certain necessary pre-conditions that must be met before the evidence is admitted.

The first condition is that her cause of death must come into question in the matter. This would include, for instance, matters where along with the charge under Section 498A of the Indian Penal Code, the prosecution has also charged the accused under Sections 302, 306 or 304B of the Indian Penal Code. It must be noted however that as long as the cause of her death has come into question, whether the charge relating to death is proved or not is immaterial with respect to admissibility.

The second condition is that the prosecution will have to show that the evidence that is sought to be admitted with respect to Section 498A of the Indian Penal Code must also relate to the circumstances of the transaction of the death.

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***243. EVIDENCE ACT, 1872 – Section 65-B**

Electronic evidence – Certified copy of CCTV footage – Original not played in Court, only certified copy was played – Neither objection was raised during trial nor any request was made to play the original – Court can rely on the certified copy of CCTV footage.

साक्ष्य अधिनियम, 1872 – धारा 65–ख

इलेक्ट्रॉनिक साक्ष्य – सीसीटीव्ही फुटेज की प्रमाणित प्रतिलिपि – मूल फुटेज न्यायालय में नहीं दिखाया गया केवल सत्यापित फुटेज दिखाया गया – विचारण के दौरान न तो कोई आपत्ति उठाई गई और न ही मूल फुटेज दिखाने हेतु कोई निवेदन किया गया – न्यायालय सीसीटीव्ही फुटेज की प्रमाणित प्रति पर विश्वास कर सकता है।

Taqdir v. State of Haryana

Judgment dated 02.03.2022 passed by the Supreme Court in Criminal Appeal No. 1537 of 2018, reported in (2022) 4 SCC 321 (Three-Judge Bench)

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***244. EVIDENCE ACT, 1872 – Sections 134 and 154**

CRIMINAL PRACTICE:

(i) Hostile witness – Conviction can be based on credible evidence of hostile witness.

(ii) Evidentiary value – Contradiction and omission – Court should examine the statement of a witness in its entirety and read with the statement of other witnesses in order to arrive at a rational conclusion.

साक्ष्य अधिनियम, 1872 – धाराएं 134 एवं 154

आपराधिक विचारण

(i) पक्षद्रोही साक्षी – पक्षद्रोही साक्षी की विश्वसनीय साक्ष्य पर भी दोषसिद्धि आधारित हो सकती है।

(ii) साक्ष्यिक मूल्य – विरोधाभास एवं लोप – युक्तिसंगत निष्कर्ष पर पहुंचने हेतु न्यायालय को साक्षी के बयान को पूर्णता से एवं अन्य साक्षियों के कथनों के आलोक में परीक्षण करना चाहिए।

Karan Singh v. The State of Uttar Pradesh and ors.

Judgment dated 02.03.2022 passed by the Supreme Court in Criminal Appeal No. 327 of 2022 reported in 2022 (1) Crimes 336 (SC)

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245. GUARDIANS AND WARDS ACT, 1890 – Section 9

(i) Territorial jurisdiction – Meaning of "ordinarily resides" – The place where the minor resides with his local guardian, before presentation of the petition is construed as ordinary place of residence.

(ii) Custody of minor aged 3 years – Is expected to be in the custody of his mother.

संरक्षक एवं प्रतिपाल्य अधिनियम, 1890 – धारा 9

(i) क्षेत्रीय अधिकारिता – ''साधारण निवास'' स्थान की परिभाषा – जहां याचिका प्रस्तुति के पूर्व अवयस्क अपने स्थानीय संरक्षक के साथ निवास करता था, उस स्थान का अर्थ साधारण निवास स्थान के रूप में लगाया जायेगा।

(ii) अभिरक्षा – तीन वर्षीय अवयस्क का उसकी मां की अभिरक्षा में होना अपेक्षित है।

Akhilesh and anr. v. Kavita

Order dated 14.03.2022 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 433 of 2021, reported in 2022 (2) MPLJ 338

Relevant extracts from the order:

In ***K.C. Sashidhar v. Roopa, AIR 1993 Kar 120*** relying upon the case of ***Mst. Firoza v. Akhtaruddin, AIR 1963 Assam 193*** it was held as under :

> "Invariably, a minor child that too at the age of 10 to 11 months is expected to be with the custody of the mother. So the words "ordinarily resides" should be construed as the place where the mother resides before the presentation of the petition. It is an admitted fact that, in the instant case, the mother was residing at Mysore when she presented the petition at Mysore seeking custody of the child. Further, it is to be noted that she has alleged in her petition circumstances under which the child was forced to be left in the custody of the father. When such is the case, the place of residence has to be construed as the place where mother resided before presenting the petition. In view of that, the finding given by the Court below that the petition filed by the petitioner, namely the mother, at Mysore, having jurisdiction does not suffer from any legal infirmities. In ***Mst. Firoza Begum*** (supra) Assam 193 wherein the Assam High Court observed:
>
> > "It is contended by Mr. Chose that the expression "ordinarily resides", does not mean casual or factual residence of the minors at the time of the application being made, and that normally the residence of the minor should be taken as the place where the legal guardian is residing..... That the expression "where the minor ordinarily resides" appears to have been deliberately used to exclude places to which the minor may be removed at or about the time of the filing of the application for the enforcement of the guardianship and custody of the minor, and that the phrase "ordinarily resides" indicates ordinary residence even at the time of the presentation of the application under Section 25 of the Act, and that the emphasis is undoubtedly on the minor's ordinary place of residence."

In the present case also non-applicant No.2 who is aged about 3 years is expected to be with the custody of his mother i.e. the applicant. The words "ordinarily resides" shall have to be construed as the place where the applicant resides before presentation of the petition. In her petition the applicant has specifically alleged circumstances under which the non-applicant No.2 was forced out of her custody by non-applicant No.1. In such case, the place of residence of non-applicant No.2 has to be construed as the place where the applicant is residing before presentation of the application i.e. Tehsil-Mahindpur, District-Ujjain. As per the applicant, the non-applicant No.2 has been removed by non-applicant No.1 from her custody prior to filing of the application for guardianship. Ordinarily place of residence of non-applicant No.2 hence would be the place where the local guardian i.e. applicant is residing. It cannot be disputed that since non-applicant No.2 is aged 3 years, applicant would be his natural guardian. In view of the aforesaid factual situation, the judgment of Hon'ble Supreme Court in the matter of ***Ruchi Majoo v. Sanjeev Majoo, (2011) 6 SCC 479*** is distinguishable and does not help the non-applicants in any manner.

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246. HINDU MARRIAGE ACT, 1955 – Section 13(1)(i-a)
FAMILY COURTS ACT, 1984 – Section 19
Divorce – Mental cruelty – Husband and wife shared domestic incompatibility for considerable period of time – During this period, wife caused irritation, threat, intimidation and avoided cohabitation – Reconciliation efforts made were not successful – Long standing dispute itself is mental cruelty.

हिन्दू विवाह अधिनियम, 1955 – धारा 13(1) (i-a)
कुटुम्ब न्यायालय अधिनियम, 1984 – धारा 19
विवाह विच्छेद – मानसिक क्रूरता – लंबी अवधि से पति पत्नी के बीच घरेलू असंगति – इस अवधि में पत्नी संताप, धमकी देती रही, डराती रही और सहवास से भी वंचित रखा – विवाद को विभिन्न चरणों पर सुलझाने का प्रयास किया गया परंतु सफलता प्राप्त नहीं – लंबे समय तक स्थायी विवाद अपने आप में मानसिक क्रूरता है।

Rajesh Bhoyale v. Mahadevi
Judgment dated 29.03.2022 passed by the High Court of Madhya Pradesh (Bench Gwalior) in First Appeal No. 1172 of 2019, reported in AIR 2022 MP 95 (DB)

Relevant extracts from the judgment:

From perusal of documents and allegations as contained in appeal, divorce application and affidavit, it appears that for a considerable period of time appellant and respondent shared domestic incompatibility and conduct of the respondent wherein she constantly for more than fifteen years or since 2004, caused irritation, threat, intimidation and avoiding cohabitation on the pretext or the other collectively entitled the appellant to get the decree of divorce.

When appellant specifically pleaded about the behavior of respondent for last more than 15 years and different stages of dispute, reconciliation and complaints from time to time were referred which indicate that both shared domestic incompatibility.

So far as mental cruelty is concerned judgment of the Apex Court in the case of ***Dr. N.G. Dastane v. Mrs. S. Dastane, AIR 1975 SC 1534*** is worth consideration. The relevant extract of the judgment is reproduced as under:

> "The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse,. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances."
>
> (1) The Court has to deal, not with an ideal husband and ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them over-look or gloss over mutual faults and failures. As said by Lord Reid in his speech in ***Gollins v. Gollins, (2) ALL ER 966***.
>
> "In matrimonial cases we are not concerned with the reasonable man, as we are in cases of negligence. We are dealing with this man and this woman and the fewer a prior assumptions we make bout them the better. In cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people."

The said judgment still holds the field and is source of wisdom time and again in respect of mental cruelty.

Cumulatively, it appears that Family Court erred in rejecting the application for divorce preferred by the appellant whereas divorce decree ought to have been passed in the case. Long standing dispute itself is a mental cruelty to a party who intends to live in domestic relationship and peace.

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247. INDIAN PENAL CODE, 1860 – Sections 120 (b), 406 and 420
CRIMINAL PROCEDURE CODE, 1973 – Section 200

(i) Criminal breach of trust, cheating and criminal conspiracy – Distinction between 'mere breach of contract' and 'cheating' – Complainant has to *prima facie* establish that the intention of accused was to cheat or to defraud from inception following which complainant suffered wrongful loss resulting in wrongful gain to accused.

(ii) Multiple complaints – Two complaints cannot be filed on the same cause of action at different places.

भारतीय दण्ड संहिता, 1860 – धाराएं 120(ख) 406 एवं 420
दण्ड प्रक्रिया संहिता, 1973 – धारा 200

(i) आपराधिक न्यासभंग, छल एवं आपराधिक षडयंत्र – संविदा के भंग तथा छल के बीच का अंतर – परिवादी को प्रथम दृष्टया प्रमाणित करना होगा कि आरोपी का आशय प्रारंभ से ही छल अथवा धोखा देने का था – जिसके फलस्वरूप परिवादी को सदोष हानि और आरोपी को सदोष लाभ प्राप्त हुआ।

(ii) बहुविध परिवाद – दो परिवाद एक ही वाद हेतुक के साथ विभिन्न स्थानों पर प्रस्तुत नहीं किये जा सकते।

Vijay Kumar Ghai & ors. v. The State of West Bengal & ors.
Judgment dated 22.03.2022 passed by the Supreme Court in Criminal Appeal No. 463 of 2022, reported in 2022 (2) Crimes 36 (SC)

Relevant extracts from the judgment:

A two-Judge bench of this Court in ***Union of India & ors. v. Cipla Ltd. & anr., (2017) 5 SCC 262*** has laid down factors which lead to the practice of forum shopping or choice of forum by the litigants which are as follows:

> "148. A classic example of forum shopping is when litigant approaches one Court for relief but does not get the desired relief and then approaches another Court for the same relief. This occurred in ***Rajiv Bhatia v. Govt. of NCT of Delhi and ors., (1999) 8 SCC 525***. The respondent-mother of a young child had filed a petition for a writ of habeas corpus in the Rajasthan High Court and apparently did not get the required relief from that Court. She then filed a petition in the Delhi High Court also for a writ of habeas corpus and obtained the necessary relief. Notwithstanding this, this Court did not interfere with the order passed by the Delhi High Court for the reason that this Court ascertained the views of the child and found that she did not want to even talk to her adoptive parents and therefore the custody of

the child granted by the Delhi High Court to the respondent-mother was not interfered with. The decision of this Court is on its own facts, even though it is a classic case of forum shopping."

Forum shopping has been termed as disreputable practice by the courts and has no sanction and paramountcy in law.

Having gone through the complaint/FIR and even the chargesheet, it cannot be said that the averments in the FIR and the allegations in the complaint against the appellant constitute an offence under Section 405 & 420 IPC, 1860. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making promise being absent, no offence under Section 420 IPC can be said to have been made out. In the instant case, there is no material to indicate that Appellants had any malafide intention against the Respondent which is clearly deductible from the MOU dated 20.08.2009 arrived between the parties.

The entire origin of the dispute emanates from an investment made by Respondent No. 2, amounting to ₹ 2.5 crores in lieu of which ₹ 2,50,000/- equity shares were issued in the year 25.03.2008, finally culminating into the MOU dated 20.08.2009. That based on this MOU respondent No.2 filed three complaints, two at Delhi and one at Kolkata. Thus, two simultaneous proceedings, arising from the same cause of action i.e. MOU dated 20.08.2009 were initiated by Respondent No. 2 amounting to an abuse of the process of the law which is barred. The details of the complaints are as under:

1. On 06.06.2012, Respondent No. 2 filed a private complaint u/s 156(3) Cr.P.C with CJM, Tis Hazari Court Delhi for registration of fir against the Appellants; which was withdrawn on 19.09.2016.
2. Complaint u/s 68 of the companies act r/w section 200 crpc filed before the CMM, Tis Hazari Courts at Delhi; which is pending.
3. On 28.03.2013, a complaint was made to the P.S Bowbazar, Central Division, Kolkata which was eventually registered as FIR No. 168 u/s 406, 420, 120B IPC, 1860.

Respondent No. 2 filed a complaint u/s 156(3) Cr.P.C on 06.06.2012, wherein his prayer for registration of an FIR was rejected vide order dated 28.02.2013 by the MM, Tis Hazari Court, immediately after which he filed his complaint on 28.03.2013 at P.S Bowbazar, Calcutta. The timeline of filing complaints clearly indicates the malafide intention of Respondent No. 2 which was to simply harass the petitioners so as to pressurise them into shelling out the investment made by Respondent No. 2.

Malafide intention of Respondent No. 2 is culled out from following facts:

1. At the time of filing of complaint dated 31.03.2013 at PS Bowbazar, Respondent No. 2 did not disclose about the filing of two complaints at Delhi against the appellants.
2. After filing of closure report by the IO Bowbazar PS dated 04.03.2014, Respondent No. 2 filed a protest petition before the CMM, Kolkata where the material fact of two complaints was completely suppressed.

In the complaint no. 306/1/2012 dated 06.06.2012 registered before the MM, Tis Hazari Court, New Delhi, Respondent No. 2/complainant stated that:

> "(c) That, thereafter Mr. Vijay Kumar Ghai and Mr. Mohit Ghai started visiting the office of the complainant company every now and then in order to persuade the complainant company to invest in their company. It is pertinent to mention herein that they stated the complainant company that the retail business of the apparels under the PRIKNIT brand through a network of exclusive brank outlets was witnessing a growth."
>
> 10. That it is submitted that this court has jurisdiction to try and entertain the matter as the complainant company is situated within the jurisdiction of this court. Moreover, all the business activities/transactions are being regulated and controlled at Delhi. Furthermore, the complaints filed by the complainant company are lying before the concerned police station, which also falls within the jurisdiction of this Hon'ble Court."

This clearly demonstrates that the jurisdiction has been created in Delhi as the Appellants used to visit Respondent No. 2 in order to persuade them to invest in their company and special emphasis can be laid on the fact that Respondent No. 2 himself accepted/agreed to the fact that all the transactions took place in Delhi. Therefore, registering a complaint in Kolkata is way of harassing the appellant as a complaint has already been filed in Delhi with all the necessary facts, apart from the jurisdictional issue at Kolkata.

The MM, Tis Hazari while dismissing the application under Section 156(3) Cr.P.C categorically observed that:

> "....In case the complainant had suffered any loss on account of the same, the necessary civil remedy lied in the form of damages, compensation and recovery. In case of breach of any term or condition of the contract, the necessary proceedings for injunction or specific performance can be initiated. But that by itself would not mean that the accused had misappropriated the amount of

> complainant for a year. There is nothing to show any conversion or misappropriation of money as the shares had been allotted subsequently. The parties have themselves agreed on clauses as to failure to honor their commitments providing for levy of interest on delayed payments.
>
> There is no *prima facie* element of deception or dishonest inducement or misappropriation or conversion or entrustment or forgery in this case.
>
> There is no requirement of police interference in this case. Even otherwise, the evidence in the present case is well within the reach of the complainant itself and it is well aware of the identity of accused persons and no investigation of technical nature is required which could warrant police intervention. The necessary record is withing the possession of the complainant itself and the same can always be proved on record by examining the witnesses. There is no necessity of any custodial interrogation at this stage and nothing identifiable is to be recovered from anyone.
>
> In these circumstances, I do not deem it appropriate to exercise my discretion and get the FIR registered against the accused persons, especially when there is no necessity for police interference. The present application under Section 156(3) Cr.P.C is thus dismissed."

It is pertinent to mention that Application under Section 156(3) Cr.P.C filed before the MM, Tis Hazari Court, Delhi was dismissed and there was no further challenge against the same. Instead, Respondent No. 2 chose to file a complaint with the same cause of action in Bowbazar PS, Calcutta and to further clarify, the Complaint filed in Bowbazar PS was the exact reproduction of the complaint filed before Tis Hazari Court, New Delhi with the only difference or what may be termed as 'Jurisdictional improvement' being in point (c) of the facts.

The order of the High Court is seriously flawed due to the fact that in its interim order dated 24.03.2017, it was observed that the contentions put forth by the Appellant vis-à-vis two complaints being filed on the same cause of action at different places but the impugned order overlooks the said aspect and there was no finding on that issue. At the same time, in order to attract the ingredients of Section of 406 and 420 IPC it is imperative on the part of the complainant to prima facie establish that there was an intention on part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore it has to be prima facie established that due to such alleged act of cheating the complainant (Respondent No. 2 herein) had suffered a wrongful loss and the same had resulted in wrongful gain for the accused (appellant herein). In absence of these elements, no proceeding is permissible in the eyes

of law with regard to the commission of the offence punishable u/s 420 IPC. It is apparent that the complaint was lodged at a very belated stage (as the entire transaction took place from January 2008 to August 2009, yet the complaint has been filed in March 2013 i.e., after a delay of almost 4 years) with the objective of causing harassment to the petitioner and is bereft of any truth whatsoever.

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248. INDIAN PENAL CODE, 1860 – Sections 148, 149 and 302
CRIMINAL PROCEDURE CODE, 1973 – Section 464
EVIDENCE ACT, 1872 – Section 32

(i) Defective charge – Effect – Mere non-framing of charge u/s 149 of IPC against accused would not vitiate the conviction in absence of any prejudice caused to him.

(ii) Dying declaration – Reliability – Mere non-recovery of the weapon used in committing offence cannot be a ground, for not relying upon dying declaration which is recorded before executive Magistrate and proved by prosecution.

भारतीय दण्ड संहिता, 1860 – धाराएं 148, 149 एवं 302

दण्ड प्रक्रिया संहिता, 1973 – धारा 464

साक्ष्य अधिनियम, 1872 – धारा 32

(i) त्रुटिपूर्ण आरोप – प्रभाव – केवल धारा 149 भा.दं.सं. का आरोप विरचित न किये जाने के आधार पर दोषसिद्धि दूषित नहीं हो जाती है, जब तक यह दर्शित न हो कि अभियुक्त के हितों पर प्रतिकूल प्रभाव पड़ा है।

(ii) मृत्युकालिक कथन – विश्वसनीयता – कार्यपालक दण्डाधिकारी के समक्ष अभिलिखित एवं अभियोजन द्वारा प्रमाणित मृत्युकालिक कथन को केवल इस आधार पर अस्वीकार नहीं किया जा सकता कि अपराध में प्रयुक्त शस्त्र जप्त नहीं हुआ।

State of Uttar Pradesh v. Subhash @ Pappu

Judgment dated 01.04.2022 passed by the Supreme Court in Criminal Appeal No. 436 of 2022, reported in 2022 (2) Crimes 86 (SC)

Relevant extracts from the judgment:

In the case of ***Annareddy Sambasiva Reddy v. State of Andhra Pradesh, (2009) 12 SCC 546***, it was submitted on behalf of the accused that in the absence of a specific charge under Section 149, accused persons cannot be convicted under Section 302 r/w Section 149 as Section 149 creates a distinct and separate offence. This Court negated the said submission and observed and held that mere non-framing of a charge under Section 149 on face of charges framed against appellant would not vitiate the conviction in the absence of any prejudice caused to them. Considering Section 464 Cr.P.C. it is observed and held that mere defect in language, or in narration or in the form of charge would not

render conviction unsustainable, provided the accused is not prejudiced thereby. It is further observed that if ingredients of the section are obvious or implicit in the charge framed then conviction in regard thereto can be sustained, irrespective of the fact that said section has not been mentioned.

Applying the law laid down by this Court in the ***Fainul Khan v. State of Jharkhand, (2019) 9 SCC 549; Annareddy Sambasiva Reddy (supra); Alister Anthony Pareira v. State of Maharashtra, (2012) 2 SCC 648 Rohtas v. State of Haryana, (2020) 14 SCALE 14*** and ***Laxman v. State of Maharashtra, (2002) 6 SCC*** decisions of to the facts of the case on hand and on noting the contents of the charges framed against the accused on 04.05.1983 and on 06.10.1983 it shows that the ingredients of Section 149 IPC are satisfied. Therefore, it cannot be said that the accused is prejudiced by non-mention of Section 149 IPC in the charge.

Now, so far as the submission on behalf of the accused that as the weapon – hockey stick alleged to have been used by the accused is not recovered and therefore he may not be convicted is concerned, the aforesaid has no substance. Merely because the weapon used is not recovered cannot be a ground not to rely upon the dying declaration, which was recorded before the Executive Magistrate, which has been proved by the prosecution.

Now, the question whether the accused can be convicted for the offence punishable under Section 302 with the aid of Section 149 IPC is concerned, it is true that the prosecution has not established and proved, who actually inflicted the knife blow. However, from the medical evidence on record and even from the deposition of the doctors, it has been established and proved by the prosecution that the deceased sustained an injury by knife blow, which is inflicted by one of the six to seven persons, who participated in commission of the offence. From the dying declaration it has been established and proved that the respondent – accused Subhash @ Pappu was part of the unlawful assembly, who participated in the commission of the offence. Pappu s/o Baijnath – respondent herein was specifically named by the deceased in the dying declaration. Therefore, even if the role attributed to the respondent-accused was that of hitting the deceased by a hockey stick, in that case also for the act of other persons, who were part of the unlawful assembly of inflicting the knife blow, the respondent accused can be held guilty of having committed the murder of deceased Bengali, with the aid of Section 149 IPC.

Now, the next question, which is posed for consideration of this Court is whether respondent -accused can be convicted for the offence punishable under Section 302 IPC r/w/s 149 IPC when the deceased died due to septicemia after a period of thirty days.

Considering the decision of this Court in the case of ***Sanjay v. State of Maharashtra, (2016) 3 SCC 62***, the conviction of the respondent accused for the offence punishable under Section 302 r/w Section 149 IPC is not warranted and the case may fall within Section 304 Part I of the IPC.

Now, so far as the conviction of the respondent accused for the offence under Section 148 IPC is concerned, it is the case on behalf of the respondent accused that in the facts and circumstance of the case, Section 148 shall not be attracted as the number of accused chargesheeted/charged/tried were less than five in number, the same has no substance. It to be noted that right from very beginning and even so stated in the dying declaration six to seven persons attacked the deceased. Therefore, involvement of six to seven persons in commission of the offence has been established and proved. Merely because three persons were chargesheeted/charged/tried and even out of three tried, two persons came to be acquitted cannot be a ground to not to convict the respondent accused under Section 148 IPC.

It is the submission on behalf of the accused that the weapon alleged to have been used by the respondent accused was said to be a hockey stick, which cannot be said to be a deadly weapon and therefore, the respondent – accused cannot be punishable for the offence under Section 148 also has no substance. As per Section 148 of IPC, whoever is guilty of rioting, being armed with a deadly weapon or with anything which used as a weapon of offence, is likely to cause death, can be punished under that Section. The term "rioting" is defined under Section 146 IPC. As per Section 146, whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

In the present case, six to seven persons were part of the unlawful assembly and they used force or violence and one of them used a deadly weapon, namely, knife and therefore, being a part of the unlawful assembly, the respondent accused can be held to be guilty for the offence of rioting and for the use of force/violence as a member of such an unlawful assembly. Therefore, the respondent was rightly convicted by the Trial Court for the offence under Section 148 IPC.

In view of the above and for the reasons stated above, present appeal succeeds in part. The impugned judgment and order passed by the High Court acquitting the accused for the offence punishable under Section 302 IPC is hereby quashed and set aside. The respondent accused is held guilty for the offence under Section 304 Part I r/w Section 149 IPC and for the offence under Section 148 IPC.

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249. INDIAN PENAL CODE, 1860 – Sections 148 and 302
EVIDENCE ACT, 1872 – Section 3

(i) Oral testimony of eye-witnesses – Oral testimony may be classified into three categories namely; (1) wholly reliable (2) wholly unreliable (3) neither wholly reliable nor wholly unreliable – Only in third category, court has to circumspect and look for corroboration in material particulars by reliable testimony direct or circumstantial.

(ii) Sole testimony – Informant eye-witness was not present at time of incident – Informed by other witness about deceased lying dead on spot – Found "wholly unreliable" witness – Medical evidence not corroborated with eye-witness – Prosecution failed to prove case beyond reasonable doubt – Accused entitled to benefit of doubt.

भारतीय दण्ड संहिता, 1860 – धाराएं 148 एवं 302

साक्ष्य अधिनियम, 1872 – धारा 3

(i) चक्षूदर्शी साक्षी द्वारा दी गई मौखिक साक्ष्य – मौखिक साक्ष्य को तीन श्रेणियों में बांटा जा सकता है; (1) पूर्ण विश्वसनीय (2) पूर्ण अविश्वसनीय (3) न तो पूर्ण रूप से विश्वसनीय और न ही अविश्वसनीय – केवल तृतीय श्रेणी के मामले में न्यायालय को सतर्क रहना आवश्यक है और विश्वसनीय प्रत्यक्ष या परिस्थितिजन्य साक्ष्य से संपुष्टि का अवलोकन करना है।

(ii) एकल साक्ष्य – घटना के समय सूचनाकर्ता चक्षुदर्शी साक्षी मौजूद नहीं – अन्य साक्षी द्वारा मृतक का घटना स्थल पर मृत लेटा होना बताया गया – पूर्ण रूप से अविश्वसनीय साक्षी पाया गया – चिकित्सीय साक्ष्य प्रत्यक्ष साक्ष्य से मेल नहीं खाती – अभियोजन मामले को युक्तियुक्त संदेह से परे प्रमाणित करने में असफल – अभियुक्त संदेह का लाभ प्राप्त करने का अधिकारी।

Mahendra Singh and ors v. State of M.P.

Judgment dated 03.06.2022 passed by the Supreme Court in Criminal Appeal No. 764 of 2021, reported in AIR 2022 SC 2631

Relevant extracts from the judgment:

This Court in its celebrated judgment in the case of ***Vadivelu Thevar v. The State of Madras, AIR 1957 SC 614***:

> ".....Hence, in our opinion, it is a sound and well-established Rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:
>
> (1) Wholly reliable.
>
> (2) Wholly unreliable.
>
> (3) Neither wholly reliable nor wholly unreliable.
>
> In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court

has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial."

It could thus be seen that this Court has found that witnesses are of three types, viz., (a) wholly reliable; (b) wholly unreliable; and (c) neither wholly reliable nor wholly unreliable. When the witness is "wholly reliable", the Court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the Court finds that the witness is "wholly unreliable", there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness. It is only in the third category of witnesses that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

The High Court has found the testimony of Amol Singh (P.W.6) to be in the third category and has upheld the conviction seeking corroboration from the Post-Mortem Report conducted by Dr. S.S. Bhargava (P.W.2). We will therefore have to consider as to in which category the evidence/testimony of Amol Singh (P.W.6) would fall.

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250. INDIAN PENAL CODE, 1860 – Section 300
EVIDENCE ACT, 1872 – Sections 3, 15, 24 and 45

(i) Circumstantial evidence – Last seen theory – Big time gap of 10 days between the day when accused was last seen with deceased and finding of dead body – No other clinching and cogent evidence produced – Absence of other links in chain of circumstances – Accused cannot be convicted solely on this ground.

(ii) Extra-judicial confession – Is a weak kind of evidence – Should be believed only when it inspires confidence or fully corroborated by other evidence of clinching nature.

भारतीय दण्ड संहिता, 1860 – धारा 300
साक्ष्य अधिनियम, 1872 – धाराएं 3, 15, 24 एवं 45

(i) परिस्थितिजन्य साक्ष्य – अंतिम बार साथ देखे जाने का सिद्धांत – शव बरामद होने से 10 दिन पूर्व अंतिम बार आरोपी को अभियुक्त के साथ देखा गया – इसके अतिरिक्त कोई निश्चित एवं ठोस साक्ष्य प्रस्तुत नहीं – परिस्थितियों की श्रृंखला में अन्य कोई महत्वपूर्ण कड़ी मौजूद नहीं – केवल इस आधार पर दोषसिद्धि नहीं की जा सकती।

(ii) न्यायिकेत्तर संस्वीकृति – यह कमजोर साक्ष्य होती है – जिसे केवल तब मानना चाहिए जब पूरी तरह विश्वास योग्य हो या अन्य पुष्टिकारक साक्ष्य प्रस्तुत हो।

Chandrapal v. State of Chhattishgarh (earlier M.P.)

Judgment dated 27.05.2022 passed by the Supreme Court in Criminal Appeal No. 378 of 2015, reported in AIR 2022 SC 2542

Relevant extracts from the judgment:

As per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession. However, this Court has consistently held that an extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession. As held in case of ***State of M.P. Through CBI and ors. v. Paltan Mallah and ors., (2005) 3 SCC 169***, the extra judicial confession made by the co-Accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused.

In ***Sahadevan and anr. v. State of Tamil Nadu, (2012) 6 SCC 403***, it was observed in para 14 as under:

> "14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration".
>
> The said ratio was also reiterated and followed by this Court in cases of ***Jagroop Singh v. State of Punjab, (2012) 11 SCC 768, S.K. Yusuf v. State of West Bengal, (2011) 11 SCC 754*** and ***Pancho v. State of Haryana, (2011) 10 SCC 165***, wherein it has been specifically laid down that the extra judicial confession is a weak evidence by itself and it has to be examined by the court with greater care and caution. It should be truthful and should inspire confidence. An extra judicial confession attains greater credibility and evidentiary

> value if it is supported by chain of cogent circumstances and is further corroborated by other prosecution evidence. In the instant case it is true that the co-Accused Videshi had allegedly made self-inculpatory extra judicial confession before the PW-4 Bhola Singh, and had made extra judicial confession before the other witnesses i.e., PW-5 Chandrashekhar, PW-6 Baran Singh Thakur and PW-7 Dukaluram stating, inter alia, that the other three Accused i.e., Bhagirathi, Chandrapal and Mangal Singh had committed the murder and he (i.e. Videshi) was asked to assist them in disposing the dead bodies and concealing the evidence. However, the High Court, considering the inconsistency between the said two extra judicial confession made by the co-Accused Videshi, did not find it safe to convict the other Accused i.e., Bhagirathi, Mangal Singh and Videshi himself, and the High Court surprisingly considered the said extra judicial confession made by Videshi as an incriminating circumstance against the Appellant Chandrapal for convicting him for the offences charged against him. In our opinion if such weak piece of evidence of the co-Accused Videshi was not duly proved or found trustworthy for holding the other co-Accused guilty of committing murder of the deceased Brinda and Kanhaiya, the High Court could not have used the said evidence against the present Appellant for the purpose of holding him guilty for the alleged offence.

In this regard it would be also relevant to regurgitate the law laid down by this Court with regard to the theory of "Last seen together".

In case of ***Bodhraj and ors. v. State of Jammu and Kashmir, (2002) 8 SCC 45***, this Court held in para 31 that:

> 31. The last-seen theory comes into play where the time-gap between the point of time when the Accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the Accused being the author of the crime becomes impossible....

In ***Jaswant Gir v. State of Punjab, (2005) 12 SCC 438***, this Court held that in absence of any other links in the chain of circumstantial evidence, the accused cannot be convicted solely on the basis of "Last seen together", even if version of the prosecution witness in this regard is believed.

In ***Arjun Marik and ors. v. State of Bihar, 1994 Supp (2) SCC 372***, It was observed that the only circumstance of last seen will not complete the chain of circumstances

to record the finding that it is consistent only with the hypothesis of the guilt of the accused, and therefore no conviction on that basis alone can be founded.

As stated hereinabove, in order to convict an accused under Section 302 Indian Penal Code the first and foremost aspect to be proved by prosecution is the factum of homicidal death. If the evidence of prosecution falls short of proof of homicidal death of the deceased, and if the possibility of suicidal death could not be ruled out, in the opinion of this Court, the Appellant-Accused could not have been convicted merely on the basis of the theory of "Last seen together".

Ergo, having regard to the totality of evidence on record, the court is of the opinion that the High Court had committed gross error in convicting the Appellant-Accused for the alleged charge of 302 read with 34 of Indian Penal Code, relying upon a very weak kind of evidence of extra judicial confession allegedly made by the co-Accused Videshi, and relying upon the theory of "Last seen together" propounded by the PW-1 Dhansingh. It is also significant to note that no evidence worth the name as to how and by whom the deceased Brinda was allegedly murdered was produced by the prosecution. Under the circumstances, it is required to be held that the prosecution had miserably failed to bring home the charges levelled against the Appellant-Accused beyond reasonable doubt. The suspicion howsoever strong cannot take place of proof.

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251. INDIAN PENAL CODE, 1860 – Sections 300, 376-A and 376(2)(i)
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Section 5
CRIMINAL PROCEDURE CODE, 1973 – Section 53-A
EVIDENCE ACT, 1872 – Sections 15, 27 and 45

(i) Expert opinion – Appreciation of – Like any other evidence, expert opinion also requires proper appreciation by the Court – Post mortem report entitled to get greater weightage.

(ii) Omission to carry DNA profiling – Effect – Lapse by itself however cannot be permitted to decide the fate of trial – Despite such flaw, Court is duty-bound to determine if material evidence is available on record to prove prosecution case.

(iii) Circumstantial evidence – Recovery of dead body – Dead body which was in a concealed condition is recovered from an unused and dilapidated building at the instance of accused – Recovery is a crucial incriminating circumstance and additional link to chain of circumstances.

(iv) Murder or death by negligence – Injury of deceased – Accused pressed the neck of the deceased very hard – Victim aged only 8 years – Cause of death due to asphyxia – Intention is subjective element, every sane person must be presumed to know the result of such action.

भारतीय दण्ड संहिता, 1860 – धाराएं 300, 376–क एवं 376(2)(i)
लैंगिक अपराध से बालकों का संरक्षण अधिनियम, 2012 – धारा 5
दण्ड प्रक्रिया संहिता, 1973 – धारा 53–क
साक्ष्य अधिनियम, 1872 – धाराएं 15, 27 एवं 45

(i) विशेषज्ञ की राय – उसी प्रकार मूल्यांकन किया जाना चाहिये जैसा अन्य किसी साक्ष्य का किया जाता है – शव परीक्षण प्रतिवेदन को अधिक महत्व दिया जाना चाहिए।

(ii) डीएनए प्रोफाईलिंग में लोप – प्रभाव – लोप के आधार पर प्रकरण के भाग्य का फैसला करने की अनुमति नहीं दी जा सकती – इस कमी के बावजूद न्यायालय यह देखने के लिये बाध्य है कि क्या अभियोजन ने प्रकरण सिद्ध करने के लिए पर्याप्त साक्ष्य प्रस्तुत की है।

(iii) परिस्थितिजन्य साक्ष्य – शव की बरामदगी – अभियुक्त के प्रकटीकरण कथन के आधार पर अप्रयुक्त और जीर्णशीर्ण इमारत में गुप्त स्थान से शव बरामद किया गया – जप्ती अपराध में संलिप्त करने वाली एक महत्वपूर्ण परिस्थिति एवं परिस्थितिजन्य साक्ष्य की श्रृंखला की एक अतिरिक्त कड़ी है।

(iv) हत्या या उपेक्षा से मृत्यु – मृतिका की गर्दन को आरोपी द्वारा बलपूर्वक दबाया – मृतिका की आयु 8 वर्ष – मृत्यु का कारण दम घुटना – आशय आत्मनिष्ठ तत्व है, कोई भी समान्य प्रज्ञावान व्यक्ति परिणाम जानता है।

Veerendra v. State of Madhya Pradesh

Judgment dated 13.05.2022 passed by the Supreme Court in Criminal Appeal No. 5 of 2018, reported in AIR 2022 SC 2396 (Three Judge Bench)

Relevant extracts from the judgment:

In the light of the decisions referred in ***State of Haryana v. Bhagirath, (1999) 5 SCC 96, Mayur Panabhai Shah v. State of Gujarat (1982) 2 SCC 396 and W.B. v. Mir Mohammed Omar and ors., (2000) 8 SCC 382*** please check the lengh of judgment it can only be said that like any other evidence, the expert opinion also requires proper appreciation at the hands of the Court, though the opinion of the doctor given with the support of postmortem report carries great weight, for arriving at the rightful conclusion as to question whether the death involved is homicidal or not.

Evidently, the three Judge Bench in ***Sunil v. State of Madhya Pradesh, (2017) 4 SCC 393*** considered ***Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130*** carrying such observations and finding before coming to the conclusion that 'a positive result of the DNA test would constitute clinching evidence against the Accused if, however, the result of the test is in the negative i.e., favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered'.

In view of the nature of the provision under Section 53A Code of Criminal Procedure and the decisions referred above we are also of the considered view that the lapse or omission (purposeful or otherwise) to carry out DNA profiling, by itself, cannot be permitted to decide the fate of a trial for the offence of rape especially, when it is combined with the commission of the offence of murder as in case of acquittal only on account of such a flaw or defect in the investigation the cause of criminal justice would become the victim. The upshot of this discussion is that even if such a flaw had occurred in the investigation in a given case, the Court has still a duty to consider whether the materials and evidence available on record before it, is enough and cogent to prove the case of the prosecution. In a case which rests on circumstantial evidence, the Court has to consider whether, despite such a lapse, the various links in the chain of circumstances forms a complete chain pointing to the guilt of the accused alone in exclusion of all hypothesis of innocence in his favour.

As a matter of fact, the decision in ***Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2019) 12 SCC 460***, would also fortify our view. The Bench was considering review petitions in Criminal Appeal Nos. 145-146 of 2011. That was a case involving rape and murder of a three (3) year old girl where the case was held as proved on the basis of circumstantial evidence. So also, in that case DNA evidence was not produced before the Court, in spite of samples being taken. Obviously, taking note of the unerring nature of the circumstantial evidence pointing only to the guilt of the accused and the other circumstances the trial Court convicted and awarded him capital punishment. The High Court confirmed not only the conviction but also the award of capital sentence. Originally, this Court dismissed the appeals and thereafter, the dismissed review petitions were restored for consideration solely in view of a Constitution Bench decision of this Court in ***Mohd. Arif v. Supreme Court of India, (2014) 9 SCC 737***. In paragraph 79, this Court in Rajendra Pralhadrao Wasnik's (Supra) case held therein thus:

> ''Insofar as the present petition is concerned, we are of opinion that for the purposes of sentencing, the Sessions Judge, the High Court as well as this Court did not take into consideration the probability of reformation, rehabilitation and social re-integration of the Appellant into society. Indeed, no material or evidence was placed before the courts to arrive at any conclusion in this regard one way or the other and for whatever it is worth on the facts of this case. The prosecution was remiss in not producing the available DNA evidence and the failure to produce material evidence must lead to an adverse presumption against the prosecution and in favour of the Appellant for the purposes of sentencing. The Trial Court was also in error in taking into consideration, for the purposes of sentencing, the pendency of two similar cases against the Appellant which

it could not, in law, consider. However, we also cannot overlook subsequent developments with regard to the two (actually three) similar cases against the Appellant.''

In the light of the above referred decisions, the contentions of the Appellant founded on the factum of non-holding of DNA profiling and the provision Under Section 53A, is only to be repelled. As held in ***Sunil's case*** (supra), a positive result of DNA test would constitute clinching evidence against the Accused. But, a negative result of DNA test or DNA profiling having not been done would not and could not, for that sole reason, result in failure of prosecution case. So much so, even in such circumstances, the Court has a duty to weigh the other materials and evidence on record to come to the conclusion on guilt or otherwise of the Appellant herein and that exactly what was done by the trial Court and then by the High Court, in the instant case.

It was on 20.09.2014 at about 04:00 pm that the Appellant was arrested. Ext. P4 is his arrest memo. While in custody he gave Ext. P5-disclosure statement regarding the concealment of the dead body of the deceased as also her dresses. The factum of the Appellant having made such a disclosure statement as also their subsequent recovery is proved through PW-2. PW-19 deposed that he had recorded Ext. P5 memo. PW-16 Jitendra Nagaich, the then Station House Officer, Police Station, Dabra, deposed to the effect that along with the Appellant they proceeded to the place of occurrence, as shown by the Appellant and from there the dead body of the victim, concealed beneath the gunny bags, was recovered at the instance of the appellant. They would also depose that the body was seen in disrobed condition. The dresses of the deceased were recovered from the place of occurrence itself. The oral evidence of PW2 and PW16 that the corpse of the deceased girl and her dresses were recovered from the said place of occurrence, at the instance of the Appellant, gained corroboration from the oral testimonies of PW-5 Mr. Sonish Vasistha, a journalist and PW-11 Mr. Deepak Shukla, who was the then Tehsildar and Executive Magistrate of the locality.

In the decision in ***Govindaraju @ Govinda v. State, (2012) 4 SCC 722*** this Court held that there would be nothing wrong in relying on the testimony of police officers if their evidence is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence. In the light of the fact that nothing was brought out to discredit the testimonies of PW-16 and PW-19 and their oral testi-monies gained corroboration from the testimonies from PWs 2, 5 and 11 it can only be held that the aforesaid aspects were rightly appreciated by the Courts below and taken as circumstances against the appellant.

The recovery of the dead body, which was in a concealed condition from an unused and dilapidated building based on the disclosure statement of an Accused is a crucial incriminating circumstance. In the decision in ***Jaharlal Das v. State of Orissa, AIR 1991 SC 1388***, this Court held therein that the discovery of the body at the instance of the accused is a crucial circumstance, in a case

resting on circumstantial evidence. This position was iterated in ***Mohd. Mannan @ Abdul Mannan v. State of Bihar, (2011) 5 SCC 317***.

The question, now to be considered is whether the homicidal death of the victim amounts to murder or whether it falls either under Section 304(1) or 304(2) as contended by the appellant. The impugned judgment would reveal that the High Court concurred with the finding of the trial Court that the homicidal death of the victim amounts to murder. The right approach in cases of culpable homicide is to first find out whether the offence falls under any of the four clauses viz., clauses firstly to fourthly under Section 300 Indian Penal Code. If it is so found, then the Court has to see whether the case is covered by any one of the five exceptions to Section 300 Indian Penal Code, which would make a culpable homicide 'not amounting to murder'. The offence, if proved, to fall under one of the said exceptions would be punishable under Section 304, either under Part 1 or Part 2 as the case may be, or otherwise it would be murder punishable under Section 302 Indian Penal Code. In the case on hand both the trial Court and the High Court, had analysed evidence on record and found that the appellant had pressed the neck of the victim so hard unmindful of the fact that she was aged only 8 years and caused internal hemorrhage. The cause of death was asphyxia due to throttling. The nature of the injuries found on the neck of the deceased would reveal the pressure exerted by the appellant on the neck. The fact that the victim was a hapless girl aged only 8 years has to be taken into account while considering the question. Intention is a subjective element and every sane person must be presumed to intend the result that his action normally produces. Hence, constriction of the neck of a girl child aged about 8 years by fingers or palm by a young man aged 25 years, with such force to cause the injuries mentioned hereinbefore cannot be said to be sans intention to take her life. If the said act was subsequent to commission of rape in the diabolic and gruesome manner revealed from the grave injuries sustained on her private parts, causing death alone can be inferred from the circumstances. If the act of constricting the neck with such force resulting in the stated injuries preceded the offence of rape, then, the manner by which she was ravished should be taken only as an act done knowingly that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death. Thus, viewing in any angle the homicidal death would fall either Clause 1 or Clause 4 of Section 300 Indian Penal Code. A feeble attempt was made by the Appellant to contend that the Courts had erred in finding the appellant guilty under Section 300 Indian Penal Code, punishable under 302 Indian Penal Code and that if at all he has to be convicted for causing death of the victim it ought to have been under Section 304 Indian Penal Code. It is to be noted, once it is found that the act falls under any one of the 4 clauses under Section 300 Indian Penal Code, to bring it out of its purview it must be proved that it falls under any one of the five exceptions to Section 300 Indian Penal Code. There is nothing on record and no contention was also raised by the appellant, with support of material, to show that any one of the said five exceptions attracts in this case. In fact, the only contention urged

and also taken in the written submission by the appellant is that the deceased had died due to an injury on her neck which had occurred quite naturally during the commission of the rape. We have no hesitation to hold that the said contention is palpably untenable and at any rate, not at all sufficient to bring the offence under any one of the five exceptions to Section 300 Indian Penal Code. The long and short of the discussion is there is no reason to interfere with the finding of the Trial Court, which was confirmed by the High Court, that the Appellant is guilty of committing murder punishable under Section 302 Indian Penal Code. Thus, on a careful examination of the matter in its entirety, we do not find any perversity or manifest illegality with respect to the concurrent finding of the trial Court and the High Court that the appellant herein had committed offences punishable under Section 302 Indian Penal Code, 376(2)(i) Indian Penal Code and Section 6 of the POCSO Act.

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252. INDIAN PENAL CODE, 1860 – Sections 307 and 324
CRIMINAL PROCEDURE CODE, 1973 – Section 360
Sentencing policy – Duty of court – Twin objective of sentencing is deterrence and correction – Accused did not challenge the conviction and prayed for reduction in sentence – Without assigning further reasons and without adverting to relevant factors same is considered – Held, inadequate and inappropriate sentence cannot be imposed only on the ground that long period has elapsed.

भारतीय दण्ड संहिता, 1860 – धाराएं 307 एवं 324
दण्ड प्रक्रिया संहिता, 1973 – धारा 360
दण्डनीति – न्यायालय के कर्तव्य – दण्डादेश का आशय निवारण एवं सुधार है – अभियुक्त द्वारा दोषसिद्धि को चुनौती नहीं दी गई केवल दण्डादेश कम करने की प्रार्थना की, जिसे स्वीकार किया गया – सुसंगत कारको एवं कारणों पर विचार किये बिना भुगताई गई सजा पर मुक्त किया गया – अभिनिर्धारित, केवल इस आधार पर कि लंबी अवधि व्यतीत हो चुकी है, अनुपयुक्त और अपर्याप्त दण्डादेश नहीं दिया जा सकता।

State of Rajasthan v. Banwari Lal and anr.
Judgment dated 08.04.2022 passed by the Supreme Court in Criminal Appeal No. 579 of 2022, reported in 2022 (2) Crimes 143 (SC)

Relevant extracts from the judgment:

Merely because a long period has lapsed by the time the appeal is decided cannot be a ground to award the punishment which is disproportionate and inadequate. The High Court has not at all adverted to the relevant factors which were required to be while imposing appropriate/suitable punishment/sentence. As observed hereinabove, the High Court has dealt with and disposed of the appeal in a most cavalier manner. The High Court has disposed of the appeal

by adopting shortcuts. The manner in which the High Court has dealt with and disposed of the appeal is highly deprecated. We have come across a number of judgments of different High Courts and it is found that in many cases the criminal appeals are disposed of in a cursory manner and by adopting truncated methods. In some cases, the convictions under Section 302 IPC are converted to Section 304 Part I or Section 304 Part II IPC without assigning any adequate reasons and solely recording submissions on behalf of the accused that their conviction may be altered to Section 304 Part I or 304 Part II IPC. In cases, like the present one, the accused did not press any challenge to the conviction and prayed for reduction in sentence and the same is considered and an inadequate and inappropriate sentence has been imposed without assigning any further reasons and without adverting to the relevant factors which are required to be considered while imposing appropriate punishment/sentence. We deprecate such practice of disposing of criminal appeals by adopting shortcuts. Therefore, the impugned judgment and order passed by the High Court reducing the sentence to the period already undergone (44 days) from three years rigorous imprisonment imposed by the learned trial Court in respect of accused Banwari Lal is absolutely unsustainable and the same deserves to be quashed and set aside.

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253. INDIAN PENAL CODE, 1860 – Section 324
ARMS ACT, 1959 – Section 27
EVIDENCE ACT, 1872 – Section 3

(i) Voluntarily causing hurt by dangerous weapons or means – Accused armed with guns, fired at victim, causing injuries on non-vital parts of the body – Medical evidence proved the injuries could have been caused in the alleged manner – Only contradictions in material particulars and not minor contradictions can be ground to discredit the testimony of the witnesses.

(ii) Injury caused by fire arm which is a dangerous weapon – Accused cannot escape from punishment for using arms prescribed u/s 27 of the Arms Act.

भारतीय दण्ड संहिता, 1860 – धारा 324

आयुध अधिनियम, 1959 – धारा 27

साक्ष्य अधिनियम, 1872 – धारा 3

(i) खतरनाक आयुधों या साधनों द्वारा स्वेच्छया उपहति – आरोपी द्वारा गोली चलाये जाने से आहत के शरीर के मर्म भाग से भिन्न स्थान पर चोट कारित – चोट इस रूप में कारित की जा सकती है यह चिकित्सीय साक्ष्य से प्रमाणित – केवल तात्विक विरोधाभास के आधार पर न कि मामूली विरोधाभास के आधार पर साक्षी के कथनों पर अविश्वास किया जा सकता है।

(ii) उपहति अग्नायुध से कारित, जो खतरनाक आयुध है – आरोपी अग्नायुध के उपयोग के फलस्वरूप दिये जाने वाले दण्ड से बच नहीं सकता – दण्ड धारा 27 आयुध अधिनियम में वर्णित है।

Anuj Singh alias Ramanuj Singh alias Seth Singh v. State of Bihar

Judgment dated 22.04.2022 passed by the Supreme Court in Criminal Appeal No. 150 of 2020, reported in AIR 2022 SC 2817 (Three Judge Bench)

Relevant extracts from the judgment:

A bare perusal of the deposition of the witnesses prove that the two appellants, Anuj Singh and Manoj Singh were present at the place of occurrence with a firearm and injury has been caused to the informant PW-6 due to the act of the Appellants. The defence of plea of alibi taken by appellant Manoj Singh that he was posted at Islampur Block does not inspire confidence as there is no attendance register maintained by the office and the prosecution witness has categorically stated that the appellant, Manoj Singh was present at the place of occurrence.

It is not disputed that there are minor contradictions with respect to the time of the occurrence or injuries attributed on hand or foot but the constant narrative of the witnesses is that the appellants were present at the place of occurrence armed with guns and they caused the injury on informant PW-6. However, the testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omission as observed by this Court in ***Narayan Chetanram Chaudhary and anr. v. State of Maharashtra, (2000) 8 SCC 457***. This Court while considering the issue of contradictions in the testimony, while appreciating the evidence in a criminal trial, held that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses.

The evidentiary value of a medical witness is very crucial to corroborate the case of prosecution and it is not merely a check upon testimony of eyewitnesses, it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. It has been reiterated by this Court that the medical evidence adduced by the prosecution has great corroborative value as it proves that the injuries could have been caused in the manner alleged.

Once the charge against the appellants under Section 324 IPC of voluntarily causing injuries by firearm, which is a dangerous weapon stands established, they cannot escape the punishment for using arms prescribed by Section 27 of the Arms Act.

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254. INDIAN PENAL CODE, 1860 – Sections 379 r/w/s 34

Benefit of probation – Theft – Court can grant benefit of probation to accused, if there are no criminal antecedents as case squarely comes under the purview of circumstances mentioned in sections 3 and 4 of the Probation of Offenders Act.

भारतीय दण्ड संहिता, 1860 – धारा 379 सहपठित धारा 34

परिवीक्षा का लाभ – चोरी – धारा 3 एवं 4 परिवीक्षा अधिनियम की परिधि में आने पर न्यायालय ऐसे आरोपी को लाभ दे सकती है जिसके विरूद्ध कोई पूर्व दोषसिद्धी न हो।

Som Dutt & ors. v. State of Himachal Pradesh

Judgment dated 04.04.2022 passed by the Supreme Court in Criminal Appeal No. 549 of 2022, reported in 2022 (1) Crimes 124 (SC)

Relevant extracts from the judgment:

Sections 3 and 4 of the Probation of Offenders Act empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Similarly, Sections 360 and 361 of the Cr.P.C also empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Hence, having regard to sentence imposed by the courts below on the appellants for the offence under Section 379 read with Section 34 of IPC, and having regard to the fact there are no criminal antecedents against the appellants, the court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the appellants, it is directed that the appellants shall be released on probation of good conduct, on each of the appellants furnishing a personal bond of ₹ 25,000/- with surety of the like amount, and on further furnishing an undertaking to keep the peace and good behaviour for a period of three years, to the satisfaction of the concerned trial court. It is further directed that if the appellants failed to comply with the said directions or commit breach of the undertaking given by them, they shall be called upon to undergo the sentence imposed by the trial court.

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255. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Sections 8(2), 12 and 102

(i) Rule of *ejusdem generis* – Attracted where a restricted meaning is given to the general word accompanying the specific word only when intended by the legislature.

(ii) Revision is maintainable u/s 102 against order of rejection of bail application.

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2016 – धाराएं 8(2), 12 एवं 102

(i) सजाति व्याख्या का नियम – वहां आकर्षित होता है जहां विशिष्ट शब्द के साथ सामान्य शब्द को प्रतिबंधित अर्थ दिया जाता है, केवल जब विधायिका द्वारा आशयित हो।

(ii) पुनरीक्षण – जमानत आवेदन के नामंजूर किये जाने के आदेश के विरूद्ध धारा 102 के अन्तर्गत पुनरीक्षण याचिका प्रचलनशील है।

Child in Conflict with Law v. State of M.P. and anr.

Order dated 07.04.2022 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Criminal Revision No. 3000 of 2021, reported in 2022 CriLJ 2358

Relevant extracts from the order:

Considering the Aims/Objects of JJ Act and the position that it is beneficial legislation as well as perusal of Section 8(2) of JJ Act, it appears that Act contains sufficient leverage to achieve the goal of Juvenile Justice. High Court (and the Children's Court) are given powers of *suo motu* cognizance also by inserting the Word "or otherwise" as figured in Section 8(2) of JJ Act. The words "or otherwise" would therefore include the bail plea that is filed before the High Court as a proceeding of first instance, otherwise than as an appeal or a revision from an order of the JJ Board (or the Children's Court) denying bail and the rule of *ejusdem generis* would not apply in the present case because of the very fact that the rule of *ejusdem generis* is attracted where a restricted meaning is given to the general word accompanying the specific word, only when intended by the legislature but herein, the word '**otherwise**' used by the legislature is having other proceeding apart from appeal or revision, which can also include *suo motu* cognizance and even deciding the petition/ application as a Court of first instance.

Therefore, it can be inferred on the basis of Section 8(2) and Section 12 of JJ Act that, High Court may entertain a bail plea as if it is a proceeding of first instance. However, it would be considered on the parameters of Section 12 of JJ Act.

Beside, that Section 102 of JJ Act gives revisional power to the High Court and said powers can be exercised at any time even on its own motion also. If it is seen with Section 8(2) of JJ Act then it appears that even *suo motu* also, High Court can call for the record of any proceedings and therefore, juvenile need not to necessarily come through JJ Board and appellate Authority to file revision once he availed the remedy before JJ Board and Appellate Authority. Once, an order has been passed rejecting the bail application of juvenile by JJ Board and by appellate Authority and even by High Court under revisional jurisdiction, then another revision by way of repeat bail application can be considered by the High Court under revisional jurisdiction without coming through the hierarchical set up again and again.

Same is applicable for a CICL, who is sent up for trial as an adult before the Children's Court.

Therefore, in cumulative analysis, even if a revision is preferred by petitioner under Section 102 of the JJ Act, it also gives sufficient powers on its own motion also to call for the record of any proceeding and therefore, contention of the complainant that petitioner/juvenile has no remedy under the JJ Act is misplaced. Revisional powers are sufficiently elaborated in the JJ Act and being special statute and by impact of Section 1(4) of JJ Act, provisions of this Act have overriding effect over other laws, therefore, in the present case even revision before High Court at this stage is also maintainable against the order of rejection of bail application by Children's Court.

So far as merit part is concerned, from the nature of allegations and the fact situation it appears that petitioner misused the liberty and he committed another offence subsequent to this case also and his case is now being prosecuted in Children's Court and therefore for the time being petitioner must involve in reparative and reformative mode and must come out as a better citizen. Therefore, for course correction, petitioner's application for the time being is rejected and liberty is granted to renew the prayer after some time and if possible with some better particulars about his disposition towards reformative measures during his stay at observation home.

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***256. LAND ACQUISITION ACT, 1894 – Sections 4 and 23**

(i) Determination of compensation – Generally the sale instances with respect to small plots/parcels of land are not comparable to large extent of land for the purpose of determining compensation.

(ii) Deduction – In case of acquisition of large tracts of land and the exemplars are of small portions of land, there shall be a suitable deduction towards development costs.

भूमि अधिग्रहण अधिनियम, 1894 – धाराएं 4 एवं 23

(i) प्रतिकर का निर्धारण – सामान्य रूप से प्रतिकर के निर्धारण के उद्देश्य से छोटे भूखण्ड/भूमि के टुकड़े के विक्रय का उदाहरण भूमि के बृहद पैमाने के विक्रय के तुलनीय नहीं है।

(ii) कटौती – वृहद क्षेत्र की भूमि तथा छोटे भाग के अर्जन के मामले में विकास शुल्क हेतु युक्तियुक्त कटौती होनी ही चाहिए।

Union of India v. Premlata and ors.

Judgment dated 06.04.2022 passed by the Supreme Court in Civil Appeal No. 176 of 2022, reported in AIR 2022 SC 1693

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257. LAND ACQUISITION ACT, 1894 – Section 23
CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 27

(i) First appeal – Additional evidence – Permission when to be granted? Additional evidence should have a direct bearing on pronouncing the judgment or for any other substantial cause.

(ii) Proof – Applicant has to prove the existence, authenticity and genuineness of the documents including contents thereof, in accordance with law.

भूमि अधिग्रहण अधिनियम, 1894 – धारा 23

सिविल प्रक्रिया संहिता, 1908 – आदेश 41 नियम 27

(i) प्रथम अपील – अतिरिक्त साक्ष्य – अनुमति कब दी जानी चाहिए – अतिरिक्त साक्ष्य का निर्णय घोषित करने से प्रत्यक्ष संबंध होना चाहिए या अन्य कोई सारभूत कारण होना चाहिए।

(ii) प्रमाण – अपीलार्थी को दस्तावेजों की अंतर्वस्तु सहित उनका अस्तित्व, प्रमाणिकता और वास्तविकता विधि के अनुसार प्रमाणित करना होगी।

Sanjay Kumar Singh v. State of Jharkhand

Judgment dated 10.03.2022 passed by the Supreme Court in Civil Appeal No. 1760 of 2022, reported in AIR 2022 SC 1372

Relevant extracts from the judgment:

Applying the law laid down by this Court in the decision of ***A. Andisamy Chettiar v. A. Subburaj Chettiar, AIR 2016 SC 79*** to the facts of the case on hand, we are of the opinion that while considering the application for additional evidence, the High Court has not at all adverted to the aforesaid relevant consideration, i.e. whether the additional evidence sought to be adduced would have a direct bearing on pronouncing the judgment or for any other substantial cause. As observed hereinabove, except sale deed dated 29.12.1987, which as such was rejected, there was no other material available on record to arrive at a fair market value of the acquired land. Therefore, in the facts and circumstances of the case, the High Court ought to have allowed the application for additional evidence. However, at the same time, even after permitting to adduce the additional evidence, the applicant has to prove the existence, authenticity and genuineness of the documents including contents thereof, in accordance with law and for the aforesaid purpose, the matter is to be remanded to the Reference Court.

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***258. MOTOR VEHICLES ACT, 1988 – Section 3**

Driving licence – Whether a person holding a driving licence in respect of "light motor vehicle" be entitled to drive a 'transport vehicle of light motor vehicle class' having unladen weight not exceeding 7,500 kg? Matter referred to larger Bench by the three Judge Bench of Apex Court in terms of the decision in *Mukund Dewangan v. Oriental Insurance Co. Ltd., 2017 ACJ 2011 (SC)*.

मोटरयान अधिनियम, 1988 – धारा 3

चालन अनुज्ञप्ति – क्या एक व्यक्ति, जिसके पास ''हल्का मोटर यान'' चलाने की चालन अनुज्ञप्ति है, 7500 किलोग्राम से अनधिक भार का लदानरहित ''हल्का परिवहन मोटर यान वर्ग'' का वाहन चलाने के लिए पात्र है – उच्चतम न्यायालय की तीन न्यायाधीश की पीठ ने *मुकुंद देवांगन विरूद्ध ओरिएंटल इंश्योरेंस कम्पनी लिमिटेड, 2017 एसीजे 2011 (एससी)* में हुए निर्णय के आलोक में प्रकरण को वृहदपीठ को संदर्भित किया।

Bajaj Allianz General Insurance Co. Ltd. v. Rambha Devi and ors.

Judgment dated 08.03.2022 passed by the Supreme Court in Civil Appeal No. 841 of 2018, reported in 2022 ACJ 953 (SC) (Three Judge Bench)

●

259. MOTOR VEHICLES ACT, 1988 – Section 168

Absence of policy – Effect – At the time of accident, threshers attached with the tractor – Threshers not insured – Insurer cannot be held liable to satisfy the award – It is the owner of the vehicle or the machine that is liable for any injury that has occurred due to accident.

मोटरयान अधिनियम, 1988 – धारा 168

पॉलिसी का अभाव – प्रभाव – दुर्घटना के समय थ्रेसर ट्रेक्टर के साथ जुड़ा था – थ्रेसर का बीमा नहीं था – बीमाकर्ता को अधिनिर्णय को संतुष्ट करने के लिये उत्तरदायी नहीं ठहराया जा सकता – मशीन या वाहन का स्वामी ही दुर्घटना के कारण हुई क्षति के लिये उत्तरदायी होगा।

Manglesh v. Jaykishan (since dead) through L.Rs. and anr.

Order dated 14.01.2022 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 279 of 2004, reported in 2022 (2) MPLJ 550

Relevant extracts from order:

Having heard the learned counsel, I do not find any error committed by the Tribunal that calls for any interference. The insurer would become liable only if a policy exists and there is no liability fastened on the owner. In the instant case, there is absence of policy itself. In the absence of a policy the insurer cannot be held liable to satisfy the award. It is the owner of the vehicle or the machine that is liable for any injury that has occurred due to the same. The Tribunal has rightly considered the evidence and material on record and fastened the liability on the owner of the machine.

●

260. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 141

(i) Offence against company – Vicarious liability – Cheques were not issued by appellant in his personal capacity or otherwise as a partner – It is not established that appellant was in-charge and responsible for the conduct of affairs of the firm – Vicarious liability in criminal law in terms of section 141 cannot be fastened.

(ii) Necessary party – Demand notice issued was solely served on authorized signatory of firm – Summon was neither issued to firm nor firm has been made a party – Unless the company or firm is arrayed as a party, Officers associated to the company would not be convicted as vicariously liable.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 141

(i) कंपनी के विरूद्ध अपराध – प्रतिनिधिक दायित्व – चैक व्यक्तिगत क्षमता में या भागीदार के रूप में जारी नहीं किया गया – यह स्थापित नहीं कि अपीलार्थी फर्म के मामलों के संचालन के लिये प्रभारी और जिम्मेदार था – आपराधिक विधि में धारा 141 के अंतर्गत प्रतिनिधिक दायित्व अधिरोपित नहीं किया जा सकता।

(ii) आवश्यक पक्षकार – मांग सूचना पत्र केवल फर्म के अधिकृत हस्ताक्षरकर्ता को दिया गया – न तो फर्म के विरूद्ध आदेशिका जारी की गई और न ही फर्म को पक्षकार बनाया – जब तक कंपनी या फर्म को पक्षकार के रूप में नहीं जोड़ा जाता, कंपनी से जुड़े अधिकारी को प्रतिनिधिक दायित्व के आधार पर दोषी नहीं ठहराया जा सकता।

Dilip Hariramani v. Bank of Baroda

Judgment dated 09.05.2022 passed by the Supreme Court in Criminal Appeal No. 767 of 2022, reported in AIR 2022 SC 2258

Relevant extracts from the judgment:

In the present case, we have reproduced the contents of the complaint and the deposition of PW-1. It is an admitted case of the Respondent Bank that the Appellant had not issued any of the three cheques, which had been dishonoured, in his personal capacity or otherwise as a partner. In the absence of any evidence led by the prosecution to show and establish that the Appellant was in charge of and responsible for the conduct of the affairs of the firm, an expression interpreted by this Court in ***Girdhari Lal Gupta v. D.H. Mehta and anr., (1971) 3 SCC 189*** to mean 'a person in overall control of the day-to-day business of the company or the firm', the conviction of the Appellant has to be set aside [***State of Karnataka v. Pratap Chand and ors., (1981) 2 SCC 335***]. The Appellant cannot be convicted merely because he was a partner of the firm which had taken the loan or that he stood as a guarantor for such a loan. The Partnership Act, 1932 creates civil liability. Further, the guarantor's liability under the Indian

Contract Act, 1872 is a civil liability. The Appellant may have civil liability and may also be liable under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. However, vicarious liability in the criminal law in terms of Section 141 of the NI Act cannot be fastened because of the civil liability. Vicarious liability under Sub-section (1) to Section 141 of the NI Act can be pinned when the person is in overall control of the day-to-day business of the company or firm. Vicarious liability under Sub-section (2) to Section 141 of the NI Act can arise because of the director, manager, secretary, or other officer's personal conduct, functional or transactional role, notwithstanding that the person was not in overall control of the day-to-day business of the company when the offence was committed. Vicarious liability under Sub-section (2) is attracted when the offence is committed with the consent, connivance, or is attributable to the neglect on the part of a director, manager, secretary, or other officer of the company.

The demand notice issued on 4th November 2015 by the Bank, through its Branch Manager, was served solely to Simaiya Hariramani, the authorised signatory of the Firm. The complaint dated 7th December 2015 under Section 138 of the NI Act before the Court of Judicial Magistrate, Balodabazar, Chhattisgarh, was made against Simaiya Hariramani and the Appellant. Thus, in the present case, the Firm has not been made an accused or even summoned to be tried for the offence.

The provisions of Section 141 impose vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in Sub-section (1) or (2) would not be liable and convicted as vicariously liable. Section 141 of the NI Act extends vicarious criminal liability to officers associated with the company or firm when one of the twin requirements of Section 141 has been satisfied, which person(s) then, by deeming fiction, is made vicariously liable and punished. However, such vicarious liability arises only when the company or firm commits the offence as the primary offender. This view has been subsequently followed in ***Sharad Kumar Sanghi v. Sangita Rane, (2015) 12 SCC 781, Himanshu v. B. Shivamurthy and anr., (2019) 3 SCC 797*** and ***Hindustan Unilever Limited v. State of Madhya Pradesh, (2020) 10 SCC 751***. The exception carved out in ***Aneeta Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1*** which applies when there is a legal bar for prosecuting a company or a firm, is not felicitous for the present case. No such plea or assertion is made by the Respondent.

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261. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 145
Complaint u/s 138 – Defence evidence – Accused filed affidavit-of-evidence in lieu of Examination-in-Chief – Not admissible – Affidavit-of-evidence is discarded from record – Direction given to record oral evidence as per procedure prescribed by law.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 145

धारा 138 के अंतर्गत परिवाद –प्रतिरक्षा साक्ष्य – अभियुक्त ने मुख्य परीक्षण के स्थान पर साक्ष्य का शपथ–पत्र पेश किया –ग्राह्य नहीं – साक्ष्य का शपथ–पत्र अभिलेख से हटाया गया – विधि द्वारा निर्धारित प्रक्रिया के अनुसार साक्ष्य अभिलिखित किये जाने के निर्देश दिये गये।

SBI Global Factors Ltd. v. State of Maharashtra and ors.
Oral judgment dated 03.03.2021 passed by the Bombay High Court in Criminal Writ Petition No. 1916 of 2019, reported in 2022 (2) MPLJ 43

Relevant extracts from judgment:

In view of the elucidation of law by the Hon'ble Supreme Court in the case of ***Mandvi Co-op. Bank Ltd. v. Nimesh B. Thakore, (2010) 3 SCC 83***, it is clear that, an accused in a proceedings under Section 138 of the Negotiable Instruments Act cannot be permitted to file an Affidavit-of-Evidence in lieu of Examination-in-Chief.

In view of the aforestated settled position of law, the respondent Nos.2 and 4 herein cannot be permitted to file an Affidavit-of-Evidence in-lieu of Examination-in-Chief. The impugned Order dated 1st April 2019 is accordingly quashed and set-aside. The evidence of accused No.3 i.e. Affidavit of Evidence in lieu of Examination-in-Chief dated 5th March, 2019 is discarded from record of C.C. No.4311/SS/2015 by allowing the application of petitioner dated 1st April 2019.

The learned Metropolitan Magistrate is directed to record oral evidence of original accused No.3 Mr. Bharatkumar V. Pandya (respondent No.4 herein) by following necessary procedure prescribed by law in that behalf.

●

262. PREVENTION OF CORRUPTION ACT, 1988 – Section 7
Extra-judicial confession – Evidentiary value – Extra-judicial confession is a weak piece of evidence – Unless such confession is found to be voluntary, trustworthy and reliable, conviction cannot be based on such confession without corroboration of other evidence.

भ्रष्टाचार निवारण अधिनियम, 1988 – धारा 7

न्यायातिरिक्त संस्वीकृति – साक्ष्यिक मूल्य – न्यायातिरिक्त संस्वीकृति एक कमजोर प्रकार की साक्ष्य है – जब तक ऐसी संस्वीकृति स्वैच्छिक, भरोसेमंद एवं विश्वसनीय नहीं हो, अन्य संपोषक साक्ष्य के बिना ऐसी संस्वीकृति के आधार पर दोषसिद्धि नहीं हो सकती है।

Union of India & ors. v. Major R. Metri No. 08585N

Judgment dated 04.04.2022 passed by the Supreme Court in Criminal Appeal No. 2196 of 2017, reported in 2022 (1) Crimes 126 (SC)

Relevant extracts from the judgment:

This Court in the case of ***Sahadevan and anr. v. State of Tamil Nadu, (2012) 6 SCC 403***, after surveying various judgments on the issue, has laid down the following principles:

> ''Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extrajudicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:
>
> (i) The extrajudicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
>
> (ii) It should be made voluntarily and should be truthful.
>
> (iii) It should inspire confidence.
>
> (iv) An extrajudicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
>
> (v) For an extrajudicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
>
> (vi) Such statement essentially has to be proved like any other fact and in accordance with law."

It could thus be seen that the extrajudicial confession is a weak piece of evidence. Unless such a confession is found to be voluntary, trustworthy and reliable, the conviction solely on the basis of the same, without corroboration, would not be justified.

●

263. PREVENTION OF CRUELTY TO ANIMALS ACT, 1960 – Sections 4 and 9 r/w/s 11(d)
GOVANSH VADH PRATISHEDH ACT, 2004 (M.P.) – Section 11(5)
GOVANSH VADH PRATISHEDH RULES, 2012 (M.P.) – Rule 5
Confiscation proceedings – Effect of acquittal – Confiscation of the vehicle – If accused is acquitted in criminal proceeding, amounts to arbitrary deprivation of the right provided under Article 300 of the Constitution of India.

पशुओं के प्रति क्रूरता का निवारण अधिनियम, 1960 – धाराएं 4 एवं 9 सहपठित धारा 11(5)

मध्यप्रदेश गौवंश वध प्रतिषेध अधिनियम, 2004 – धारा 11(5)

मध्यप्रदेश गौवंश वध प्रतिषेध नियम, 2012 – नियम 5

अधिहरण की कार्यवाही – दोषमुक्ति का प्रभाव – आपराधिक कार्यवाहियों में दोषमुक्त होने के बाद भी वाहन को अधिहरित किया जाना अभियुक्त का भारत के संविधान के अनुच्छेद 300 में प्रदत्त अधिकार का मनमाना उल्लंघन है।

Abdul Vahab v. State of Madhya Pradesh

Judgment dated 04.03.2022 passed by the Supreme Court in Criminal Appeal No. 340 of 2022, reported in 2022 (1) Crimes 330 (SC)

Relevant extracts from the judgment:

In the present case, the appellant's truck was confiscated on account of the criminal proceedings alone and therefore, under the applicable law, the vehicle cannot be withheld and then confiscated by the State, when the original proceedings have culminated into acquittal. It is also not the projected case that there is a likelihood that the appellant's truck will be used for committing similar offence.

It should be noted that the objective of the 2004 Act is punitive and deterrent in nature. Section 11 of the 2004 Act and Rule 5 of M.P Govansh Vadh Pratishedh Rules, 2012, allows for seizure and confiscation of vehicle, in case of violation of sections 4,5,6, 6A and 6B. The confiscation proceeding, before the District Magistrate, is different from criminal prosecution. However, both may run simultaneously, to facilitate speedy and effective adjudication with regard to confiscation of the means used for committing the offence. The District Magistrate has the power to independently adjudicate cases of violations under Sections 4, 5, 6, 6A and 6B of the 2004 Act and pass order of confiscation in case of violation. But in a case where the offender/accused are acquitted in the Criminal Prosecution, the judgment given in the Criminal Trial should be factored in by the District Magistrate while deciding the confiscation proceeding. In the present case, the order of acquittal was passed as evidence was missing to connect the accused with the charges. The confiscation of the appellant's truck when he is acquitted in the Criminal prosecution, amounts to arbitrary deprivation of his property and violates the right guaranteed to each person under Article 300A. Therefore, the circumstances here are compelling to conclude that the District Magistrate's order of Confiscation (ignoring the Trial Court's judgment of acquittal), is not only arbitrary but also inconsistent with the legal requirements.

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264. PREVENTION OF FOOD ADULTERATION ACT, 1954 – Sections 7, 13 and 16

Selling adulterated food – Sample of namkeen taken by inspector found adulterated – Report was sent to accused by Registered Post – After marking his presence before Trial Court, he never applied to get second sample examined by the Central Food Laboratory u/s 13(2) – Accused was convicted and Appellate Court affirmed the trial court's judgment – At the stage of revision, accused cannot take the plea of non-compliance of Section 13(2).

खाद्य अपमिश्रण निवारण अधिनियम, 1954 – धाराएं 7, 13 एवं 16

अपमिश्रित खाद्य का विक्रय – निरीक्षक द्वारा लिया गया नमकीन का नमूना अपमिश्रित पाया गया – प्रतिवेदन अभियुक्त को पंजीकृत डाक द्वारा भेजा गया – विचारण न्यायालय के समक्ष अपनी उपस्थिति दर्ज कराने के उपरांत उसके द्वारा कभी भी दूसरे नमूने को धारा 13(2) के अन्तर्गत केन्द्रीय खाद्य प्रयोगशाला से परीक्षित कराने के संबंध में आवेदन नहीं किया गया – अभियुक्त को दोषसिद्ध ठहराया गया और अपील न्यायालय ने विचारण न्यायालय के निर्णय को पुष्ट किया – पुनरीक्षण के स्तर पर अभियुक्त धारा 13(2) के अपालन का बचाव आधार नहीं ले सकता है।

Devendra Kumar Agrawal v. State of M.P. and anr.

Order dated 07.04.2022 passed by the High Court of Madhya Pradesh in Criminal Revision No. 3568 of 2021, reported in 2022 CriLJ 2048

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265. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 2(f), 12 and 17

(i) Domestic Incident Report – Consideration of – When a Domestic Incident Report is filed by a Protection Officer or a service provider, Magistrate has to take into consideration the said report – When an application is filed before the Magistrate by the aggrieved person by herself or through a legal counsel, Magistrate can pass any order without considering such report.

(ii) Shared household – Lived at any point of time – Not necessary that at the time of filing of application, aggrieved person is in domestic relationship and lives with respondent in shared household – Even if at any point of time lived or had the right to live and has been subjected to domestic violence, can file the application.

(iii) Right to reside – Cannot be restricted to actual residence – Even in absence of actual residence in shared household, she can enforce her right to reside therein.

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धाराएं 2(च), 12 एवं 17

(i) घरेलू घटना रिपोर्ट – विचार में लेना – जहाँ घरेलू घटना रिपोर्ट संरक्षा अधिकारी या सेवा प्रदाता द्वारा प्रस्तुत की गई है वहाँ मजिस्ट्रेट को उक्त रिपोर्ट पर विचार करना होगा – जहाँ मजिस्ट्रेट के समक्ष पीड़ित व्यक्ति द्वारा स्वयं या अधिवक्ता के माध्यम से आवेदन प्रस्तुत किया गया है वहाँ मजिस्ट्रेट रिपोर्ट को विचार में लिये बिना भी कोई आदेश पारित कर सकता है।

(ii) साझा गृहस्थी – किसी समय साथ रहे हो – यह आवश्यक नहीं है कि आवेदन प्रस्तुत करते समय पीड़ित व्यक्ति, अनावेदक के साथ घरेलू संबंधों में हो – यदि किसी समय साथ में रहे हों या रहने का अधिकार हो तथा घरेलु हिंसा कारित की गई हो तो भी आवेदन प्रस्तुत किया जा सकता है।

(iii) निवास का अधिकार – वास्तविक निवास तक सीमित नहीं किया जा सकता – चाहे वास्तविक रूप से पीड़ित महिला साझा गृहस्थी में नहीं रही हो, फिर भी वह साझा गृहस्थी में रहने के अधिकार की मांग कर सकती है।

Prabha Tyagi v. Kamlesh Devi
Judgment dated 12.05.2022 passed by the Supreme Court in Criminal Appeal No. 511 of 2022, reported in AIR 2022 SC 2331

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266. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 12 and 31
CRIMINAL PROCEDURE CODE, 1973 – Sections 468 and 482
Limitation – Application u/s 12 is not a complaint as defined u/s 2(d) of CrPC – Breach of order u/s 12 of the Act constitutes an offence as is clear from section 31 of the Act – Limitation period prescribed u/s 468 of CrPC is not applicable – Limitation to file complaint will not be calculated from the date of application u/s 12 but from the date of breach of order.

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धाराएं 12 एवं 31
दण्ड प्रक्रिया संहिता, 1973 – धाराएं 468 एवं 482

परिसीमा – धारा 12 का आवेदन, धारा 2(घ) दं.प्र.सं. में वर्णित परिवाद नहीं है – धारा 12 के आदेश का भंग स्पष्टतः धारा 31 के अपराध को गठित करता है – धारा 468 दं.प्र.सं. में वर्णित परिसीमा काल लागू नहीं – परिवाद प्रस्तुत करने की परिसीमा की गणना धारा 12 में पारित आदेश के भंग की दिनांक से देखी जायेगी, न कि आवेदन प्रस्तुती दिनांक से।

Kamatchi v. Lakshmi Narayanan
Judgment dated 13.04.2022 passed by the Supreme Court in Criminal Appeal No. 627 of 2022, reported in AIR 2022 SC 2932

Relevant extracts from the judgment:

The special features with regard to an application under Section 12 of the Act were noticed by a Single Judge of the High Court in ***Dr. P. Padmanathan and ors. v. Tmt. V. Monica and ors., 2021 SCC Online Mad. 8731*** as under:

> "19. In the first instance, it is, therefore, necessary to examine the areas where the D.V. Act or the D.V. Rules have specifically set out the procedure thereby excluding the operation of Code of Criminal Procedure as contemplated under Section 28(1) of the Act. This takes us to the D.V. Rules. At the outset, it may be noticed that a "complaint" as contemplated under the D.V. Act and the D.V. Rules is not the same as a "complaint" under Code of Criminal Procedure.
>
> A complaint under Rule 2(b) of the D.V. Rules is defined as an allegation made orally or in writing by any person to a Protection Officer. On the other hand, a complaint, under Section 2(d) of the Code of Criminal Procedure is any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence. However, the Magistrate dealing with an application under Section 12 of the Act is not called upon to take action for the commission of an offence. Hence, what is contemplated is not a complaint but an application to a Magistrate as set out in Rule 6(1) of the D.V. Rules. A complaint under the D.V. Rules is made only to a Protection Officer as contemplated under Rule 4(1) of the D.V. Rules.
>
> 20. Rule 6(1) sets out that an application under Section 12 of the Act shall be as per Form II appended to the Act. Thus, an application under Section 12 not being a complaint as defined under Section 2(d) of the Code of Criminal Procedure, the procedure for cognizance set out under Section 190(1)(a) of the Code followed by the procedure set out in Chapter XV of the Code for taking cognizance will have no application to a proceeding under the D.V. Act. To reiterate, Section 190(1)(a) of the Code and the procedure set out in the subsequent Chapter XV of the Code will apply only in cases of complaints, under Section 2(d) of Code of Criminal Procedure, given to a Magistrate and not to an application under Section 12 of the Act".

It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution.

In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence.

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267. PUBLIC TRUSTS ACT, 1951 (M.P.) – Sections 22, 25 and 26

(i) Vacancies occurred in the Board – Can be filled through the procedure as provided u/s 25 of the Act.

(ii) Removal of the trustees – No such discretion is available to the Registrar.

(iii) Public Trust – Dispute relating to administration – The directions ought to have been sought from the District Judge as provided u/s 26 of the Act – Registrar has clearly acted in excess of his jurisdiction to pass the order – Cannot be countenanced in the eyes of law.

लोक न्यास अधिनियम, 1951 (म.प्र.) – 22, 25 एवं 26

(i) बोर्ड में स्थानों की रिक्तता – अधिनियम की धारा 25 के अंतर्गत उपबंधित प्रक्रिया के द्वारा ही पूर्ण की जा सकती है।

(ii) न्यासियों का हटाया जाना – पंजीयक के पास ऐसा कोई विवेकाधिकार उपलब्ध नहीं है।

(iii) लोक न्यास – प्रशासन से संबंधित विवाद – अधिनियम की धारा 26 के अंतर्गत उपबंधों के तहत जिला न्यायाधीश से निर्देश प्राप्त करने होंगे – आदेश पारित करने में पंजीयक द्वारा क्षेत्राधिकार से बाहर जाकर कार्य किया गया – विधि की दृष्टि से समर्थित नहीं माना जा सकता है।

Saurabh and anr.v. State of M.P. and ors.

Order dated 12.01.2022 passed by the High Court of Madhya Pradesh (Indore Bench) in Writ Petition No. 26947 of 2021, reported in 2022 (2) MPLJ 615

Relevant extracts from the order:

A perusal of the aforesaid provisions clearly reveal that if the vacancies have occurred in the Board, it can be filled through the procedure as provided under Section 25 of the Act, but in the present case admittedly the trustees were appointed by the Trust itself and it appears that no such intimation was given by the Board of trustees to the Registrar Public Trust which has led to removal of the two trustees by the Registrar himself. In the considered opinion of this court, no such discretion is available to the Registrar to remove the Trustees and to direct the trust to conduct the election by appointing two new trustees from Bharatvarshiya Digambar Jain Tirthkshetra Committee.

In the considered opinion of this Court the dispute between the parties in the aforesaid public trust is in respect of its administration only, and for which the directions ought to have been sought from the District Judge as provided

under Section 26 of the Act. Thus, the Registrar Public Trust, Barwani has clearly acted in excess of his jurisdiction to pass the impugned order which cannot be countenanced in the eyes of law.

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268. SPECIFIC RELIEF ACT, 1963 – Sections 16(c) and 20

(i) Agreement to sale – Nature of document – Merely because in the document the purpose of sale of the property was stated to be for the marriage expenses, the document which otherwise can be said to be an agreement to sale, will not become a loan agreement or security document.

(ii) Readiness and willingness – Once the execution of the agreement to sale has been believed and it has been found that the original plaintiffs were always ready and willing to perform their part under the agreement and in fact they remained present before the Sub-Registrar, the decree for specific performance should be passed.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 16(ग) एवं 20

(i) विक्रय का अनुबंध – दस्तावेज की प्रकृति – केवल इस कारण कि दस्तावेज में सम्पत्ति को विक्रय किये जाने का उद्देश्य विवाह खर्च उल्लेखित किया गया है, दस्तावेज जो अन्यथा विक्रय का अनुबंध कहा जा सकता है, ऋण का अनुबंध अथवा प्रतिभूति का दस्तावेज नहीं बन जाएगा।

(ii) इच्छुक और तत्परता – एक बार विक्रय के अनुबंध का निष्पादन विश्वसनीय मान लिया जाये और यह पाया जाये कि मूल वादीगण हमेशा अनुबंध के अन्तर्गत अपने भाग का पालन करने के लिये इच्छुक और तत्पर थे और यहां तक कि वे उप–पंजीयक के समक्ष उपस्थित रहे विनिर्दिष्ट अनुतोष की डिक्री पारित की जानी चाहिए।

Kirpal Kaur and anr. v. Ritesh and ors.

Judgment dated 22.03.2022 passed by the Supreme Court in Civil Appeal No. 1991 of 2022, reported in AIR 2022 SC 1555

Relevant extracts from the judgment:

On a careful consideration of the agreement dated 11.02.2004, the first appellate Court and the High Court have observed and held that the agreement dated 11.02.2004 cannot be said to be a loan agreement and/or security document, as alleged by the defendants. We have also gone through and considered the agreement dated 11.02.2004. On reading the entire agreement, it cannot be said that the agreement dated 11.02.2004 can be said to be a loan agreement and/or security document. Merely because in the document the purpose of sale of the property was stated to be for the marriage expenses, the document which otherwise can be said to be an agreement to sell, will not become a loan agreement and/or security document. If the agreement as a whole is

read, we find that it is an agreement to sell. Both, the first appellate Court and the High Court have rightly not accepted the case on behalf of the defendants that the agreement is a loan agreement and/or security document. At this stage, it is required to be noted that as such it was never the case on behalf of the defendants before the trial Court that the agreement is a loan agreement and/or security document. Before the trial Court, the defendants denied totally the very execution of the agreement and receipt of ₹ 3,50,000/-, which has been rightly disbelieved even by the trial Court. It appears that before the first appellate Court, for the first time, the defendants came out with a case that the agreement is a loan agreement and/or security document.

Once the execution of the agreement to sell for a sale consideration has been believed and it has been found that Jai Parkash and thereafter, the original plaintiffs were always ready and willing to perform their part under the agreement and in fact they remained present before the Sub Registrar, Nilokheri on 10.02.2005, which has been established and proved, the decree for specific performance is rightly passed by the first appellate Court, which is rightly confirmed by the High Court.

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***269. SPECIFIC RELIEF ACT, 1963 – Section 20**

Agreement to sale – Admissions – Once the vendor had specifically admitted the execution of the agreement to sale and receipt of the advance sale consideration, no further evidence or proof is required.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20

विक्रय का अनुबंध – स्वीकृतियां – एक बार जब विक्रेता विनिर्दिष्ट रूप से विक्रय की संविदा का निष्पादन तथा अग्रिम विक्रय प्रतिफल की प्राप्ति स्वीकार कर लेता है, तो अन्य साक्ष्य या प्रमाण की आवश्यकता नहीं होती है।

P. Ramasubbamma v. V. Vijayalakshmi and ors.

Judgment dated 11.04.2022 passed by the Supreme Court in Civil Appeal No. 2095 of 2022, reported in AIR 2022 SC 1793

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***270. SUCCESSION ACT, 1925 – Section 63**

(i) Execution of Will – Suspicious circumstances – When the signature of the testator is disputed or the mental capacity of the testator is questioned, it amounts to suspicious circumstances.

(ii) Fair distribution – While appreciating the genuineness of execution of a Will, there is no place for the court to see whether the distribution made by the testator was fair and equitable to all his children or not – Court does not apply Article 14 to dispositions under a Will.

उत्तराधिकार अधिनियम, 1925 – धारा 63

(i) वसीयत का निष्पादन – संदेहहास्पद परिस्थितियां – जहाँ वसीयतकर्ता के हस्ताक्षर विवादित है या वसीयतकर्ता की मानसिक अवस्था को प्रश्नगत किया गया है, यह संदेहास्पद परिस्थितियां है।

(ii) निष्पक्ष वितरण – वसीयत के निष्पादन की शुद्धता की विवेचना करते समय न्यायालय के लिए यह देखने की गुंजाइश नहीं है कि वसीयतकर्ता द्वारा किया गया वितरण सभी संतानों के लिए निष्पक्ष और न्यायसंगत है या नहीं – वसीयत के अन्तर्गत किए गए प्रबंध पर न्यायालय अनुच्छेद 14 लागू नहीं करती है।

Swarnalatha and ors. v. Kalavathy and ors.
Judgment dated 30.03.2022 passed by the Supreme Court in Civil Appeal No. 1565 of 2022, reported in AIR 2022 SC 1585

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271. TRANSFER OF PROPERTY ACT, 1882 – Section 41
LIMITATION ACT, 1963 – Article 59

(i) Right of bonafide purchaser – Husband made an agreement to sale – Later on, husband and wife filed collusive suit and decree made in favour of the wife – Decree not registered and mutation not done – Afterwards, husband sold property to bonafide purchaser after receiving full consideration – Bonafide purchaser gets possession and entry in revenue record was also made – After five years, suit filed by wife – Bonafide purchaser entitled to title over property.

(ii) Bar of limitation – Suit for cancellation of sale deed and possession – Substantive prayer was of cancellation of sale deed and relief of possession is consequential prayer – Limitation period requires to be calculated with respect to substantive relief claimed and not consequential relief.

संपत्ति अंतरण अधिनियम, 1882 – धारा 41

परिसीमा अधिनियम, 1963 – आर्टिकल 59

(i) सद्भावी क्रेता का अधिकार – पति द्वारा विक्रय का अनुबंध किया गया, पति एवं पत्नी ने दुरभिसन्धि पूर्ण वाद प्रस्तुत किया और पत्नी के पक्ष में डिक्री किया गया – डिक्री का पंजीयन या नामांतरण नहीं कराया – पश्चात् में पति द्वारा सद्भाविक क्रेता से संपूर्ण प्रतिफल प्राप्त कर संपत्ति विक्रय कर दी – सद्भावी क्रेता ने कब्जा प्राप्त कर राजस्व अभिलेखों इंद्राज कराया – पाँच वर्ष पश्चात् पत्नी द्वारा दावा प्रस्तुत – सद्भावी क्रेता संपत्ति पर स्वत्व प्राप्त करने का अधिकारी।

(ii) परिसीमा का वर्जन – विक्रय पत्र रद्द किये जाने व आधिपत्य हेतु वाद – सारवान सहायता विक्रय पत्र रद्द किया जाना और पारिणामिक सहायता

आधिपत्य प्राप्त किया जाना – परिसीमा काल की गणना सारवान सहायता के आधार पर की जायेगी न कि परिणामिक सहायता के आधार पर।

Rajpal Singh v. Saroj (Deceased) through LRs. and anr.
Judgment dated 18.05.2022 passed by the Supreme Court in Civil Appeal No. 3489 of 2022, reported in AIR 2022 SC 2707

Relevant extracts from the judgment:

The suit seeking cancellation of the sale deed was required to be filed within a period of three years from the date of the knowledge of the sale deed. Therefore, when the name of the appellant herein-original defendant No. 1 was mutated in the revenue records in the year 1996 on the basis of the registered Sale Deed dated 19.04.1996 and when he was found to be in possession and cultivating the land since then, the suit was required to be filed by the original Plaintiff within a period of three years from 1996. The submission on behalf of the original Plaintiff (now represented through her heirs) that the prayer in the suit was also for recovery of the possession and therefore the said suit was filed within the period of twelve years and therefore the suit has been filed within the period of limitation, cannot be accepted. Relief for possession is a consequential prayer and the substantive prayer was of cancellation of the Sale Deed dated 19.04.1996 and therefore, the limitation period is required to be considered with respect to the substantive relief claimed and not the consequential relief. When a composite suit is filed for cancellation of the sale deed as well as for recovery of the possession, the limitation period is required to be considered with respect to the substantive relief of cancellation of the sale deed, which would be three years from the date of the knowledge of the sale deed sought to be cancelled. Therefore, the suit, which was filed by the original Plaintiff for cancellation of the sale deed, can be said to be a substantive therefore the same was clearly barred by limitation. Hence, the learned Trial Court ought to have dismissed the suit on the ground that the suit was barred by limitation.

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272. TRANSFER OF PROPERTY ACT, 1882 – Section 41
POWER OF ATTORNEY ACT, 1882 – Sections 1A and 2

(i) Sale by Power of Attorney holder – The possession of an agent under a deed of Power of Attorney is also the possession of the principal and that any unauthorized sale made by the agent will not tantamount to the principal parting with possession.

(ii) Sale by ostensible owner – Power of Attorney did not contain authorization to sell – If bonafide purchasers does not exercise reasonable care as required by proviso to section 41, he cannot claim benefit of it.

(iii) Suit for partition – Is not always necessary for a plaintiff in a suit for partition to seek cancellation of alienations.

संपत्ति अन्तरण अधिनियम, 1882 – धारा 41

मुख्तारनामा अधिनियम, 1882 – धाराएं 1क एवं 2

(i) मुख्तारआम द्वारा विक्रय – मुख्तारनामा के अन्तर्गत अभिकर्ता का आधिपत्य प्रधान का आधिपत्य माना जाता है और अभिकर्ता के द्वारा किया गया कोई अनाधिकृत विक्रय प्रधान के आधिपत्य से अलग होने के समान नहीं होगा।

(ii) दृश्यमान स्वामी द्वारा विक्रय – मुख्तारनामा के अन्तर्गत विक्रय करने हेतु अधिकृत होने का उल्लेख नहीं था – यदि सद्भाविक क्रेता युक्तियुक्त सतर्कता नहीं रखता जैसा कि धारा 41 के परन्तुक के अन्तर्गत आवश्यक है, तो वह उसका लाभ नहीं ले सकता है।

(iii) विभाजन का वाद – विभाजन के वाद में वादी के लिए यह हमेशा आवश्यक नहीं होता कि वह व्ययनों का निरस्तीकरण मांगे।

Mrs. Umadevi Nambiar v. Thamarasseri Roman Catholic Diocese Rep. By Its Procurator Devssia's Son Rev. Father Joseph Kappil

Judgment dated 01.04.2022 passed by the Supreme Court in Civil Appeal No. 2592 of 2022, reported in AIR 2022 SC 1640

Relevant extracts from the judgment:

The High Court has held and in our view rightly so, that if the respondent had exercised reasonable care as required by the proviso to Section 41, they could have easily found out that there was no power of sale.

Unfortunately, after finding (i) that the Power of Attorney did not contain authorization to sell; and (ii) that the respondent cannot claim the benefit of Section 41 of the Act, the High Court fell into an error in attributing constructive notice to the appellant in terms of Interpretation Clause in Section 3 of the Act.

Two things are important for the interpretation clause to come into effect. They are: (i) willful abstention from an enquiry or search; and (ii) gross negligence. Explanation I and Explanation II under the interpretation clause are applicable to the person acquiring an immovable property, the transaction relating to which is required by law to be effected by a registered instrument. The High Court has turned the above interpretation clause upside down and held the Principal in relation to a deed of Power of Attorney, to have had constructive notice in terms of Section 3, of a sale effected by the agent.

The reasoning given by the High Court for holding that the appellant ought to have challenged the alienations, is that the appellant was out of possession. Here again, the High Court failed to appreciate that the possession of an agent under a deed of Power of Attorney is also the possession of the Principal and that any unauthorized sale made by the agent will not tantamount to the Principal parting with possession.

It is not always necessary for a plaintiff in a suit for partition to seek the cancellation of the alienations. There are several reasons behind this principle. One is that the alienees as well as the cosharer are still entitled to sustain the alienation to the extent of the share of the co¬sharer. It may also be open to the alienee, in the final decree proceedings, to seek the allotment of the transferred property, to the share of the transferor, so that equities are worked out in a fair manner. Therefore, the High Court was wrong in putting against the appellant, her failure to challenge the alienations.

The learned counsel for respondent relied upon the decision of this Court in ***Delhi Development Authority v. Durga Chand Kaushish, (1973) 2 SCC 825***, in support of his argument about the rule of interpretation to be adopted while construing Exhibit A-1, the deed of general Power of Attorney. He also relied upon the Judgment of this Court in ***Syed Abdul Khader v. Rami Reddy and ors., (1979) 2 SCC 601***, for driving home the question as to how the deed of Power of Attorney should be construed.

We do not know how the ratio laid down in the aforesaid decisions could be applied to the advantage of the respondent. As a matter of plain and simple fact, Exhibit A-1, deed of Power of Attorney did not contain a clause authorizing the agent to sell the property though it contained two express provisions, one for leasing out the property and another for executing necessary documents if a security had to be offered for any borrowal made by the agent. Therefore, by convoluted logic, punctuation marks cannot be made to convey a power of sale. Even the very decision relied upon by the learned counsel for the respondent, makes it clear that ordinarily a Power of Attorney is to be construed strictly by the Court. Neither Ramanatha Aiyar's Law Lexicon nor Section 49 of the Registration Act can amplify or magnify the clauses contained in the deed of Power of Attorney.

As held by this Court in ***Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706***, the document should expressly authorize the agent, (i) to execute a sale deed; (ii) to present it for registration; and (iii) to admit execution before the Registering Authority.

It is a fundamental principle of the law of transfer of property that "no one can confer a better title than what he himself has" (Nemo dat quod non habet). The appellant's sister did not have the power to sell the property to the vendors of the respondent. Therefore, the vendors of the respondent could not have derived any valid title to the property. If the vendors of the respondent themselves did not have any title, they had nothing to convey to the respondent, except perhaps the litigation.

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PART - III

CIRCULARS/NOTIFICATIONS

NOTIFICATION OF MINISTRY OF WOMEN & CHILD DEVELOPMENT DATED 31-08-2022 REGARDING DATE OF ENFORCEMENT OF JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) AMENDMENT ACT, 2021

नई दिल्ली, 31 अगस्त, 2022

का.आ. 4127(अ). – केन्द्रीय सरकार, किशोर न्याय (बालकों की देखरेख और संरक्षण) संशोधन अधिनियम, 2021 (2021 का 23) की धारा 1 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए 01 सितम्बर, 2022 को उस तारीख के रूप में नियत करती है जिसको उक्त अधिनियम प्रवृत्त होगा।

[फा. सं. सीडब्ल्यू–II–20/2/2019–सीडब्ल्यू–II–भाग (1)]

तृप्ति गुरहा, संयुक्त सचिव

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NOTIFICATION OF MINISTRY OF WOMEN & CHILD DEVELOPMENT DATED 31-08-2022 REGARDING DATE OF ENFORCEMENT OF JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) AMENDMENT ACT, 2021

New Delhi, the 31st August, 2022

S.O. 4127(E). – In exercise of the Powers conferred by sub-section (2) of section 1 of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 (23 of 2021), the Central Government hereby appoints the 1st day of September, 2022 as the date on which the said Act shall come into force.

[F. No. CW-II-20/2/2019-CW-II-Part (1)]

TRIPTI GURHA, Jt. Secy.

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किशोर न्याय (बालकों की देखरेख और संरक्षण) आदर्श नियम, 2016 के संशोधन की अधिसूचना, दिनांक 01 सितम्बर, 2022

सा.का.नि. 678(अ). – केन्द्रीय सरकार, किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 (2016 का 2) की धारा 110 कि उप–धारा (1) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, किशोर न्याय (बालकों की देखरेख और संरक्षण) आदर्श नियम, 2016 का संशोधन किया गया है जिसे भारत का राजपत्र (असाधारण) में दिनांक 01 सितम्बर, 2022 को प्रकाशित किया गया है।

उक्त नियमावली का क्यू आर कोड के माध्यम से अध्ययन किया जा सकता है।

JJ Rules 2016

PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

मध्यप्रदेश किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम, 2022

क्रमांक 6458–12–2022–पचास–2.– राज्य शासन एतद् द्वारा किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, 2015 की धारा 110 में दिये प्रावधानों के परिप्रेक्ष्य में मध्यप्रदेश किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम, 2022 विभाग द्वारा तैयार की गई है, जिसे मध्यप्रदेश राजपत्र (असाधारण) में दिनांक 25 अगस्त, 2022 को प्रकाशित किया गया है।

उक्त नियमावली का क्यू आर कोड के माध्यम से अध्ययन किया जा सकता है।

प्रतिज्ञां चाधिरोहस्व मनसा कर्मणा गिरा पालयिष्याम्यहं भौमान् ब्रह्म इत्येव चासकृत् ।। यश्चात्र धर्मो नित्योक्तो दण्डनीतिव्यपाश्रयः तप्तषड्ड करिष्यामि स्ववषो न कदाचन।।

ऐसी प्रतिज्ञा करो, कि मन, क्रिया और वचन से अखिल भौम पार्थिव ब्रह्मस्वरूप वेदों का निरंतर पालन करूंगा।

वेद में दण्डनीति के नियम अनुसार जो सब नीति धर्म कहे गये हैं, निर्भय चित्त से उन्हीं का आचरण करूंगा; कभी स्वेच्छाचारी नहीं होऊंगा।।

Take an oath that by your mind, deeds and words you shall protect the people considering it as equivalent to the creator; that you shall act in accordance with Dandniti and not your own caprice.

– Mahabharata, Shantiparva, 59, 106-108

मध्यप्रदेश उच्च न्यायालय, खण्डपीठ इन्दौर

मध्यप्रदेश उच्च न्यायालय, खण्डपीठ ग्वालियर

मध्यप्रदेश उच्च न्यायालय, जबलपुर

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