JOTI JOURNAL

(BI-MONTHLY)

OCTOBER 2020

MADHYA PRADESH STATE JUDICIAL ACADEMY

HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

JOTI JOURNAL OCTOBER - 2020

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EDITORIAL

Esteemed Readers,

> *"Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to Swaraj for the hungry and spiritually starving millions? Then you will find your doubts and your self melt away."*

This was one of the last notes left behind by Father of Nation Mahatma Gandhi in 1948, expressing his deepest social thought. It is a talisman given to us by him. On 2nd October of this year, we have concluded 150 years, (in fact 151 years) of celebrating the Mahatma. We have to revive our resolution that preaches from this philosophy of social justice emphasised by Gandhi.

The Constitution of India made a promise for social justice to citizens. Mahatma Gandhi, as early as in 1922, opined that *"Swaraj* will not be a free gift of the British Parliament, it will be a declaration of India's full self-expression. That it will be expressed through an Act of Parliament is true but it will be merely a courteous ratification of 'the declared wish of the people of India' even as it was in the case of the Union of South Africa." Hence, establishing that social justice is the wish of the people of India. The Supreme Court of India defines social justice as the comprehensive form to remove social imbalance by law harmonizing the rival interests of different sections in the social structure by means of which alone it would be possible to build up a welfare State.

Throughout the humanistic and cultural discipline pertaining to the legal discourse in our country, we have been learning and understanding meaningful suggestions when it comes to us being a conscientious player in legal development as well as social development through law. This can also bring a critical understanding of how social justice is perceived and administered at different times in Indian society to the forefront. Our Academy, through its curricula, is taking care of judicial education from the point of view of "Law and Social Justice".

Over the last four months, we have continued to employ online mediums of communication to conduct all courses. In all, the Academy has conducted

six programmes during the last couple of months. Keeping in mind the current scenario and necessity, specialised educational programme on "Cases pertaining to Violation of Law and Orders relating to COVID-19 Pandemic" was organised with the intention of equipping the Judicial Magistrates across the State for effective handling of the docket detonation of such cases. Another object-oriented programme that was conducted by the Academy was "Colloquium for Chief Judicial Magistrates". Specialised judicial educational programmes on subjects like; "Protection of Children from Sexual Offences Act, 2012 (POCSO Act)" and "Motor Accident Claim Cases" were also organised to the Judges dealing in matters relevant to the aforementioned subjects. Owing to the ongoing epidemic, we had to reschedule the Second Phase of Induction Training course for the Group I of Civil Judges Class II of 2020 Batch to the next month.

The Academy is keeping up with new pronouncements by not limiting itself to merely conduction of educational programmes but also through its in-house publication. A long awaited reference to the Constitutional Bench on the question whether anticipatory bail can be ordered to remain in force for a limited period so as to enable the accused to seek regular bail, was answered in *Sushila Aggarwal and ors. v. State*. Hon'ble Supreme Court has also laid down factors to be kept in mind while dealing with applications for anticipatory bail. In *BGS SGS SOMA JV v. NHPC Limited*, the Apex Court has interpreted the concept of "juridical seat" of arbitration proceedings for determining jurisdiction of civil courts. These judgments find place in Part II of this issue. Law relating to admissibility of electronic records has been revisited by a three-Judge Bench of Hon'ble Supreme Court in *Arjun Panditrao Khotkar v. Kailash Kushalrao Gorantyal*. A write-up based on this judgment has been included in Part I of this issue besides articles on other topics.

We owe a huge gratitude to all the scholarly persons involved in making this Journal a success with their suggestions, insights and recommendations that make every edition of this bi-monthly a work of pristine literature. We work on the feedback and try to make the next version of this Journal better than the last one.

Your feedback is much appreciated and welcome.

Ramkumar Choubey
Director

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GLIMPSES OF THIRD PHASE INDUCTION COURSE (2019 BATCH) CONDUCTED ONLINE

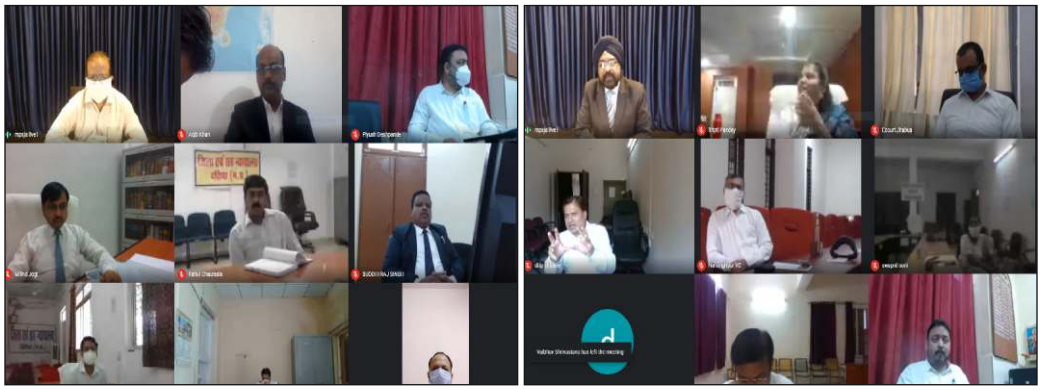
Participants of Group-2 at different District Headquarters
(24.08.2020 to 18.09.2020)

GLIMPSES OF SPECIALIZED EDUCATIONAL PROGRAMMES CONDUCTED ONLINE

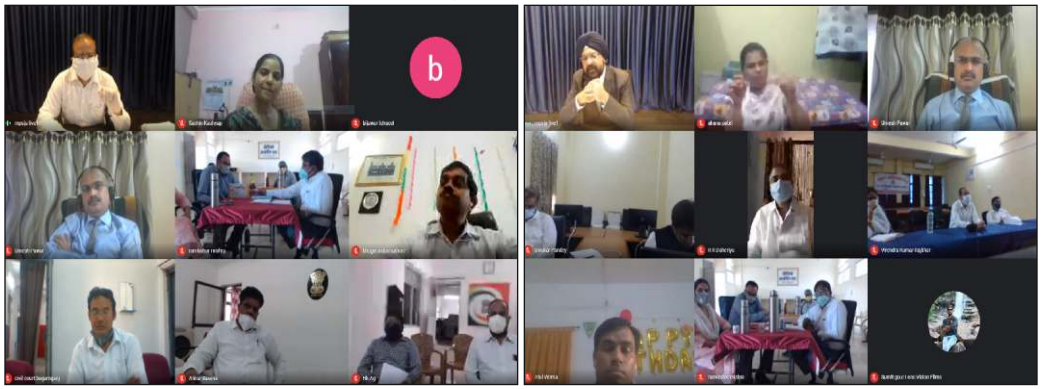
Cases Pertaining to violation of Laws/Orders relating to COVID-19 Pandemic
(12.09.2020)

GLIMPSES OF SPECIALIZED EDUCATIONAL PROGRAMMES CONDUCTED ONLINE

Protection of Children from Sexual Offences Act, 2012
(26.09.2020)



Colloquium for Chief Judicial Magistrates
(10.10.2020)



Motor Accident Claim Cases
(17.10.2020)

GLIMPSES OF BIDDING FAREWELL TO HON'BLE SHRI JUSTICE AJAY KUMAR MITTAL, CHIEF JUSTICE AND PATRON IN-CHIEF IN THE PREMISES OF MADHYA PRADESH STATE JUDICIAL ACADEMY

HON'BLE SHRI JUSTICE AJAY KUMAR MITTAL, CHIEF JUSTICE OF MADHYA PRADESH DEMITS OFFICE

Hon'ble Shri Justice Ajay Kumar Mittal has demitted office on His Lordship's attaining superannuation.

His Lordship was born on 30th September, 1958 at Chandigarh in the family of distinguished lawyers. After obtaining degrees of B.Com (Hons.) from Shri Ram College of Commerce at Delhi University in the year 1977 and Law from the Faculty of Law, Delhi University in the year 1980, was enrolled as an Advocate in Punjab and Haryana High Court in July 1980 and practiced in Punjab and Haryana High Court in Constitutional, Civil, Taxation, Company and Service matters. His Lordship worked for the Department of Income Tax in the Punjab and Haryana High Court for almost ten years. His Lordship was elevated as Judge of Punjab and Haryana High Court on 9th January, 2004. His Lordship functioned as Acting Chief Justice of Punjab and Haryana High Court from 4th May, 2018 to 2nd June, 2018 and also performed the functions of Executive Chairman of Punjab and Haryana State Legal Services Authority. His Lordship was appointed as the Chief Justice of High Court of Meghalaya on 28th May, 2019.

His Lordship was sworn as 25th Chief Justice of Madhya Pradesh High Court on 3rd November, 2019 and took charge on 4th November, 2019.

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

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

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PART - I

GANDHIAN PHILOSOPHY OF JUSTICE AND ADR METHODS

Ramkumar Choubey
Director, MPSJA

Gandhi's philosophy of justice is the natural response of his experiments with truth. His abidance of truth necessarily makes it integral to the morality, hence he suggested; "not law as law but morality should decide the case". Mahatma Gandhi prefers that any dispute between individuals or group of people should be settled on the ground of fairness and justice, rather than resorting to law. This he does, not because of the inconvenience of resort of law, but because to settle it bilaterally is manly or human, whereas taking recourse to law is unmanly or non-human. (*Gandhi: Indian Home Rule: Navajivan, 1938*). He was of the view that resort to law is cowardice and hence, implies weakness of morality. (*Gandhi: An Autobiography*).

Gandhi, while sharing his experiences as lawyer, admitted in his autobiography that "it is not impossible to practice law without compromising the truth." He was of the steadier view that "a lawyer should not resort to untruth even to prove the rightness of the client who is right; much less should he do so for the sake of defending a client who is in wrong". (*Gandhi: An Autobiography: Navajivan, 1927*). Gandhi was saying that client must be defended according to truth, whatever the difficulties of arriving at it.

Thus, one of Gandhi's concepts of law and justice disclosed his strong belief in alternative dispute resolution (ADR) methods. In ADR, parties resort to truth and morality rather than doctrine of laws to adjudicate their conflicts. Mahatma Gandhi was a sharp critic of litigation and an avid proponent of ADR, because, his faith in ADR rest on his assertion that the "parties alone know who is right."(*Gandhi: An Autobiography*). Further, Mahatma Gandhi was of the view that litigation is not designed to address the cause of a conflict, and consequently, it often leaves one or both sides dissatisfied, which makes future conflict more likely. (*Gandhi's Way: A Handbook of Conflict Resolution 7 (2005) by Mark Juergensmeyer*). Gandhi trumpeted ADR, which he called the "master-key," for four compelling reasons: (i) it saves time and money; (ii) it empowers ordinary citizens to resolve their own disputes; (iii) it is consistent with a lawyer's duty to pursue truth and unity; and (iv) in his experience, it works. Most of these points remain persuasive today as well. For Gandhi, however, ADR is about more than saving time and money and the legal principles involved. It is about empowering people to pursue truth and unity on their own and in a way that minimizes the likelihood of future conflict. Mahatma Gandhi had, many a time, used the alternative method to resolve the dispute during legal profession as well as during political movements.

In one of the cases, Gandhi was representing Dada Abdullah in a commercial litigation against Tyeb Sheth. The demands of the case were distracting both sides from their businesses, legal fees were devouring the parties' resources, and mutual ill-will was steadily increasing. Gandhi, knew that the prevailing party could not recover the full amount of fees and expenses incurred in the litigation and, consequently, could not be made financially whole. At that point, Gandhi embraced private arbitration as a way to break this destructive cycle. The case was decided quickly and inexpensively with the businesses intact. (*Gandhi: An Autobiography*). Gandhi's joy was boundless when the arbitration proved successful. Additionally, the party with the truth on its side (Gandhi's client, of course) won. As result of this jubilant experience with arbitration as an alternative to litigation, Mahatma Gandhi aggressively pursued compromise agreements in his legal practice and had become an ardent supporter of ADR with this first experience.

Another example of ADR was evident in how Gandhi used it to resolve dispute while persuading his famous *Satyagraha* movement. In the year 1918 at Ahmedabad, the situation that Gandhi confronted was a tense labour dispute between textile workers and mill owners. The owners had announced that they were withdrawing a bonus originally paid to the workers to prevent work stoppages during a plague outbreak but continued after the epidemic. The workers believed some part of the bonus was necessary to cover the increased cost of living. After investigating the facts of the situation, Gandhi concluded that a thirty-five percent wage increase was fair and just and initiated a non-violent campaign to convince the owners to accept it. The dispute was resolved after both the sides agreed to arbitration. The workers formed the Ahmedabad Textile Labour Association, and the owners agreed to compromise with a wage increase and an arbitration agreement. Gandhi's *Satyagraha* campaign had empowered the workers to improve their situation through non-violent collective action, and convinced the employers that it was also in their collective interest to adopt a formal process by which labour disputes could be resolved efficiently and without violence. The ballooning ill-will between the parties was punctured, and the owners even provided sweets for the workers' celebratory parade. They had learnt how to trust and respect each other again. (*Gandhi: An Autobiography and Conquest of Violence: The Gandhian Philosophy of Conflict 65 (1988) by Joan V. Bondurant*).

The lesson from Ahmedabad for Gandhi and his followers, was that citizens could use ADR to empower themselves in a way that pursues truth, justice, and unity, rather than mere submission. Gandhi saw ADR as the "master-key" unlocking the solution to "rule by the sword." Even, during the escalation of conflict in India culminating in 1947, Gandhi proposed the use of private arbitrators or a judicial tribunal to resolve political and social justice questions between the conflicting groups. (*M.K. Gandhi: The Way to Communal Harmony. Navajivan, 1962, Gandhi & Life of the Law by Shubha Ghosh and Gandhi: An Autobiography*)

In Gandhi's view, ADR is preferable not only because it is more practical in terms of time and expense, but also because it harmonizes ends and means. Successful ADR requires that parties act voluntarily, with mutual toleration, and with a willingness to compromise, trust, and be open to differing view points. Thus, ADR put justice back into the hands of the people. Reconciliation can only be successful if both parties agree to it and not one side being forced to obey. It is exhaustive for all parties involved and bottlenecks the already understaffed judicial instruments of the country.

Gandhi had a vision and saw the untapped potential in ADR which is what we examined closely. If the goal is justice and unity among disputing parties, then the process should be one which encourages behavior conducive to those ends. Proponents of ADR methods have championed these principles. Today we would be wise to canvass Gandhian philosophy of justice in the efficacious use of ADR.

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My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature and enter men's hearts. I realized that the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the 20 years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby, not even money, certainly not my soul.

– MAHATMA GANDHI

SALE TRANSACTIONS: EFFECT OF BENAMI PROHIBITION LAW

[*with reference to the amendments incorporated by The Benami Transaction (Prohibition) Amendment Act, 2016*]

Namita Dwivedi
Civil Judge Class-I
Khandwa

The general perception about a sale deed is that it bestows absolute ownership upon the buyer. The same stands corroborated by The Prohibition of Benami Property Transactions Act, 1988, earlier known as The Benami Transaction (Prohibition) Act, 1988 (hereinafter referred to as "the Act"), a bare perusal of which gives the impression that a property purchased in the name of other shall stand in the name of other irrespective of the source of income. However, a study of the same in light of the recent amendment and pronouncements throws a different shade altogether. It is noteworthy that the amendments have been incorporated in the Act vide The Benami Transaction (Prohibition) Amendment Act, 2016 (in short – "the Amendment Act") which came into effect on 1st November, 2016 whereby, a new perspective has also been created. Section 3 of the Act bars benami trasaction. Howsoever, the provision has underwent a radical change under the Amendment Act. The same is reiterated so as to highlight the difference.

Prior to Amendment of 2016, section 3 reads as under :

> "*3. Prohibition of benami transactions* – (1) No person shall enter into any benami transaction.
>
> (2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife of the unmarried daughter.
>
> (3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.
>
> (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this section shall be non-cognizable and bailable."

After Amendment of 2016, section 3 reads as under :

> *3. Prohibition of benami transactions* – (1) No person shall enter into any benami transaction.

(2) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016 (43 of 2016) shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII."

It is pertinent to note that, in order to curb the benami transactions, the legislature has enhanced the punishment of entering into a benami transaction from 3 years to minimum of 1 year of imprisonment, which may extend to 7 years and to pay fine which may extend to 25% of the fair market value of the property. Another dimension which has been added is that even knowingly furnishing wrong information or document to any authority under the Act is deemed to be an offence which is punishable with rigorous imprisonment for a term which shall not be less than 6 months but which may extend to 5 years and shall also be liable to fine which may extend to 10% of the fair market value of the property u/s 52 of the Act. The new amended law is much more stringent. The amendment is a huge add on of 72 sections to the Act which was originally of 9 sections. This raised a question if the old law should be repealed and new law altogether must be introduced, it was stated before the parliament whilst clarifying the intent behind introducing the amendment that if the old Benami Law were to be repealed, it could have been interpreted as granting immunity to those who acquired benami properties between 1988 and 2016. It was pressed upon the point that the legislature continues to be hard on benami transactions *per se* and the new law aims to curb it further.

The amended Benami Law contains enhanced penal consequences for anyone who enters into a benami transaction on and after 1st November, 2016. The Act does not make mention if the new law shall have retrospective or prospective impact. This question came up before Hon'ble the Rajasthan High Court in the case of ***Niharika Jain & ors. v. Union of India (S.B. Civil Writ Petition No. 2915 of 2019 decided on 13.05.2019)***. The Court ruled that the Amendment Act cannot be applied retrospectively. This judgment reiterates that the amendments so introduced affect the substantive rights of the parties and hence, must be applied prospectively. This would mean that benami transactions undertaken prior to 1st November, 2016 will continue to remain out of the purview of the enhanced penal consequences introduced vide the Amendment Act and would continue to be governed by the old Law.

It is pertinent to note that under the amendment, the definition of "Benami Transactions'' has underwent a radical change. Benami Transaction has been defined u/s 2(9) of the Act as a transaction or an arrangement—

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration.

Certain exceptions have been laid down to the definition and has been excluded from the purview of what shall constitute a benami transaction. As per clause (iii) of section 2(9) of the Act, any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual. It is pertinent to note that provision of section 4(1) of the Act has remained unchanged which states that "no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming it to be the real owner of such property".

Therefore, it is clear that on one hand there is a prohibition on benami transactions and that no person shall enter into any benami transaction. However, sub-section 2 of the Act, prior to amendment, carves an exception to this rule. It states that the same shall not apply to the purchase of property by any person in the name of his wife or unmarried daughter. In order to give effect to the intention mandated by section 3(1) of the Act, a presumption was provided which states that it shall be presumed, unless the contrary is proved, that the property had been purchased for the benefit of the wife or the unmarried daughter. The exception carved by section 3(2) of the Act seemed to have given a liberty that a property can be purchased by a person in the name of his wife or unmarried daughter. Although a presumption has been incorporated but the same is a rebuttable presumption. Similar provision has been provided by the Amendment Act in the form of exception under section 2(9)(iii) of the Act.

This accrues a possibility wherein the husband claims ownership to the property purchased in the name of wife or unmarried daughter. The point to ponder upon is if in light of section 3(2) of the Act, prior to amendment, which stands incorporated in section 2(9)(iii) of the Act, can an ownership claim sustain when section 4(1) of the Act, bars any suit, action or claim in respect of any property held benami against the person in whose name the property is held.

The above situation has been addressed in ***Nand Kishore Mehra v. Sushila Mehra, 80 (1999) DLT 670*** wherein, it is held that a husband can successfully claim that the property in the name of his wife is really his and that he is entitled to recover possession, or base a claim for relief in the capacity of owner. It has been further explained that it should be proved that at the time of purchase of the property, his intention was that the property was not for benefit of the wife.

This proposition has been laid down by Hon'ble the Supreme Court in ***G. Mahalingappa v. G.M. Savitha, (2005) 6 SCC 441***, wherein the yardstick was established so as to conclude that the transaction in question was benami in nature which comprised of factors namely, the plaintiff had paid the purchase money, the original title deed was with the plaintiff, the plaintiff had mortgaged the suit property for raising loan to improve the same and he paid the taxes, the motive was not benefit of the wife or unmarried daughter. Also, the circumstances surrounding the transaction, relationship of the parties and subsequent conduct of the plaintiff was held to be important as well. These tests were reiterated in ***Thakur Bhim Singh (Dead) by LRs & anr. v. Thakur Kan Singh, (1980) 3 SCC 72*** and ***Binapani Paul v. Pratima Ghosh, (2007) 6 SCC 100***.

At this juncture, it is also important to draw attention to the words "Nothing in sub-section (1)'' as mentioned in section 3(2) of the Act prior to amendment. The intention of the legislature was further pondered upon by the Delhi High Court in ***Yogita Dasgupta v. Kaustav Dasgupta, MAT APP (FC) 7/2014, decided on 27.07.2016,*** which held as under:

> ''The structure of section 3 is such that two categories of what would otherwise be benami acquisitions are kept out from its sweep-purchase in the name of wife, and purchase in the name of unmarried daughter. It would indeed be anomalous if it were held that Parliament intended that in case the husband did not prove that the property was for the benefit of someone not the wife, it would be her's and at the same time, also intended that in case he did prove that it was for someone else's benefit, he would be unable to secure a decree as he would be remediless because of section 4. The correct interpretation would be, in our opinion that the class of transactions covered by section 3 is treated as a class apart. It is only the *inter-se* rights of the disputing parties, which is dependent upon the party asserting that the acquisition was not for the benefit of the wife/daughter, proving it to be so."

The Hon'ble High Court elaborated the issue further by way of an illustration. It said that, for instance, if a dishonest debtor were to use all or substantial monies under threat of imminent legal action by the creditors to recover dues, for the purchase of property in his wife's name, and the creditor were to prove that it was not for the benefit of the wife, but to defeat their rights, section 4 cannot be said to bar the relief. In such event, the relief of securing a decree to recover money, which can be traced to the purchase of property, or an appropriate decree of cancellation or declaration and sale, would lie. It was held that, ''therefore, in any given case if the party asserts that the purchase was not for the benefit of the wife or unmarried daughter, it only means that he discharges

the onus of proof and qualifies for the relief he seeks, because the controlling part of section 3(2) operates and treats the transaction as not a benami transaction.'' This case law discusses the burden of proof and reiterates that section 4 of the Act cannot be said to bar an ownership claim. Suit by the husband or father, as the case may be, howsoever, the bruden of proof is stringent and he has to prove that the property purchased was not for the benefit of wife or unmarried daughter.

Adding further to the above discusion, the Delhi High Court in ***Manoj Arora v. Mamta Arora, 2018 SCC OnLine Del. 10423*** has whilst discussing the new amendment has held that, ''as per the suit plaint/averments, in the present case the existence of the properties in the name of the respondent/defendant/wife will fall as an exception to the prohibited benami transaction in view of the clause (iii) of section 2(9)(A) in as much as it is legally permissible for a person to purchase an immovable property in the name of his spouse from his known sources, and in which position, the property purchased will not be a benami property but the property will be of the *de jure* owner/plaintiff/husband and not of the de facto owner (in whose name title deeds exist), being the respondent/ defendant/wife in the present case.'' Consequently, the above case law makes it clear that a husband can purchase property in the name of his spouse and he can very well claim ownership but due importance has been given to 'known source' and the burden of proof is to be discharged by the husband.

To put the above discussion, in a nutshell, the amended benami law has not only introduced stringent penal consequences to curb benami transactions and also clarified the position by creating exceptions to benami transactions. Section 2(9)(A) (iii) of the Act makes it abundantly clear that a property purchased in the name of wife or an unmarried daughter for her benefit, would be excluded from the purview of benami transactions. The amendments to the Act has further added a new dimension of 'known source' apart from the point of benefit which is to be proved by the person claiming ownership. Consequently, it can be inferred that a person who has executed a sale deed in the name of his wife or unmarried daughter can claim ownership if he proves that he provided the consideration that is he establishes a known source of income and that the same was not executed for the benefit of wife or unmarried daughter. Hence, the Act has in a way carved an exception to the general perception that sale deed bestows absolute ownership on the purchaser.

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LAW RELATING TO ADMISSIBILITY OF ELECTRONIC RECORDS

[*with reference to Arjun Panditrao Khotkar, (2020) 7 SCC 1*]

Yashpal Singh
Deputy Director
MPSJA

BACKGROUND

Law relating to admissibility of electronic records has been the most talked about topic in past two decades. However, unlike other streams of law, this subject had not been static and has swung from one extreme to the other in the past 15 years.

In ***State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600*** our Apex Court held that:

> "Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65."

This remained law for a period of 9 years, when a three Judges Bench of the Apex Court in ***Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473*** overruled ***Navjot Sandhu*** (supra) and held that:

> "The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. *Generalia specialibus non derogant*, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in ***Navjot Sandhu*** case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

Very next year, another Three Judge Bench of Apex Court without taking into consideration the mandate of ***Anvar P.V.*** (supra) in ***Tomaso Bruno v. State of U.P., (2015) 7 SCC 178*** again took a discordant view and held that:

> "The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65-B of the Evidence Act. Sub-section (1) of Section 65-B makes admissible as a document, paper printout of electronic records stored in optical or magnetic media produced by a computer subject to the fulfilment of the conditions specified in sub-section (2) of Section 65-B. Secondary evidence of contents of document can also be led under Section 65 of the Evidence Act."

Again in 2018, a Division Bench of the Apex Court in ***Shafhi Mohammad v. State of Himachal Pradesh, (2018) 2 SCC 801*** while interpreting the law laid down in ***Anvar P.V.*** (supra) held that –

> "The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in the absence of certificate under Section 65-B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65- B(4) is not always mandatory.
>
> Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65-B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies."

Thus, this subject has seen diagonally opposite views of interpretation and deviation from the settled law making the task of Bar and Bench tedious.

REFERENCE

Considering the deviation of law and mutually conflicting judgments of the Apex Court, a Division Bench in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 3 SCC 216*** referred the correctness of the judgment in ***Shafhi***

Mohammad (supra) to a larger bench of three Hon'ble Judges of the Apex Court. The reference was made in the following words:

> "We are of the considered opinion that in view of ***Anvar P.V.*** (supra), the pronouncement of this Court in ***Shafhi Mohammad*** (supra) needs reconsideration. With the passage of time, reliance on electronic records during investigation is bound to increase. The law therefore needs to be laid down in this regard with certainty. We, therefore, consider it appropriate to refer this matter to a larger Bench. Needless to say that there is an element of urgency in the matter."

ANSWER TO THE REFERENCE

After discussing the legal provisions and precedents on the subject and after thorough analysis of law, the reference has been answered by Apex Court in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1*** in following terms –

> "(a) ***Anvar P.V.*** (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment in ***Tomaso Bruno*** (supra), being *per incuriam*, does not lay down the law correctly. Also, the judgment in ***Shafhi Mohammad*** (supra) and the judgment dated 03.04.2018 in ***Shafhi Mohammad v. State of H.P., (2018) 5 SCC 311***, do not lay down the law correctly and are therefore overruled.
>
> (b) The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop, computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). The last sentence in ***Anvar P.V.*** (supra) which reads as "…if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act…" is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act,…" With this clarification, the law stated in paragraph 24 of ***Anvar P.V.*** (supra) does not need to be revisited.
>
> (c) The general directions issued in paragraph 62 shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage.

These directions shall apply in all proceedings, till rules and directions under Section 67C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.

The general directions issued in paragraph 62 are as follows :

> "62. To obviate this, general directions are issued to cellular companies and internet service providers to maintain CDRs and other relevant records for the concerned period (in tune with Section 39 of the Evidence Act) in a segregated and secure manner if a particular CDR or other record is seized during investigation in the said period. Concerned parties can then summon such records at the stage of defence evidence, or in the event such data is required to cross-examine a particular witness. This direction shall be applied, in criminal trials, till appropriate directions are issued under relevant terms of the applicable licenses, or under Section 67C of the Information Technology Act, which reads as follows:
>
> **67C. Preservation and retention of information by intermediaries.–**
>
> (1) Intermediary shall preserve and retain such information as may be specified for such duration and in such manner and format as the Central Government may prescribe.
>
> (2) any intermediary who intentionally or knowingly contravenes the provisions of sub-section (1) shall be punished with an imprisonment for a term which may extend to three years and also be liable to fine."

(d) Appropriate rules and directions should be framed in exercise of the Information Technology Act, by exercising powers such as in Section 67C, and also framing suitable rules for the retention of data involved in trial of offences, their segregation, rules of chain of custody, stamping and record maintenance, for the entire duration of trials and appeals, and also in regard to preservation of the meta data to avoid corruption. Likewise, appropriate rules for preservation, retrieval and production of electronic record, should be framed as indicated earlier, after considering the report of the Committee constituted by the Chief Justice's Conference in April, 2016.

DISCUSSION AND REASONS

(1) Original electronic record

It has been reiterated after relying upon ***Anvar P.V.*** (supra) that requisite certificate under Section 65-B(4) of the Evidence Act is unnecessary if the original document itself is produced before the Court. However, paragraph 24 of ***Anvar***

P.V. (supra) which reads as "*…if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act…*" has been clarified to read without the words "*under Section 62 of the Evidence Act*."

The reason assigned is that the *non-obstante* clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65-B, which is a special provision in this behalf – Sections 62 to 65 being irrelevant for this purpose. It is further held that Section 65-B(1) clearly differentiates between the "original" document which would be the original "electronic record" contained in the "computer" in which the original information is first stored – and the computer output containing such information, which then may be treated as evidence of the contents of the "original" document. All this necessarily shows that Section 65-B differentiates between the original information contained in the "computer" itself and copies made therefrom – the former being primary evidence, and the latter being secondary evidence.

(2) Output of electronic record

It has also been reiterated after relying upon ***Anvar P.V.*** (supra) that a written certificate u/s 65-B(4) is *sine qua non* for admissibility of output of an electronic record, i.e. secondary evidence.

(3) Legality of *Shafhi Mohammad* (supra)

It has been held in paragraphs 41 to 44 that all the previous judgments relied upon in ***Shafhi Mohammad*** (supra) were not related to the interpretation of Section 65-B of the Evidence Act. Moreover, it has been held that the decision in ***Shafhi Mohammad*** (supra) after relying upon ***Tomaso Bruno*** (supra) is directly contrary as to what was stated by three Judge Bench in ***Anvar P.V.*** (supra).

After thorough discussion, ***Shafhi Mohammad*** (supra) has been overruled and ***Tomaso Bruno*** (supra) has been held to be *per incuriam*.

(4) Party relying upon an output of electronic record is not possession or control of relevant electronic device

The judgment of Division Bench of Apex Court in ***Shafhi Mohammad*** (supra) had actually remedied an event where party relying upon an output of electronic record was not in actual physical possession or control of the device from which the output of electronic record was reproduced.

This question has been duly addressed in this judgment also. After considering the effect of Section 165 of the Evidence Act, Order XVI of the CPC and Section 91 r/w/s 349 of the CrPC, it has been held that an application can always be made to civil and criminal Courts seeking direction for production of certificate from the requisite person and Courts have ample power to direct such person to produce the certificate.

(5) Event of impossibility

The Apex Court has further considered the remotest event where a person directed to produce certificate u/s 65-B may choose to refuse the production thereof. In such case relying upon the two Latin maxims *lex non cogit ad impossibilia* (the law does not demand the impossible) and *impotentia excusat legem* (when there is disability that makes it impossible to obey the law, the alleged disobedience of the law is excused), it has been held that where the applicant having done everything possible to obtain the necessary certificates which is to be given by a third party over whom applicant has no control, the requirement of certificate u/s 65-B of the Evidence Act must be relieved.

Therefore, although ***Shafhi Mohammad*** (supra) has been overruled, yet in the event of impossibility to procure certificate where the person relying upon an output of electronic record has done everything possible to obtain the certificate, Courts must relieve such person from the obligation of producing certificate and admit the output without such certificate.

It is apposite to reproduce paras 50 and 55 of the judgment to understand the true import of law which are as follows:

> "50. However, a caveat must be entered here. The facts of the present case show that despite all efforts made by the Respondents, both through the High Court and otherwise, to get the requisite certificate under Section 65-B(4) of the Evidence Act from the authorities concerned, yet the authorities concerned willfully refused, on some pretext or the other, to give such certificate. In a fact-circumstance where the requisite certificate has been applied for from the person or the authority concerned, and the person or authority either refuses to give such certificate, or does not reply to such demand, the party asking for such certificate can apply to the Court for its production under the provisions aforementioned of the Evidence Act, CPC or CrPC. Once such application is made to the Court, and the Court then orders or directs that the requisite certificate be produced by a person to whom it sends a summons to produce such certificate, the party asking for the certificate has done all that he can possibly do to obtain the requisite certificate. Two Latin maxims become important at this stage. The first is *lex non cogit ad impossibilia i.e.* the law does not demand the impossible, and *impotentia excusat legem* i.e. when there is a disability that makes it impossible to obey the law, the alleged disobedience of the law is excused.
>
> 55. On an application of the aforesaid maxims to the present case, it is clear that though Section 65-B(4) is mandatory, yet, on the facts of this case, the Respondents, having done everything possible to obtain the necessary certificate, which was to be given by a third-party over whom the Respondents had no control, must be relieved of the mandatory obligation contained in the said sub-section."

(6) Stage at which certificate u/s 65-B is required

The Court also considered the question as to the stage at which such certificate is required. It is held that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In ***Anvar P.V.*** (supra), it was observed that such certificate must accompany the electronic record when the same is produced in evidence. But this can be followed only in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the concerned person, the Judge conducting the trial must summon the person/ persons referred to in Section 65-B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied with all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of CrPC. The Apex Court also relied upon a Division Bench judgment in ***State of Karnataka v. M.R. Hiremath, (2019) 7 SCC 515*** wherein it was observed that the need for production of such certificate would arise when the electronic record is sought to be produced in evidence at trial.

The Court further went on to hold that in criminal cases, the appropriate stage for production of certificate is the filing of charge-sheet as accused is required to be provided with copies of all the documents relying upon by the prosecution. However, the trial Courts have been directed to exercise the powers u/s 91 and 311 of CrPC and Section 165 of the Evidence Act for procuring the certificate at a later point of time, provided the accused is not seriously prejudiced. In case, accused desires to produce the certificate in his defence, he may be allowed to do so during his defence at the discretion of Courts.

The Court also upheld the judgments of Rajasthan and Delhi High Court in ***Paras Jain v. State of Rajasthan, 2015 SCC Online Raj 8331*** and ***Kundan Singh v. State, 2015 SCC Online Del 13647***, respectively. In both these judgments, it was held that certificate u/s 65-B need not be contemporaneous to the output of electronic record and may be produced at later stage also.

It is finally held that :

> **"64.** ….. So long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted, and relied upon in evidence."

(7) Statement in certificate

Section 65-B(4) of the Evidence Act provides that it shall be sufficient for a matter in the certificate if it is stated "to the best of knowledge and belief" of the person stating it.

The Court considered the word "and" between 'knowledge' and 'belief' in Section 65-B(4) and held that since the certificate may be produced long after the reproduction of electronic record by a computer, it would be sufficient if word "and" is replaced by "or" as a person cannot testify to the best of knowledge and belief at the same time.

(8) Oral evidence in lieu of certificate

It has been reiterated after relying upon ***Anvar P.V.*** (supra) that the certificate required u/s 65-B is a condition precedent to the admissibility of output of an electronic record. Oral evidence in place of such certificate cannot be given. Thereafter, the judgment of Madras High Court in ***K. Ramajyam @ Appu v. Inspector of Police, 2016 CrLJ 1542*** has been overruled to that extent it permitted oral testimony of the person who was in-charge of the relevant computer device in place of such certificate.

(9) Preservation and retention of original data

The question as to the loss of original information contained in a computer device and impossibility of securing a certificate at later stage due to unverifiable data has also been considered by the Apex Court. General directions have been issued to all the cellular companies and internet services providers to maintain CDRs (Call Data Records) and other relevant records in a segregated and secured manner when a particular CDR or other record is seized during investigation. It is further been held that these directions shall be applicable till appropriate directions are issued by the Central Government u/s 67C of the Information Technology Act.

Now a question arises whether private individuals are also required to retain the original electronic record if output of such information is seized during investigation of a criminal offence. For example, CCTV footage of camera installed in a shop. Answer to this question may be given in negative terms as the general directions issued by the Apex Court for preservation of original electronic record have been made in light of Section 67C of the IT Act which provides for preservation and retention of electronic record by intermediaries only. Who is an intermediary is defined u/s 2(1)(w) of the IT Act which is as under:

> "2(1)(w) intermediary, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes;"

A bare reading of this provision makes it clear that the term 'intermediary' does not include private individuals. Therefore, original electronic records are not required to be preserved by private individuals even if output thereof is seized during investigation of a criminal offence.

CONCLUSION

In the light of this judgment, law relating to admissibility of electronic records may be summarized as under :-

(1) Where original electronic record is produced in Court, it is admissible without any certificate u/s 65-B(4) of the Evidence Act.

(2) Every output of electronic record is admissible in evidence without production or proof of original, provided it is supported by a certificate as contemplated u/s 65-B(4) of a competent person.

(3) It would be sufficient if such certificate is stated to the best of knowledge "or" belief of the person issuing the certificate.

(4) Oral evidence in lieu of such certificate is not admissible.

(5) Appropriate stage for production of certificate in criminal cases is the stage of filing of charge-sheet. Similarly, in civil cases, such certificate must be produced at the time of presentation of plaint or written statement, as the case may be, subject of course, to the provisions of Order VII Rule 14 and Order VIII Rule 1A CPC.

(6) A party who is not in possession or control of the electronic device from which output of electronic record is reproduced may apply to the Court seeking directions for production of the certificate from requisite person.

(7) Court may, at its discretion, allow such an application of a party and direct the person concerned to produce such certificate. Such powers are vested in every civil and criminal Court by virtue of Sections 91 and 311 of CrPC, Order XVI CPC and Section 165 of the Evidence Act.

(8) Where a party has done everything possible to obtain the necessary certificate from a third party over whom he has no control, including through Court, then he may be relieved of the requirement to produce certificate. Such output of electronic record would be admissible without certificate u/s 65-B(4).

(9) All the intermediaries shall maintain the original electronic records where its output is seized during investigation in a segregated and secured manner.

(10) Private individuals are not required to preserve the original electronic record.

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DETERMINATION OF COMPENSATION AGAINST MEDICAL EXPENSES

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The compensation or the damages in respect of personal injuries are required to be broadly classified into two classes; one is pecuniary and another is non-pecuniary. The heads under non-pecuniary damages are pain and suffering, loss of amenities of life and loss of expectation of life. The pecuniary damages are where the actual amount is expended by the claimant. The medical expenses would fall under this class i.e., pecuniary loss sustained by the injured person. The claimants are entitled to recover all the expenses reasonably incurred in the treatment of their injuries. This includes fees for medical advice and for surgical operations, the cost of treatment and care in a hospital or nursing home and the cost of surgical appliances and of drugs and other prescriptions. Presumably, the cost of a leave for convalescence is also admissible, if the leave is reasonably taken, on medical advice, as part of the treatment. Fresh air and good food can be curative factors just as much as medicine. When considering whether an item should be set off, it helps to go back to basic principles. Damages for financial loss are assessed so as to give compensation for the actual loss in money which the claimant has sustained or will sustain.

At the time of determination of the compensation under the head of medical expenses this situation often arises before the Tribunal that whether the medical expenses incurred by the injured, who has taken a Mediclaim Policy can seek reimbursement of the medical expenses expended by him both under the Mediclaim Policy as well as the amount, which is claimed u/s 166 of the Motor Vehicles Act. In such cases, Insurance Companies submit that if the claimants are permitted to claim compensation under the head of medical expenses both under the Mediclaim Policy as well as the Motor Vehicles Act, it would amount to double payment and unjust enrichment. Rival contention is that claimants are entitled to claim compensation both under the Mediclaim Policy as well as under the Motor Vehicles Act.

In the case of ***Kashiram Mathur and ors. v. Sardar Rajendra Singh and anr., 1983 ACJ 152*** (F.B.), the Madhya Pradesh High Court has opined that there shall not be any deductions in respect of the amount, which is received under the (1) Life Insurance Policy (2) Provident Fund; (3) Family Pension; (4) Gratuity. The Madhya Pradesh High Court was of the view that the amount, which is receivable by the claimants under the Life Insurance Policy, cannot be deducted for the reason that the said amount of Insurance is under a contract and for which deceased had paid premiums. The receipt of such amount is not deductible from the damages payable to them. The deceased had not insured himself and

paid premiums all the years during his lifetime for the benefit of the tort-feaser. This sum represents his thrift for his own benefit and for the benefit of his family. Thus, the tort-feaser could not seek advantage out of this receipt.

With reference to the deductions under the Mediclaim, in ***Madhya Pradesh State Road Transport Corporation v. Priyank, 2000 ACJ 701,*** placing reliance on the ***Kashiram Mathur*** (supra), the Madhya Pradesh High Court has observed that the amount received by the insured under the Mediclaim Policy is not deductible inasmuch as the claimant has received these amounts under the contract of insurance for which he had paid premium. But in ***Helen C. Rebello v. Maharashtra State Road Transport Corporation, 1999 ACJ 10 (SC),*** Hon'ble the Apex Court has observed that:

> "Thus, it would not include that which claimant receives on account of other forms of death, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that would have come to the claimant even otherwise, could not be construed to be the 'pecuniary advantage', liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received (sic) out of such insurance on the happening of such incidence may be an amount liable for deduction. However, our legislature has taken note of such contingency, through the proviso of Section 95. Under it, the liability of the insurer is excluded in respect of injury or death, arising out of (sic and) in the course of employment of an employee."

In ***United India Insurance Co. Ltd. v. Patricia Jean Mahajan, (2002) 2 SCC 281,*** wherein Hon'ble the Supreme Court has placed reliance on a decision in the matter of ***Hodgson v. Trapp, 1988 (3) All ER 870,*** wherein it was observed as under:

> "... the basic rule is that it is the net consequential loss and expense which the Court must measure, if, in consequence of the injuries sustained, the plaintiff has enjoyed receipts to which he would not otherwise have been entitled, prima facie, those receipts are to be set against the aggregate of the plaintiffs losses and expenses in arriving at the measure of his damages. All this is elementary and has been said over and over again. To this basic rule there are, of course,

> certain well established, though not always precisely defined and delineated, exceptions. But the Courts are, I think, sometimes in danger, in seeking to explore the rationale of the exceptions, of forgetting that they are exceptions. It is the rule which is fundamental and axiomatic and exceptions to it which are only to be admitted on grounds which clearly justify their treatment as such."

In ***Jitendra v. Rahul, 2008 (5) MPHT 336,*** the Madhya Pradesh High Court following the judgment of the Hon'ble Supreme Court in the case of ***Patricia Jean Mahajan*** (supra) and ***Hodgson*** (supra) held that this position of law was not existing before the Hon'ble Division Bench while delivering the judgment in the matter of ***Priyank*** (supra). No doubt the amount of medical expenses has been received by the appellant under an agreement of insurance for which appellant has paid the premium. This amount of medical expenses is otherwise not available to the appellant. In the circumstances appellant is at the most entitled for the amount of premium which was paid by the appellant for Mediclaim Policy.

In ***Udam Singh Sethi v. Tamal Das and ors., MACA No. 369/2006 decided on 26.10.2009,*** High Court of Delhi has observed that the claimant would not be entitled to the medical expenditure which has been reimbursed to him under the Mediclaim Policy. In ***Binup Kumar R. v. Prabhakar H.G. and anr., 2010 ACJ 2742,*** High Court of Karnataka has observed that the claimants cannot get the benefit both under the Mediclaim Policy as well as under the Act. The analogy was also drawn that in the case of a Government Servant inasmuch as whatever the amount a Government Servant gets reimbursed from his employer, the said amount will be deducted from out of the total amount arrived at by the Tribunal and the balance will have to be paid to him. On the same lines, whatever the amount the claimant gets from any scheme like Mediclaim etc., the said amount will have to be deducted from the actual amount payable to the claimant. Division Bench of High Court of Karnataka in ***APSRTC, rep. by its M.D., Central Office v. Sri Rathnakar, ILR 2014 KAR 6083,*** has observed that in a claim under the Motor Vehicles Act, the claimant is entitled for medical expenses, however, the very same amount cannot be awarded twice, since the same would amount to a pecuniary benefit. If not, claimants would receive a double payment under the same head. Hence, the claimant having received the reimbursement towards medical expenses is not entitled to claim the same amount under the Motor Vehicles Act. In ***National Insurance Company Ltd. v. Akber Badsha and ors., MACA. No. 1623 of 2013 decided on 08.09.2015,*** High Court of Kerala has observed that if the amount, which is received by the claimant under the Mediclaim Policy falls short of the actual expenses expended by him, it is always open for him to claim the difference of amount spent from the Tribunal. But, however he cannot claim

compensation under both the Mediclaim Policy as well as the claim petition filed under the Motor Vehicles Act.

From the above discussion, it is clear that the deductions are admissible from the amount of compensation in case the claimant receives the benefit as a consequence of injuries sustained, which otherwise he would not have been entitled to. A Mediclaim Policy, which is valid for a particular period and on expiry of period, automatically the policy lapses and any amount received out of such insurance, is liable to be deducted. Further, the said policy covers only for a specific purpose, namely, reimbursing the amount spent by the victim towards his medical treatment. Once the amount is reimbursed, the claimant is not entitled to get the same under the name of compensation because it would amount to double compensation.

CONCLUSION:

- The amount expended by the claimant for the medical expenses is classified as a pecuniary loss which means that the actual amount expended by the claimant for treatment. If the said amount has been paid by the insurer under the Mediclaim Policy, the claimant is not entitled to get the same under the name of compensation because it would amount to double compensation.
- If the amount, which is received by the claimant under the Mediclaim Policy falls short of the actual expenses expended by him, it is always open for him to claim the difference of amount spent from the Tribunal.
- If the amount received under the Mediclaim Policy is higher than what is determined by the Tribunal, then no compensation under the head of medical expenses can be awarded by the Tribunal.
- The amount of medical expenses is received by the claimant under an agreement of insurance for which he has paid the premium. In such circumstances claimant is entitled for the amount of premium which was paid by him for Mediclaim Policy.
- In the case of a Government Servant inasmuch as whatever the amount a Government Servant gets reimbursed from his employer, the said amount will be deducted from out of the total amount arrived at by the Tribunal and the balance will have to be paid to him.

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पारस्परिक सम्मति से हिन्दू विवाह–विच्छेद : विधिक अपेक्षाएँ

भावना साधौ
अतिरिक्त प्रधान न्यायाधीश
कुटुम्ब न्यायालय, भोपाल

हिन्दू विवाह अधिनियम, 1955 (संक्षेप में– ''अधिनियम'') में विवाह–विच्छेद के आधारों को उपबंधित किया गया है। विधि की मंशा यह है कि सामान्य रूप से विवाह का विघटन न हो और यथा संभव विवाह को बचाए रखा जा सके। यही कारण है कि पति–पत्नी के मध्य विवाह–विच्छेद से पूर्व मेल–मिलाप की कार्यवाही को अनिवार्य बनाया गया है।

अधिनियम की धारा 13–ख पारस्परिक सम्मति से विवाह–विच्छेद के संबंध में प्रावधान करती है। जिसके अनुसार विवाह के विघटन के लिए दोनों पक्षकार पारस्परिक सम्मति से आवेदन प्रस्तुत करते हैं जबकि वे एक वर्ष या उससे अधिक समय से अलग–अलग रह रहे हैं और वह एक साथ नहीं रह सकते हैं तथा वे इस बात के लिए परस्पर सम्मत हो गए हैं कि विवाह का विघटन कर दिया जाना चाहिए। पारस्परिक सम्मति से विवाह–विच्छेद का आवेदन प्रस्तुत किए जाने की तारीख से छः माह के पश्चात् और उस तारीख के अठारह माह के पूर्व यदि याचिका वापस नहीं ली गई है न्यायालय पक्षकारों को सुनने के पश्चात् और ऐसी जांच करने के पश्चात् जो वह ठीक समझे, अपना यह समाधान कर लेने पर कि विवाह अनुष्ठापित हुआ है और आवेदन में किए गए प्रकथन सही हैं, पारस्परिक सम्मति के आधार पर विवाह–विच्छेद की डिक्री पारित करेगा। उक्त प्रावधान में निम्न बातें महत्वपूर्ण हैं–

- पक्षकार एक वर्ष से अधिक समय से अलग रह रहे हैं,
- वे साथ–साथ नहीं रह सकते हैं,
- वे इस बात के लिए सम्मत हैं कि विवाह विघटन कर देना चाहिये,
- याचिका प्रस्तुति की तारीख से छः माह पश्चात् व अठारह माह से पूर्व किसी पक्षकार ने याचिका वापस नहीं ली है।

याचिका प्रस्तुत किए जाने की तारीख से कम से कम छः माह पश्चात् की अवधि की प्रतीक्षा किए जाने का उद्देश्य ही यह दर्शित करता है कि विधायिका की मंशा अन्त तक यह प्रयास करना है कि पक्षकारों के मध्य विवाह–विच्छेद के अलावा कोई विकल्प यदि शेष रह गया है, तब उन परिस्थितियों में विवाह–विच्छेद न हो।

धारा 13–ख के मामले में सबसे अधिक महत्वपूर्ण तत्व छः माह की अवधि (cooling period) है। न्यायालय के समक्ष प्रायः यह प्रश्न उत्पन्न होता है कि क्या आपसी सम्मति से विवाह–विच्छेह हेतु प्रस्तुत याचिका को इसकी प्रस्तुति के छः माह के पूर्व निराकृत कर विवाह विच्छेद की डिक्री दी जा सकती है अथवा नहीं? धारा 13–ख(2) में प्रावधान है कि – ''उपधारा (1) में निर्दिष्ट याचिका के प्रस्तुत किये जाने की तारीख से छः मास के पश्चात् और उस तिथि से अठारह मास के भीतर दोनों पक्षकारों द्वारा स्वप्रेरणा पर, यदि इस दौरान याचिका वापस नहीं ले ली गई हो तो, ... डिक्री पारित करेगा...''।

वर्ष 1993 से 2018 के दौरान अनेक प्रकरणों में पक्षकार कई वर्षों से अलग–अलग निवास कर रहे थे। उनके बीच कई मामले लम्बित थे। पक्षकारों द्वारा माननीय उच्चतम न्यायालय के समक्ष लम्बित कार्यवाहियों में मीडिएशन कार्यवाहियों में या अन्यथा राजीनामा प्रस्तुत किया गया। पक्षकारों के मध्य लम्बित समस्त विवादों को निराकृत करने की दृष्टि से मामले की परिस्थितियों में माननीय उच्चतम न्यायालय ने पूर्ण न्याय करने के लिए छः माह की समयावधि के पूर्व ही आपसी सम्मति से विवाह–विच्छेद की याचिका को स्वीकार करते हुए विवाह–विच्छेद की सहायता प्रदान की। कुछ अन्य मामलों में माननीय उच्चतम न्यायालय ने संविधान के अनुच्छेद 142 के अंतर्गत भी छः माह की समयावधि में छूट प्रदान करते हुए विवाह–विच्छेद की सहायता प्रदान की है। ***चंद्रकला मेनन एवं अन्य वि. विपिन मेनन एवं अन्य, (1993) 2 एससीसी 6, अशोक हुर्रा वि. रूपा बिपिन, 1997 एआईआर एससीडब्लू 1314, संध्या एम. खन्डेलवाल वि. मनोज के. खन्डेलवाल, (1998) 8 एससीसी 369, दविन्दर सिंह नरूला वि. मीनाक्षी नांगिया, एआईआर 2012 एससी 2890, निखिल कुमार वि. रूपाली कुमार, एआईआर 2016 एससी 2163, अदिति वाडेरा वि. विवेक कुमार वाडेरा, एआईआर 2016 एससी 3840, बी.ए. वानी वि. यूनियन आफ इंडिया, एआईआर 2016 एससी (सप्लीमेंट) 253, हरजिंदर सिंह वि. राजपाल, एआईआर 2018 एससी (सप्लीमेंट) 124, कूकी रवीन्द्रन वि. सी. सोमाया मदप्पा, एआईआर 2018 एससी (सप्लीमेंट) 154, सचिन दीनानाथ धूरी वि. स्नेहा सचिन धूरी, एआईआर 2018 एससी (सप्लीमेंट) 1189, स्नेहा पारीख वि. मनित कुमार, एआईआर 2018 एससी 575***।

जहां तक धारा 13–ख में छः माह की समयावधि का प्रावधान निदेशात्मक (directory) अथवा आज्ञापक (mandatory) प्रकृति के होने का प्रश्न है न्यायदृष्टांत ***अमरदीप वि. हरवीन कौर, एआईआर 2017 एससी 4417*** में कहा गया है कि धारा 13–ख के प्रावधान निदेशात्मक हैं। अन्य न्यायदृष्टांत यथा ***डॉ. धरन गारसिया वि. एन. मनसू, एआईआर 1988 गुजरात 159, ज्योति जैन वि. जिनेश जैन, 2004 (4) एमपीएलजे 542, अनामिका श्रीवास्तव वि. विवेक श्रीवास्तव, 2007 (4) एमपीएचटी 374***, एवं ***अपर्णा गोयल वि. राकेश गोयल, एआईआर 2009 एससी 1836*** में भी ऐसा ही अभिमत दिया गया है। न्यायालय द्वारा आपसी सहमति से विवाह विच्छेद की डिक्री याचिका प्रस्तुति के पश्चात् छः माह की अवधि पूर्ण होने के पूर्व भी दी जा सकती है। परंतु न्यायदृष्टांत ***अनिल कुमार जैन वि. माया जैन, एआईआर 2010 एससी 229*** में माननीय उच्चतम न्यायालय की दो न्यायमूर्तिगण की पीठ ने प्रतिपादित किया है कि सिविल न्यायालय और उच्च न्यायालय अधिनियम के सुसंगत प्रावधान के अधीन विहित अवधि के पूर्व या ऐसे आधार पर जो धारा 13 एवं 13–ख में उपबंधित नहीं है, आदेश पारित नहीं कर सकते हैं। ऊपर वर्णित न्यायदृष्टांतों के प्रकाश में यह प्रतिपादना किंचित दुविधा पैदा करती है। माननीय मध्यप्रदेश उच्च न्यायालय की खण्डपीठ ने ***दिशा कुशवाहा वि. रितुराज सिंह, एआईआर 2019 मध्यप्रदेश 217*** में माननीय उच्चतम न्यायालय की तीन न्यायमूर्तिगण की पीठ के ***नवीन कोहली वि. नीलू कोहली, एआईआर 2006 एससी 1675*** के निर्णय के प्रकाश में विधिक स्थिति स्पष्ट करते हुए अभिमत दिया है कि ***अनिल कुमार जैन*** (पूर्वोक्त) में प्रतिपादित विधि ***नवीन कोहली*** (पूर्वोक्त) में प्रतिपादित उस न्याय सिद्धांत के अनुरूप नहीं है जिसमें उच्च न्यायालय को यह निर्देशित किया गया था कि असाध्य रूप से विवाह टूटने संबंधी वाद विषय पर विचार करने के प्रयोजन से समस्त दाण्डिक एवं अन्य कार्यवाहियों के प्रतिघात, परिणाम, प्रभाव

एवं जटिलताओं पर भी विचार किया जाए। माननीय मध्यप्रदेश उच्च न्यायालय ने स्पष्ट किया है कि ***नवीन कोहली*** (पूर्वोक्त) में प्रतिपादित न्याय सिद्धांत जो पूर्व का है, ***अनिल कुमार जैन*** (पूर्वोक्त) में विचार में नहीं लिया गया है। ऐसी स्थिति में तीन न्यायमूर्तिगण की पीठ का ***नवीन कोहली*** (पूर्वोक्त) में प्रतिपादित न्याय सिद्धांत बंधनकारी है।

स्पष्ट है कि न्यायालय को याचिका प्रस्तुति के पश्चात छः माह की अवधि तक इंतजार करना चाहिए। परंतु माननीय उच्चतम व उच्च न्यायालयों के विभिन्न निर्णयों से स्पष्ट है कि यह न्यायालय के विवेकाधीन है कि वह मामले के तथ्यों व परिस्थितियों पर विचार कर चाहे तो इस अवधि में छूट प्रदान कर सकता है। ***अमरदीप*** (पूर्वोक्त) के मामले में माननीय उच्चतम न्यायालय ने कहा हैः–

चूंकि हमारा अभिमत यह है कि धारा 13–ख(2) में उल्लेखित समय आज्ञापक नहीं है बल्कि निदेशात्मक है, न्यायालय प्रत्येक प्रकरण के तथ्यों एवं परिस्थितियों के अनुसार अपने विवेकाधिकार का प्रयोग कर सकेगा जहां पक्षकारों के मध्य सहवास/साहचर्य के पुनर्स्थापन की कोई संभावना नहीं है और वैकल्पिक पुनर्वास के अवसर हैं। उन्मुक्ति के अनुतोष के लिये कारण उल्लेखित करते हुए उन्मुक्ति आवेदन प्रथम सुनवाई के एक सप्ताह पश्चात् प्रस्तुत किया जा सकता है। यदि पूर्व स्थितियां संतुष्ट होती हैं, द्वितीय सुनवाई के लिए प्रतीक्षा अवधि की उन्मुक्ति संबंधित न्यायालय के विवेकाधिकार में होगी।

माननीय उच्चतम न्यायालय ने ***अमरदीप*** (पूर्वोक्त) में उन परिस्थितियों को वर्णित किया है, जिसमें कि यदि न्यायालय चाहे तो उपरोक्त छः माह की विहित समयावधि की प्रतीक्षा किए बिना विवाह–विच्छेद की डिक्री प्रदान कर सकता है जो इस प्रकार हैं–

1. उभयपक्ष धारा 13–ख हिन्दू विवाह अधिनियम में विहित समयावधि छः माह एवं धारा 13–ख(1) में वर्णित एक वर्ष की अवधि से अधिक समय से पृथक–पृथक पहले से निवास कर रहे हों।
2. उभयपक्षों के मध्य बीच–बचाव/सुलह के सारे प्रयास न्यायालय द्वारा किए जा चुके हैं, किन्तु उनके साथ रहने के प्रयास विफल हो चुके हैं।
3. पक्षकारों ने न्यायोचित रूप से बच्चों की संरक्षकता, जीवन निर्वाह भत्ता एवं अन्य विवादों को समझौते के रूप में स्वीकार कर लिया है या उनका इन बिन्दुओं पर समझौता हो चुका है।
4. न्यायालय यह समझता है कि सम्मतिपूर्वक विवाह–विच्छेद हेतु विहित छः माह की अवधि की प्रतीक्षा पक्षकारों के लिए तनावपूर्ण व कष्टदायक होगी।

निष्कर्ष में, पारस्परिक सम्मति से विवाह–विच्छेद हेतु प्रस्तुत याचिका के मामले में सामान्य रूप से अधिनियम की धारा 13–ख के प्रावधानों में वर्णित एक वर्ष और फिर छः माह की समयावधि को विचार में लेकर विहित अवधि व्यतीत होने पर ही विवाह–विच्छेद की डिक्री प्रदान की जानी चाहिए। किन्तु, जैसा कि ***अमरदीप सिंह*** (पूर्वोक्त) में वर्णित हैं, अपवाद स्वरूप विशेष परिस्थितियों में छः माह की अवधि में छूट प्रदान करते हुए विवाह–विच्छेद की डिक्री प्रदान की जा सकती है।

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विधिक समस्याएँ एवं समाधान

(इस स्तंभ के अंतर्गत 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। स्तंभ के लिये न्यायिक अधिकारी अपनी विधिक समस्याएँ अकादमी को प्रेषित कर सकते हैं। चयनित समस्याओं के समाधान आगामी अंकों में प्रकाशित किये जाएँगे।)

(1) क्या एन.डी.पी.एस. एक्ट के अंतर्गत अपराध का अन्वेषण ऐसे पुलिस अधिकारी, जो स्वयं परिवादी हो अर्थात् जिसने स्वयं ही प्रथम सूचना रिपोर्ट दर्ज की हो, द्वारा किए जाने से अन्वेषण और विचारण दूषित होगा और इस आधार पर अभियुक्त दोषमुक्ति का अधिकारी होगा?

न्यायदृष्टांत ***मोहन लाल विरुद्ध पंजाब राज्य, (2018) 17 एससीसी 627***, में यह अभिनिश्चित किया गया था कि ऐसा पुलिस अधिकारी, जो प्रकरण में परिवादी है अर्थात् जिसने स्वयं प्रथम सूचना रिपोर्ट दर्ज की है, उसी मामले में अन्वेषण भी करता है तब ऐसी स्थिति में विचारण दूषित होगा एवं अभियुक्त दोषमुक्ति का हकदार होगा। पश्चात्वर्ती प्रक्रम में उच्चतम न्यायालय की तीन सदस्यीय पीठ द्वारा न्यायदृष्टांत ***वारिन्दर कुमार विरुद्ध स्टेट ऑफ हरियाणा, (2020) 3 एससीसी 321*** में यह अभिनिर्धारित किया गया कि ***मोहन लाल*** (पूर्वोक्त) में प्रतिपादित विधि ऐसे प्रकरणों को प्रभावित नहीं करेगी जो ***मोहन लाल*** (पूर्वोक्त) के निर्णय की दिनांक को लंबित थे। ***मोहन लाल*** (पूर्वोक्त) के मामले में प्रतिपादित अभिमत की शुचिता पर संदेह व्यक्त करते हुए ***मुकेश सिंह विरुद्ध स्टेट (नॉरकोटिक ब्रांच दिल्ली), एस.एल.पी. (क्रि.) नं. 39528/2018*** में मामला वृहद पीठ को निर्देश हेतु प्रेषित किया गया था दिनांक 31 अगस्त, 2020 को संवैधानिक पीठ द्वारा दण्ड प्रक्रिया संहिता, 1973 की धाराओं 154, 156 एवं 157 तथा 465 को उल्लेखित करते हुये यह निश्चित किया गया है कि संहिता के इन प्रावधानों में सुसंगत मामलों में पुलिस अधिकारी को सूचना प्राप्त होने के बाद उसे अभिलिखित कर संज्ञेय मामले का अन्वेषण करने से प्रतिबंधित नहीं किया गया है। इसी प्रकार साक्ष्य अधिनियम, 1872 की धारा 114 की यह उपधारणा कि लोक सेवक द्वारा अपने पदीय कर्तव्यों के अनुक्रम में कार्य किया जाता है, पुलिस अधिकारियों पर समान रूप से लागू होती है। इतना ही नहीं एन.डी.पी.एस. एक्ट में अन्वेषणकर्ता द्वारा विद्वेषपूर्ण तरीके से की गई कार्यवाही के संबंध में दाण्डिक प्रावधान किए गए हैं। उपरोक्त आधारों पर संवैधानिक पीठ ने यह अभिनिश्चित किया कि पुलिस अधिकारी जो स्वयं परिवादी भी है, द्वारा अन्वेषण किये जाने से अभियुक्त के प्रति पक्षपात या पूर्वाग्रह कारित हुआ; ऐसा प्रत्येक प्रकरण के तथ्यों एवं परिस्थितियों पर निर्भर करेगा। केवल इसी कारण से कि सूचनादाता स्वयं ही अन्वेषणकर्ता है विचारण दूषित नहीं होगा और इस आधार पर अभियुक्त को दोषमुक्त नहीं किया जा सकता। ***मोहन लाल*** (पूर्वोक्त) एवं अन्य निर्णयों जिनमें सूचनाकर्ता द्वारा अन्वेषण किये जाने पर अभियुक्त को दोषमुक्त होने का अधिकारी माना गया है, अच्छी विधि नहीं है और ओव्हररूल की गई है।

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(2) सिविल प्रक्रिया संहिता, 1908 के आदेश 7 नियम 10 (सहपठित नियम 10–क) के अधीन लौटाये गये वाद पत्रों को निर्दिष्ट सक्षम न्यायालय के समक्ष प्रस्तुत किए जाने पर ऐसे पश्चात्वर्ती न्यायालय में विचारण की समुचित प्रक्रिया क्या होगी?

सिविल प्रक्रिया संहिता, 1908 के आदेश 7 नियम 10 के अधीन वाद पत्रों को उस न्यायालय में प्रस्तुत करने के लिए जहां वाद संस्थित किया जाना चाहिए था, लौटाए जाने का प्रावधान है। यद्यपि ऐसे पश्चात्वर्ती न्यायालय द्वारा अपनाई जाने वाली प्रक्रिया के संबंध में संहिता में अभिव्यक्त उपबंध नहीं है। इस विषय पर माननीय उच्चतम न्यायालय के न्यायदृष्टांत ***ऑयल एण्ड नेचुरल गैस कार्पोरेशन लिमिटेड विरुद्ध मॉडर्न कन्सट्रक्शन एवं कंपनी, (2014) 1 एससीसी 648*** एवं ***जोगिन्दर तुली विरुद्ध एस.एस. भाटिया, (1997) 1 एससीसी 502*** में परस्पर विरोधाभाष होने के कारण मामला वृहद पीठ को निर्देशित किया गया था। उच्चतम न्यायालय की तीन सदस्यीय पीठ द्वारा पारित निर्णय न्यायदृष्टांत ***मेसर्स एक्सल केरियर एवं अन्य विरुद्ध फ्रेंकफिन एविएशन सर्विसेस प्राईवेट लिमिटेड, सिविल अपील नं 2904/2020 दिनांक 05.08.2020*** में अभिनिर्धारित किया गया है कि ***मॉडर्न कन्सट्रक्शन*** (पूर्वोक्त) में प्रतिपादित विधि ही सही विधि है अर्थात् जब कभी आदेश 7 नियम 10 के अंतर्गत वाद पत्र लौटाया किया जाता है, तब ऐसी स्थिति में नये सिरे से विचारण (de novo trial) होगा। ऐसी स्थिति में परिसीमा अधिनियम, 1963 की धारा 14 के तहत क्षेत्राधिकार न होने वाले न्यायालय में सुनवाई में लगे समय को अपवर्जित किया जा सकेगा एवं अदा किये गये न्यायालय शुल्क के समायोजन के संबंध में भी आवेदन प्रस्तुत किया जा सकेगा।

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(3) जब किसी अभियुक्त को क्षेत्राधिकार के बाहर गिरफ्तार कर निकटतम मजिस्ट्रेट के समक्ष प्रस्तुत कर ट्रांजिट रिमाण्ड प्राप्त किया जाता है तब धारा 167 दं.प्र.सं. के अंतर्गत 60/90 दिन की गणना निकटतम मजिस्ट्रेट के समक्ष प्रस्तुत किये जाने की दिनांक से होगी या क्षेत्राधिकार वाले मजिस्ट्रेट के समक्ष प्रस्तुत किये जाने की दिनांक से?

दण्ड प्रक्रिया संहिता, 1973 की धारा 57 यह प्रावधान करती है कि वारंट के बिना गिरफ्तार किए गए किसी व्यक्ति को उससे अधिक अवधि के लिए अभिरक्षा में नहीं रखा जायेगा जो कि मामले की सब परिस्थितियों में उचित हो एवं यात्रा के लिए आवश्यक समय छोड़कर ऐसे निरोध की अवधि 24 घंटे से अधिक की नहीं होगी। ऐसे मामलों में जहाँ अभियुक्त को ऐसे स्थान पर गिरफ्तार किया जाता है जहां से उसे 24 घंटे के भीतर क्षेत्राधिकार वाले मजिस्ट्रेट के समक्ष प्रस्तुत करना संभव नहीं हो पाता है, तब ऐसी परिस्थिति में निकटतम उपलब्ध मजिस्ट्रेट, भले ही उसे उस मामले में जांच या विचारण का क्षेत्राधिकार न हो, के समक्ष अभियुक्त को सर्वप्रथम प्रस्तुत किया जाता है। ऐसे मजिस्ट्रेट द्वारा अभियुक्त को क्षेत्राधिकार वाले मजिस्ट्रेट के समक्ष

प्रस्तुत करने के निर्देश के साथ निरोध में प्राधिकृत करने का आदेश दिया जाता है। ऐसा निरोध ''ट्रांजिट रिमाण्ड'' कहा जाता है।

दण्ड प्रक्रिया संहिता, 1973 की धारा 167 में यह प्रावधान किया गया है कि जहाँ अन्वेषण 24 घंटे की अवधि के भीतर पूरा नहीं किया जा सकता तब अभियुक्त को निकटतम न्यायिक मजिस्ट्रेट के समक्ष प्रस्तुत किया जावेगा। इस प्रकार जहाँ अभियुक्त को गिरफ्तार किए जाने पर धारा 57 की मंशा के अनुरूप उसे 24 घंटे के भीतर क्षेत्राधिकार वाले मजिस्ट्रेट के समक्ष प्रस्तुत नहीं किया जा सकता है तब निकटतम मजिस्ट्रेट, जिसे उस मामले में जांच या विचारण का क्षेत्राधिकार नहीं है, के समक्ष प्रस्तुत किए जाने पर अभियुक्त की अभिरक्षा उस दिन से प्रारंभ होगी जबकि अभियुक्त को ऐसे निकटतम मजिस्ट्रेट के समक्ष प्रस्तुत किया गया है और जिसके द्वारा ट्रांजिट रिमाण्ड प्राधिकृत किया गया है।

इस संबंध में ***राजेश नटवरलाल विरुद्ध राज्य, क्रिमिनल रिट पिटिशन 112/2015 दिनांक 03.02.2015,*** में माननीय बॉम्बे हाईकोर्ट ने अभिमत व्यक्त किया है कि 60 दिन अथवा 90 दिन की अवधि की गणना उसी दिनांक से प्रारंभ होगी जिस दिनांक को अभियुक्त को सर्वप्रथम निकटतम मजिस्ट्रेट के समक्ष प्रस्तुत किया गया है। भले ही उसे प्रकरण में जांच या विचारण का क्षेत्राधिकार हो या न हो। अतः विधिक प्रावधान एवं उक्त न्यायदृष्टांत के आधार पर यह उचित होगा कि धारा 167 दण्ड प्रक्रिया संहिता के अंतर्गत 60 एवं 90 दिन की गणना निकटतम मजिस्ट्रेट के समक्ष प्रस्तुत किये जाने की दिनांक से की जाए जिसके द्वारा ट्रांजिट रिमाण्ड प्रदान किया गया है न कि प्रथम बार क्षेत्राधिकार वाले मजिस्ट्रेट के समक्ष प्रस्तुत किये जाने की दिनांक से।

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(4) इलेक्ट्रॉनिक रिकॉर्ड की साक्ष्य में ग्राह्यता संबंधी अद्यतन विधि क्या है?

अर्जुन पंडितराव खोटकर विरुद्ध कैलाश कुशनराव गोरंटियाल, (2020) 7 एससीसी 1 के मामले में माननीय सर्वोच्च न्यायालय द्वारा इलेक्ट्रॉनिक रिकॉर्ड की साक्ष्य में ग्राह्यता के संबंध प्रतिपादित विधि का सार संक्षेप यह है –

(1) जहाँ न्यायालय में मूल इलेक्ट्रॉनिक रिकॉर्ड प्रस्तुत किया जाता है, तो यह बिना किसी प्रमाण–पत्र के साक्ष्य अधिनियम की धारा 65–ख(4) के अधीन ग्राह्य होगा।

(2) इलेक्ट्रॉनिक रिकॉर्ड का प्रत्येक आउटपुट मूल रिकॉर्ड को प्रस्तुत एवं प्रमाणित किए बिना साक्ष्य में ग्राह्य होगा, बशर्ते कि यह एक सक्षम व्यक्ति के द्वारा जारी धारा 65–ख(4) के अपेक्षित प्रमाण–पत्र द्वारा समर्थित हो।

(3) ऐसे प्रमाण–पत्र को जारी करने वाले व्यक्ति के ज्ञान 'या' विश्वास के आधार पर अभिकथित किया जाना पर्याप्त होगा।

(4) ऐसे प्रमाण–पत्र के स्थान पर मौखिक साक्ष्य ग्राह्य नहीं होगी।

(5) आपराधिक मामलों में प्रमाण–पत्र के प्रस्तुति का उपयुक्त प्रक्रम चार्जशीट प्रस्तुत करने का चरण है। इसी प्रकार सिविल मामलों में यह प्रमाण–पत्र, आदेश 7 नियम 14 एवं आदेश 8 नियम 1क सि.प्र.सं. के प्रावधानों के अध्याधीन रहते हुए, वादपत्र या लिखित कथन प्रस्तुति के समय प्रस्तुत किया जाना चाहिए।

(6) एक पक्षकार जो ऐसे इलेक्ट्रॉनिक उपकरण के आधिपत्य या नियंत्रण में नहीं है, जिससे इलेक्ट्रॉनिक रिकॉर्ड के आउटपुट का उत्पादन किया गया हो, तो ऐसा व्यक्ति न्यायालय को आवेदन कर सक्षम व्यक्ति से प्रमाण–पत्र प्रस्तुत करने के निर्देश जारी करा सकता है।

(7) न्यायालय अपने विवेक से किसी पक्षकार के ऐसे आवेदन को स्वीकार कर सकता है और संबंधित व्यक्ति को ऐसा प्रमाण–पत्र प्रस्तुत करने का निर्देश दे सकता है। ऐसी शक्तियां प्रत्येक सिविल और आपराधिक न्यायालय में द.प्र.सं. की धाराएं 91 व 311, सि.प्र.सं. के आदेश 16 और साक्ष्य अधिनियम की धारा 165 के द्वारा निहित हैं।

(8) जहां एक पक्ष ने तीसरे पक्ष से, जिस पर उसका कोई नियंत्रण नहीं है, आवश्यक प्रमाण–पत्र प्राप्त करने के लिए हर संभव प्रयास कर लिया हो, जिसमें न्यायालय का माध्यम भी सम्मिलित है, तो उसे प्रमाण–पत्र प्रस्तुत करने की अनिवार्यता से मुक्त किया जा सकता है। इलेक्ट्रॉनिक रिकॉर्ड का ऐसा आउटपुट धारा 65–ख(4) के प्रमाण–पत्र के बिना भी ग्राह्य होगा।

(9) जहां इलेक्ट्रॉनिक रिकॉर्ड का आउटपुट किसी अनुसंधान कार्यवाही के दौरान जप्त किया जाता है, वहां प्रत्येक मध्यवर्ती मूल इलेक्ट्रॉनिक रिकॉर्ड को एक पृथक और सुरक्षित तरीके से अनुरक्षित रखेंगे।

(10) निजी व्यक्तियों को मूल इलेक्ट्रॉनिक रिकॉर्ड को संरक्षित करने की आवश्यकता नहीं है।

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PART - II

NOTES ON IMPORTANT JUDGMENTS

228. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 2 (1) (e) and 20 Arbitration – "Venue" and "Seat" – "Seat" means the place where the Court is, which has the territorial jurisdiction with respect to the subject matter/cause of action of the matter and "Venue" is the place where the Tribunal sits to hold the arbitration proceedings – ''Venue'' and ''Seat'' cannot be synonymous.

माध्यस्थम् एवं सुलह अधिनियम, 1996 – धाराएं 2 (1) (ङ) एवं 20

माध्यस्थम – ''स्थान'' एवं ''पीठ''–''पीठ'' का अर्थ है वह स्थान जहां वह न्यायालय है जिसे मामले के विषय वस्तु/वाद कारण के संबंध में क्षेत्रीय अधिकारिता है और ''स्थान'' वह जगह है जहां अधिकरण माध्यस्थम् कार्यवाहियों के लिये बैठता है – ''स्थान'' एवं ''पीठ'' समानार्थी नहीं हो सकते।

Cobra CIPL v. Chief Project Manager

Order dated 04.02.2019 passed by the High Court of Madhya Pradesh in Arbitration Case No. 107 of 2017, reported in 2020 (2) MPLJ 71

Relevant extracts from the order:

In ***Konkola Copper Mines v. Stewarts and Lloyds of India Ltd., (2013) SCC Online BOM 476,*** it was held that merely because before commencement of arbitral proceedings, both parties agreed that "venue" place of arbitration shall be at Mumbai for the sake of convenience, that would not confer jurisdiction on this Court to entertain application under Section 9 of Arbitration and Conciliation Act. It is apposite to remember that as per Section 2(1)(e) of the Act, the purpose is to identify the Courts having supervisory control over the arbitration proceedings. The "venue" cannot determine the jurisdiction of such Courts. Precisely for this reason, in the case of ***Konkola Copper*** (supra), the Court expressed its inability to trace jurisdiction from the place of "venue". The "seat" of arbitration constitutes the center of gravity of the arbitration whereas the "venue" of the arbitration may be at one or more convenient locations. In the case of ***P.C.P. International Ltd. v. LANCO Infratech Ltd. (2015) SCC OnLine DEL 10428,*** the Court opined that the argument of petitioner that merely because "venue" of arbitration is in Delhi, this Court would have territorial jurisdiction is a misconceived argument because there is a difference between "venue" of arbitration and "seat" of arbitration. It was further clarified that it is only the "seat" of arbitration which will give territorial jurisdiction and not the "venue" of jurisdiction. "Seat" means the place where Court is, which has the territorial jurisdiction with respect to the subject matter/cause of action of the smatter, and "venue" is the place where the Tribunal sits to hold the arbitration proceedings and sitting of Tribunal need not be at the place where the "seat" of arbitration is located. In ***Union of India v. Hardi Exploration and Production (India) INC, (2018)***

SCC OnLine SC 1640, the Apex Court held that a "venue" can become a "seat" if something is added to it as a concomitant. The definition of "venue" in the present case does not fulfill this requirement. Indeed, the definition clearly shows that parties never intended to treat the "venue" as a "seat". For this reason, "venue" was left open to be changed at the discretion of the purchaser. In view of foregoing analysis, the judgment passed in the case of ***Mr. Raman Deep Singh Taneja v. Crown Realtech Pvt. Ltd., (2017) SCC OnLine Delhi High Court 11966*** cannot be pressed into service.

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229. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 9, 20, 34 and 42

Jurisdiction of Civil Court – Application for setting aside an arbitral award – Juridical seat of arbitral proceedings – Held, once the seat of arbitration is designated by agreement or determined by Arbitral Tribunal, the same operates as an exclusive jurisdiction clause – Only Courts where such seat is located would have jurisdiction over the arbitration to the exclusion of all other Courts, even Court where part of cause of action may have arisen – However, where no seat is designated by agreement nor has been determined by the Arbitral Tribunal, all Courts where part of cause of action arises, may have jurisdiction over arbitration – Earliest application having been made to a Court would then become exclusive Court which would have control over the arbitral proceedings. [*Venture Global Engg. v. Satyam Computer Services Ltd., (2008) 10 SCC 308* overruled; *Union of India v. Hardy Exploration & Production (India) Inc., (2019) 13 SCC 472* held *per incuriam*]

माध्यस्थम् एवं सुलह अधिनियम, 1996 – धाराएं 9, 20, 34 एवं 42

सिविल न्यायालय की अधिकारिता – एक माध्यस्थम् अधिनिर्णय को अपास्त करने के लिए आवेदन – माध्यस्थम् कार्यवाही की न्यायिक पीठ – अभिनिर्धारित, एक बार माध्यस्थम् की पीठ समझौते से निर्धारित होती है या माध्यस्थम् अधिकरण द्वारा विनिश्चित की जाती है, तो वही एक विशेष क्षेत्राधिकार खंड के रूप में लागू होगी – मात्र उन्हीं न्यायालयों को जहां ऐसी पीठ स्थित होती है, को अन्य सभी न्यायालयों, यहां तक कि ऐसे न्यायालय जहां वाद हेतुक का भाग उत्पन्न हुआ हो, के अपवर्जन के साथ माध्यस्थम् पर अधिकारिता होगी – यद्यपि, जहां कोई पीठ समझौते से निर्धारित नहीं हो या माध्यस्थम् अधिकरण द्वारा विनिश्चित न की गई हो, वहां ऐसे सभी न्यायालयों को जहां वाद हेतुक का भाग उत्पन्न होता हो, को माध्यस्थम् पर अधिकारिता होगी – तब वह न्यायालय जहां प्रथम आवेदन किया जाता है माध्यस्थम् पर अधिकारिता वाला अनन्य न्यायालय बन जाएगा। (*वेन्चर ग्लोबल इंजी. वि. सत्यम कम्प्यूटर सर्विसेज़ लिमि., (2008) 10 एससीसी 308* उलट दिया गया; *भारत संघ वि. हार्डी एक्सप्लोरेशन एण्ड प्रोडक्शन (इण्डिया) इंक., (2019) 13 एससीसी 472* पर इन्क्यूरियम घोषित)

BGS SGS SOMA JV v. NHPC Limited

Judgment dated 10.12.2019 passed by the Supreme Court in Civil Appeal No. 9307 of 2019, reported in (2020) 4 SCC 234

Relevant extracts from the Judgment:

It can be seen that given the new concept of "juridical seat" of the arbitral proceedings, and the importance given by the Arbitration Act, 1996 to this "seat", the arbitral award is now not only to state its date, but also the place of arbitration as determined in accordance with Section 20. However, the definition of "Court" contained in Section 2(1) (c) of the Arbitration Act, 1940, continued as such in the Arbitration Act, 1996, though narrowed to mean only principal civil court and the High Court in exercise of their original ordinary civil jurisdiction. Thus, the concept of juridical seat of the arbitral proceedings and its relationship to the jurisdiction of courts which are then to look into matters relating to the arbitral proceedings – including challenges to arbitral awards – was unclear, and had to be developed in accordance with international practice on a case by case basis by this Court.

Section 42 is meant to avoid conflicts in jurisdiction of Courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one Court exclusively. This is why the section begins with a non-obstante clause, and then goes on to state *"...where with respect to an arbitration agreement any application under this Part has been made in a Court..."* It is obvious that the application made under this part to a Court must be a Court which has jurisdiction to decide such application. The subsequent holdings of this Court, that where a seat is designated in an agreement, the Courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the Court where the seat is located, and that Court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no "seat" is designated by agreement, or the so-called "seat" is only a convenient "venue", then there may be several Courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the "seat" of arbitration, and before such "seat" may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a Court in which a part of the cause of action arises would then be the exclusive Court under Section 42, which would have control over the arbitral proceedings.

The judgments of the English Courts have examined the concept of the "juridical seat" of the arbitral proceedings, and have laid down several important tests in order to determine whether the "seat" of the arbitral proceedings has, in fact, been indicated in the agreement between the parties.

It will thus be seen that wherever there is an express designation of a "venue", and no designation of any alternative place as the "seat", combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.

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230. BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988 – Sections 3 and 4
Appellant/defendant did not said that the plaintiff or someone other than the purchaser was the real owner, nor was the interest in the property – Transaction as benami, not proved.

बेनामी संव्यवहार (प्रतिषेध) अधिनियम, 1988 – धाराएं 3 एवं 4

अपीलीर्थी/प्रतिवादी ने अंत तक नहीं कहा कि क्रेता के अलावा वादी या कोई अन्य स्वामी था, या संपत्ति में हित रखता था – संव्यवहार बेनामी की तरह, साबित नहीं।

M/s. Fair Communication and Consultants and anr. v. Surendra Kerdile

Judgment dated 20.01.2020 passed by the Supreme Court in Civil Appeal No. 106 of 2010, reported in AIR 2020 SC 1464

Relevant extracts from the judgment:

In the present case, the appellants did not prove that the transaction (to which they were not parties) was benami; on the contrary, the appellant's argument was merely that the transaction could not be said to be for a consideration in excess of ₹ 1,30,000/- in the context of a defense in a suit for money decree. The defendant/appellants never said that the plaintiff or someone other than the purchaser was the real owner; nor was the interest in the property, the subject matter of the recovery suit. Therefore, in the opinion of this court, the conclusions and the findings in the impugned judgment are justified.

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231. CIVIL PRACTICE:
MOTOR VEHICLES ACT, 1988 – Section 173
Appeal – Cross-objection – Court fee has to be paid in accordance with the claim made in the cross-objection and in absence of the court fee, cross-objection cannot be entertained.

सिविल प्रथाः

मोटरयान अधिनियम, 1988 – धारा 173

अपील – प्रत्याक्षेप – न्यायालय शुल्क प्रत्याक्षेप में किये गये दावे के अनुसार भुगतान किया जाना चाहिए एवं न्यायालय शुल्क के अभाव में प्रत्याक्षेप पर विचार नहीं किया जा सकता।

Jagat Narayan Sharma and anr. v. Mithleshi and ors.

Judgment dated 01.08.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Appeal No. 1555 of 2010, reported in 2020 ACJ 1300

Relevant extracts from the judgment:

So far as the Claim Petition is concerned, the claimants are required to pay the fixed court fee. Therefore, under that circumstance, if the Claims Tribunal comes to a conclusion that lesser compensation amount has been demanded and the claimants are entitled for higher compensation amount, then even in absence of the prayer, the Claims Tribunal can award the higher compensation amount. However, that proposition of law cannot be made applicable to the cross-objection. Court fee has to be paid in accordance with the claim made in the cross-objection and in absence of the court fee, the cross-objection cannot be entertained.

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232. CIVIL PROCEDURE CODE, 1908 – Section 96 and Order 41 Rule 22 LIMITATION ACT, 1963 – Article 97

(i) Appeal – Without filing a cross-objection, even an issue or any finding decided against the respondent can be assailed before the Appellate Court at the time of final hearing.

(ii) Limitation – Special provision always prevail over and above the general provision and when a specific provision for limitation is provided under Article 97 of the Limitation Act for filing civil suit on the basis of right of pre-emption, then general provisions of limitation for declaration will not be applicable.

सिविल प्रक्रिया संहिता, 1908 – धारा 96 एवं आदेश 41 नियम 22 परिसीमा अधिनियम, 1963 – अनुच्छेद 97

(i) अपील – प्रतिवादी के विरूद्ध निर्णीत कोई वाद प्रश्न या निष्कर्ष अपीलीय न्यायालय के समक्ष अंतिम सुनवाई के समय प्रत्याक्षेप प्रस्तुत किये बिना भी आक्षेपित किया जा सकता है।

(ii) परिसीमा – विशेष प्रावधान हमेशा सामान्य प्रावधान पर अभिभावी होते हैं और जब परिसीमा अधिनियम के अनुच्छेद 97 के अंतर्गत अग्रक्रयाधिकार के अधिकार के आधार पर सिविल वाद प्रस्तुत करने हेतु एक विशिष्ट प्रावधान दिया गया है तब घोषणा की परिसीमा हेतु सामान्य प्रावधान लागू नहीं होंगे।

Dr. Kailashchandra v. Damodar (deceased) through Legal Heirs Smt. Reva Devi and ors.

Judgment dated 17.10.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in First Appeal No. 29 of 2002, reported in 2020 (2) MPLJ 40

Relevant extracts from the judgment:

Article 97 of Limitation Act has specifically provides the period of limitation for filing civil suit claiming right of preemption is one year. The trial Court while

deciding the issue of limitation has held that the appellant has challenged the sale deed, therefore, the period of limitation for filing suit is 3 years. It is settled principle of law that special provision will always prevail over and above the general provision and when there is a specific provision for limitation is provided under Article 97 of Limitation Act for filing civil suit on the basis of right of preemption, then general provision will not be applicable in the present case. Thus, the learned trial Court has rightly decided the preliminary issue on 12.01.1999.

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***233. CIVIL PROCEDURE CODE, 1908 – Section 96 and Order 41 Rule 31**

Appeal – Duties of appellate court – First appellate court is required to address all issues of facts and laws and decide the case by giving reasons – Findings must be recorded after dealing with the evidence led by parties – The judgment of first appellate court must set out points for determination, record the decision thereon and give its own reasons – When appellate court agrees with the views of trial court, expression of a general agreement with reasons given by trial court would ordinarily suffice.

सिविल प्रक्रिया संहिता, 1908 – धारा 96 एवं आदेश 41 नियम 31

अपील – अपीलीय न्यायालय के कर्तव्य – प्रथम अपीलीय न्यायालय से तथ्यों और विधि के सभी विवाद्यकों पर विचार करने तथा सकारण मामले का विनिश्चय करने की अपेक्षा होती है – पक्षकारों द्वारा प्रस्तुत साक्ष्य पर विचारोपरांत निष्कर्ष अवश्यमेव अभिलिखित किए जाने चाहिए – प्रथम अपीलीय न्यायालय के निर्णय में विचारणीय बिन्दु, उन पर विनिश्चय एवं स्वयं के कारण अंतर्वलित होने चाहिए – जब अपीलीय न्यायालय विचारण न्यायालय के मत से सहमत हो, तो विचारण न्यायालय द्वारा दिए गए कारणों के साथ सहमति की साधारण अभिव्यक्ति सामान्यतया पर्याप्त होगी।

Malluru Mallappa (D) through LRs v. Kuruvathappa and ors.

Judgment dated 12.02.2020 passed by the Supreme Court in Civil Appeal No. 1485 of 2020, reported in (2020) 4 SCC 313

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234. CIVIL PROCEDURE CODE, 1908 – Section 149

SPECIFIC RELIEF ACT, 1963 – Section 16(c)

(i) Effect of permission to make up deficiency in court fees – If the Court allows a person at any stage to pay the whole or part of the court fee, the document shall have the same force and effect as if such fee had been paid in the first instance.

(ii) Enforcement of agreement to sell – Proper form of relief is suit for specific performance and not for mandatory injunction.

सिविल प्रक्रिया संहिता, 1908 – धारा 149

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 16(ग)

(i) न्यायालय शुल्क की कमी को पूरा करने की अनुमति का प्रभाव – यदि न्यायालय किसी व्यक्ति को किसी भी स्तर पर न्यायालय शुल्क पूर्णतः या भागतः अदा करने की अनुमति देता है तब ऐसा दस्तावेज वही बल व प्रभाव रखेगा मानो ऐसा न्यायालय शुल्क प्रथम अवसर पर ही अदा किया गया हो।

(ii) विक्रय की संविदा का प्रवर्तन – सहायता का उचित प्रकार विनिर्दिष्ट अनुपालन के लिये वाद है ना कि आज्ञापक व्यादेश के लिये।

Atma Ram v. Charanjit Singh

Judgment dated 10.02.2020 passed by the Supreme Court in S.L.P. (C) No. 27598 of 2016, reported in (2020) 3 SCC 311

Relevant extracts from the judgment:

Section 149 CPC confers a discretion upon the Court to allow a person, at any stage, to pay the whole or part of the court fee actually payable on the document, but which has not been paid. Once the Court exercises such a discretion and payment of court fee is made in accordance with the said decision, the document, under Section 149, shall have the same force and effect as if such fee had been paid in the first instance.

But in this case, the question was not merely one of limitation. As we have stated earlier, the suit agreement of sale was dated 12.10.1994. According to the petitioner, the last date fixed for the performance of the obligations under the contract, was 07.10.1996. A legal notice was issued by the petitioner on 12.11.1996. But the plaint itself was presented only on 13.10.1999, which was beyond three years of the date 07.10.1996, fixed under the agreement of sale for the performance of the contract. (Though the petitioner has claimed before us that the plaint was presented on 03.10.1999, the copy of the judgment as well as the decree of the Trial Court indicate the date of presentation of the plaint as 13.10.1999). The relief sought in the plaint as it was originally presented, was for a mandatory injunction to direct the respondent to receive the balance sale consideration and to get a document of transfer effected in favour of the petitioner. The petitioner/plaintiff was obviously conscious of the nature of the relief prayed for by him. This is why he valued the relief claimed in the suit at ₹ 250/- and paid a fixed court fee of ₹ 25/-. The respondent took an objection in his written statement, to the maintainability of the suit, in the form in which it was filed. Therefore, the Trial Court also framed an issue as to whether the suit was not maintainable in the present form, as issue No.5. It was only after issues were framed on 12.10.2002 that the Trial Court took up the application filed by the respondent for the dismissal of the suit. It is in that application that the Trial Court passed the order dated 09.08.2003 permitting the petitioner/plaintiff to pay the deficit court fee by treating the prayer made as one for specific performance. Instead of addressing the issue as to whether the petitioner could

indirectly seek specific performance of an agreement of sale, by couching the relief as one for mandatory injunction and paying a fixed court fee as payable in a suit for mandatory injunction, the Trial Court, by a convoluted logic, chose to treat the suit as one for specific performance and permitted the petitioner to pay deficit court fee.

As a matter of fact, if the suit was actually one for specific performance, the petitioner ought to have at least valued the suit on the basis of the sale consideration mentioned in the agreement. But he did not. If the suit was only for mandatory injunction (which it actually was), the only recourse open to the petitioner was to seek an amendment under Order VI, Rule 17 CPC. If such an application had been filed, it would have either been dismissed on the ground of limitation [***K. Raheja Constructions Ltd. v. Alliance Ministries, 1995 Supp. (3) SCC 17***] or even if allowed, the prayer for specific performance, inserted by way of amendment, would not have been, as a matter of course, taken as relating back to the date of the plaint [***Tarlok Singh v. Vijay Kumar Sabharwal, (1996) 8 SCC 367, Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit v. Ramesh Chander, (2010) 14 SSC 596***]. Therefore, a short-cut was found by the petitioner/plaintiff to retain the plaint as such, but to seek permission to pay deficit court fee, as though what was filed in the first instance was actually a suit for specific performance. Such a dubious approach should not be allowed especially in a suit for specific performance, as the relief of specific performance is discretionary under Section 20 of the Specific Relief Act, 1963.

It may be true that the approach of the High Court in non-suiting the petitioner-plaintiff on the ground of limitation, despite the original defect having been cured and the same having attained finality, may be faulty. But we would not allow the petitioner to take advantage of the same by taking shelter under Section 149 CPC, especially when he filed the suit (after more than three years of the date fixed under the agreement of sale) only as one for mandatory injunction, valued the same as such and paid court fee accordingly, but chose to pay proper court fee after being confronted with an application for the dismissal of the suit. Clever ploys cannot always pay dividends.

Coming to the second aspect revolving around Section 16(c), a look at the judgment of the Trial Court would show that no issue was framed on the question of readiness and willingness on the part of the petitioner/plaintiff in terms of Section 16(c) of the Specific Relief Act, 1963. The fact that the petitioner chose to issue a legal notice dated 12.11.1996 and the fact that the petitioner created an *alibi* in the form of an affidavit executed before the Sub-Registrar on 07.10.1996 (marked as Ext. P-2) to show that he was present before the Sub-Registrar for the purpose of completion of the transaction, within the time stipulated for its performance, was not sufficient to conclude that the petitioner continued to be ready and willing even after three years, on 13.10.1999 when the plaint was presented. No explanation was forthcoming from the petitioner for the long delay of three years, in filing the suit (on 13.10.1999) after issuing a legal notice on 12.11.1996. The conduct of a plaintiff is very crucial in a suit

for specific performance. A person who issues a legal notice on 12.11.1996 claiming readiness and willingness, but who institutes a suit only on 13.10.1999 and that too only with a prayer for a mandatory injunction carrying a fixed court fee relatable only to the said relief, will not be entitled to the discretionary relief of specific performance.

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***235. CIVIL PROCEDURE CODE, 1908 – Section 151**

Consolidation of suits – Merely because two suits were consolidated, would not mean that both the suits had merged in each other – There is no specific provision in CPC for consolidation of suits and the said power is to be exercised only u/s 151 of CPC – The purpose of consolidation of suits is to save costs, time and effort and to conduct several actions more conveniently by treating them as one action.

सिविल प्रक्रिया संहिता, 1908 – धारा 151

वादों का समेकन – मात्र इस कारण कि दो वाद समेकित किये गये थे, यह अर्थ नहीं होगा कि दोनों वाद एक दूसरे में समाहित हो गये थे – सिविल प्रक्रिया संहिता में वादों के समेकन हेतु कोई विशिष्ट प्रावधान नहीं है और उक्त शक्ति का प्रयोग केवल सिविल प्रक्रिया संहिता की धारा 151 के अंतर्गत किया जाएगा – वादों के समेकन का उद्देश्य व्यय, समय और श्रम बचाना तथा कई कार्यों को एक साथ एक कार्य के रूप में अधिक सुविधाजनक तरीके से संचालित करना है।

Shankarlal v. Mahila Ramdai and ors.

Judgment dated 12.09.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Second Appeal No. 406 of 2000, reported in 2020 (2) MPLJ 376

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

Amendment – Plea of forgery in any document cannot be examined at the stage of amendment in pleadings as it is a matter of evidence.

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17

संशोधन – किसी दस्तावेज में कूटरचना का अभिवाक् अभिवचनों में संशोधन के स्तर पर परीक्षित नहीं किया जा सकता क्योंकि यह साक्ष्य का विषय है।

Sarveshvar and ors. v. Sukhdev and ors.

Judgment dated 30.11.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 3113 of 2018, reported in 2020 (2) MPLJ 557

Relevant extracts from the judgment:

The order of remand passed by this Court was not a limited remand order but by that order the trial Court was directed to decide the suit afresh. The plea

of the petitioner that the alleged will is a forged document, cannot be examined at this stage since it is a matter of evidence which may be led by the parties during the trial of the suit. The amendment has been sought on account of the subsequent development of death of Sukhdev and the alleged will executed by him. Section 8 of the Act is attracted in case when the male Hindu dies intestate, therefore, the respondent cannot be restrained from amending the written statement on the basis of the will, which may be a relevant factor for determining the applicability of Section 8.

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

Amendment of plaint – When new parties are added and they file their written statements with counter-claim then on the basis of such subsequent development, the plaintiff should also be allowed to amend the plaint as evidence will be required to be led by the parties on the basis of their pleadings.

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17

वादपत्र में संशोधन – जब नये पक्षकार जोड़े गये हैं और वे लिखित कथन के साथ अपना प्रतिदावा प्रस्तुत करते हैं तब इस पश्चातवर्ती बदलाव के आधार पर वादी भी वादपत्र में संशोधन करने हेतु अनुमत किया जाना चाहिए क्योंकि पक्षकारों द्वारा उनके अभिवचनों के आधार पर ही साक्ष्य को प्रस्तुत करने की अपेक्षा होती है।

Padam Chand Jain and ors. v. Mahaveer Prasad Jain

Judgment dated 27.08.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 3195 of 2019, reported in 2020 (2) MPLJ 287

Relevant extracts from the judgment:

From the perusal of the law laid down by the Hon'ble Supreme Court in the case of ***Abdul Rehman and anr. v. Mohd. Ruldu and ors., (2012) 11 SCC 341*** and the provision of Order 6 Rule 17, the amendment on the basis of the subsequent development was a material amendment and the application filed for the same should have been allowed by the learned trial Court. In the present case as the new parties were added as defendants and they have filed their written statements and counter claim. The learned trial Court has permitted the counter claim but has refused the application for amendment in plaint. Once the counter claim was permitted then there was no occasion for the trial Court for refusing the amendment application, as evidence will be required to be lead by the parties on the basis of the pleadings. If there will be no pleadings it will be objected by the defendants at the time of evidence. By the aforesaid amendment no prejudice will be caused to the defendants.

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***238.CIVIL PROCEDURE CODE, 1908 – Order 8 Rule 1**
COMMERCIAL COURTS ACT, 2015 – Section 16

(i) Written statement – Prescribed period is 90 days for filing – Nature of – Held, Order 8 Rule 1 CPC, as amended by Commercial Courts Act, 2015, provides a mandatory nature of timeline for filing written statements in commercial disputes – Courts have no discretion to condone delay – Amended provision does not apply to non-commercial disputes – Discretion to condone delay beyond 90 days must be exercised in cases of extreme hardship or due to factors beyond the control of parties despite proactive diligence.

(ii) Delay in filing written statement – Condonation of – Defendant put forth that his counsel did not turn up in Court, thus, written statement could not be filed – Held, not a cogent reason for condonation of delay.

सिविल प्रक्रिया संहिता, 1908 – आदेश 8 नियम 1
वाणिज्यिक न्यायालय अधिनियम, 2015 – धारा 16

(i) लिखित कथन प्रस्तुत करने के लिए 90 दिवस की अवधि विहित है – प्रकृति – अभिनिर्धारित, वाणिज्यिक न्यायालय अधिनियम, 2015 द्वारा यथा संशोधित आदेश 8 नियम 1 वाणिज्यिक विवादों में लिखित कथन प्रस्तुति हेतु एक आज्ञापक प्रकृति की समय सीमा का प्रावधान करता है – न्यायालय के पास विलंब क्षमा करने का कोई विवेकाधिकार नहीं है – संशोधित प्रावधान गैर–वाणिज्यिक विवादों पर लागू नहीं होता है – 90 दिवस से अधिक विलंब को क्षमा करने के विवेकाधिकार का प्रयोग अत्यधिक कठिनाई के मामलों में अथवा सक्रिय तत्परता के पश्चात् भी पक्षकारों के नियंत्रण से परे रहने वाली परिस्थितियों में किया जाना चाहिए।

(ii) लिखित कथन प्रस्तुति में विलंब – क्षमा किया जाना – प्रतिवादी के द्वारा व्यक्त किया गया कि उसके अधिवक्ता न्यायालय में नहीं आ रहे थे, इसीलिए वह लिखित कथन प्रस्तुत नहीं कर सका था – अभिनिर्धारित, यह विलंब क्षमा करने का सुदृढ़ आधार नहीं है।

Desh Raj v. Balkishan (Dead) through Proposed LR MS Rohini
Judgment dated 20.01.2020 passed by the Supreme Court in Civil Appeal No. 433 of 2020, reported in (2020) 2 SCC 708 (Three-Judge Bench)

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***239.CIVIL PROCEDURE CODE, 1908 – Order 11 Rule 21 (2)**

Non compliance with order for discovery – Effect of – Once suit has been dismissed under Order 11 Rule 21 of the Code, by virtue of sub-rule (2) plaintiff is debarred to file fresh suit – Provisions of Order 11 Rule 21 of the Code are not only important but have a mandatory effect in the course of trial.

सिविल प्रक्रिया संहिता, 1908 – आदेश 11 नियम 21 (2)

प्रकटीकरण के आदेश का अननुपालन – प्रभाव – जब एक बार संहिता के आदेश 11 नियम 21 उपनियम (1) के अंतर्गत वाद खारिज हो चुका हो, तब उपनियम (2) के अंतर्गत वादी नया वाद प्रस्तुत करने से प्रवारित हो जाता है – संहिता के आदेश 11 नियम 21 के प्रावधान न केवल महत्वपूर्ण हैं बल्कि विचारण के अनुक्रम में आज्ञापक प्रभाव रखते हैं।

Zamindar Dharmik and Shekshnik Nyas, Indore v. Siddhanath (deceased) through his L.Rs.

Judgment dated 08.07.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 191 of 1999, reported in 2020 (2) MPLJ 100

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***240. CIVIL PROCEDURE CODE, 1908 – Order 16 Rules 1, 6 and 7**

Summoning of witnesses and documents – When the party files applications under Order 16 Rules 1, 6 and 7 of the Code and fails to establish relevance of witnesses mentioned in the list and also fails in establishing the relevance of document sought to be summoned, rejection of such application is proper.

सिविल प्रक्रिया संहिता, 1908 – आदेश 16 नियम 1, 6 एवं 7

साक्षियों एवं दस्तावेजों का आहूत किया जाना – जब पक्षकार संहिता के आदेश 16 नियम 1, 6 एवं 7 के अंतर्गत आवेदन प्रस्तुत करता है एवं सूची में वर्णित साक्षियों की प्रासंगिकता को स्थापित करने में असफल रहता है साथ ही आहूत किये जाने वाले दस्तावेजों की प्रासंगिकता स्थापित करने में भी असफल रहता है, तब ऐसे आवेदन का अस्वीकार किया जाना उचित है।

Prayagnarayan Bansal v. Pavan Chandil

Judgment dated 16.01.2020 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 6600 of 2019, reported in 2020 (2) MPLJ 142

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***241. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 65 (as applicable in State of M.P.)**

Auction sale – Executing court after receiving the auction proposal reserved the case for hearing objection of judgment-debtor – No order accepting or rejecting the bid passed – Held, such an order amounts to refusal of bid – No right accrues in favour of auction-purchaser.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 65 (म.प्र. राज्य में यथा लागू)

नीलामी बिक्री – निष्पादन न्यायालय ने नीलामी प्रस्ताव प्राप्त कर मामला निर्णीऋणी की आपत्ति पर सुनवाई हेतु नियत किया – बोली को स्वीकार अथवा खारिज करने का कोई आदेश नहीं दिया गया – अभिनिर्धारित, ऐसा आदेश बोली अस्वीकार करने का प्रभाव रखता है – नीलामी–क्रेता को कोई अधिकारी उद्भूत नहीं हुआ।

Manish Tiwari and ors. v. Deepak Chotrani and ors.

Order dated 08.02.2020 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 4671 of 2018, reported in 2020 (2) MPLJ 612

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***242.CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 85**

Execution – Auction proceedings – Executing Court has no authority or jurisdiction to extend period to deposit balance amount of purchase money – Provision of Rule 85 is mandatory in nature and balance amount ought to have been deposited within 15 days.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 85

निष्पादन – नीलामी कार्यवाहियां – निष्पादन न्यायालय को शेष क्रय राशि जमा करने के लिये समयावधि बढ़ाने की कोई अधिकारिता या शक्ति नहीं है – नियम 85 के प्रावधान आज्ञापक प्रकृति के हैं और शेष क्रय राशि 15 दिनों के भीतर अवश्यमेव जमा की जानी चाहिए।

Jagat Bandhu v. Vijay Kaushal and ors.

Judgment dated 20.01.2020 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 544 of 2017, reported in 2020 (2) MPLJ 353

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***243.CIVIL PROCEDURE CODE, 1908 – Order 39 Rules 1 and 2**

Temporary injunction – Encroachment – Where a person is found to be in possession and if another individual is trying to interfere with the possession of the said person, then temporary injunction can be granted – But if applicant has encroached upon the government land then State has special provisions u/s 248 MPLRC for dispossessing the encroacher – If State wishes to exercise said power, then by issuing a temporary injunction, Court cannot restrain the State from dispossessing the plaintiff unless and until *prima facie* it is shown that the plaintiffs are having any title in the property in dispute.

सिविल प्रक्रिया संहिता, 1908 – आदेश 39 नियम 1 एवं 2

अस्थायी व्यादेश – अतिक्रमण – जहां एक व्यक्ति को कब्जे में होना पाया जाता है और यदि कोई दूसरा व्यक्ति उस व्यक्ति के कब्जे में बाधा डालता है, तब अस्थायी व्यादेश प्रदान किया जा सकता है – परंतु यदि आवेदक शासकीय भूमि पर अतिक्रमण

करता है, तब राज्य के पास मध्यप्रदेश भू–राजस्व संहिता की धारा 248 के अंतर्गत अतिक्रमणकारी को बेकब्जा करने हेतु विशेष प्रावधान है – यदि राज्य उक्त शक्ति का प्रयोग करना चाहता है तब न्यायालय अस्थायी व्यादेश जारी करते हुए राज्य को वादी को बेकब्जा करने से अवरूद्ध नहीं कर सकता जब तक कि प्रथम दृष्टया यह न दर्शाया गया हो कि वादीगण विवादित संपत्ति में कोई स्वामित्व रखते हैं।

Kapoori and ors. v. State of M.P. and ors.

Judgment dated 30.09.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 5104 of 2019, reported in 2020 (2) MPLJ 261

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244. CIVIL PROCEDURE CODE, 1908 – Order 41 Rules 23, 23A, 27 and Order 9 Rule 13

Remand in civil case – Trial Court has passed the decree on merit but the first appellate court has not reversed the judgment and decree on merit and simply held that the Trail Court has wrongly proceeded *ex parte* against the defendants – The first appellate court ought to have considered the appeal on merit and in case the appellate court finds it to be a fit case for reversal then only it can remand the case to the Trial Court.

सिविल प्रक्रिया संहिता, 1908 – आदेश 41 नियम 23, 23ए, 27 एवं आदेश 9, नियम 13

व्यवहार मामलों में प्रतिप्रेषण – विचारण न्यायालय ने गुण–दोषों के आधार पर आज्ञप्ति पारित की परंतु प्रथम अपीलीय न्यायालय ने निर्णय एवं आज्ञप्ति को गुण–दोष के आधार पर अपास्त न करते हुए केवल यह अभिनिर्धारित किया कि विचारण न्यायालय द्वारा अनुचित रूप से प्रतिवादीगण के विरुद्ध एकपक्षीय कार्यवाही की गई – प्रथम अपीलीय न्यायालय को गुण–दोष के आधार पर ही अपील को विचारित करना था एवं यदि अपीलीय न्यायालय निर्णय को अपास्त किया जाना उचित पाता है केवल तब ही प्रकरण विचारण न्यायालय को प्रतिप्रेषित किया जा सकता है।

Dineshchandra Sharma (Deceased) through L.Rs. and ors. v. Rana Dharampal Singh and ors.

Judgment dated 13.02.2020 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Appeal No. 1658 of 2012, reported in AIR 2020 MP 54

Relevant extracts from the judgment:

It is clear that the first appellate Court can remand the suit to the trial Court only after reversal of the decree. Under Order 41 Rule 23A CPC where the civil Court has disposed of the suit otherwise than on a preliminary point and the first appellate Court has reversed the decree in appeal and found that a retrial is necessary then the appellate Court may remand the suit as provided

under Order 41 Rule 23. In the present case the trial Court has passed the decree on merit but the first appellate Court has not reversed the judgment and decree on merit and simply held that the trial Court has wrongly proceeded *ex parte* against the defendants by placing reliance over the judgment passed by the Apex Court in the case of ***Malkiat Singh and anr. v. Joginder Singh and ors., AIR 1998 SC 258.*** The case of ***Malkiat Singh*** (supra) was travelled up to the Supreme Court after rejection of the application under Order 9 Rule 13 CPC and not after dismissal of regular first appeal. The Apex Court has considered the scope of Order 9 Rule 13 CPC and set aside the judgment and decree, therefore, the facts of the present case are distinguishable. The first appellate Court ought to have considered the appeal on merit and in case the appellate Court finds it to be a fit case for reversal then only it can remand the case to the trial Court.

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245. CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 27

Additional evidence – If proposed documents are not such material documents which may change the fate of litigation conclusively, then application filed under Order 41 Rule 27 may be rejected as provisions of Order 41 Rule 27 of the Code does not authorize any lacuna or gaps in evidence to be filled up at the stage of appeal.

सिविल प्रक्रिया संहिता, 1908 – आदेश 41 नियम 27

अतिरिक्त साक्ष्य – यदि प्रस्तावित दस्तावेज ऐसे तात्विक दस्तावेज नहीं हैं जो निर्णायक रूप से वाद के परिणाम को बदल सकते हैं तब आदेश 41 नियम 27 के अधीन प्रस्तुत आवेदन निरस्त किया जा सकता है क्योंकि आदेश 41 नियम 27 के प्रावधान, अपील के प्रक्रम पर साक्ष्य की कमी को पूरा करने के लिये अधिकृत नहीं करते।

Pramod Kumar Jain and ors. v. Kusum Lashkari and ors.

Judgment dated 29.08.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Second Appeal No. 564 of 2008, reported in 2020 (2) MPLJ 357

Relevant extracts from the judgment:

Through this application, appellants have not successfully demonstrated the due diligence factor and it appears that these documents are not helpful for reaching at just conclusion of litigation. It appears to be a dilatory tactics. Those documents are not such material documents which may change the fate of litigation conclusively therefore, documents are rejected to be taken on record. Provisions of Order 41 Rule 27 of CPC does not authorize any lacuna or gaps in evidence to be filled up at the stage of appeal. It is the duty of the litigating party to show due diligence. [See: ***N. Kamalam (Dead) and anr. v. Ayyasamy and anr., (2001) 7 SCC 503*** and ***Basayya I. Mathad v. Rudrayya S. Mathad and ors., (2008) 3 SCC 120*** and recent pronouncement of the Hon'ble Apex Court in the case of ***Jagdish Prasad Patel (D) thr. LRs. v. Shivnath and ors., (2019) 6 SCC 82***].

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246. CONSUMER PROTECTION ACT, 1986 – Section 2 (1) (d)
CONTRACT ACT, 1872 – Sections 148 and 151

(i) Consumer – Definition – When any individual is a beneficiary under the policy then he is definitely a consumer.

(ii) Insurance – Insurer is liable to pay value of damaged/ destructed goods as shown in the receipts issued by the warehouse on the date of storage to farmers.

(iii) Bailer and bailee – A person hands over his produce/goods to any warehouse on rent as a bailer and warehouse accepts this as a bailee and such relationship does not create a relationship based only on trust.

उपभोक्ता संरक्षण अधिनियम, 1986 – धारा 2 (1) (d)
संविदा अधिनियम, 1872 – धाराएं 148 एवं 151

(i) उपभोक्ता – परिभाषा – जब कोई व्यक्ति पॉलिसी के अंतर्गत एक लाभार्थी है तब वह निश्चित ही एक उपभोक्ता है।

(ii) बीमा – बीमाकर्ता किसानों को क्षतिग्रस्त/नष्ट वस्तुओं के उसी मूल्य का भुगतान करने हेतु दायी है जो कि वेयरहाउस द्वारा भंडारण की तिथि को जारी की गई रसीदों में दर्शाया गया है।

(iii) उपनिधाता एवं उपनिहिती – एक व्यक्ति अपने उत्पाद/वस्तुओं को किसी वेयरहाउस को किराये पर उपनिधाता के रूप में सौंपता है एवं वेयरहाउस उसे एक उपनिहिती के रूप में स्वीकार करता है और ऐसा संबंध मात्र विश्वास पर आधारित संबंध का सृजन नहीं करता है।

Canara Bank v. United India Insurance Company Limited and ors.
Judgment dated 06.02.2020 passed by the Supreme Court in Civil Appeal No. 1042 of 2020, reported in (2020) 3 SCC 455

Relevant extracts from the judgment:

The definition of consumer under the Act is very wide and it includes beneficiaries who can take benefit of the insurance availed by the insured. As far as the present case is concerned, under the *tripartite* agreement entered between the Bank, the cold store and the farmers, the stock of the farmers was hypothecated as security with the Bank and the Bank had insisted that the said stock should be insured with a view to safeguard its interest. We may refer to the penultimate clause of the tripartite agreement which reads as follows:

> "WHEREAS the Third Party has agreed to insure the produce/goods stored in the cold storage to indemnify the produce in case of any casualty or accident by any means to cover the risk and also to cover the loan amount to avoid loss at the cost of the Second Party till the release order or repayment of the loan amount."

The aforesaid clause in unambiguous terms binds the cold store to insure the goods, to indemnify the produce, to cover the risk and cover the loan amount. This insurance policy has to be taken at the cost of the second party which is the farmer. Therefore, there can be no manner of doubt that the farmer is a beneficiary under the policy. The farmer is, therefore, definitely a consumer.

We, therefore, affirm the decision of the National Commission that the value of the goods as reflected in the warehouse receipts should be taken to be the value on the date of fire. We may add that this value is not very different from the median value for most of the products. We rely upon the value given in the warehouse receipts because that was the value which was given by the farmers, not knowing that their product is going to be burnt, and was accepted by the cold store, which must have known the value of the product in the local market and accepted by the Bank, which on the basis of such surety advanced the loan.

In view of the aforesaid discussion, we are of the view that the Bank shall be entitled to recover the principal amount advanced by it to each one of the farmers along with the simple interest at the rate of 12% per annum from the date of advancing of loan till repayment thereof. The insurance company is liable to pay the value of goods as reflected in the warehouse receipts of each farmer along with simple interest at the rate of 12% per annum from the date of fire till payment of the amount. The dues of the Bank till the date of fire will have to be first determined and, thereafter, the excess will be payable to the farmer along with the interest.

The argument raised by learned senior counsel appearing for the insurance company is that since the goods were held in trust by the cold store, the insurance company is not liable. We are not at all impressed with this argument. This is not a case where the goods were deposited only on the basis of trust. The goods were kept in the cold store on payment of rent by the farmer. This is not a case envisaged under Exclusion Clause 5 quoted hereinabove. These goods were also not held on commission. Learned senior counsel appearing for the farmers submits that the relationship between the farmer and the cold store was of bailor and bailee. He submits that the crops were given on contractual bailment to the cold store for consideration.

In the present case, as pointed out above, the farmer had agreed to pay consideration to the cold store and, therefore, the goods were not held in trust per se but the goods were held by cold store as bailee of the goods for consideration. The possession of the farm produce was handed over by the bailor, i.e. farmer to the cold store i.e. the bailee, in terms of the contract. There may be *inter se* rights and liabilities between the farmer and the cold store but it cannot be said that the goods were held 'in trust'.

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247. CRIMINAL PROCEDURE CODE, 1973 – Section 216

(i) Charge; addition or alteration of – Whether charges can be added or altered even after the completion of evidence, arguments and reserving of the judgment? Held, Yes – Test for addition or alteration of charges – Whether material brought on record has a direct link or nexus with the ingredients of the alleged offences?

(ii) Charge; addition or alteration of – Whether evidentiary value of material already brought on record is to be taken into consideration? Held, No – Court is only required to *prima facie* determine that there exists sufficient material for commencement of trial and that such material has a connection or link with the ingredients of the offences for which charges are sought to be added or altered.

दण्ड प्रक्रिया संहिता, 1973 – धारा 216

(i) आरोप में परिवर्द्धन या परिवर्तन – क्या साक्ष्य एवं तर्क पूर्ण होने और निर्णय हेतु सुरक्षित किए जाने के बाद भी आरोप परिवर्द्धित या परिवर्तित किए जा सकते हैं? अभिनिर्धारित, हाँ – आरोपों को परिवर्द्धित या परिवर्तित किए जाने की कसौटी – क्या अभिलेख पर लाई गई सामग्री की कथित अपराध के घटकों के साथ प्रत्यक्ष संबद्धता है?

(ii) आरोप में परिवर्द्धन या परिवर्तन – क्या अभिलेख पर उपलब्ध सामग्री का साक्ष्यिक मूल्य विचार में लिया जाना चाहिए? अभिनिर्धारित, नहीं – न्यायालय से मात्र यह अपेक्षा है कि प्रथम दृष्टया निर्धारित करे कि विचारण प्रारंभ करने के लिए पर्याप्त सामग्री उपलब्ध है और इस तरह की सामग्री का उन अपराधों के आवश्यक घटकों के साथ सीधा संबंध है जिन्हें परिवर्द्धित या परिवर्तित करना अपेक्षित है।

Dr. Nallapareddy Sridhar Reddy v. The State of Andhra Pradesh & ors.

Judgment dated 21.01.2020 passed by the Supreme Court in Criminal Appeal No. 1934 of 2019, reported in 2020 (1) Crimes 198 (SC)

Relevant extracts from the judgment:

From the precedents ***P. Kartikalakshmi v. Sri Ganesh, (2017) 3 SCC 347, Anant Prakash Sinha v. State of Haryana, (2016) 6 SCC 105, CBI v. Karimullah Osan Khan, (2014) 11 SCC 538*** and ***Jasvinder Saini v. State (Govt. of NCT of Delhi), (2013) 7 SCC 256*** it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in Sub-Section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing

of charge or if upon *prima facie* examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused.

x x x

The test adopted by the High Court is correct and in accordance with decisions of this Court. In the counter affidavit filed by the fourth respondent before this Court, depositions of PW 1 (LW 1), PW 5 (LW 12) and PW 6 (LW 13) and their cross-examination have been annexed. The material on record supports the possibility that in April 2006, the appellant demanded ₹ 5,00,000/- from PW 1, who is the complainant, in order to secure a doctor's job for the complainant's daughter in the United Kingdom. According to PW 1, he borrowed the amount from PW 5 (brother-in-law of PW 1) and paid it to the appellant in the presence of PW 5 and PW 6 (friend of PW 1). Without pronouncing on the probative value of such evidence, there exists sufficient material on record that shows a connection or link with the ingredients of the offences under Sections 406 and 420 of the IPC, and the charges sought to be added.

The veracity of the depositions made by the witnesses is a question of trial and need not be determined at the time of framing of charge. Appreciation of evidence on merit is to be done by the court only after the charges have been framed and the trial has commenced. However, for the purpose of framing of charge the court needs to *prima facie* determine that there exists sufficient material for the commencement of trial. The High Court has relied upon the materials on record and concluded that the ingredients of the offences under Sections 406 and 420 of the IPC are attracted. The High Court has spelt out the reasons that have necessitated the addition of the charge and hence, the impugned order does not warrant any interference.

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248. CRIMINAL PROCEDURE CODE, 1973 – Sections 227 and 228
INDIAN PENAL CODE, 1860 – Sections 107 and 306

(i) Abetment to commit suicide – To constitute an offence u/s 306 of the IPC, prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide.

(ii) **Validity of charge – The mere fact that the applicant has developed some intimacy with co-accused, during subsistence of marriage and failed to discharge her marital obligations, as such would not amount to "cruelty", which drove the deceased to commit suicide – Accused is discharged from the commission of offence u/s 306 of the IPC.**

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 227 एवं 228

भारतीय दण्ड संहिता, 1860 – धाराएं 107 एवं 306

(i) आत्महत्या के लिए दुष्प्रेरण – धारा 306 भा.द.सं. के अंतर्गत अपराध गठित करने के लिए अभियोजन को यह संदेह से परे स्थापित करना होगा कि मृतक ने आत्महत्या की और अभियुक्त ने उसे ऐसी आत्महत्या करने हेतु दुष्प्रेरित किया।

(ii) आरोप की वैधता – केवल यह तथ्य कि विवाह के अस्तित्व में रहने के दौरान आवेदक ने सहअभियुक्त के साथ कुछ अंतरंगता विकसित की और वैवाहिक उत्तरदायित्वों का निर्वहन करने में असफल रही। ये ऐसी ''क्रूरता'' नहीं है जो मृतक को आत्महत्या कारित करने में अग्रसर करे – अभियुक्त को धारा 306 भा.दं.सं. के आरोप से उन्मोचित किया गया।

Varsha v. State of M.P.

Order dated 20.01.2020 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Revision No. 6166 of 2019, reported in 2020 CriLJ 1944

Relevant extracts from the Order:

The mere fact that the applicant has developed some intimacy with co-accused-Sudeep, during the subsistence of marriage and failed to discharge her marital obligations, as such would not amount to "cruelty", which drive the deceased to commit suicide. To constitute an offence under Section 306, the Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the husband to commit suicide.

Taking this view of the matter, the present revision petition is allowed. The impugned order dated 19.08.2019 passed by Third Additional Sessions Judge, Ratlam in S.T. No. 209/2014 is hereby set aside and the applicant-Varsha is discharged from the commission of offence under Section 306 of the IPC.

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***249. CRIMINAL PROCEDURE CODE, 1973 – Section 300**

INDIAN PENAL CODE, 1860 – Sections 419, 420, 467, 468 and 471

Double jeopardy – Applicability of – Whether mentioning of different penal provisions in latter FIR can be considered as different ingredients justifying it? Held, No – If the substance of two FIRs is

common, mere addition of some penal provisions will not make latter FIR based on different materials, allegations and grounds.

दण्ड प्रक्रिया संहिता, 1973 – धारा 300

भारतीय दण्ड संहिता, 1860 – धाराएं 419, 420, 467, 468 एवं 471

दोहरे दण्ड का सिद्धांत – प्रयोज्यता – क्या पश्चात्वर्ती प्रथम सूचना रिपोर्ट में भिन्न प्रावधानों का उल्लेख उसे उचित ठहराने वाले भिन्न संघटक माने जा सकते हैं? अभिनिर्धारित, नहीं – यदि दोनों प्रथम सूचना रिपोर्ट सारतः समान हों, वहां कुछ अन्य दाण्डिक प्रावधानों का संयोजन मात्र पश्चात्वर्ती प्रथम सूचना रिपोर्ट को भिन्न सामग्री, आक्षेपों और कारणों पर आधारित नहीं बनाएगा।

Prem Chand Singh v. State of Uttar Pradesh and anr.

Judgment dated 07.02.2020 passed by the Supreme Court in Criminal Appeal No. 237 of 2020, reported in (2020) 3 SCC 54

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250. CRIMINAL PROCEDURE CODE, 1973 – Section 313
INDIAN PENAL CODE, 1860 – Sections 86, 302 and 304

(i) Examination of accused – Inculpatory admissions – Whether to be relied upon? Held, Yes – Where evidence is available, Court may proceed to enter verdict of guilt.

(ii) Murder and culpable homicide not amounting to murder – Determination of – Principles reiterated.

(iii) General defenses – Intoxication and drunkenness – Attribution of knowledge and intention – Held, Section 86 only attributes accused with knowledge as he would have if he were not under the state of voluntary intoxication – Knowledge is to be presumed as if there was no intoxication – So far as intention is concerned, it has to be gathered from the attending circumstances – The test is "was the man beside his mind, altogether for the time being?" – Degree of intoxication and time gap between state of intoxication and incident are the guiding factors.

दण्ड प्रक्रिया संहिता, 1973 – धारा 313

भारतीय दण्ड संहिता, 1860 – धाराएं 86, 302 एवं 304

(i) अभियुक्त का परीक्षण – अभियोगात्मक संस्वीकृति – क्या विश्वास करने योग्य है? अभिनिर्धारित, हाँ – जहां साक्ष्य उपलब्ध हो, वहां न्यायालय दोषिता के निर्णय को अभिलिखित करने हेतु अग्रेषित हो सकता है।

(ii) हत्या एवं आपराधिक मानव वध जो हत्या नहीं है – विनिश्चय – सिद्धांत दोहराए गए।

(iii) सामान्य प्रतिरक्षा – नशा एवं मदिरापान – ज्ञान और आशय का आरोपण – अभिनिर्धारित, धारा 86 अभियुक्त पर मात्र उस ज्ञान का आरोपण करती है जो

उसके स्वेच्छया नशे की स्थिति में न होने पर उसे होता – ज्ञान होने की उपधारणा की जाएगी जैसे कि कोई नशा था ही नहीं – जहां तक आशय का प्रश्न है, इसे विद्यमान परिस्थितियों से आंकलित किया जाना चाहिए – परीक्षण की कसौटी यह है कि ''क्या व्यक्ति तत्समय पूर्ण रूप से अपने नियंत्रण से परे था?'' – नशे की तीव्रता तथा नशे की स्थिति एवं घटना के मध्य समय का अंतराल मार्गदर्शक कारक होते हैं।

Paul v. State of Kerala

Judgment dated 21.01.2020 passed by the Supreme Court in Criminal Appeal No. 38 of 2020, reported in (2020) 3 SCC 115

Relevant extracts from the judgment:

In ***State of U.P. v. Lakhmi, (1998) 4 SCC 336*** the case involved death of the respondent's wife. Respondent and the deceased had two children. The prosecution case was that there were intermittent skirmishes between the couple. The wife accused the appellant of dissipating his money on account of having drinks. During the early hours of the fateful day, it is further alleged that the respondent inflicted blows on the head of the deceased, smashed her skull leading to instant death. The trial Court convicted the respondent but High Court acquitted him. We may notice paragraph 8. It reads as under:

> "8. As a legal proposition we cannot agree with the High Court that statement of an accused recorded under Section 313 of the Code does not deserve any value or utility if it contains inculpatory admissions. The need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial, nor is it a mere formality. It has a salutary purpose. It enables the court to be apprised of what the indicted person has to say about the circumstances pitted against him by the prosecution. Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases the accused would offer some explanations to incriminative circumstances. In very rare instances the accused may even admit or own incriminating circumstances adduced against him, perhaps for the purpose of adopting legally recognised defences. In all such cases the court gets the advantage of knowing his version about those aspects and it helps the court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstance appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy."

We, therefore, have no hesitation in holding that a statement made by the accused under Section 313 CrPC even it contains inculpatory admissions cannot be ignored and the Court may where there is evidence available proceed to enter a verdict of guilt. In the aforesaid ***Lakhmi case*** (supra) the accused specifically stated that he murdered his wife with a *kunda* and not with *phali*. The Court noted further that there was no merit in the defence sought to be set up under Section 84 of the Penal Code. However, the Court noted as follows: [***Lakhmi case*** (supra)].

> 16. …However, we have noticed that the accused had adopted another alternative defence which has been suggested during cross-examination of prosecution witnesses i.e. his wife and PW 2 (Ramey) were together on the bed during the early hours of the date of occurrence. If that suggestion deserves consideration we have to turn to the question whether the benefit of Exception I to Section 300 of the IPC should be extended to him?
>
> 17. The law is that burden of proving such an exception is on the accused. But the mere fact that the accused adopted another alternative defence during his examination under Section 313 of the IPC without referring to Exception I of Section 300 of IPC is not enough to deny him of the benefit of the exception, if the Court can cull out materials from evidence pointing to the existence of circumstances leading to that exception. It is not the law that failure to set up such a defence would foreclose the right to rely on the exception once and for all. It is axiomatic that burden on the accused to prove any fact can be discharged either through defence evidence or even through prosecution evidence by showing a preponderance of probability.
>
> 18. In the above context, we deem it useful to ascertain what possibly would have prompted the accused to kill his wife. The prosecution case as noted above, is that the accused was not well- disposed to his wife as she was always speaking against his drinking habits. We are inclined to think that, while considering the manner in which he had suddenly pounced upon his young wife who bore two children to him and smashed her head during the early hours, he would have had some other strong cause which probably would have taken place within a short time prior to the murder. Certain broad features looming large in evidence help us in that line of thinking."

x x x

As far as the contention that the appellant should be handed down conviction under Section 304, Part-I, we are not impressed by the said argument. As to what constitutes murder under Section 300 of the IPC and what constitutes culpable homicide amounting to murder has been a vexed issue and the subject matter of a large body of case law. Section 300 of the IPC declares that except in those cases which are specifically excepted culpable homicide is murder in situations which have been specifically laid down. They are commonly referred to as firstly, secondly, thirdly and fourthly under Section 300 of the IPC. If the intention of the Legislature was that culpable homicide would amount to murder if it did not fall in any of the five exceptions enumerated in Section 300 of the IPC. What was the need for the Legislature to 'waste words' as it were by declaring that culpable homicide is murder if the act fell within any of the 4 clauses in Section 300 of the IPC? In order that an act is to be punished as murder, it must be culpable homicide which is declared to be murder. Murder is homicide of the gravest kind. So is the punishment appropriately of the highest order. Murder requires establishment of the special mens rea while all cases of culpable homicide may not amount to murder.

x x x

As far as this case is concerned, there can be no doubt that the act which led to the death has been committed by the appellant. We can safely proceed on the basis also that it amounts to culpable homicide. Going by the circumstances present in this case and in particular injuries suffered, it is quite clear that the act would fall within the scope of Section 300 of the IPC. If the act results in culpable homicide which does not amount to murder, then and then alone the question arises of applying Section 304 Part-I or Part-II as the case may be. Appellant cannot extricate himself from the consequence of his act attracting the ingredients of murder by pointing out Section 304 Part I which also contains the expression, "the act with the intention to cause death". The implications are vastly different. Section 304 of the IPC would apply only in a case where culpable homicide is not murder. If the act amounting to culpable homicide satisfies any of the four criteria to bring it under the offence of murder, being mutually exclusive, there can be no scope for applying Section 304 of the IPC. On the other hand, if the act is culpable homicide as falling in any of the five exceptional circumstances mentioned in Section 300 and then it would amount to culpable homicide not amounting to murder. In cases where the accused is able to establish he is entitled to the benefit of any of the exceptions under Section 300 then his case may be considered under Part-I or Part-II of Section 304 of the IPC depending on whether the act which caused the culpable homicide was done with the intention of causing death or with knowledge that it is likely to cause death. That apart, cases of culpable homicide which do not attract any of the four situations under Section 300 would still be culpable homicide to be dealt with under Section 304 of the IPC. However, if the case falls under any of the four limbs of Section 300, there would be no occasion to allow Section 304 to have play. If the act which caused the death and which is culpable homicide is

done with the intention of causing death, then it would be murder. This is however subject to the act not being committed in circumstances attracting any of the 5 exceptions. Appellant's contention that it would be culpable homicide not amounting to murder and reliance placed on the words 'done with the intention of causing death' in Section 304 Part-I is wholly meritless.

x x x

Section 86 of the IPC enunciates presumption that despite intoxication which is not covered by the last limb of the provision, the accused person cannot ward off the consequences of his act. A dimension however about intoxication may be noted. Section 86 begins by referring to an act which is not an offence unless done with a particular knowledge or intent. Thereafter, the law giver refers to a person committing the act in a state of intoxication. It finally attributes to him knowledge as he would have if he were not under the state of intoxication except undoubtedly, in cases where the intoxicant was administered to him either against his will or without his knowledge. What about an act which becomes an offence if it is done with a specific intention by a person who is under the state of intoxication? Section 86 does not attribute intention as such to an intoxicated man committing an act which amounts to an offence when the act is done by a person harbouring a particular intention. This question has engaged the attention of this Court in the decision in ***Basdev v. State of Pepsu, AIR 1956 SC 488***. In the said case the appellant, a retired military official went to attend a wedding. The appellant was very drunk. He asked a young boy to step aside a little so that he could occupy a convenient seat. The boy did not budge. The appellant fired from a pistol, he had with him, in the abdomen of the boy which proved fatal. This Court *inter alia* held as follows:

> "It is no doubt true that while the first part of the section speaks of intent or knowledge, the latter part deals only with knowledge and a certain element of doubt in interpretation may possibly be felt by reason of this omission. If in voluntary drunkenness knowledge is to be presumed in the same manner as if there was no drunkenness, what about those cases where *mens rea* is required?
>
> Are we at liberty to place intent on the same footing, and if so, why has the section omitted intent in its latter part? This is not the first time that the question comes up for consideration. It has been discussed at length in many decisions and the result may be briefly summarised as follows:-
>
> 5. So far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, we must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being?

If so it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about, we can apply the rule that a man is presumed to intend the natural consequences of his act or acts.

6. Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion."

In this case there is no evidence about how drunk the appellant was or whether the drunkenness in any way stood in the way of the appellant forming the requisite intention. There is also gap between the time when he was allegedly found drinking and the time of the crime. Moreover, in his Section 313 CrPC statement, according to him, he has stated that he fell fast asleep and he got up to see his wife hanging. The principle that would apply therefore is that appellant can be presumed to have intended the natural consequences of his act.

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***251. CRIMINAL PROCEDURE CODE, 1973 – Section 386**

Remand – In a criminal case, remand is not to be ordered as a matter of course – It is only if there is a mis-trial or some technical issues have arisen that such an order may be made but in very rare circumstances.

दण्ड प्रक्रिया संहिता, 1973 – धारा 386

प्रतिप्रेषण – आपराधिक मामलों में प्रतिप्रेषण का आदेश सामान्य अनुक्रम में जारी नहीं किया जाना चाहिए – ऐसा आदेश केवल तब किया जा सकता है जब त्रुटिपूर्ण विचारण हुआ हो या कोई तकनीकी मुद्दा उत्पन्न हुआ हो, किंतु अत्यन्त असाधारण परिस्थितियों में ही।

Kooli Saseendran and ors. v. State of Kerala etc.

Judgment dated 17.12.2019 passed by the Supreme Court in Criminal Appeal No. 1874 of 2010, reported in AIR 2020 SC 1729

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***252. CRIMINAL PROCEDURE CODE, 1973 – Section 394**

Appeal; abatement of – Whether entire appeal would be abated on the death of accused appellant where appeal was preferred against sentence as well as fine? Held, No – Appeal against fine shall be considered on merits after giving opportunity of hearing to the legal heirs of accused.

दण्ड प्रक्रिया संहिता, 1973 – धारा 394

अपील का उपशमन – क्या जहां कारावास के साथ–साथ अर्थदण्ड के विरुद्ध भी अपील की गई हो, वहां अभियुक्त अपीलार्थी की मृत्यु पर पूरी अपील उपशमित हो जाएगी? अभिनिर्धारित, नहीं – अभियुक्त के विधिक उत्तराधिकारियों को सुनवाई का अवसर देने के बाद अर्थदण्ड के विरुद्ध अपील को गुण–दोष पर निराकृत किया जाएगा।

Ramesan (dead) L.R. Girija A v. The State of Kerala

Judgment dated 21.01.2020 passed by the Supreme Court in Criminal Appeal No. 77 of 2020, reported in 2020 (1) Crimes 163 (SC)

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253. CRIMINAL PROCEDURE CODE, 1973 – Sections 437 and 439

(i) Bail – Factors to be considered while granting or cancelling bail – Explained.

(ii) Bail; cancellation of – Held, cancellation of bail is a harsh order and it must not be lightly resorted to – Bail may be cancelled where Court granting bail has ignored relevant material indicating involvement of accused or takes into consideration irrelevant material for grant of bail to accused.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437 एवं 439

(i) जमानत – जमानत स्वीकार या निरस्त करते समय विचार किए जाने वाले कारक – व्याख्या की गई।

(ii) जमानत निरस्त किया जाना – अभिनिर्धारित, जमानत निरस्त किया जाना एक कठोर आदेश है और इसे साधारणतः अवधारित नहीं किया जाना चाहिए – जहां न्यायालय जमानत देते समय अभियुक्त की संलिप्तता दर्शित करने वाले सुसंगत तत्वों को अनदेखा कर दे अथवा अप्रासंगिक तत्वों को विचार में लिया गया हो वहां, जमानत निरस्त की जा सकती है।

Myakala Dharmarajam and ors. v. State of Telangana and anr.

Judgment dated 07.01.2020 passed by the Supreme Court in Criminal Appeal No. 1974 of 2019, reported in (2020) 2 SCC 743

Relevant extracts from the judgment:

The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of

his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The court has to only opine as to whether there is *prima facie* case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same. [***Kanwar Singh Meena v. State of Rajasthan, (2012) 12 SCC 180***]

In ***Raghubir Singh v. State of Bihar, (1986) 4 SCC 481*** this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

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254. CRIMINAL PROCEDURE CODE, 1973 – Section 438
CONSTITUTION OF INDIA – Article 21

(i) Anticipatory bail – Reference made to larger Bench in the light of previous contradictory judgments, answered – Factors to be kept in mind while dealing with application of anticipatory bail laid down.

(ii) Anticipatory bail – Whether anticipatory bail can be ordered to remain in force for a limited period so as to enable that person to seek regular bail from trial court? Held, generally such an order should be passed without any restriction on time – However, in specific facts or features of a case, Court may impose appropriate condition including limiting it to time or event.

(iii) Anticipatory bail – Whether life of an anticipatory bail should end at the time and stage when the accused is summoned by the Court? Held, No – Unless the anticipatory bail is limited for a specific tenure, it does not end at the time and stage of summoning or framing of charge.

दण्ड प्रक्रिया संहिता, 1973 – धारा 438

भारत का संविधान – अनुच्छेद 21

(i) अग्रिम जमानत – पूर्ववर्ती विरोधाभासी निर्णयों के आलोक में वृहद पीठ को प्रेषित संदर्भ निर्णीत किया गया – अग्रिम जमानत के आवेदन की सुनवाई के दौरान ध्यान में रखे जाने वाले कारक रेखांकित किए गए।

(ii) अग्रिम जमानत – क्या अग्रिम जमानत को सीमित अवधि के लिए प्रभावी रहने का आदेश दिया जा सकता है ताकि ऐसा व्यक्ति विचारण न्यायालय से नियमित जमानत प्राप्त कर सके? अभिनिर्धारित, सामान्यतया ऐसा आदेश समय पर कोई प्रतिबंध लगाए बिना पारित किया जाना चाहिए – हालांकि, किसी मामले के विशिष्ट तथ्यों या विशेषताओं में, न्यायालय उचित शर्त लगा सकती है जिसमें समय या घटना विशेष तक प्रभाव सीमित करना भी सम्मिलित है।

(iii) अग्रिम जमानत – क्या अभियुक्त को न्यायालय द्वारा आहूत किए जाने के समय और प्रक्रम पर अग्रिम जमानत का प्रभाव समाप्त हो जाना चाहिए? अभिनिर्धारित, नहीं – जब तक कि अग्रिम जमानत को एक विशिष्ट समयावधि के लिए सीमित नहीं किया गया हो, यह समन करने या आरोप विरचना के प्रक्रम पर समाप्त नहीं होता है।

Sushila Aggarwal and ors. v. State (NCT of Delhi) and anr.

Judgment dated 29.01.2020 passed by the Supreme Court in Special Leave Petition (Criminal) No. 7281 of 2017, reported in 2020 (1) Crimes 225 (SC) (Constitution Bench)

Relevant extracts from the judgment:

In the light of the conflicting views of the different Benches of varying strength, more particularly in the cases of ***Shri Gurbaksh Singh Sibbia and ors. v. State of Punjab, (1980) 2 SCC 565; Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694; Bhadresh Bipinbhai Sheth v. State of Gujarat, (2016) 1 SCC 152*** on the one side and in the cases of ***Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667,*** subsequently followed in the case of ***K.L. Verma v. State and anr., (1998) 9 SCC 348; Sunita Devi v. State of Bihar, (2005) 1 SCC 608; Nirmal Jeet Kaur v. State of M.P., (2004) 7 SCC 558; HDFC Bank Limited v. J.J. Mannan, (2010) 1 SCC 679*** and ***Satpal Singh v. State of Punjab, (2018) 4 SCC 303,*** the following questions are referred for consideration by a larger Bench:

> "(1) Whether the protection granted to a person under Section 438 Cr.P.C. should be limited to a fixed period so as to enable the person to surrender before the Trial Court and seek regular bail?
>
> (2) Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court?"

x x x

The answer to the first question in the reference made to this Bench is that there is no offence, *per se,* which stands excluded from the purview of Section 438, & except the offences mentioned in Section 438(4). In other words, anticipatory bail can be granted, having regard to all the circumstances, in respect of all offences. At the same time, if there are indications in any special law or

statute, which exclude relief under Section 438(1) they would have to be duly considered. Also, whether anticipatory offences should be granted, in the given facts and circumstances of any case, where the allegations relating to the commission of offences of a serious nature, with certain special conditions, is a matter of discretion to be exercised, having regard to the nature of the offences, the facts shown, the background of the applicant, the likelihood of his fleeing justice (or not fleeing justice); likelihood of co-operation or non-co-operation with the investigating agency or police, etc. There can be no inflexible time frame for which an order of anticipatory bail can continue.

Therefore, this court holds that the view expressed in ***Salauddin Abdulsamad Shaikh, K.L. Verma, Nirmal Jeet Kaur, Satpal Singh, Adri Dharan Das v. State of West Bengal, (2005) 4 SCC 303, HDFC Bank, J.J. Manan*** (supra) and ***Naresh Kumar Yadav v. Ravindra Kumar Yadav, (2008) 1 SCC 632*** about the Court of Sessions, or the High Court, being obliged to grant anticipatory bail, for a limited duration, or to await the course of investigation, so as the "normal court" not being "bye passed" or that in certain kinds of serious offences, anticipatory bail should not be granted normally-including in economic offences, etc. are not good law. The observations – which indicate that such time related or investigative event related conditions, should invariably be imposed at the time of grant of anticipatory bail are therefore, overruled. Similarly, the observations in ***Mhetre*** (supra) that *"the courts should not impose restrictions on the ambit and scope of section 438 Cr.P.C. which are not envisaged by the Legislature. The court cannot rewrite the provision of the statute in the garb of interpreting it"* is too wide and cannot be considered good law. It is one thing to say that as a matter of law, ordinarily special conditions (not mentioned in Section 438(2) read with Section 437(3) should not be imposed; it is an entirely different thing to say that in particular instances, having regard to the nature of the crime, the role of the accused, or some peculiar feature, special conditions should not be imposed. The judgment in ***Sibbia*** (supra) itself is an authority that such conditions can be imposed, but not in a routine or ordinary manner and that such conditions then become an inflexible "formula" which the courts would have to follow. Therefore, courts and can, use their discretion, having regard to the offence, the peculiar facts, the role of the offender, circumstances relating to him, his likelihood of subverting justice (or a fair investigation), likelihood of evading or fleeing justice-to impose special conditions. Imposing such conditions, would have to be on a case to case basis, and upon exercise of discretion by the court seized of the application under Section 438. In conclusion, it is held that imposing conditions such as those stated in Section 437(2) while granting bail, are normal; equally, the condition that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, person released on bail shall be liable to be taken in police custody for facilitating the discovery. Other conditions, which are restrictive, are not mandatory; nor is there any invariable rule that they should necessarily be imposed or that the anticipatory bail order would be for a time duration, or be valid till the filing of the FIR, or the recording of any statement

under Section 161, Cr.P.C. etc. Other conditions may be imposed, if the facts of the case so warrant.

The following answers to the reference are set out:

(1) Regarding question No. 1, this court holds that the protection granted to a person under Section 438 Cr.P.C. should not invariably be limited to a fixed period; it should inure in favour of the accused without any restriction on time. Normal conditions under Section 437(3) read with Section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event) etc.

(2) As regards the second question referred to this court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.

This court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438, Cr.P.C.:

(1) Consistent with the judgment in ***Shri Gurbaksh Singh Sibbia*** (supra), when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

(2) It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.

(3) Nothing in Section 438 Cr.P.C., compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The

courts would be justified and ought to impose conditions spelt out in Section 437(3), Cr. P.C. [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

(5) Anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

(6) An order of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

(7) An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.

(8) The observations in ***Sibbia*** (supra) regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. ***Sibbia*** (supra) had observed that if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in ***State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 1125***.

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

(10) The court referred to in para (9) above is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

(11) The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the state or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See ***Prakash Kadam v. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189; Jai Prakash Singh*** (supra), ***State through C.B.I. v. Amarmani Tripathi, (2005) 8 SCC 21)***. This does not amount to "cancellation" in terms of Section 439(2), Cr.P.C.

(12) The observations in ***Siddharam Satlingappa Mhetre*** (supra) (and other similar judgments) that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in ***Salauddin Abdulsamad Shaikh*** (supra) and subsequent decisions (including ***K.L. Verma*** (supra); ***Sunita Devi*** (supra); ***Adri Dharan Das*** (supra); ***Nirmal Jeet Kaur*** (supra); ***HDFC Bank Limited*** (supra); ***Satpal Singh*** (supra) and ***Naresh Kumar Yadav*** (supra) which lay down such restrictive conditions or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.

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255. CRIMINAL PROCEDURE CODE, 1973 – Section 439
N.D.P.S. ACT, 1985 – Section 37

(i) Bail – NDPS Act – Restrictions and limitations under – Power to grant bail is subject to the limitation placed by Section 37 – Two conditions must be satisfied before granting bail; firstly, prosecution must be given an opportunity to oppose application and secondly, the Court must be satisfied that there are reasonable grounds for believing that applicant is not guilty of such offence – Recording of such satisfaction is *sine qua non* for granting bail under the Act.

(ii) "Reasonable grounds" occurring in Section 37 of 1985 Act – Connotation of – "Reasonable grounds" means something more than *prima facie* ground – Reasonable belief contemplated in provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

दण्ड प्रक्रिया संहिता, 1973 – धारा 439

स्वापक औषधि एवं मनःप्रभावी पदार्थ अधिनियम, 1985 – धारा 37

(i) जमानत – एनडीपीएस अधिनियम – प्रतिबंध एवं सीमाएं – जमानत देने की शक्ति धारा 37 की सीमा के अध्यधीन है – जमानत देने से पहले दो शर्तों को पूरा होना चाहिए; प्रथम, अभियोजन को आवेदन का विरोध करने का अवसर दिया जाना चाहिए और द्वितीय, न्यायालय को संतुष्ट होना चाहिए कि यह विश्वास करने के लिए युक्तियुक्त आधार हैं कि आवेदक इस तरह के अपराध का दोषी

नहीं है – अधिनियम के अधीन जमानत देने के पूर्व ऐसी संतुष्टि अभिलिखित किया जाना अनिवार्य है।

(ii) 1985 के अधिनियम की धारा 37 में प्रयुक्त ''युक्तियुक्त आधार'' – तात्पर्य – ''युक्तियुक्त आधार'' का अर्थ है ''प्रथम दृष्टया'' आधारों से कुछ अधिक – इस प्रावधान में परिकल्पित युक्तियुक्त विश्वास ऐसे तथ्यों एवं परिस्थितियों के विद्यमान होने की अपेक्षा करता है जो अपने आप में इस बात का समाधान करने के लिए पर्याप्त हों कि अभियुक्त कथित अपराध का दोषी नहीं है।

State of Kerala etc. v. Rajesh etc.

Judgment dated 24.01.2020 passed by the Supreme Court in Criminal Appeal No. 154 of 2020, reported in 2020 (1) Crimes 158 (SC)

Relevant extracts from the judgment:

The scheme of Section 37 of NDPS Act reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

The expression "reasonable grounds" means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

We may further like to observe that the learned Single Judge has failed to record a finding mandated under Section 37 of the NDPS Act which is a *sine qua non* for granting bail to the accused under the NDPS Act.

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***256. CRIMINAL TRIAL:**

Circumstantial evidence – In a case based on circumstantial evidence, when the circumstances relied upon by the prosecution to prove the guilt of the accused are not complete and do not lead to the conclusion that in all human probability the murder must have been committed by the accused, conviction cannot be sustained.

आपराधिक विचारणः

परिस्थितिजन्य साक्ष्य – परिस्थितिजन्य साक्ष्य पर आधारित मामले में जब अभियोजन द्वारा अवलंबित परिस्थितियां अभियुक्त की दोषिता प्रमाणित करने हेतु संपूर्ण नहीं हैं और इस निष्कर्ष की ओर नहीं ले जाती हैं कि सभी मानवीय संभाव्यताओं से हत्या मात्र अभियुक्त द्वारा ही की गई है, तब दोषसिद्धि स्थिर नहीं रखी जा सकती।

Mohd. Younus Ali Tarafdar v. State of West Bengal
Judgment dated 20.02.2020 passed by the Supreme Court in Criminal Appeal No. 119 of 2010, reported in (2020) 3 SCC 747

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257. EVIDENCE ACT, 1872 – Section 45
NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 118 (a), 138 and 139

(i) Handwriting expert – In terms of Section 45 of Evidence Act, opinion of handwriting expert is a relevant piece of evidence but not conclusive evidence.

(ii) Presumption – Once issuance of cheque is admitted/ established, presumption would arise u/s 139 of Negotiable Instruments Act, in favour of the holder of the cheque although the nature of presumption u/s 139 and 118(a) of the Negotiable Instruments Act of the Negotiable Instruments Act are rebuttable and the burden lies upon the accused to rebut the presumption by adducing evidence.

साक्ष्य अधिनियम, 1872 – धाराएं 45

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 118 (क) 138 एवं 139

(i) हस्तलेख विशेषज्ञ – साक्ष्य अधिनियम की धारा 45 के संदर्भ में हस्तलेख विशेषज्ञ की राय साक्ष्य का एक सुसंगत अंश है किंतु यह निश्चायक साक्ष्य नहीं है।

(ii) उपधारणा –जब एक बार चेक का जारी होना स्वीकृत/स्थापित हो जाता है तब परक्राम्य लिखत अधिनियम की धारा 139 के अंतर्गत उपधारणा चेक के धारक के पक्ष में उत्पन्न होगी यद्यपि परक्राम्य लिखत अधिनियम की धारा 139 एवं 118(a) की उपधारणा की प्रकृति खंडनीय है किंतु उपधारणा को साक्ष्य प्रस्तुत कर खंडित करने का भार अभियुक्त पर होता है।

Rajeshbhai Muljibhai Patel and ors. v. State of Gujarat and anr.
Judgment dated 10.02.2020 passed by the Supreme Court in Criminal Appeal No. 251 of 2020, reported in (2020) 3 SCC 794

Relevant extracts from the judgment:

It is also to be pointed out that in terms of Section 45 of the Evidence Act, the opinion of handwriting expert is a relevant piece of evidence; but it is not a

conclusive evidence. It is always open to the plaintiff-appellant No.3 to adduce appropriate evidence to disprove the opinion of the handwriting expert. That apart, Section 73 of the Indian Evidence Act empowers the Court to compare the admitted and disputed writings for the purpose of forming its own opinion. Based on the sole opinion of the handwriting expert, the FIR ought not to have been registered. Continuation of FIR No.I-194/2016, in our view, would amount to abuse of the process of Court and the petition filed by the appellants under Section 482 Cr.P.C. in Criminal Misc. Application No.2735/2017 to quash the FIR I-194/2016 is to be allowed.

When once the issuance of cheque is admitted/established, the presumption would arise under Section 139 of the N.I. Act in favour of the holder of cheque. The nature of presumptions under Section 139 of the N.I. Act and Section 118(a) of the Evidence Act are rebuttable. The burden lies upon the accused to rebut the presumption by adducing evidence.

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258. EVIDENCE ACT, 1872 – Section 113-A

INDIAN PENAL CODE, 1860 – Sections 306 and 498-A

(i) Presumption – To attract the applicability of section 113-A of the Evidence Act, the following conditions are required to be satisfied:

(a) the woman has committed suicide;

(b) such suicide has been committed within a period of seven years from the date of her marriage;

(c) the husband or his relatives who are charged had subjected her to cruelty.

(ii) Merely because an accused is found guilty of an offence punishable u/s 498-A of the Code and the death has occurred within a period of seven years of marriage, accused cannot be automatically held guilty for offence punishable u/s 306 of the Code by employing the presumption u/s 113-A of the Act – Unless prosecution establishes that some act or illegal omissions by the accused has driven the deceased to commit suicide, conviction u/s 306 of the Code would not be tenable.

साक्ष्य अधिनियम, 1872 – धारा 113–ए

भारतीय दण्ड संहिता, 1860 – धाराएं 306 एवं 498–ए

(i) उपधारणा – साक्ष्य अधिनियम की धारा 113–ए की प्रयोज्यता को आकर्षित करने के लिये निम्नलिखित परिस्थितियों का पूरा होना आवश्यक है:

(a) महिला द्वारा आत्महत्या की गई हो;

(b) ऐसी आत्महत्या विवाह की तारीख से सात वर्ष के भीतर की गई हो;

(c) पति या उसके नातेदारों जो आरोपित किये गये हैं, ने उसके प्रति क्रूरता की थी।

(ii) केवल इस कारण कि एक अभियुक्त संहिता की धारा 498–ए के अंतर्गत दण्डनीय अपराध का दोषी पाया गया और मृत्यु विवाह से सात वर्ष के भीतर कारित हुई, अभियुक्त स्वतः ही संहिता की धारा 113–ए की उपधारणा करते हुए संहिता की धारा 306 के अंतर्गत दण्डनीय अपराध के लिये दोषी नहीं ठहराया जा सकता – जब तक अभियोजन यह स्थापित नहीं करता कि अभियुक्त द्वारा किये गये किसी अवैध कृत्य अथवा लोप ने मृतका को आत्महत्या कारित करने हेतु प्रेरित किया, संहिता की धारा 306 के अंतर्गत दोषसिद्धि मान्य नहीं होगी।

Gurjit Singh v. State of Punjab

Judgment dated 26.11.2019 passed by the Supreme Court in Criminal Appeal No. 1492 of 2010, reported in AIR 2020 SC 1785

Relevant extracts from the order:

It could be seen, that the view taken by the three–Judge Bench of this Court in the case of ***Ramesh Kumar v. State of Chhattisgarh, AIR 2001 SC 3837*** that when a case does not fall under clause secondly or thirdly, it has to be decided with reference to the first clause, i.e., whether the accused has abetted the commission of suicide by intentionally instigating her to do so; has been consistently followed. As such, we are of the view that merely because an accused is found guilty of an offence punishable under Section 498-A of the IPC and the death has occurred within a period of seven years of the marriage, the accused cannot be automatically held guilty for the offence punishable under Section 306 of the IPC by employing the presumption under Section 113-A of the Evidence Act. Unless the prosecution establishes that some act or illegal omission by the accused has driven the deceased to commit the suicide, the conviction under Section 306 would not be tenable.

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***259. FOREST ACT, 1927 – Section 68**

Compounding – When accused takes recourse to remedy of compounding the offence, it presupposes that he has admitted the commission of stated offence or about the use of seized vehicle in the commission of the offence – Therefore, denial of releasing the seized vehicle by the competent authority merely on the fact that the accused has admitted his guilt, is not justified – Before such denial, the competent authority is obliged to reckon tangible factors such as gravity of offence or that the vehicle has been used for commission of specified offence even in the past.

वन अधिनियम, 1927 – धारा 68

शमन – जब अभियुक्त अपराध के शमन के उपाय का आश्रय लेता है, तब यह पूर्वअनुमानित होता है कि उसने आरोपित अपराध को कारित करना स्वीकार किया है या जप्त वाहन का उपयोग अपराध करने में किया है – इसलिये सक्षम प्राधिकारी द्वारा एकमात्र इस आधार पर जप्त वाहन को मुक्त करने से मना करना कि अभियुक्त ने

अपनी दोषिता स्वीकार कर ली है, न्यायोचित नहीं है– इस तरह की मनाही के पूर्व सक्षम प्राधिकारी मूर्त कारकों जैसे अपराध की गंभीरता या उस विशिष्ट अपराध कारित करने में उसी वाहन के पूर्व में भी उपयोग को ध्यान में रखने हेतु बाध्य है।

Rakesh alias Tattu v. State of Madhya Pradesh & ors.
Judgment dated 15.11.2019 passed by the Supreme Court in Criminal Appeal No. 1689 of 2019, reported in AIR 2020 SC 1929

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260. HINDU MARRIAGE ACT, 1955 – Sections 11 and 15
CRIMINAL PROCEDURE CODE, 1973 – Section 125

(i) Bar to remarriage – Bar u/s 15 of the Hindu Marriage Act applies only if the appeal is filed within the period of limitation and not after expiry of period of limitation.

(ii) Maintenance – Second marriage contracted during the pendency of an appeal from a decree of divorce is not *ab initio* void and certainly not when such an appeal is filed after expiry of the period of limitation – Wife entitled for maintenance.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 11 एवं 15
दण्ड प्रक्रिया संहिता, 1973 – धारा 125

(i) पुनर्विवाह पर प्रतिबंध – हिन्दू विवाह अधिनियम की धारा 15 का प्रतिबंध तभी लागू होता है जबकि अपील परिसीमा अवधि के अंतर्गत प्रस्तुत की गई हो न कि निर्धारित परिसीमा अवधि पश्चात् प्रस्तुत की गई हो।

(ii) भरण–पोषण – विवाह विच्छेद के विरुद्ध प्रस्तुत अपील के लंबित रहने के दौरान द्वितीय विवाह प्रारंभतः शून्य नहीं होता है और निश्चित रूप से जबकि ऐसी अपील परिसीमा अवधि का अवसान होने के उपरांत प्रस्तुत की गई हो – पत्नी भरण–पोषण की हकदार है।

Krishnaveni Rai v. Pankaj Rai and anr.
Judgment dated 19.02.2020 passed by the Supreme Court in Criminal Appeal No. 321 of 2020, reported in AIR 2020 SC 1156

Relevant extracts from the judgment:

In any case, the bar of Section 15 is not at all attracted in the facts and circumstances of this case, where the appeal from the decree of divorce had been filed almost a year after expiry of the period of limitation for filing an appeal. Section 15 permits a marriage after dissolution of a marriage if there is no right of appeal against the decree, or even if there is such a right to appeal, the time of appealing has expired without an appeal having been presented, or the appeal has been presented but has been dismissed. In this case no appeal had been presented with the period prescribed by limitation.

The bar, if any, under Section 15 of the Hindu Marriage Act applies only if there is an appeal filed within the period of limitation, and not afterwards upon condonation of delay in filing an appeal unless of course, the decree of divorce is stayed or there is an interim order of Court, restraining the parties or any of them from remarrying during the pendency of the appeal.

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261. INDIAN PENAL CODE, 1860 – Section 34

Common intention – Existence of a pre-arranged plan has to be proved either from the conduct of the accused or from circumstances or from any incriminating facts – It is not enough to have the "same intention" independently of each other.

भारतीय दण्ड संहिता, 1860 – धारा 34

सामान्य आशय – अभियुक्त के आचरण या परिस्थितियों से अथवा अपराध में आलिप्त करने वाले अन्य तथ्यों के आधार पर पूर्व नियोजित योजना का अस्तित्व प्रमाणित करना आवश्यक है – एक दूसरे से स्वतंत्र रूप से ''समान–आशय'' रखना ही पर्याप्त नहीं है।

Chhota Ahirwar v. State of Madhya Pradesh

Judgment dated 06.02.2020 passed by the Supreme Court in Criminal Appeal No. 238 of 2011, reported in AIR 2020 SC 1150

Relevant extracts from the judgment:

Common intention implies acting in concert. Existence of a pre-arranged plan has to be proved either from the conduct of the accused, or from circumstances or from any incriminating facts. It is not enough to have the same intention independently of each other.

The question in this case is, whether the prosecution has been able to establish a pre-arranged common intention between the accused appellant and the main accused *Khilai* to kill the complainant in pursuance of which the accused *Khilai* open fired from his pistol. The answer to the aforesaid question has to be in the negative for the following reasons:

(i) A quarrel broke out between the accused appellant and the complainant. When the accused appellant tried to prevent the complainant from going to the field, the complainant insisted on doing so. While the quarrel was going on, the main accused *Khilai* arrived at the spot and intervened whereupon the complainant told him off, saying he should go home as he was in no way concerned with the dispute. At this, the main accused *Khilai* brought out a pistol from his right pant pocket and aimed it at the complainant.

(ii) There is no evidence to establish any pre-arrangement to converge at the place of occurrence. The circumstances established suggest that intervention by the main accused *Khilai* was by chance. The main

accused *Khilai* chanced to stop as he was passing by the place of occurrence when the accused appellant and the complainant were quarrelling.

(iii) As per the evidence of the complainant, who is a injured witness, when the complainant told the main accused *Khilai* not to intervene and to go home, *Khilai* reacted by taking out the pistol from his right pant pocket and pointing it at the complainant. The pistol was taken out by the main accused and pointed at *Khilai*, without any instigation from the accused appellant.

(iv) Even if it is accepted that the accused appellant uttered the words attributed to him by the complainant (PW-3) in his evidence, this seems to have been done on the spur of the moment. Pre-arrangement is not established.

(v) As observed above, there are some notable discrepancies between the evidence of the complainant (PW-3) and PW-4 which raise serious doubts with regard to the truth and/or accuracy of their evidence particularly in view of the enmity and pre-existing family disputes between the parties.

(vi) Even though PW-5 may have been declared hostile, his evidence is not to be rejected within its entirely. This witness also confirmed that there was an altercation between the accused appellant and the complainant, in which the main accused *Khilai* intervened, took out his pistol and aimed it at the complainant. These facts are corroborated by PW-3 (the Complainant) and PW-4. This witness however stated that the main accused *Khilai* took out his pistol and threatened to kill the complainant. He did not say that the accused appellant urged the main accused, *Khilai* to shoot.

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262. INDIAN PENAL CODE, 1860 – Sections 34, 302 and 404
SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 3
SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) RULES, 1995 – Rule 7
Offence registered under IPC as well as under the Act of 1989 – Investigated by an Officer below the rank of Deputy S.P., effect of? Held, accused is entitled to acquittal as far as offences under the Act of 1989 are concerned – But for offences under IPC, as there was no requirement for offences to be investigated by an officer not below the rank of Deputy S.P., trial thereof must continue.

भारतीय दण्ड संहिता, 1860 – धाराएं 34, 302 एवं 404

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धारा 3

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) नियम, 1995 – नियम 7

भा.दं.सं. के साथ–साथ 1989 के अधिनियम के अधीन अपराध दर्ज किया गया – अनुसंधान कार्यवाही उप–पुलिस अधीक्षक से न्यून पद के अधिकारी द्वारा की गई, प्रभाव? अभिनिर्धारित, जहां तक 1989 के अधिनियम के अपराधों का संदर्भ है, अभियुक्त दोषमुक्ति का पात्र है – परन्तु भा.दं.सं. के अधीन दण्डनीय अपराधों के लिए चूंकि उप पुलिस अधीक्षक से अन्यून पद के अधिकारी द्वारा अनुसंधान करने की कोई आवश्यकता नहीं थी, इसलिए उनका विचारण जारी रहेगा।

State of Madhya Pradesh v. Babbu Rathore & anr.

Judgment dated 17.01.2020 passed by the Supreme Court in Criminal Appeal No. 123 of 2020, reported in 2020 (1) Crimes 210 (SC)

Relevant extracts from the judgment:

By virtue of its enabling power, it is the duty and the responsibility of the State Government to issue notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police. Rule 7 of the 1995 Rules provides rank of investigation officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer in holding investigation in reference to the offences committed under any provisions of the 1989 Act but the question arose for consideration is that apart from the offences committed under the 1989 Act, if the offence complained are both under IPC and the offence enumerated in Section 3 of the 1989 Act and the investigation being made by a competent police officer in accordance with the provisions of the Code of Criminal Procedure (hereinafter being referred to as "the Code"), the offences under IPC can be quashed and set aside for non-investigation of the offence under Section 3 of the 1989 Act by a competent police officer. This question has been examined by a two-Judge Bench of this Court in ***State of M.P. v. Chunnilal @ Chunni Singh, (2009) 12 SCC 649***. Relevant para is as under:

> "... By virtue of its enabling power it is the duty and responsibility of the State Government to issue a notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police for different areas in the police districts. Rule 7 of the Rules provided rank of investigating officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer.

> The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation of an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non-investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in an appropriate court for the offences punishable under IPC notwithstanding investigation and the charge-sheet being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence."

Undisputedly, in the instant case, the respondents were charged under Sections 302/34, 404/34 IPC apart from Section 3(2)(v) of the 1989 Act and the charges under IPC have been framed after the investigation by a competent police officer under the Code, in such a situation, in our view, the High Court has committed an apparent error in quashing the proceedings and discharging the respondents from the offences committed under the provisions of IPC, where the investigation has been made by a competent police officer under the provisions of the Code. In such a situation, the charge-sheet deserves to proceed in an appropriate competent court of jurisdiction for the offence punishable under IPC, notwithstanding the fact that the charge-sheet could not have proceeded confined to the offence under Section 3 of the 1989 Act.

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263. INDIAN PENAL CODE, 1860 – Sections 302 and 376-AB
EVIDENCE ACT, 1872 – Section 9

(i) Identification parade – As a rule of thumb, it cannot be held that in all circumstances, the test identification pales into insignificance if the eye-witness has not deposed about the identification.

(ii) Recovery – The recovery will not stand vitiated merely because the place of recovery of dead body of victim was an open place – Moreso, when prosecution has clearly established that the body was found inside a "beshram" bush.

(iii) Veracity of DNA report – Merely non-mentioning of time and duration of test will not vitiate the said report.

(iv) Examination of accused – Where conviction is recorded on the basis of circumstantial evidence, the statement of accused u/s 313 was relevant material.

(v) **Sentence – The pendency of large number of criminal cases against the accused persons might be a factor which could be taken note of for awarding a sentence but in any case, not a relevant factor for awarding capital punishment.**

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 376–कख

साक्ष्य अधिनियम, 1872 – धारा 9

(i) शिनाख्तगी परेड – सभी परिस्थितियों में एक सख्त नियम के तौर पर यह अभिनिर्धारित नहीं किया जा सकता कि शिनाख्तगी परेड महत्वहीन हो जायेगी यदि प्रत्यक्षदर्शी साक्षियों ने पहचान के संबंध में परिसाक्ष्य न दी हो।

(ii) बरामदगी – केवल इसलिए कि मृतक के शव की बरामदगी खुले स्थान से हुई है, ऐसी बरामदगी दूषित नहीं होगी – विशेषकर तब जबकि अभियोजन ने स्पष्टतः स्थापित किया हो कि शव ''बेशरम'' की झाड़ियों के अंदर से प्राप्त हुआ।

(iii) डी.एन.ए. रिपोर्ट की शुचिता – केवल इसलिए कि समय और परीक्षण की अवधि का उल्लेख नहीं है, ऐसी रिपोर्ट दूषित नहीं होगी।

(iv) अभियुक्त परीक्षण – जहां दोषसिद्धि परिस्थितिजन्य साक्ष्य पर अभिनिर्धारित की जाती है, धारा 313 के अंतर्गत अभियुक्त का कथन सुसंगत होगा।

(v) दण्डादेश – अभियुक्त के विरुद्ध बड़ी संख्या में आपराधिक प्रकरणों का लंबित होना एक कारक हो सकता है जिसे दण्डादेश अधिरोपित करने में विचार में लिया जाये, परंतु किसी भी स्थिति में मृत्युदण्ड अधिरोपित करने में यह सुसंगत कारक नहीं होगा।

Deepak alias Nanhu Kirar v. State of M.P.

Judgment dated 20.02.2020 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 7544 of 2019, reported in 2020 CriLJ 2076 (DB)

Relevant extracts from the judgment:

Careful reading of this judgment makes it clear that the Supreme Court has consciously used the word “ordinarily” while holding that a person who has identified the assailant must himself give evidence in regard to the identification. Thus, as a rule of thumb, it cannot be held that in all circumstances, the TIP pales into insignificance if the eye-witness has not deposed about the identification/TIP.

The DNA test report was proved by P.W.-24. During cross-examination, no questions were asked which may create any doubt on the correctness of this report. Merely because time and duration of test is not mentioned in the report, it will not vitiate the said report. The DNA report was assailed by contending that P.W.-24 produced the relevant certificate which shows that DNA sample was taken but said document was a photocopy and, therefore, the Court did not permit the prosecution to exhibit the same. Heavy reliance was placed on a note appended in the examination-in-chief portion of Dr. Sunil Jain (P.W.-24). However, a microscopic reading of this para makes it clear that note appended only contains

the rival contentions of the parties. On the contrary, Para 2 of the deposition of P.W.-24 shows that prosecution was permitted to mark the seizure memo as Ex.P.-16 whereby two test tubes containing blood sample of the appellant were seized.

In view of *ratio decidendi* of (***Sanatan Naskar v. State of W.B., AIR 2010 SC 3570, Khairuddin v. State of W.B., AIR 2013 SC 2354, Brajendra Singh v. State of M.P., AIR 2012 SC 1552, State of Maharashtra v. Sukhdev Singh, AIR 1992 SC 2100, State of Maharashtra v. R.B. Chowdhari, AIR 1968 SC 110, Hate Singh Bhagat Singh v. State of M.B., AIR 1953 SC 468, State of U.P. v. Lakhmi, AIR 1998 SC 1007, Musheer Khan v. State of M.P., AIR 2010 SC 762, Sunil Clifford Daniel v. State of Punjab, (2012)11 SCC 205*** and ***Madhu v. Sate of Karnataka, AIR 2014 SC 394***), it can be safely held that in a case of this nature, where conviction is recorded on the basis of circumstantial evidence, the statement of appellant under Section 313 was a relevant material.

The cases are pending and appellant has not been convicted. In a given case, the pendency of large number of criminal cases against the accused persons might be a factor which could be taken note of for awarding a sentence but in any case, not a relevant factor for awarding capital punishment.

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264. INDIAN PENAL CODE, 1860 – Sections 304-B and 498-A
EVIDENCE ACT, 1872 – Sections 32 and 113-B
Multiple dying declarations – Assessment of – Every dying declaration is to be considered independently on its own merit – One cannot be rejected because of the contents of other – Instantly, there were three dying declarations recorded on 06.02.2008, 07.02.2008 and 13.02.2008 respectively – First was recorded by Panchayat, second by Tehsildar and third by Additional Tehsildar – While recording first and second dying declarations, deceased was under the control of her husband and in-laws – Her mother was not allowed to meet and accompany her to a better hospital – Third dying declaration was recorded after deceased met her mother – Deceased implicated only mother-in-law explaining the act of pouring kerosene and setting her ablaze therein – Under the circumstances, third dying declaration held, reliable.

भारतीय दण्ड संहिता, 1860 – धाराएं 304–ख एवं 498–क
साक्ष्य अधिनियम, 1872 – धाराएं 32 एवं 113–ख
एकाधिक मृत्युकालिक कथन – मूल्यांकन – प्रत्येक मृत्युकालिक कथन पर उसके गुण–दोष के अनुसार पृथकतः विचार किया जाना चाहिए – एक को अन्य की अंतर्वस्तु के कारण अस्वीकार नहीं किया जा सकता है – इस मामले में क्रमशः 06.02.2008, 07.02.2008 और 13.02.2008 को तीन मृत्युकालिक कथन लेखबद्ध किए गए – पहला पंचायत द्वारा, दूसरा तहसीलदार द्वारा और तीसरा अपर तहसीलदार द्वारा – प्रथम एवं

द्वितीय मृत्युकालिक कथन लेखबद्ध करते समय मृतका अपने पति और ससुराल वालों के नियंत्रण में थी – उसकी माँ को उसे मिलने एवं अपने साथ बेहतर अस्पताल में नहीं ले जाने दिया गया – मृतका के अपनी माँ से मिलने के बाद तीसरा मृत्युकालिक कथन लेख किया गया था – उसमें मृतका ने मात्र अपनी सास को आक्षेपित किया और बताया कि कैसे उसने केरोसिन डालकर उसे आग लगा दी थी – उपरोक्त परिस्थितियों में, तीसरा मृत्युकालिक कथन विश्वसनीय माना गया।

Kashmira Devi v. State of Uttarakhand and ors.

Judgment dated 28.01.2020 passed by the Supreme Court in Criminal Appeal No. 724 of 2019, reported in 2020 (1) Crimes 144 (SC)

Relevant extracts from the judgment:

The justification for the reliance placed on the third dying declaration dated 13.02.2008 by the High Court is to be examined. The evidence of PW1, as noted, would disclose that when she first went to the Hospital in Srinagar, she found that the deceased was surrounded by her husband and in-laws while PW1, the mother of the deceased was not allowed to interact with her daughter. It is in that circumstance the said declarations dated 06.02.2008 and 07.02.2008 were recorded. Firstly, the statement dated 06.02.2008 was not recorded by a Competent Authority or an Officer but is recorded by the so-called Panchayat in the manner to aid the accused. Insofar as the second dying declaration dated 07.02.2008 it is no doubt true that it has been recorded after a communication being addressed to the Tehsildar and after being certified by the doctor that the deceased was mentally fit to make the declaration. Though the said requirements are satisfied, the surrounding circumstances in which the statement was recorded while she was under the control of her in-laws. Such statements relied on by the appellant would not inspire confidence in the Court. In addition, it is noticed that the same is in the form of question and answer which could also be out of context depending on the manner in which the questions were put.

As noted in the evidence of PW1, the mother of the deceased, she was not allowed to accompany the deceased when she was shifted to Doon Hospital. However, she subsequently went there and was able to interact with her daughter and in that circumstance after about a week from the incident the declaration was recorded on 13.02.2008 after being certified by the doctor about the deceased being conscious and fit to make the statement. The said statement refers to the incident and the manner in which it had occurred. The indicator to the truthfulness of such statement is that the deceased had only mentioned about the appellant i.e., the mother-in-law who had indulged in the act of pouring kerosene and setting her on fire. She had not implicated her husband nor her father-in-law who was in the house but has stated that her father-in-law was sitting in another room having her daughter on his lap and has in fact stated that when she started crying, her father-in-law came there and he extinguished the fire. If it was a case of false implication, there was no reason for the deceased

to have been so specific insofar as the act of causing the death without naming the other members of the family when all of them were involved in the act of demanding dowry and was complaining earlier about the harassment meted out by them. In such circumstance, the reliance placed on the dying declaration dated 13.02.2008 is justified.

While arriving at such conclusion the High Court has kept in view a decision of this Court in the case of ***Nallam Veera Stayanandam v. The Public Prosecutor, High Court of A.P., (2004) 10 SCC 769*** wherein it is held that each dying declaration has to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. It is held therein that the Court has to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs. The consideration made herein above would also indicate that on an independent consideration, the dying declaration dated 13.02.2008 is reliable for the reasons stated above. To the same effect the High Court has also relied on another decision of this Court in the case of ***Ashabai and anr. v. State of Maharashtra, (2013) 2 SCC 224*** wherein it is held that when there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated on its own merits.

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***265. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – Section 7-A**

Age determination – Claim of juvenility – Order passed after following the procedure stipulated by Act is conclusive proof of the age as regards child in conflict with law – Such a claim can be raised at any stage, even after the final disposal of case – But, once the claim is raised and attains finality, it is not open to the accused to re-agitate the plea of juvenility by filing a fresh application.

किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2000 – धारा 7–क

आयु निर्धारण – किशोरवयता का दावा – अधिनियम द्वारा निर्धारित प्रक्रिया का पालन करने के बाद पारित किया गया आदेश विधि का उल्लंघन करने वाले बालक के लिए आयु का निर्णायक प्रमाण है – ऐसा दावा किसी भी स्तर पर किया जा सकता है, यहां तक कि मामले के अंतिम निराकरण के उपरांत भी – परन्तु, एक बार ऐसा दावा उठाने और अंतिमता प्राप्त कर लेने के उपरांत, अभियुक्त को किशोरवयता के प्रश्न को नया आवेदन प्रस्तुत कर पुनः उठाने की स्वतंत्रता नहीं है।

Pawan Kumar Gupta v. State of NCT of Delhi

Order dated 20.01.2020 passed by the Supreme Court in Special Leave Petition (Criminal) No. 547 of 2020, reported in 2020 (1) Crimes 206 (SC) (Three-Judge Bench)

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266. LAND ACQUISITION, 1894 – Sections 23, 28, 34 and 54

Condonation of delay in filing appeal – Appellant is not entitled to interest for period of delay in filling appeal.

भूमि अधिग्रहण अधिनियम, 1894 – धाराएं 23, 28, 34 एवं 54

अपील प्रस्तुत करने में हुए विलम्ब को क्षमा किया जाना – अपीलार्थी अपील प्रस्तुत करने में हुए विलम्ब की अवधि का ब्याज प्राप्त करने का अधिकारी नहीं हैं।

Executive Engineer, Nimna Dudhna Project, Selu, District Parbhani, Maharashtra v. State of Maharashtra and ors.

Judgment dated 15.01.2020 passed by the Supreme Court in Civil Appeal No. 246 of 2020, reported in (2020) 3 SCC 255

Relevant extracts from the judgment:

Merely because at the time of condoning the delay no such condition was imposed that the claimants shall not be titled to the interest on the enhanced amount of compensation for the period of delay, the appellant who is otherwise a public body cannot be saddled with the liability to pay the interest for the period of delay, which is not at all attributed to them. Under the circumstances, the common impugned judgment and order passed by the High Court awarding the interest on the enhanced amount of compensation for the period of delay in preferring the appeals deserve to be quashed and set aside and the impugned common judgment and order passed by the High Court is required to be modified to the aforesaid extent.

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267. MOTOR VEHICLES ACT, 1988 – Section 147 (1)

Act policy – Although Act policy does not cover the occupant of the car or the pillion rider but if the Insurance Company takes additional premium for passengers then it means that the gratuitous passengers are insured by the Insurance Company – However, the maximum liability of the Insurance Company in such case would be to the extent of ₹ 1,00,000/- (as per India Motor Tariff GR 36).

मोटरयान अधिनियम, 1988 – धारा 147 (1)

एक्ट पॉलिसी – हालांकि एक्ट पॉलिसी कार के अधिभोगी या पीछे की सीट की सवारी को शामिल नहीं करती किंतु यदि बीमा कंपनी यात्रियों के लिये अतिरिक्त राशि लेती है तो इसका अर्थ यह है कि निःशुल्क यात्री बीमा कंपनी द्वारा बीमित हैं – हालांकि, इस तरह के मामलों में बीमा कंपनी की अधिकतम जिम्मेदारी एक लाख रूपये की सीमा तक होगी। (भारतीय मोटर टेरिफ जीआर 36 के अनुसार)

National Insurance Co. Ltd. v. Dilip Kumar Jain and ors.

Judgment dated 02.04.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Appeal No. 139 of 2010, reported in 2020 ACJ 958

Relevant extracts from the judgment:

"Act" Policy does not cover the occupant of the car or the pillion rider.

However, it is apparent from the Insurance Policy, Ex. D-1, that the appellant had charged ₹ 450/- as an additional premium for 9 passengers. Thus, it is clear that the gratuitous passengers were insured by the Insurance Company. However, the maximum liability of the Insurance Company would be to the extent of ₹ 1,00,000 (As per Indian Motor Tariff G.R. 36) and not ₹ 10,000 as mentioned in the Insurance Policy, Ex. D-1. Thus, it is held that although the Insurance Policy Ex. D-1 was an "Act" Policy, but since, the Insurance Company had charged additional premium of ₹ 450/- for nine passengers (i.e. ₹ 50 for each passenger), therefore, the Insurance Company is severally and jointly liable to pay compensation subject to maximum liability of ₹ 1,00,000.

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268. MOTOR VEHICLES ACT, 1988 – Section 149 (2) (a) (i) (c)

Violation of policy – Insurance company is liable to satisfy the award and thereafter seek recovery from the owner of the vehicle if the offending vehicle was not having permit and fitness certificate on the date of accident.

मोटरयान अधिनियम, 1988 – धारा 149 (2) (a) (i) (c)

पालिसी का उल्लंघन – यदि दुर्घटना दिनांक को दुर्घटनाकारी वाहन का परमिट और फिटनेस प्रमाणपत्र नहीं था तो बीमा कंपनी प्रतिकर प्रदान करने के लिये जिम्मेदार हैं और उसके पश्चात् मालिक से वसूली कर सकती है।

Gudiya and ors. v. Govind Sharma and ors.

Judgment dated 03.05.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Appeal No. 532 of 2013, reported in 2020 ACJ 1569

Relevant extracts from the judgment:

So far as applicability of liability is concerned, although several judgments from time to time has been passed by the Hon'ble Apex Court in this regard. The Hon'ble Apex Court in the case of ***Francisca Luiza Rocha and ors. v. K. Valarmathi, 2018 ACJ 1430 (SC)*** while considering the decision of the Hon'ble Apex Court in the case of ***National Insurance Company Ltd. v. Swaran Singh, 2004 ACJ 1 (SC)*** concluded that Insurance Company is liable to satisfy the award and thereafter seek recovery from the owner of the vehicle. Said law would be applicable in the present fact situation of the case wherein the offending vehicle was not having permit and fitness certificate on the date of accident, as reflected in the discussion in the impugned award but held that at the relevant point of time on 11.12.2011, owner of the vehicle – respondent No.2 was not having permit for the offending vehicle, therefore, this Court concludes that the Insurance Company shall have to satisfy the award thereafter seek recovery from owner of the vehicle.

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

(i) Compensation – Assessment of income – Investment in LIC policies is not mandatory, but voluntary and serves dual purpose; (a) investment for future saving and coverage of risk and (b) tax saving – Income Tax Act promotes certain specified nature of investments and offer tax exemption among other incentives under Chapter VI(a) of the Act – Investment in LIC polices is one of them – Thus, the income reduced by tax benefit on LIC investments cannot be construed to be loss of income of assessee.

(ii) Loss of income – Merely running of shop by the L.Rs. of the deceased by itself shall not lead to presumption of no loss of income to the family, unless income generated from the shop after death of the deceased is found to be substantially the same with the income earned by the deceased.

मोटरयान अधिनियम, 1988 – धाराएं 166 एवं 168

(i) प्रतिकर – आय का निर्धारण – एल.आई.सी. की योजनाओं में निवेश आज्ञापक नहीं बल्कि स्वैच्छिक होता है और दो उद्देश्यों की पूर्ति करता है; (ए) भविष्य की बचत हेतु निवेश और जोखिम का कवरेज तथा (ब) कर की बचत – आयकर अधिनियम कुछ विशिष्ट प्रकृति के निवेशों को बढ़ावा देता है एवं अधिनियम के अध्याय **VI(a)** के अंतर्गत अन्य प्रोत्साहनों के बीच कर में छूट को आमंत्रण देता है – एल.आई.सी. की योजनाओं में निवेश उनमें से एक है – इस प्रकार एल.आई.सी. में निवेश पर कर लाभ द्वारा कम की गई आय को आंकलनकर्ता की आय का नुकसान नहीं माना जा सकता है।

(ii) आय की हानि – मृतक के उत्तराधिकारियों द्वारा मृतक की दुकान चलाया जाना मात्र परिवार की आय की कोई हानि न होने की उपधारणा नहीं है जब तक कि मृतक की मृत्यु के बाद दुकान से प्राप्त आय सारतः मृतक द्वारा अर्जित आय के समान न पाई जाए।

Mamta Kanoongo and ors. v. Dilip Agrawal and ors.

Judgment dated 26.07.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Appeal No. 687 of 2019, reported in 2020 (2) MPLJ 256

Relevant extracts from the judgment:

Undisputedly, income available at the hands of the deceased for taxation in the assessment year 2015-16 was ₹ 3,53,503/-. The investment in the LIC policies was not mandatory, but voluntary and serves dual purpose; (a) investment for future saving and coverage of risk and (b) tax saving.

The Income Tax Act promotes certain specified nature of investments and offer tax exemption under Income Tax Act among other incentives under Chapter VI (a) of the Act. Investment in LIC polices is one of them. As such, the income

reduced by tax benefit on LIC investments cannot be construed to be the loss of income of the assessee.

As no efforts were made by the insurance company to substantiate the submission that there was no loss of income to the family after demise of deceased. Merely, running of medical shop by the son of the deceased by itself shall not lead to presumption of no loss of income to the family, unless the income generated from the medical shop after death of the deceased is found to be substantially the same with the income earned by the deceased. The judgment cited by Senior Advocate for appellant in the case of ***Urmila wd/o Prakash Deora & ors. v. M.P. State Road Transport Corporation Bhopal and ors., 2002 (3) MPLJ 347*** supports the view taken by this Court as in the said case, the Division Bench has held that loss of income of the deceased cannot be set off by the income of the son from the same business or undertaking etc. consequently, the second submission so raised by Counsel for the respondent/ Insurance Company is also hereby rejected.

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***270. MOTOR VEHICLES ACT, 1988 – Sections 166 and 168**

Compensation – Future prospects – In computation of compensation, future prospects of the self employed person (deceased) must be considered according to his age at the time of accident – In *National Insurance Company Limited v. Pranay Sethi and ors., 2017 ACJ 2700 (SC)* (Constitution Bench), Supreme Court has considered the issue in relation to future prospects, while granting the compensation and held as under:-

> **"61 (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation.**

मोटरयान अधिनियम, 1988 – धाराएं 166 एवं 168

प्रतिकर – भावी आय – प्रतिकर की गणना में स्वनियोजित व्यक्ति (मृत) की भावी आय हेतु दुर्घटना के समय उसकी उम्र के आधार पर विचार अवश्य किया जाना चाहिए – *नेशनल इंश्योरेंश कंपनी लिमिटेड वि. प्रणय सेठी एवं अन्य, 2017 एसीजे 2700 (सु.को.) (संविधान पीठ)* में सर्वोच्च न्यायालय ने प्रतिकर प्रदान करते समय भावी आय से संबंधित विषयों पर विचार करते हुए निम्नानुसार अवधारित किया गया हैः–

> **"61 (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between**

the age of 50 to 60 years should be regarded as the necessary method of computation.

Kunjan Sadana and anr. v. Mahesh Kumar and ors.
Judgment dated 10.12.2019 passed by the Supreme in Civil Appeal No. 9312 of 2019, reported in 2020 ACJ 812 (SC)

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***271. MOTOR VEHICLES ACT, 1988 – Sections 166 and 168**

(i) Compensation – Liability – Once in a claim petition filed by the other claimant arising out of the same accident, it has been held that Insurance Company is liable to indemnify the owner and is jointly and severally liable to pay compensation, then the said finding would be binding – Only if any new evidence is led by the parties, only then it would be possible for the Claims Tribunal to give a finding at variance with the findings recorded in earlier claim petition arising out of same accident.

(ii) Abatement of claim petition – Non-bringing the legal representatives of the deceased driver of the offending vehicle do not affect adversely the petition – It does not result in abatement of the claim petition in toto because the owner of the offending vehicle is made vicariously liable for the act of his employee, i.e., driver, therefore, once it is held that the driver of the offending vehicle was rash and negligent and was responsible for the accident, then the owner of the vehicle would automatically become liable to pay compensation for the rash and negligent act of his driver – For the purpose of payment of compensation, the owner of the offending vehicle can be kept in the category of legal representative of the driver.

मोटरयान अधिनियम, 1988 – धाराएं 166 एवं 168

(i) प्रतिकर – उत्तरदायित्व – एक ही दुर्घटना से उत्पन्न अन्य दावेदार द्वारा दायर दावा याचिका में जब एक बार यह अभिनिर्धारित कर दिया जाता है कि बीमा कंपनी मालिक को क्षतिपूर्ति हेतु दायी है और वह प्रतिकर भुगतान हेतु संयुक्ततः व पृथकतः उत्तरदायी है तब उक्त निष्कर्ष बाध्यकारी होगा – यदि पक्षकारों द्वारा कोई नई साक्ष्य प्रस्तुत की जाये केवल तब ही दावा अधिकरण के लिए यह संभव होगा कि उसी दुर्घटना से उत्पन्न किसी पश्चातवर्ती याचिका में पूर्व दावा याचिका में अभिलिखित निष्कर्षों से भिन्न निष्कर्ष दे।

(ii) दावा याचिका का उपशमन – उल्लंघनकर्ता वाहन के मृत चालक के विधिक प्रतिनिधियों को न लाना याचिका को प्रतिकूल रूप से प्रभावित नहीं करता – इसके परिणामतः याचिका का पूर्णतः उपशमन नहीं हो जाता क्योंकि उल्लंघनकर्ता वाहन का स्वामी उसके कर्मचारियों जैसे वाहनचालक के कृत्य के लिये प्रतिनिधिक रूप से दायी है, इसलिये जब एक बार यह अभिनिर्धारित हो जाता है

कि उल्लंघनकर्ता वाहन का वाहन चालक उतावला और उपेक्षापूर्ण था और दुर्घटना के लिये जिम्मेदार था तब वाहन का स्वामी स्वयंमेव वाहन चालक के उतावले और उपेक्षापूर्वक कृत्य के लिये प्रतिकर के भुगतान हेतु दायी होगा – इसलिये प्रतिकर के भुगतान के उद्देश्य से उल्लंघनकर्ता वाहन का स्वामी वाहन चालक के विधिक प्रतिनिधि की श्रेणी में रखा जा सकता है।

Meera and ors. v. Har Prasad and ors.

Order dated 13.01.2020 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Miscellaneous Appeal No. 267 of 2017, reported in 2020 (2) MPLJ 297

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

Motor Insurance – Commercial Vehicle package policy – Theft of vehicle – When an insured has lodged the FIR immediately after the theft of a vehicle occurred and when the police after investigation have lodged a final report when the vehicle was not traced and when the surveyors/investigators appointed by the insurance company have found the claim of the theft to be genuine, then mere delay in intimating the insurance company about the occurrence of the theft cannot be a ground to deny the claim of the insured.

मोटरयान अधिनियम, 1988 – धारा 168

वाहन बीमा – वाणिज्यिक यान पैकेज पालिसी – वाहन की चोरी – जब एक पालिसी धारक ने वाहन की चोरी के तुरंत पश्चात् प्राथमिकी दर्ज करायी और जब पुलिस ने अन्वेषण के पश्चात् वाहन के न मिलने पर अंतिम प्रतिवेदन दायर किया और जब बीमा कंपनी द्वारा नियुक्त सर्वेक्षणकर्ताओं/अन्वेषणकर्ताओं ने चोरी के दावे को वास्तविक पाया, तब चोरी की घटना के बारे में बीमा कंपनी को सूचित करने में विलंब मात्र पालिसी धारक के दावे को खारिज करने का आधार नहीं हो सकती है।

Gurshinder Singh v. Shriram General Insurance Co. Ltd. and anr.

Judgment dated 24.01.2020 passed by the Supreme Court in Civil Appeal No. 653 of 2020, reported in 2020 ACJ 1029 (SC) (Three-Judge Bench)

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273. MOTOR VEHICLES ACT, 1988 – Section 173

CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 22

Appeal – Cross-objection – Insurance Company filed appeal before the High Court challenging its liability – Claimants filed cross-objection seeking enhancement of compensation – Appeal was dismissed for want of office objections – High Court dismissed the cross-objections as not maintainable on the ground that appeal by

Insurance Company was restricted only to denial of its liability and had not challenged the quantum of compensation – Apex Court held that respondent cannot be denied to file cross-objection on appeal filed by the other side challenging that part of the award with which he was aggrieved.

मोटरयान अधिनियम, 1988 – धारा 173

सिविल प्रक्रिया संहिता, 1908 – आदेश 41 नियम 22

अपील – प्रत्याक्षेप – बीमा कम्पनी ने उच्च न्यायालय के समक्ष अपने दायित्व को चुनौती देते हुए अपील प्रस्तुत की तथा आवेदकगण ने प्रतिकर की राशि बढ़ाने हेतु प्रत्याक्षेप प्रस्तुत किया – कार्यालयीन त्रुटियों में सुधार न होने के कारण अपील निरस्त हुई – उच्च न्यायालय ने, यह मानते हुए प्रत्याक्षेप निरस्त किया कि बीमा कम्पनी की अपील केवल अपने दायित्व को चुनौती देने तक सीमित थी और उसमें प्रतिकर की राशि को चुनौती नहीं दी गई थी – शीर्ष न्यायालय ने प्रतिपादित किया कि प्रतिप्रार्थी को अपील में प्रत्याक्षेप करने से इस कारण इंकार नहीं किया जा सकता कि अन्य पक्ष ने अधिनिर्णय के केवल उतने भाग को चुनौती दी है जितने से वह व्यथित है।

Urmila Devi and ors. v. Branch Manager, National Insurance Co. Ltd. and anr.

Judgment dated 30.01.2020 passed by the Supreme Court in Civil Appeal No. 838 of 2020, reported in 2020 ACJ 771 (SC) (Three-Judge Bench)

Relevant extracts from the judgment:

A conjoint reading of the provisions of Section 173 of the M.V. Act; Rule 249 of the Bihar Motor Vehicles Rules, 1992; and Order XLI Rule 22 of the CPC would reveal that there is no restriction on the right to appeal of any of the parties. It is clear, that any party aggrieved by any part of the Award would be entitled to prefer an appeal. It is also clear, that any respondent, though he may not have appealed from any part of the decree, apart from supporting the finding in his favour, is also entitled to take any cross-objection to the decree which he could have taken by way of appeal.

When in an appeal the appellant could have raised any of the grounds against which he is aggrieved, we fail to understand, as to how a respondent can be denied to file cross-objection in an appeal filed by the other side challenging that part of the Award with which he was aggrieved. We find, that the said distinction as sought to be drawn by the High Court is not in tune with conjoint reading of the provisions of Section 173 of the M.V. Act; Rule 249 of the Bihar Motor Vehicles Rules, 1992; and Order XLI Rule 22 of the CPC.

As a matter of fact, it could be seen from the prayer clause in the appeal preferred by the respondents herein (Insurance Company) before the High Court that the entire award was challenged by the respondents – Insurance Company. Not only that, but the appellants herein (the claimants) were also impleaded as

party respondents to the said appeal. In such circumstances, the High Court has erred in declining to consider the cross-objection of the appellants herein (the claimants) on merits.

There is another angle to it. Sub-rule (4) of Rule 22 of Order XLI of the CPC specifically provides, that even if the original appeal is withdrawn or is dismissed for default, the cross-objection would nevertheless be heard and determined after such notice to the other parties as the Court thinks fit. We are, therefore, of the considered view, that even if the appeal of the Insurance Company was dismissed in default and the Insurance Company had submitted that they were not interested to revive the appeal, still the High Court was required to decide the cross-objection of the appellants herein on merits and in accordance with law.

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***274. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 147**
LEGAL SERVICES AUTORITIES ACT, 1987 – Section 19
Compromise in Lok Adalat – New cheque issued and again dishonoured – Whether dishonour of cheque issued in pursuance of a compromise arrived at Lok Adalat would constitute offence u/s 138 of Act of 1881? Held, Yes – Award of a Lok Adalat is deemed to be a decree of Civil Court and executable as a legally enforceable debt.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 147
विधिक सेवा प्राधिकरण अधिनियम, 1987 – धारा 19
लोक अदालत में समझौता – नया चेक जारी किया गया और पुनः अनादरित हो गया – क्या लोक अदालत में हुए समझौते के अनुसरण में जारी किए गए चेक का अनादरण 1881 के अधिनियम की धारा 138 के अपराध का गठन करेगा? अभिनिर्धारित, हाँ – लोक अदालत का अधिनिर्णय सिविल न्यायालय की आज्ञप्ति माना जाता है और वैध ऋण के रूप में प्रवर्तनीय होता है।

Arun Kumar v. Anita Mishra and ors.
Judgment dated 18.10.2019 passed by the Supreme Court in Criminal Appeal No. 1580 of 2019, reported in AIR 2019 SC 5745

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275. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 12, 18 and 27
(i) Section 18 of the Domestic Violence Act relates to protection only – Before issuing notice, the Court shall *prima facie* be satisfied that there have been instances of domestic violence.
(ii) There are no specific allegations as to how other relatives of appellant have caused the acts of domestic violence – The criminal case of domestic violence against other relatives of appellant cannot be continued.

(iii) The petition under the Domestic Violence Act can be filed in a court where the "person aggrieved" permanently or temporarily resides or carries on business or is employed.

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धाराएं 12, 18 एवं 27

दण्ड प्रक्रिया संहिता, 1973 – धारा 482

(i) घरेलू हिंसा अधिनियम की धारा 18 मात्र संरक्षण से संबंधित है – सूचना–पत्र जारी करने से पूर्व न्यायालय का प्रथम दृष्ट्या समाधान होना चाहिए कि घरेलू हिंसा कारित हुई है।

(ii) यहाँ ऐसे कोई विनिर्दिष्ट आक्षेप नहीं हैं कि अपीलार्थी के अन्य रिश्तेदारों ने कैसे घरेलू हिंसा का कृत्य किया – उनके विरुद्ध घरेलू हिंसा से संबंधित दाण्डिक प्रकरण जारी नहीं रखा जा सकता।

(iii) घरेलू हिंसा अधिनियम के अंतर्गत याचिका ऐसे न्यायालय में प्रस्तुत की जा सकती है जहां व्यथित व्यक्ति स्थाई या अस्थाई रूप से रहती हो या व्यापार करती हो या नियोजन में हो।

Shyamlal Devda and ors. v. Parimala

Judgment dated 22.01.2020 passed by the Supreme Court in Criminal Appeal No. 141 of 2020, reported in 2020 CriLJ 2114

Relevant extracts from the judgment:

Section 18 of the Domestic Violence Act relates to protection order. In terms of Section 18 of the Act, intention of the legislature is to provide more protection to woman. Section 20 of the Act empowers the court to order for monetary relief to the "aggrieved party". When acts of domestic violence is alleged, before issuing notice, the court has to be *prima facie* satisfied that there have been instances of domestic violence.

In the present case, the respondent has made allegations of domestic violence against fourteen appellants. Appellant No.14 is the husband and appellants No.1 and 2 are the parents-in-law of the respondent. All other appellants are relatives of parents-in-law of the respondent. Appellants No. 3, 5, 9, 11 and 12 are the brothers of father-in-law of the respondent. Appellants No. 4, 6 and 10 are the wives of appellants No. 3, 5 and 9 respectively. Appellants No. 7 and 8 are the parents of appellant No. 1. Appellants No. 1 to 6 and 14 are residents of Chennai. Appellants No. 7 to 10 are the residents of State of Rajasthan and appellants No. 11 to 13 are the residents of State of Gujarat. Admittedly, the matrimonial house of the respondent and appellant No. 1 has been at Chennai. Insofar as appellant No.14-husband of the respondent and appellants No. 1 and 2 Parents-in-law, there are averments of alleging domestic violence alleging that they have taken away the jewellery of the respondent gifted to her by her father during marriage and the alleged acts of harassment

to the respondent. There are no specific allegations as to how other relatives of appellant No.14 have caused the acts of domestic violence. It is also not known as to how other relatives who are residents of Gujarat and Rajasthan can be held responsible for award of monetary relief to the respondent. The High Court was not right in saying that there was *prima facie* case against the other appellants No. 3 to 13. Since there are no specific allegations against appellants No. 3 to 13, the criminal case of domestic violence against them cannot be continued and is liable to be quashed.

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***276. STAMP ACT, 1899 – Section 35**

Objection as to deficiency in stamp duty – Whether can be deferred till final decision in the suit? – Held, generally such objection is required to be decided before proceeding further in the suit – But, where nature of document is required to be determined on the basis of evidence, it is reasonable to defer the admissibility of document till final decision in the suit – Instantly, a power of attorney was challenged as conveyance deed and objection of insufficient stamp duty raised – Held, nature of document can be determined only after evidence – Thus, admissibility of document deferred till final decision in suit.

स्टाम्प अधिनियम, 1899 – धारा 35

स्टाम्प शुल्क में कमी की आपत्ति – क्या वाद के अंतिम निराकरण तक स्थगित की जा सकती है? – अभिनिर्धारित, सामान्यतया ऐसी आपत्ति वाद में आगे बढ़ने के पूर्व विनिश्चित की जाना आवश्यक है – परन्तु जहां दस्तावेज की प्रकृति को साक्ष्य के आधार पर निर्धारित किया जाना आवश्यक हो, वाद के अंतिम निराकरण तक दस्तावेज की ग्राह्यता को स्थगित करना उचित है – हस्तगत मामले में, मुख्त्यारनामा को हस्तांतरण विलेख के रूप में चुनौती दी गई थी और अपर्याप्त स्टांप शुल्क की आपत्ति ली गई – अभिनिर्धारित, दस्तावेज की प्रकृति को साक्ष्य के आधार पर ही निर्धारित किया जा सकता है – इस प्रकार, वाद के अंतिम निराकरण तक दस्तावेज की ग्राह्यता स्थगित की गई।

M/s. Z. Engineers Construction Pvt. Ltd. And another v. Bipin Bihari Behera and others

Judgment dated 14.02.2020 passed by the Supreme Court in Civil Appeal No. 1627 of 2019 (Arising out of SLP (Civil) No.5036 of 2019), reported in AIR 2020 SC 1140

[*Readers are advised to read *Bipin Shantilal Panchal v. State of Gujarat, AIR 2001 SC 1158* and *Avinash Kumar Chauhan v. Vijay Krishna Mishra, AIR 2009 SC 1489* also.]

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277. TRANSFER OF PROPERTY ACT, 1882 – Sections 5 and 108

CIVIL PRACTICE :

(i) Concept of "unearned increase" – Explained – Unearned increase in case of Government grant is the difference between premium paid and the market value of property.

(ii) Construction of document – Transfer of leasehold interest in property or absolute transfer of all rights, titles and interest – Perpetual leave was granted to original grantee – Right of lease was purchased by Central Government under statutory powers of Income Tax Act – Property was put in auction by Central Government through DDA – Sale deed was executed in favour of auction purchaser – Action purchaser claimed absolute transfer – Held, what was transferred by auction was the leasehold interest in property – Sale deed cannot be read in divorce to the auction notice – Sale was not absolute.

संपत्ति अंतरण अधिनियम, 1882 – धाराएं 5 एवं 108

सिविल प्रथा :

(i) ''अनर्जित वृद्धि'' की अवधारणा – समझाई गई – शासकीय अनुदान के मामले में अनर्जित वृद्धि प्रीमियम भुगतान और संपत्ति के बाजार मूल्य के मध्य का अंतर है।

(ii) दस्तावेज का निर्वचन – संपत्ति में पट्टाधृति हित का अंतरण अथवा सभी अधिकारों, स्वत्वों एवं हितों का पूर्ण हस्तांतरण – मूल अनुदेयी को स्थाई पट्टा दिया गया था – आयकर अधिनियम की वैधानिक शक्तियों के अधीन केंद्र सरकार द्वारा पट्टाधृति का अधिकार क्रय किया गया – संपत्ति डीडीए के माध्यम से केंद्र सरकार द्वारा नीलामी में रखी गई – नीलामी क्रेता के पक्ष में विक्रय पत्र निष्पादित किया गया – नीलामी क्रेता ने पूर्ण हस्तांतरण का दावा किया – अभिनिर्धारित, नीलामी द्वारा हस्तांतरित हित संपत्ति में पट्टाधृति हित था – विक्रय विलेख को नीलामी सूचना के विच्छेद में नहीं पढ़ा जा सकता है – विक्रय पूर्ण नहीं था।

Delhi Development Authority v. Karamdeep Finance and Investment (India) Private Limited and ors.

Judgment dated 12.02.2019 passed by the Supreme Court in Civil Appeal No. 1533 of 2019, reported in (2020) 4 SCC 136

Relevant extracts from the Judgment:

In perpetual lease, granted to Shri Trilochan Singh Rana and Mrs. Rani Rana, one of the conditions provided that the lessor may impose conditions to claim and recover a portion of the unearned increase in the value (i.e. the difference between the premium paid and the market value) of the residential plot at the time of sale, transfer, assignment or parting with the possession, the amount to be recovered being fifty per cent of the unearned increase.

In the present case, the appropriate authority has exercised its power under Section 269-UD of the Income Tax Act for the purchase of the property by the Central Government. It is by exercise of statutory power that rights of the lessee were purchased by the Central Government. The Central Government issued auction notice for auction of property in question.

The learned counsel for the petitioner has relied on Clauses 1 and 2 of the sale deed, which are to the following effect:

> "1. That in pursuance of the said auction and consideration of the sum of ₹ 1,08,05,000 (Rs one crore eight lakhs and five thousand only) already paid by the vendor/auction-purchaser to the vendor as aforesaid, the receipt of which the vendor hereby acknowledged, the vendor hereby transfers, conveys and sells to the auction-purchaser, the vendee, by way of sale of that plot of land measuring 725 sq. yds. bearing No. 14 in Block A-2 in the layout plan of Safdarjung Development Scheme, Ring Road South Delhi (Villages Mohammadpur Munirka and Humayunpur Revenue Estate, together with all rights, titles, interests, appurtenances, easements, privileges in and pertaining to the aforesaid property in favour of the vendee absolutely and forever, with the provisions of Section 269-UE (1) of the Income Tax Act, 1961 and all the powers, rights and interests vested in the vendor with regard to the sale, transfer and conveyances of the aforesaid property to the vendee hereto.
>
> 2. That on the execution of this sale deed, the vendee has become the absolute and exclusive owner of the property hereby sold, conveyed and transferred to it and that the vendee shall have absolute rights and title to the same and to deal with the property in any manner it likes. It is made clear that the vendor has no right and is left with no interest, claim or title of any nature whatsoever into/on/upon the aforesaid property."

A plain reading of the above clauses does give impression that what was sold to the writ petitioner was all rights, titles, interests and appurtenances but when we read Clause 3 of the same sale deed, the said clause gives a different impression. Clause 3 of the sale deed is as follows:

> "That the vendor hereby represents and assures to the vendee that his right in the property hereby sold, transferred and conveyed is in terms of the agreement for transfer dated 29.09.1988 between Mr. Trilochan Singh Rana and Ms. Rani

Rana, transferor and M/s Ocean Construction Industries (P) Ltd. (through its Director Shri Jugal Kishore Malhan), transferee."

Before we construe the document, we need to first notice the auction notice by which the property was put to auction. Auction notice, which has been brought on the record as Annexure R-1 indicates that details of four properties were given in the auction notice. It is useful to look into the details given as follows:

	Details of Properties	Reserve Price
1.	Property No. B-6, Friends Colony Mathura Road, New Delhi. This is a lease hold residential plot measuring 195.097 sq.m. together with buildings and structure thereon and fixtures and fitting therein	34.20 lacs
2.	Property No. 14, Block A-2, Safdarjung Development Area, New Delhi. This is a lease hold residential plot measuring (725 sq. yds.) with a double storeyed building. The Ground Floor consists of drawing dining bed room, kitchen and a garage. The First Floor consists of 3 bed rooms, 3 bath rooms, store and a lobby over the garage. There are 2 floors each having a servant room W.O. and a cocking verandah.	1.08 crores
3.	Property No. A-8/23, Vasant Vihar, New Delhi. This is a lease hold residential plot No. 23 in Street No. A-8 in the lay out plan of Vasant Vihar of the Government Servants Cooperative. House Building Society Ltd., and measuring 150 Sq. yds. alongwith the super structure build thereon. (Covered area 1350 Sq. Ft).	36.60 Lacs
4.	Property bearing House No. E-444 (Ground Floor), Greater Kailash Part-II, New Delhi-110048. All rights, titles and Interests in the dwelling unit on ground floor, and mazanine floor of House No. E-444, Greater Kailash, Part-II, New Delhi, together with undivided. Indivisible and impartible ownership right of 35% in the land underneath of the said building and including the followings:— 1. One drawing-cum-dining hall, three bed rooms with attached bath rooms, balcony, kitchen, storage space (servants quarters) and servant's bath rooms on ground floor. 2. Front lawn and back courtyard on the ground floor. Parking space for a Maruti Car in the Driveway. Ingress and Egress from the main gate to the dwelling unit.	25.60 lacs

A perusal of the details of the properties indicates that the property in question is included as Item 2, which is mentioned as “This is a leasehold residential plot”. It is to be noticed that insofar as properties at S1. Nos. 1, 2 and 3 are concerned, the words mentioned are “leasehold residential plots” whereas with regard to property details given at S1. No. 4, it has been mentioned that “all rights, titles and interests in the dwelling unit”, which if contrasted with details of properties given at S1. Nos. 1, 2 and 3 contains the intendment. Thus, there cannot be any doubt that property in question, which was put in auction was a property as leasehold rights residential plots. When property is auctioned, the terms and conditions of auction are binding on both the parties. When the petitioner submitted his bid in pursuance of the auction notice, he was bidding for leasehold residential plot with a double – storeyed building. While interpreting the sale deed, the auction notice has to be looked into to find out the nature of the transaction. The sale deed cannot be read divorced to the auction notice or contrary to auction notice. Auction of a leasehold residential plot and auction of freehold residential plot carry different connotations. Leasehold rights are limited rights, which are subservient to freehold rights of a property. In giving bid for leasehold rights and freehold rights, different considerations are there. Clause 3, as noted above, indicates that the property sold and transferred is in terms of the agreement dated 29-9-1988 between Trilochan Singh Rana and Mrs Rani Rana to M/s Ocean Construction Industries (P) Ltd. Trilochan Singh Rana and Mrs Rani Rana were only leaseholders. Thus, they could best transfer their right, which was conferred to them by the indenture dated 18.03.1970.

There cannot be any dispute to principles of constructions of document as laid down by this Court. But we have to look into the different clauses to find out the real intention of the granter. We need to notice that present is a case of government grant where the Government has granted rights by sale deed to the writ petitioner.

Normally, the grant should be construed to include all rights, title and interest of the grantor, unless there is a country provision either expressly made, or implied by necessary implication, is the principle, which has been laid down by this Court in the above case. Para 3 contains the intention of the granter to transfer the rights to the writ petitioner in terms of the agreement dated 29.09.1998. Clause 3 limits and explains the rights, which were given in. Clauses 1 and 2 of the sale deed, but it cannot be said that Clause 3 is totally contradictory to Clauses 1 and 2. The three clauses have to be harmoniously construed to give effect to the intention of the granter. Furthermore, as we have noticed that auction notice provided for auction of leasehold rights, which is an important factor, which cannot be brushed aside while interpreting the sale deed.

We, thus, find that on true construction of the sale deed, it is clear that all rights, titles and interests were not conveyed to the petitioner in the leasehold residential plot, when we read Clauses 1, 2 and 3 together.

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PART - III

CIRCULARS/NOTIFICATIONS

NOTIFICATION DATED 22.09.2020 OF DEPARTMENTOF REVENUE, MINISTRY OF FINANCE AUTHORIZING OFFICERS OF AND ABOVE THE RANK OF INSPECTORS OF THE NATIONAL INVESTIGATION AGENCY TO EXERCISE THE POWER AND PERFORM DUTIES U/S 53 (1) OF NDPS ACT.

New Delhi, the 22nd September, 2020-10-13

S.O. 3213 (E) - In exercise of the powers conferred by sub section (1) of section 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985 the Central Government, after consultation with the State Governments, hereby invests the officers of and above the rank of inspectors in the National Investigation Agency constituted under the National Investigation Agency Act, 2008 to exercise the power and perform duties specified in sub-section (1) of that section, within the area of the their jurisdiction.

का. आ. 3231 (अ) – केंद्रीय सरकार, स्वापक औषधि और मनः प्रभाव पदार्थ अधिनियम, 1985 की धारा 53 की उप–धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राज्य सरकारों की सहमति से, राष्ट्रीय अन्वेषण अभिकरण अधिनियम, 2008 के अधीन गठित राष्ट्रीय जांच एजेंसी में निरीक्षक पद के अधिकारियों को उनकी अधिकारिता के क्षेत्रों के भीतर, धारा 53 (1) में विनिर्दिष्ट शक्तियों का प्रयोग और कर्तव्यों का पालन करने के लिए सशक्त करती है।

(F.No. N/11011/04/2019-NC-III)
Biswajit Sarkar, Under Secy.

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NOTIFICATION DATED 14.09.2020 OF THE HIGH COURT OF THE MADHYA PRADESH SPECIFYING COURT WHICH MAY DISPOSE OF URGENT APPLICATION WHEN THE COURT OF SPECIAL SESSIONS JUDGE SPECIFIED UNDER SC/ST (PREVENTION OF ATROCITIES) ACT IS VACANT.

In exercise of the powers conferred u/s 9(5) of the Cr.P.C. 1973, the High Court of Madhya Pradesh hereby directs that where the office of the Special Sessions Judge specified by the Government of Madhya Pradesh u/s **14 of the SC/ST (Prevention of Atrocities) Act (Special Judge)** is vacant, then any urgent application which may be made or pending before Special Court, shall *be disposed of by the*, Senior most Addl. Sessions Judge at the headquarters or in his/her absence, by the Senior most Addl. Sessions Judge or Sessions Judge available in the Sessions Division or in *the absence of all of them by the Chief Judicial Magistrate of the District*; and every such Judge or Magistrate shall be deemed to be the Presiding Officer/Judge of the said Court of Sessions (Court of Special Judge) for this purpose.

The High Court Notification no. 1414/Conf./II-II21/63-part-II, dt. 9-9-96 is hereby withdrawn.

By Order of Hon'ble the Chief Justice

(B.P. SHARMA)
REGISTRAR(DE)

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"The law cannot be used as a device to reach back in time and provide a legal remedy to every person who disagrees with the course which history has taken. The courts of today cannot take cognizance of historical rights and wrongs unless it is shown that their legal consequences are enforceable in the present."

M. Siddiq v. Suresh Das,
2020 (1) SCC 1

PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE MADHYA PRADESH MONEYLENDERS (AMENDMENT) ACT, 2020
NO. 16 OF 2020

[26th September, 2020]

[Received the assent of the Governor on the 25th September, 2020; assent first published in the "Madhya Pradesh Gazette (Extraordinary)", dated 26th September, 2020.

An Act further to amend the Madhya Pradesh Moneylenders Act, 1934.

BE it enacted by the Madhya Pradesh Legislature in the seventy first year of the Republic of India as follows :-

1. **Short title.** – This Act may be called the Madhya Pradesh Moneylenders (Amendment) Act, 2020.

2. **Amendment of section 2.** – In Section 2 of the Madhya Pradesh Moneylenders Act, 1934 (No. 13 of 1934) (hereinafter referred to as the Principal Act), in clause (vii), after sub-clause (d), the following sub-clause shall be inserted, namely :–

   "(da) a loan advanced by a "non-banking financial company" as defined in section 45-I(f) of the Reserve Bank of India Act, 1934, (No. 2 of 1934)".

3. **Insertion of section 2-B** – After section 2-A of the Principal Act, the following section shall be inserted, namely :–

   "2-B. Limit of interest. – No moneylender shall charge interest more than the rate notified by the State Government from time to time."

4. **Renumbering of section 11-FF and insertion of new section 11-FF.** – Section 11-FF of the Principal Act shall be renumbered, as section 11-FFF and before section 11-FFF as so renumbered, the following new section shall be inserted, namely :–

   "11-FF. Loan by unregistered moneylenders shall not be recoverable in certain conditions. – Notwithstanding anything contained in any other law for the time being in force, any loan advanced to any person by a moneylender not registered under section 11-B shall not be recoverable in any Court of law unless at the time of filing the suit the moneylender held an effective registration and the Court is satisfied that the loans advanced were in compliance with section 2-B."

5. **Amendment of section 11-FFF.** – In section 11-FFF as so renumbered of the Principal Act, in marginal heading and in provision, for the word, figure and letter "section 2-A" wherever they occur, the words, the figures and letters "section 2-A, Section 2-B" shall be substituted.

मध्यप्रदेश साहूकार (संशोधन) अधिनियम, 2020
क्रमांक 16 सन् 2020

(26 सितम्बर, 2020)

(दिनांक 25 सितम्बर, 2020 को राज्यपाल की अनुमति प्राप्त हुई अनुमति ''मध्यप्रदेश राजपत्र असाधारण)'' में दिनांक 26 सितम्बर, 2020 को प्रथम बार प्रकाशित की गई)

मध्यप्रदेश साहूकार अधिनियम, 1934 को संशोधित करने हेतु अधिनियम।

भारत गणराज्य के इकहत्तरवें वर्ष में मध्यप्रदेश विधान–मंडल द्वारा निम्नलिखित रूप में यह अधिनियमित होः–

1. संक्षिप्त नाम – इस अधिनियम का संक्षिप्त नाम मध्यप्रदेश साहूकार (संशोधन) अधिनियम, 2020 है।

2. धारा 2 का संशोधन – मध्यप्रदेश साहूकार अधिनियम, 1834 (क्रमांक 13 सन् 1834) (जो इसमें इसके पश्चात् मूल अधिनियम के नाम से निर्दिष्ट है) की धारा 2 में, खण्ड (सात) में, उपखण्ड (घ) के पश्चात, निम्नलिखित उपखण्ड अन्तःस्थापित किया जाए, अर्थातः–

''(घ क) भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 45–आई (च) में यथा परिभाषित किसी ''गैर बैंकिंग वित्तीय कम्पनी'' द्वारा अग्रिम दिया गया कोई उधार,''।

3. धारा 2–ख का अन्तःस्थापन – मूल अधिनियम की धारा 2–क के पश्चात् निम्नलिखित धारा अन्तःस्थापित की जाए, अर्थातः–

''2–ख ब्याज की सीमा – कोई भी साहूकार, राज्य सरकार द्वारा समय–समय पर अधिसूचित की गई दर से अधिक ब्याज प्रभारित नहीं करेगा।''

4. धारा 11–चच का पुनर्क्रमांकित किया जाना तथा नवीन धारा 11–चच का अन्तःस्थापन – मूल अधिनियम की धारा 11–चच को धारा 11 – चचच के रूप में पुनर्क्रमांकित किया जाए और इस प्रकार पुनर्क्रमांकित धारा 11–चचच के पूर्व, निम्नलिखित नई धारा अन्तःस्थापित की जाए, अर्थातः–

''11–चच अरजिस्ट्रीकृत साहूकारों द्वारा दिया गया उधार कतिपय परिस्थितियों में वसूलनीय नहीं होगा – तत्समय प्रवृत किसी अन्य विधि में अंतर्विष्ट किसी बात के होते हुए भी धारा 11–ख के अधीन अरजिस्ट्रीकृत किसी साहूकार द्वारा, किसी व्यक्ति को अग्रिम दिया गया कोई उधार विधि के किसी न्यायालय में तब तक वसूलनीय नहीं होगा जब तक कि वाद दायर किए जाने के समय साहूकार प्रभावी रजिस्ट्रीकरण न रखता हो और न्यायालय का समाधान न हो गया हो कि अग्रिम दिए गए उधार धारा 2–ख के अनुसरण में थे।''

5. धारा 11–चचच का संशोधन – मूल अधिनियम की इस प्रकार पुनर्क्रमांकित धारा 11–चचच में, पार्श्व शीर्ष में और उपबंध में, शब्द, अंक तथा अक्षर, ''धारा 2–क'', जहां कहीं भी आए हों, के स्थान पर, शब्द, अंक तथा अक्षर ''धारा 2–क, धारा 2–ख'' स्थापित किया जाए।

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मध्यप्रदेश उच्च न्यायालय, खण्डपीठ इन्दौर

मध्यप्रदेश उच्च न्यायालय, खण्डपीठ ग्वालियर

मध्यप्रदेश उच्च न्यायालय, जबलपुर

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