

JOTI JOURNAL
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PART-II
(NOTES ON IMPORTANT JUDGMENTS)

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| Section 12(1)(a) – See Section 114 Illustration (f) of Evidence Act, 1872. | 212 | 327 |
| Section 12 (1)(a) – See Rule 15 of the Accommodation Control Rules, 1966 (M.P.). | 2 | 3 |
| Sections 12 (1)(a), 12 (3) and 13 – Protection to tenant – Held, benefit of protection under Section 12(3) of the Act can be extended only for once. Protection under Section 12(3) is available only when the provisions of Section 13(1) of the Act are complied with – In case of three consecutive defaults, the protection is automatically removed. | 147* | 229 |
| Section 12 (1)(b) – See Sections 101 and 102 of the Evidence Act, 1872. | 148* | 229 |
| Section 12 (1)(c) – Denial of title – Where the defendant has neither renounced his character as tenant nor has set-up title in himself but has bonafidely called upon the plaintiff to prove his title, it does not amount to denial of title. | | |
| Section 12 (1)(f) – Bonafide requirement – In order to obtain decree under Section 12 (1) (f), the plaintiff is not only required to prove that he is landlord but also that he is owner. | 273* | 421 |
| Sections 12 (1) (h) and 12 (7) – No pleading that plaintiff is having a plan or estimate for reconstruction and she is also having necessary funds with her – In absence of such a pleading and further, by not proving those ingredients, it can be held that learned two Courts below have grossly erred in passing the decree of eviction u/s 12(1)(h) of the Act. | 3 | 4 |
| Section 23-A (b) – Eviction ordered on the ground of personal bona fide need of Dr. ‘R’ to open dispensary in the premises – Such need completely eclipsed on account of his death, during the pendency of the present revision – None of the legal heirs came forward expressing bona fide need of any kind – Held, on account of this subsequent event, the order of eviction cannot be permitted to be kept alive. | 4* | 5 |
| ACCOMMODATION CONTROL RULES, 1966 (M.P.) | | |
| Rule 15 – Mode of service – The demand notice was sent on the address of tenanted premises by Regd A/D and was returned with an endorsement that premises is found locked – Suit filed mentioning different address in plaint because the defendant started living on that address – Held, notice of demand has been validly served upon the tenant. | 2 | 3 |

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| Judgment debtor/respondent deposited sum during the pendency of the proceeding under Section 34 of the Act – It was accepted by the appellant on protest – He is entitled to appropriate deposit towards interest which was due and payable till that date on principal amount. | 149 | 229 |
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| ARBITRATION AND CONCILIATION ACT, 1996 | | |
| Sections 2 (9), 11 and 23 – Counter-claim before Arbitrator – Unless the parties have otherwise agreed, a counter-claim can be raised directly before Arbitrator though it has not been raised before claimant nor in reply of application under Section 11 of the Act. | | |
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| Sections 7, 11, 14 and 15 – Death of named arbitrator prior to appointment – Effect of – Arbitration clause subsists so long as any question or dispute or difference between the parties exists despite death of named arbitrator unless language of arbitration clause clearly expresses an intention to the contrary – Legal position explained. | 353 | 555 |
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ARMS ACT, 1959

Section 27(3) – See Articles 13, 14 and 21 of the Constitution of India. 159* 245

BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

Section 4 (1) – Plea of benami – Plaintiff allegation itself is evident that suit property was purchased benami – No evidence was required to be recorded for deciding the preliminary issue – Suit is not maintainable. 6 7

Section 5 – Saved transaction – Section 4 (3) (b) specifically saves a transaction where the property is held by a person who stands in a fiduciary capacity for the benefit of a person towards whom he stands in such capacity.

Fiduciary capacity – Connotation of – It implies a relationship that is analogous to the relationship between a trustee and beneficiaries of the trust.

Determination of fiduciary relationship – In determining whether a relationship is based on trust and confidence, relevant to determine whether they stand in a fiduciary capacity, the court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. 215 330

CENTRAL MOTOR VEHICLES RULES, 1989

Rule 100 – See Article 21 of the Constitution of India and Sections 52, 53 and 92 of the Motor Vehicles Act, 1988. 229 (ii) 345

CVC SANCTION FOR PROSECUTION GUIDELINES, 2005

- Sanctioning authority is to decide whether material collected against public servant is prima facie sufficient to proceed against him for the offence alleged – In this process opportunity of hearing is not required to be given to the affected person.

Time limit of three months for grant of sanction for prosecution upon sanction application by private citizen must be strictly adhered to – Private citizen must be informed of the decision on sanction application.

Concept as evolved through interpretative process warrants that there must be definite time frame for taking decision for prosecution. 207 (iii) 311

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CIVIL PRACTICE

- Court should be cautious and extremely careful while granting ex parte ad interim injunction.

Delay in civil litigation – Steps for curbing prevailing delay in civil litigation in trial court suggested. 7 7

CIVIL PROCEDURE CODE, 1908

Section 2 (2) and Order 8 Rule 6-D – Non-drawing up of a decree, effect of – If the claim is allowed by trial Court by decreeing the rights of parties in its judgment, it will amount to a decree even if no formal decree was drawn up. 86 (ii) 143

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| Section 9 – See Sections 4 and 6 of the Land Acquisition Act, 1894. | 330 | 507 |
| Section 9 – See Section 53-A of the Transfer of Property Act, 1882. | 276 | 423 |
| Section 9 – See Sections 158, 57 (2) & (3) of the Land Revenue Code, 1959 (M.P). | 121 | 197 |
| Section 9 – Jurisdiction of Civil Court – Matrimonial dispute – Matters relating to matrimonial dispute or other matters of that nature are wholly within the cognizance of civil courts – There cannot, therefore, be any jurisdiction in the Masaajid Committee, functioning under the Muslim Personal Law, for deciding such disputes – Counselling and mediation within reasonable limits are permissible – But in the garb of counselling and mediation, committee is not to take over the functions of a civil Court and adjudicate matters relating to matrimonial dispute, including one relating to maintenance. | 354 | 557 |
| Section 9 and Order 21 Rules 97, 101 & 103 – Execution of decree, objection as to – If anybody is objecting to the execution of a decree, he becomes an objector and then he has only remedy to file an objection under Order 21 Rules 97, 101 and 103 of CPC – No separate suit would be maintainable in this respect. | 216 | 331 |
| Section 9 and Order 23 Rule 3-A – Bar to lie suit – It does not apply to a decree passed by a revenue authority of limited and restricted jurisdiction. | | |
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| Section 11 – Decision or judgment, contrary to law, operates as res judicata until the decision or judgment is not set aside in appeal, it is binding upon the parties as res judicata. | 150 | 230 |
| Section 11 Explanation II, Order 1 Rule 10 – <i>Res judicata</i> , applicability of – Application to implead as defendant by 'Y' – 'X' has been declared owner of suit property in a title suit against 'Y' and then the suit property was sold by 'X' to 'S' – Afterwards, 'S' filed an eviction suit against tenants of suit property – 'Y' filed an application in the eviction suit under Order 1 Rule 10 of CPC to implead him as defendant as an appeal of the title suit is pending against 'X', regarding suit property of the eviction suit – Held, the Judgment and decree of the title suit still operate as res judicata in the view of Explanation II of Section 11 of CPC and until and unless the said decree is set aside 'X' can not be impleaded as necessary party in the eviction suit – Trial court rightly rejected the application. | 355* | 558 |
| Section 11 Order 17 Rules 2 & 3 – <i>Res Judicata</i> –Where first suit was dismissed not on merits but for non-production of evidence, section 11 would not be attracted simply because instead of a schedule of costs a decree was drawn up. | 277* | 424 |

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| Section 47 and Order 21 Rule 32 – Executing Court, Power of – Decree for specific performance of contract – Decree-holder was required to pay balance consideration to Judgment-debtors within specified period and in case of refusal of the same, it may be deposited in the Court – Money order of the said consideration sent by the decree-holder with in time was refused by the Judgment-debtor – An execution application filed to permit decree-holder to deposit the consideration in the Court – The application rejected on the ground that the consideration was not deposited by the decree-holder in the court immediately after the refusal and therefore, the decree cannot be accepted. | | |
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| Section 96 – Duty of first appellate court – Being the final court of fact, first appellate court is duty bound to discuss entire evidence of parties and after marshalling the same should come to a conclusion as to why a particular set of evidence of a particular party is believable and the evidence of another party is not. | 76 | 129 |
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| Section 148, Order 21 Rules 84, 85 and 86 – Whether time to deposit remaining 75% of purchase money can be extended under Section 148 in execution of decree? Held, No, as the rules 84 and 85 of Order 21 CPC leave no discretion of power to court to extend time statutorily fixed by the rules, Section 148 has no role as to extension of time. | 152 232 |
| Section 149 and Order 7 Rules 11 (b), (c) & (d) – Filing of plaint with deficit court fee – Exercise of powers under Section 149 CPC – Where the plaint is filed within period of limitation prescribed by law but with deficit court fee and the plaintiff seeks to make good the deficit of court fee beyond the period of limitation, the Court, though has discretion under Section 149 CPC, must scrutinize the explanation offered for the delayed payment of the deficit court fee carefully because exercise of such discretion would certainly have some bearing on the rights and obligations of the defendant. | 357 559 |
| Section 151 – See Section 45 of the Evidence Act, 1872 and Article 20 (3) of the Constitution of India. | 102 167 |
| Section 151, Order 5 & 9 and Rules 6 & 13 – Proceeding ex parte – Court before proceeding ex parte against defendant, must cautiously see the process and report of service of summons. | |
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| Application filed under Order 9 Rule 13 r/w/s 151CPC would not become infructuous on the ground that the plaintiff/appellant had re-married after passing of the ex parte decree for divorce. | |
| Applicability of Proviso to Order 9 Rule 13 – If the plaintiff satisfies the Court that summons were in fact served in accordance with law but certain directive provision was not observed, only in such a case the Court may on being satisfied that the defendant had sufficient time to approach the Court on the date of hearing, can refuse to set aside the ex parte decree. | 10* 12 |
| Section 151 and Order 21 Rule 32 (5) – Whether possession can be restored to decree holder under execution of decree of permanent prohibitory injunction, if Judgment-debtor had gained the possession on decretal property by violating the decree? Held, Yes – Executing Court can restore the possession by exercising power under Order 21 Rule 32 (5) read with its Explanation or by exercising power u/s 151 of CPC. | 220 334 |
| Order 1 Rule 10 – Impleadment of parties in a suit for specific performance of contract – Broad principles governing the disposal of such application enunciated. | 280 427 |
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| Order 6 Rule 17 – Due diligence – Respondent/Plaintiff filed suit for declaration of sale deed as null and void – Petitioner filed application for amendment of written statement on the ground that it was erroneously left out in written statement – Held, it is incumbent upon the petitioners seeking amendment at post-trial stage to explain the aspect of due diligence – Further, a real controversy test is to be satisfied – Trial Court rightly rejected the application. | 358* | 562 |
| Order 6 Rule 17 – See Sections 18 and 19 of the Land Acquisition Act, 1894. | 51 | 80 |
| Order 7 Rule 3, Order 20 Rule 9 and Order 41 Rule 11 – Description of property – Sufficient to identify – Sufficient description of suit property was given in the plaint, therefore, a decree as per provisions of Order 20 Rule 9 can be passed in compliance of Order 7 Rule 3. | | |

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| Dismissal of appeal without notice to respondent – Appellate Court is required to consider the correctness of the judgment and decree challenged before it. | 78 | 132 |
| Order 7 Rule 10 and Section 19 Hindu Marriage Act, 1955 – Territorial jurisdiction – A Court does not get territorial jurisdiction merely because wedding reception was held within its territorial jurisdiction. | 281* | 428 |
| Order 7 Rule 11 – Effect – Application under Order 7 Rule 11, raising objection with regard to valuation, was earlier rejected – Subsequently issue with regard to valuation of property was framed – On the basis of statement of plaintiff itself issues with regard to valuation was decided against plaintiff – Held, finding on application under Order 7 Rule 11 is not binding on the Trial Court at the time of passing of final judgment. | 365 (ii) | 578 |
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| Order 7 Rule 11 – See Section 9 (i) of the Guardians and Wards Act, 1890. | 109 | 177 |
| Order 7 Rule 11, Order 2 Rule 2 and Order 1 Rule 9 – What is the relevant consideration to decide an application under Order 7 Rule 11 CPC? Only averments in the plaint are the relevant considerations to decide that application and pleas taken in written statement are wholly irrelevant. | | |
| What is cause of action? It is a bundle of facts which when taken with the law applicable to them, gives the suitor right to relief against the opponent. | | |
| A plea as to the non-joinder of the party cannot be raised for the first time before the Supreme Court if the same was not raised before the Trial Court and is not resulted in failure of justice. | | |
| When plaintiff is liable to be rejected under Order 7 Rule 11 CPC? A suit for specific performance of agreement to sell was filed against owner and his power of attorney holder – Agreement between plaintiff and power of attorney holder filed alongwith plaint but holder is not authorized by owner to enter into an agreement to sell or to execute sale deed – Registered copy of power of attorney or its certified copy also not produced by plaintiff – Date of agreement not mentioned in the plaint; even plaint does not disclose cause of action, so the plaint is liable to be rejected. | 359 | 562 |
| Order 8 Rule 10 – Non-filing of written statement, consequence of – Held, would not have penal consequence – Court should proceed consciously and exercise its discretion in a just manner – Even in absence of written statement, burden of proof would remain on the plaintiff to discharge it. | 222 | 337 |
| Order 9 Rule 1 and Order 8 Rule 10 – Even if the defendant fails to file the written statement, the Court should proceed cautiously and exercise its discretion in a just manner – The burden of proof would remain on plaintiff and his mere assertion in plaint affidavit would not be sufficient to discharge the burden. | 284 | 429 |

Order 9 Rules 7 & 13 and Order 18 Rules 2, 4, 5, 13 & 15 – Expression “from the stage at which his predecessor left it” occurring in Rule 15 of Order 18 CPC is wide and comprehensive enough to take in its fold all situations and stages of the suit.

Opportunity of hearing – Court ordered the suit to proceed ex parte against the defendants – Presiding Officer who heard the arguments was transferred and the new Presiding Officer who assumed the charge pronounced the judgment – In these facts, the defendant cannot be permitted to raise any grievance that the successor Judge has not given an opportunity of hearing.

Recording of evidence – Examination-in-chief on affidavit – Purpose and objective is speedy trial of the case and to save precious time of the Court. 155 235

Order 9 Rules 8 & 9 and Order 17 Rules 2 & 3 – Restoration of proceeding – If a decision is rendered (whether on merits or otherwise) in absence of plaintiff or petitioner, he has a right to apply for restoration of the case – This right is not curtailed only because the Court or the Tribunal has examined the merits of the matter. 12 13

Order 9 Rule 9 (1) – In order to invoke bar on bringing a fresh suit, it has to be demonstrated that the cause of action in the previous and subsequent suits are same.

285 431

Order 9 Rule 13 – Setting aside ex-parte decree – Application for setting aside ex-parte decree was filed after 30 days – No application for condonation of delay was filed – Only reason assigned in the application was that it took time to obtain certified copy of decree – Provisions of Section 12 of Limitation Act does not apply to proceedings under Order 9 Rule 13 – Conduct of respondent in original suit in adopting the delaying tactics does not entitle him for condonation of delay. 156* 240

Order 9 Rule 13 – Setting aside of ex parte decree – No copy of the plaint was pasted alongwith summons – Process server who served notice by affixture admitted that he did not record the statement or obtained signature of the witnesses in whose presence summons were served by affixture – Held, the second proviso to Rule 13 of Order 9 not applicable – No satisfaction can be drawn that respondent No. 1 had notice of the date of hearing and had sufficient time to appear and answer the claim of respondent No. 2.

13* 14

Order 11 Rule 12 and Order 38 Rule 5 – Whether discovery of document under Order 11 Rule 12 can be allowed for facilitating adjudication of application under Order 38 Rule 5 for attachment before judgment of property of the defendant? Held, No.

157 240

Order 11 Rule 21 – Powers under Order 11 Rule 21 is not available when only direction of production of documents is violated. Such direction at the most would lead the Court to draw an adverse inference. The defence cannot be struck off in case the defendant fails to produce the document.

Section 151 – Inherent powers – If the Court does not have a jurisdiction under an express provision it does not assume powers under Section 151. Inherent powers of the Court can not override the express provision of law. 278* 424

Order 14 Rule 1 – Framing of issues – Suit merely for perpetual injunction – Plaintiff asserted his own title as well as possession that defendant denied in written statement –

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| It was obligatory on the part of the trial Judge to raise specific issue whether the plaintiff is in exclusive possession of the disputed property. | 14 (i) | 15 |
| Order 15 Rule 1 – Where the written statement was filed on the date of the suit; trial was over within 3 days and the defendant a rustic, illiterate lady gratuitously gave her exclusive property to plaintiff and suffered consent decree, the decree found to be fraudulent. | 286 | 432 |
| Order 17 Rules 1 and 3 – Adjournment – Cap of three adjournments provided in Proviso to Rule 1 of Order 17 – Although not mandatory, ordinarily should be maintained – It may be relaxed only in suitable case on “justifiable cause” i.e. cause which is not only “sufficient cause” as contemplated in Rule 1 but one which makes request for further adjournment unavoidable and a sort of compelling necessity. | 15 | 16 |
| Order 18 Rule 4 – Documentary Evidence – Certain documents were filed along with affidavit under Order 18 Rule 4 and were exhibited – Cross-examination was deferred – Objection with regard to admissibility of documents was raised after six months but before the beginning of cross-examination – Held, as there was no progress in the matter and merely on the basis that objection was raised at the time when the affidavit was filed by petitioner, it cannot be said that respondents lost their right to raise objection about the admissibility of the document – Further, no order was passed by the Court relating to admissibility of the documents when the documents were filed along with affidavit – Trial Court did not commit any mistake in entertaining the application. | 360 | 564 |
| Order 18 Rule 17 and Section 151 – Recall of witnesses – Power, procedure and precautions explained. | 279 | 425 |
| Order 20 Rule 18 – See Section 6 (as amended by Act of 2005) of Hindu Succession Act, 1956. | 41 | 56 |
| Order 20 Rule 18 and Order 23 Rule 3 – Compromise in partition suit – Where in a partition suit a compromise petition filed by the parties showing that they had admitted their respective share in property had already been allotted and they were in separate and exclusive possession thereof and there was no clause regarding any future course of action in the compromise petition, then decree drawn up incorporating the compromise is a final decree and executable accordingly. | | |
| Distinction between preliminary and final decree in partition suit, reiterated. | | |
| A final decree becomes enforceable from the date of passing of decree and not when decree is engrossed on the stamp paper – Hence, execution application of such decree should be filed within the prescribed period of limitation under Article 136 of Limitation Act, 1963, i.e. 12 years from the date of decree. | 158 | 241 |
| Order 21 Rule 2 – Executing court cannot recognize any payment or adjustment which has not been certified or recorded. | 287 | 437 |
| Order 21 Rule 11 – See Section 32 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. | 138 | 219 |
| Order 21 Rule 32 and Order 23 Rule 3 – Pre-mature application for execution of compromise decree – Maintainability of – Held, there is nothing in the various provisions relating to execution under Order 21 CPC which lays down that pre-mature filing of an execution petition would entail its rejection. | 223 | 339 |

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Order 21 Rule 32 and Order 39 Rule 2-A – Disobedience/breach of an injunction – Application of Order 39 Rule 2-A CPC lies only where such injunction is granted under Order 39 Rules 1 and 2 CPC during the pendency of the suit – Order 39 Rule 2-A CPC does not include the case of violation of permanent injunction granted by decree.

Breach of undertaking – If it is given to the Court during the pendency of the suit on the basis of which the suit itself has been disposed of becomes a part of the decree and breach of such undertaking has to be dealt with in execution proceedings under Order 21 Rule 32 CPC and not by means of contempt proceedings.

Contempt proceedings – Availability of – Law does not permit to skip the remedies available under Order 21 Rule 32 CPC and restore contempt proceedings. 224 340

Order 21 Rules 84, 85 and 86 – Sale in execution of decree – Two conditions precedent for confirmation of sale: (1) to pay 25% of the amount of purchase-money on the date when auction is held; and (2) rest of the amount has to be paid in the court within the fifteenth day before the closer of the court – If an auction purchaser does not comply these or any of the mandatory conditions, the sale would be liable to be set aside.

361 565

Order 22 – Legal representatives – Original plaintiff died during pendency of civil suit and his legal heirs were brought on record – Defendant filed appeal against decree but 'A', one of the L.Rs. was not made party – 'A' also filed appeal against part dismissal of suit – Held, as 'A' had also filed cross appeal and other legal representatives were on record, first and second appeals filed by defendant was maintainable and had not abated.

Injunction – No injunction can be granted against any coparcener – Each coparcener is having equal right in the property 79* 134

Order 22 Rules 4 and 9 – Where the appellants were aware of the death of respondents, as was demonstrated by applications in revenue cases, inordinately long delay in filing applications for substitution of legal heirs cannot be condoned. 288 439

Order 22 Rule 9 – Abatement of suit, setting aside of – Applicant has to take timely steps for bringing the L.Rs. within reasonable period after their respective deaths or to move application for condonation of delay and setting aside the abatement – Not doing the same is sufficient to infer gross negligence and deliberate inaction on the part of applicant.

Sufficient cause – The phrase 'sufficient cause' as used in Section 5 of Limitation Act and Order 22 Rule 9 of the Code should receive a liberal construction so as to advance substantial justice only when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of applicant. 362 568

Order 23 Rule 1 and Section 151 – Whether Court can permit to withdraw an application for withdrawal of suit? Held, Yes – Court can permit to withdraw an application for withdrawal of suit under its inherent power, but such power is exercised to secure ends of justice. 225 342

Order 23 Rule 3 – See Section 12 (1) of Accommodation Control Act, 1961.

71 123

Order 38 Rule 5 – Attachment before judgment – Court must be satisfied not only that the defendant is about to dispose of his property or about to remove it from its jurisdiction but

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| also that the disposal or removal is with intent to obstruct or delay the execution of any decree that may be passed. | 289* | 439 |
| Order 39 Rule 1, Order 6 Rule 1 and Order 14 Rule 1 – Applicability of Order 10 Rule 2 CPC – It enables the Court to go to the core of the matter in its search for the truth and narrow down or even eliminate disputes. | 346 (iii) | 541 |
| Order 39 Rules 1 and 2 – Actus curiae neminem gravabit means act of the Court shall not harm anybody – An interim order passed by the Trial Court does not lapse on erroneous dismissal of suit by appellate Court for want of maintainability. | 226 | 343 |
| Order 39 Rules 1 and 2 – Encashment of bank guarantee – Cannot be encashed if it is conditional and for inconsistent purpose. Bank guarantee was for mobilization of advance with a view to secure the said amount – Bank guarantee has been encashed for non-performance of contract – Trial Court rightly restrained defendants from invocation and encashment of bank guarantee – Trial Court was also right in directing the defendants to deposit the amount as the bank guarantee was encashed after receiving the notice of the suit. | 80* | 134 |
| Order 39 Rules 1 and 2 – Interim injunction – An interim order, which would create irreparable difficulties for defendants in the event of dismissal of suit, cannot be issued. | 81 | 134 |
| Order 39 Rules 1 and 2 – Power to make interim order is implicit in the power to make a final order except where it is specifically taken away by the concerned Statute – The law does not permit making of an interim order by one Authority or Court ending adjudication of the dispute by another. | 82 | 138 |
| Order 39 Rules 1 and 2 – Scope of the appellate Court's power to interfere with an interim order passed by the Court of first instance – Reiterated. | 290 | 440 |
| Order 39 Rules 1 and 2 – Temporary injunction – Plaintiff and defendants claiming title over the disputed property on the basis of Wills in their favour – Circumstances surrounding execution of each one of the Wills are sufficient to raise a reasonable suspicion as to its genuineness – Facts of case clearly establish existence of a substantial question to be investigated and consequent necessity to preserve status quo – Order of temporary injunction restraining appellant from alienating the property rightly granted. | 227 | 344 |
| Order 39 Rules 1 and 2 – Temporary Injunction – It is not incumbent upon the Court to grant temporary injunction merely because a prima facie case is made out and the ingredients of irreparable loss and balance of convenience were also existing in favour of the plaintiff if public interest is likely to hamper. | 292 | 443 |
| Order 39 Rules 1 and 2 – Where the Plaintiff has a prima facie case but will not suffer irreparable loss, grant of temporary injunction would be improper. | 291 | 442 |
| Order 39 Rules 1 & 2, Section 151 and Order 43 Rule 1(2) – Order passed u/s 151 CPC directing parties to maintain status quo – It is an order under Order 39 Rules 1 and 2 CPC and appealable under Order 43 Rule 1 (2) CPC. | 83 | 139 |

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| Order 40 Rule 1 – Appointment of receiver – The object of the appointment of a receiver is to secure and preserve the property in controversy as it stands. | 293* | 445 |
| Order 41 Rule 5 – Stay of execution proceedings of eviction decree by appellate court is a matter of discretion to be exercised after taking in to consideration the facts and circumstances of each individual case. Conditions may be imposed. | 294 | 445 |
| Order 41 Rule 23-A – Retrial/de novo trial – Permissibility of – The trial Court had disposed of the suit on merits and not on a preliminary issue – The first appellate Court set aside the judgment and decree of the trial Court and directed the trial Court to decide the suit afresh after giving parties an opportunity to lead evidence – The order passed by the appellate Court leaves no manner of doubt – The same has been passed in exercise of power under Order 41 Rule 23-A CPC. | 228 | 344 |

COMMISSION FOR PROTECTION OF CHILD RIGHTS ACT, 2005

Sections 2(b), 13, 14, 15, 25 and 26 – See of Section 223 of the Criminal Procedure Code, 1973

363 571

COMPANIES ACT, 1956

Sections 159, 163 and 610 – Annual return filed under Section 159 of the Companies Act with the Registrar of Companies – Such return is a public document being public record kept in State of private documents, therefore, a certified copy of such annual report is a public document and the same would be admissible in evidence.

128 (iii) 204

CONSTITUTION OF INDIA

Articles 13, 14 and 21 – Constitutional validity of Section 27 (3) of Arms Act – The Apex Court held that Section 27 (3) of the Arms Act, 1959, which provided mandatory death penalty on conviction is against the fundamental tenets of our constitutional law as developed by this Court. This Court declares that Section 27 (3) of the Arms Act, 1959 is ultra vires the Constitution and is declared void.

159* 245

Articles 14, 15, 16, 341 and 342 – Status of offspring of inter-caste or tribal/non-tribal marriage – After analyzing the earlier decisions of *Valamma Paul v. Cochin University*, (1996) 3 SCC 545, *Sobha Hymavathi Devi v. Setti Gangadhara Swamy*, (2005) 2 SCC 244, *Punit Rai v. Dinesh Choudhary*, (2003) 8 SCC 204 and *Anjan Kumar v. Union of India*, (2006) 3 SCC 257 legal position explained.

Determination of the caste of the offspring is essentially a question of fact to be decided on the basis of the facts adduced in each case – In such cases there may be a presumption that the child has the caste of the father but by no means the presumption is conclusive or irrebuttable.

160* 245

Articles 14 and 21 – Impartial investigation – Every citizen has a right to get his/her complaint properly investigated – A fair and proper investigation is always conducive to the ends of justice and for establishing the rule of law and maintaining proper balance in law and order.

171* 263

Articles 16, 226 and 235 – A Judge holds an office of public trust – Qualities expected from a Judge stated.

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| Compulsory retirement of a Judge – Even confirmation as District Judge and grant of selection grade and super time scale do not wipe out the earlier adverse entries as the overall profile of a judicial officer is the guiding factor for this purpose. | 295 | 446 |
| Article 19(1) (a) & (g) – Freedom of speech and to assembly – Bundh/Strike – There may be a voluntary call to support (Bundh/Strike) but if it has an element of force it would not fall under Article 19(1) (a) & (g). | | |
| Bundh/Strike – State directed to take steps to prevent the coercion or the force applied by callers. | | |
| Bundh/Strike – Compensation – State is free to quantify the damage and call upon the callers to compensate in case it finds that public property has been damaged – Individuals also at liberty to recover compensation in accordance with law. | 161 | 246 |
| Article 20 (3) – Direction given by Family Court for medical examination of defendant regarding alleged impotency – Article 20 (3) has no application as said Article gives protection to accused in criminal case and deals with criminal matters. | 102 | 167 |
| Article 21 – Just and fair trial – The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape – Both are public duties of the Judge. | | |
| Where there is deliberate dereliction of duty by Investigating Officer and expert witness, the Court should record specific finding against these officers in this regard to make them liable for disciplinary action. | 296 | 448 |
| Article 21 – Right to safety – This right emerges from Article 21 of the Constitution of India – Trivial protection or inconvenience, if any, must yield in favour of the larger public interest. | 229 (i) | 345 |
| Articles 21 and 22 – Police atrocities – Protection of human rights in view of Article 21 of the Constitution – Any form of torture or cruel, inhuman or degrading treatment is inhibited – Torture is not permissible whether it occurs during investigation, interrogation or otherwise. | 84 (i) | 139 |
| Articles 21 and 39-A – Free legal aid – Is available both at trial as well as appellate stage – To ensure fair trial, Court is duty bound to enquire of accused or convict whether he or she requires legal representation at State expense. | 297 | 452 |
| Article 22 (1) – An accused has a fundamental right to take services of a lawyer of his choice – If an accused, too poor to afford a lawyer has to go through trial without legal assistance then such trial cannot be regarded as reasonable, fair and just. | 162 | 249 |
| Article 22 – Right under Article 22 (2) is available only against illegal detention by the police – It is not available against custody in jail of a person pursuant to a judicial order – Article 22 (2) does not operate against the judicial order. | 26 (ii) | 30 |
| Article 28(1) – Religious instruction – Geeta Sar – Religious instruction has a restricted meaning and conveys that teachings of customs, ways of worship, practice and rituals cannot be allowed in educational institutions – Gita is a book on Indian philosophy and not a book on Indian religion. | 162* | 250 |
| Article 32 – See Sections 14, 29, 30 and 38 of the National Green Tribunal Act, 2010 (NGT Act, 2010). | 337 | 526 |

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| Articles 39-A, 226 and 227 – See Section 22-A(b), 22-C(8) and 22-D of the Legal Services Authority Act, 1987. | 333 | 515 |
| Article 142 – Where minimum sentence is prescribed in law, it would not at all be appropriate even for the Supreme Court to reduce the sentence on the ground of mitigating factor in exercise of its power under Article 142 of the Constitution of India. | 341 (iii) | 534 |
| Article 226 – Honour killing on account of inter caste marriage – Guidelines/ direction issued for fair investigation. | 164* | 251 |
| Article 226 – Payment of court fees on petition – Where more than one persons have joined in one petition and are seeking relief on distinct and separate causes of action, then each of the petitioner is required to make payment of separate court fees. | 16 | 18 |
| Article 226 – See Order 39 Rules 1 & 2, Section 151 and Order 43 Rule 1(2) of the Civil Procedure Code, 1908. | 83 | 139 |
| Article 227 – Validity of award passed by Lok Adalat – Award passed by the Lok Adalat is akin to a compromise decree, its validity can be challenged by a party in a writ petition on the ground that the same has been obtained by playing fraud – Also see Sections 20 and 21 of the Legal Services Authorities Act, 1987. | 122 | 198 |
| CONSUMER PROTECTION ACT, 1986 | | |
| Section 2 (1) (d) (i) – Consumer – Definition of – National Seeds Corporation Ltd., a Government Company selling sub standard and defective seeds causing loss to farmers – Provisions of the Consumer Protection Act are available to the farmers as they are covered by the definition “consumer”. | 165 | 253 |
| Section 2 (1) (g) – See Section 21 of the Hire Purchase Act, 1972 | 190 | 284 |
| Sections 2 (1) (o) and (g) – Deficiency in service – Encroachment by some people from the neighbouring areas on the plot allotted by the allotter/development authority after possession thereof has been delivered to the allottee – It will not amount to deficiency of service on part of the allotter/development authority. | 85 | 142 |
| Section 2 (1) (o) (g) – Service – Meaning of – Activities of the appellant Company in the given case involving offer of plots for sale to its customer/members with an assurance of development of infrastructure/amenities, layout approvals, etc. was a “service” within the meaning of Section 2 (1) (o) of the Act. | 230* | 347 |
| Sections 12, 18, 22 and 28-A – Representation by authorised agent before the Consumer Fora – Authorised agents, who are not Advocates, may file complaint and represent aggrieved consumers before the Consumer Fora. | 17 | 19 |
| Sections 22 and 22-A – Jurisdiction and powers of Consumer Forum – The District Consumer Forum and the State Commission has not been given any powers to set aside ex parte orders and the power of review – Powers which have not been given expressly by the Statute cannot be exercised. | 18 | 20 |

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| CONTEMPT OF COURTS ACT, 1971 | | |
| Section 2(b) – See Order 21 Rule 32 and Order 39 Rule 2-A of the Civil Procedure Code, 1908. | 224 | 340 |
| CONTRACT ACT, 1872 | | |
| Sections 2 (g), 2(h), 10 and 28 – See Section 12 (1) of Accommodation Control Act, 1961. | 71 | 123 |
| Section 4 – Place of suing – Where an offer was made by telephonic conversation from place 'A' and the same was accepted by the same conversation from place 'B', the contract is made at place 'A' and a part of cause of action for suit for recovery of consideration arises within the jurisdiction of place 'A' – Court at place 'A' has jurisdiction to try the suit. | 74* | 125 |
| Sections 23 and 28 – Exclusion or conferring of jurisdiction by mutual agreement – The parties to an agreement cannot confer jurisdiction on a Court which has no jurisdiction to entertain a suit – Similarly, a mutual agreement intended to restrict or extinguish the right of a party from enforcing right by legal proceedings would be void – However, where two Courts have the jurisdiction to try a suit, parties can exclude the jurisdiction of one Court or Tribunals to the other by mutual agreement. | 166 | 255 |
| Section 25 – Consideration – Proof of – Consideration for the purpose of mortgage – May be even for the money advanced in the past – Past liability on the mortgagor would serve the purpose of consideration, which is permissible under law. | 19 | 21 |
| Section 25 – See Section 18 and Articles 36 and 37 of the Limitation Act, 1963. | 20 | 22 |
| Section 27 – Injunction related to the use of trademark – Section 27 of the Act not attracted. | 167 | 258 |
| Section 55 – Contract relating to commercial enterprises for sale of immovable property – When time is essence of contract? Time is not normally the essence – However, this is not an absolute proposition and has several exceptions – In a contract relating to commercial enterprise, the Court is strongly inclined to hold time to be essential, where the contract is for purchase of land or for such purpose or more “directly for the prosecution of trade”. | 65 | 114 |
| Sections 59 and 60 – See Sections 34 and 36 of the Arbitration and Conciliation Act, 1996. | 149 | 229 |
| Sections 62 and 63 – See Section 115 of the Evidence Act, 1872. | 21 | 24 |
| Section 72 – Recovery of amount paid in excess without fault of recipient party – Any amount paid or received without authority of law can be recovered barring a few exceptions of extreme hardship but not as a matter of right – No such law implies an obligation on the payee to repay the money otherwise it would amount to unjust enrichment. | 364 | 575 |
| Sections 126 and 128 – Liability of guarantor/surety – The liability of guarantor/surety is co-extensive with that of principal debtor. He has no right to dictate terms to the creditor. Public money should be recovered expeditiously but at the same time, financial institutions should not be permitted to behave like property dealers. | 298 | 453 |

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COURT FEES ACT, 1870

Section 7(vi-a)(a)(b) – Suit for partition of house – Leviable court fees – Court fees is payable on the basis of market value on the date of presentation of plaint.

365 (i) 578

Section 7(iv) (c) – See Section 8 of the Suits Valuation Act, 1887. **348 547**

Section 7 (iv) (c) and (v) – In a suit for declaration, permanent injunction and possession of property as a consequential relief in respect of land situated within municipal area the plaintiff is liable to pay ad valorem Court fees as per the value of the sale deed which is subject matter of the suit. **299 455**

Section 7 (v) – Suit/counter claim for recovery of possession of agricultural land – Valuation of property for the purpose of court fees will be twenty times of land revenue of the agricultural land – Valuation on market value of the agricultural land is not required.

“Discontinue”, meaning and scope of – When a Court returns a plaint to the plaintiff to file it in the Court having pecuniary jurisdiction, it comes within the scope of the term “discontinue” as envisaged under Rule 6-D of Order 8 CPC. **86 (i) 143**

Section 16 – Refund of court fees – Where a matter is settled under any mode prescribed under Section 89 of C.P.C., the plaintiff is entitled for refund of court fees as per Section 16 of the Court Fees Act – Since the matter was settled in compromise and the suit was dismissed as per compromise, therefore, there was no justification on the part of Court below in not directing for refund of the court fees. **22* 25**

Sections 16 and 35 – Refund of court fees – If a matter is decided by the Lok Adalat, the petitioner shall be entitled to a certificate from Court authorizing him to receive back from the Collector the entire amount of court fees already paid in the matter without any deduction. **123 200**

Section 17 – See Article 226 of the Constitution of India. **16 18**

COURT FEE (M.P. AMENDMENT) ACT, 2008

Schedule II, Article 11 (a) (i) – Enhancement of Court Fee – Need has arisen for amendment in Court Fees Act.

Fiscal Laws – The Court should not unless compelled by the Statute or by the Constitution encroach into this field or invalidate such law.

Payment of ad valorem Court Fee on appeal for enhancement of compensation – Position of appellant seeking enhancement of compensation is different from that of Insurance Company and owner.

Upper limit of Court Fee – Absence of – Issue left to be dealt with in appropriate cases.

Date of operation – Right to file appeal is a substantive right that cannot be taken away by an enactment which is not retrospective unless it says so expressly – Fixed Court Fee is payable on claims filed before 02.04.2008. **87 146**

CRIMINAL PROCEDURE CODE, 1973

Section 2 (g) and 2 (h) – See Section 7-A of the Juvenile Justice (Care & Protection of Children) Act, 2000 **394 640**

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| Section 24 – Public prosecutor – Study and nature of office in context of its role in criminal justice system reiterated. | 168 | 259 |
| Sections 36, 154 (3), 156 (3) and 190 – Private complaint – Direction as to investigation – If a person has grievance that his F.I.R. is not registered by Police, his first remedy is to approach the S.P. under Section 154(3) or other police officers referred in Section 36 – If on account of this, his grievance still persists, he can approach the Magistrate under Section 156(3) | 169 | 260 |
| Sections 70, 71 and 476 – Whether the Courts can issue a 'non-bailable' warrant in absence of such terminology in the CrPC as well as in Form 2 of its Second Schedule? Held, Yes. How to check possibility of misuse of an arrest warrant? Hon'ble the Supreme Court issued guidelines to be adopted in all cases where non-bailable warrants are issued by the Courts. | 23 | 25 |
| Sections 82, 84, 164 and 157 – See Article 226 of the Constitution of India. | 164 | 251 |
| Section 87 – Issuance of arrest warrant – Case under Section 138 of Negotiable Instruments Act – Magistrate satisfied that accused is absconding the process of Court – Service is not possible in ordinary course – Magistrate has power to compel presence of accused by issuance of arrest warrant under Section 87 even if the case is summarily triable. | 231 | 348 |
| Section 125 – Maintenance – Decree of divorce passed against wife on the ground that she is living an adulterous life – Wife is not entitled for maintenance allowance. | 170 | 262 |
| Section 125 – See Section 45 of the Evidence Act, 1872. | 88* | 151 |
| Sections 125 and 127 – Petitioner was directed to pay interim maintenance – Application for alteration of interim maintenance amount on the ground of delaying tactics being adopted by wife filed by husband is pending – Held, unless the interim order of maintenance passed earlier is amended/alterd or maintained, same will be enforceable. | 89* | 151 |
| Sections 145 and 146 – Possession of receiver – Permanent injunction – Possession of property taken from plaintiff and given to Supurdgidar under Section 145 of the Code – It shall be deemed that plaintiff was in possession of suit property because Supurdgidar holds possession for the person who is actually entitled to obtain the possession – Plaintiff not required to seek the relief of possession. | 209 | 322 |
| Section 154 – F.I.R. by itself is not substantial evidence – If its scribe had turned hostile, it will not lose its relevancy and can be taken into as a relevant circumstance of the evidence. | 300 (i) | 457 |
| Section 154 – F.I.R. – If a definite role has been attributed in the commission of crime to a person, he can be punished on being found guilty, even if his name is missing from the F.I.R. | 301 (i) | 459 |
| Section 154 – FIR – Variation in recording time of occurrence – In absence of any evidence to show that time of incident recorded in FIR was first written in pencil and | | |

thereafter was erased and again overwritten, it cannot be held that time of incident as recorded was doubtful. 248 (iii)* 371

Section 154 – F.I.R. – Whether the wireless message sent soon after the incident is the real F.I.R.? – Wireless message cryptic and did not sufficiently disclose the nature of offence committed much less the identity of the persons who committed the offence – Such cryptic information cannot be treated to be a first information report – Legal position explained. 366 580

Section 154 – Promptness in lodging FIR – Prompt and early report of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. 33 (iii) 45

Section 154 – Whether cell-phonetic information may amount to First Information Report? Held, Yes – If the information received by a police officer is not vague or cryptic but contained precise particulars of the offending acts by accused, it could be treated as First Information Report. 24* 28

Section 154 – Whether F.I.R. recorded by a Police Officer on the confessional statement of the accused is admissible? Held, No. 232 (i) 348

Section 154 – Where the F.I.R. was promptly lodged; investigation was started immediately and the eye witness supported the prosecution version, the prosecution case was held to be established. 302 461

Sections 154, 157 and 159 – Sending copy of FIR – Effect of omission or delay – In spite of the fact that any lapses on part of IO such as non-sending of FIR to Magistrate, would not confer any benefit on accused – Prosecution case may be seen with certain suspicion when FIR has not been sent, when examined with other contemporaneous circumstances involved in the case.

Regulation 710 of M.P. Police Regulations cannot override the statutory requirements under Section 157 (1) Cr.P.C. 25 28

Sections 154, 190, 203 and 204 – Multiple FIRs in respect of the same incident – Held, law does not prohibit registration and investigation of two FIRs in respect of the same incident, in case the versions are different.

Entertainment of second complaint/protest petition on same facts – Law does not prohibit filing or entertaining of the second complaint even on the same facts – However, second complaint would not be maintainable where the earlier one has been disposed of after full consideration of the case on merit. 90 152

Sections 154 and 401 – The revisional Court, in revision against framing of charges, cannot confine its attention only to the recitals in the F.I.R. because an F.I.R. can never represent entire evidence of the case. 233 350

Sections 154 and 438 – FIR – Prompt and delayed – Significance of – Object of insisting upon prompt lodging of FIR is to obtain information regarding circumstance in which crime was committed, name of actual culprits, part played by them as well as names of eye witness – Delayed FIR loses advantage of spontaneity.

Anticipatory bail – Parameters can be granted only in exceptional cases where Court is prima facie of the view that applicant was falsely enroped in crime and is not likely to misuse his liberty. 234 351

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| Sections 156 and 178 (8) – A police investigation may start with the registration of the FIR or the registration of an FIR may succeed CBI enquiry but in either case registration of F.I.R is essential. | | |
| - The Magistrate has power to direct further investigation under Section 178 (8) of the Cr.P.C. A suspect has no right of being heard prior to initiation of investigation. | 303 | 462 |
| Sections 156, 157 & 173 (8) – See Articles 14 and 21 of the Constitution of India. | 171* | 263 |
| Section 161 – Discrepancy in police statement and Court statement – Witness (aged 9-10 years) could not give the correct statement of the incident to the police because at that time he was threatened by his maternal grandmother – Held, the witness cannot be disbelieved on the ground that he did not tell the truth to the Investigating Officer and stated it after a lapse of time in the Court. | 99* | 165 |
| Section 161 – See Sections 304-B, 306 and 498-A of Indina Penal Code, 1860 | 388 | 631 |
| Section 162 – Discrepancy or omissions have to be material ones and then alone they may amount to contradiction of some serious consequences – Every omission cannot take place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. | 379 (vi) | 606 |
| Section 166 (2) proviso (a) (i) – Default bail – Relevant date of counting 90 days for filing chargesheet is the date of first order of remand and not date of arrest. | | |
| Default bail is not an absolute or indefeasible right – It would be lost if chargesheet is filed and would not survive after filing chargesheet if such right has already not been availed of. | 26 (i) | 30 |
| Sections 169, 173, 190 & 200 – Closure report under Section 169 CrPC – Court directing submission of chargesheet – Validity of. | 172* | 263 |
| Section 173 – Once the investigation is completed and final report u/s 173 (2) has been filed by the investigative agency, the process of monitoring the case is over. | | |
| Before considering the closure report submitted by the investigative agency, the Magistrate must give notice to the informant and provide him an opportunity to be heard. | 91 | 153 |
| Sections 173, 207 and 313 – Scope of use of document filed by prosecution in defence by accused – Documents whether relied or not by prosecution but filed in Court with police report under Section 173 CrPC and which would help in determining the truth should be disclosed to the accused – Accused can claim access to such documents in custody of Court filed by prosecution at any stage of trial – Denial may cause prejudice to acused in properly defending his case and thus resulting in denial of fair trial – Cause of speedy trial should not cause justice to be denied. | 377 | 599 |
| Sections 178 (d), 179, 181 (4) and 182 – Territorial Jurisdiction of Indian Courts. | | |
| Offence when committed within India by reason of “anything which has been done” in India or by reason “of a consequence which has ensued” in India can be tried in India | | |

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| even against foreigners stationed in different foreign countries but their acts/omissions connected with transaction/cause of action arising in India. | | |
| Culpability is relatable even to the place at which consideration is required to be returned or accounted for. | | |
| For offence of which cheating is a component if the alleged act of deception is shown to have been committed through communications/letters/ messages, the Court within whose jurisdiction the said communications/letters/messages were sent (or were received) would be competent to inquire into and try the same. | | |
| Where an offence consists of several acts carried out under different jurisdictions, a Court having jurisdiction where any one of such acts was committed will be competent to try the same. | 173 | 267 |
| Sections 190 and 197 – Sanction not necessary when accused ceased to be a public servant in one capacity but continues to be so in other capacity – Similarly, sanction is not required if alleged corrupt act relates to office which has since been demitted by the public servant. | 207 (ii) | 311 |
| Section 190 (1) (b) – Order of taking cognizance – The correctness of the order of taking cognizance of the offence by Magistrate, unless it is perverse or based on no material should be sparingly interfered by the Superior Court. | 174 | 271 |
| Sections 190 and 195 – Powers of Magistrate – Issuance of process – Once a process is issued against some accused, on the next date, Magistrate can issue process to some other person against whom there is some material on record, but his name is not included as accused in the charge-sheet. | | |
| Cognizance – Cognizance can only be taken on the complaint in writing of the Additional Chief Secretary to State Government or of some other public servant to whom he is administratively subordinate – Complaint does not include police report. | 367 | 581 |
| Section 190 and 198 – See Sections 494 and 498-A of the Indian Penal Code, 1860. | 368 | 583 |
| Sections 190, 203, 204, 399, 400 and 401 – Cognizance on complaint – Setting aside of order in revision – Photocopies of documents produced by accused for the first time before revisional Court – Cannot be entertained and made a basis for setting aside an order passed by the trial court. | 92 | 154 |
| Sections 190 and 204 – The expression “cognizance”, meaning of – It merely means, “become aware of” and when used with reference to a Court or a Judge, it connotes “to take notice of judicially” – It is entirely a different thing from initiation of proceedings, rather it is a condition precedent to the initiation of proceedings by the Magistrate or a Judge. | | |
| Summons – Issuance of – Law does not mandate to explicitly state the reasons for issuance of summons – However, the Magistrate must have taken notice of the accusation and apply his mind to the allegations made in the police report and the materials filed therewith. | 235 | 353 |
| Sections 195(1)(b)(i) and 438 – Anticipatory bail proceedings in connection with the criminal case are judicial proceedings, therefore, offence committed u/s 211 IPC related | | |

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| to said proceedings comes under such proceedings under Section 195(1)(b)(i) Cr.P.C. and cognizance could be taken only at the instance of the complainant in writing of the Court in relation to whose proceedings the same was committed or who finally dealt with the case. | 93* | 156 |
| Sections 204(1)(b), 209 and 319 – After committal of a case u/s 209 of Cr.P.C. the concerned Magistrate is not empowered to issue process to other persons u/s 204 (1) (b) of Cr.P.C. – Such persons can be arrayed as accused persons by the Sessions Court u/s 319 of Cr.P.C. only after collecting evidence for which it is not necessary to collect the entire evidence. | | |
| Such persons may also be arrayed as accused person only when a reference is made either by the Magistrate while passing an order of commitment or by the Sessions Judge to the High Court and the High Court, on examining the materials, comes to the conclusion that sufficient material exists against them even though the police might not have filed charge-sheet. | 175* | 272 |
| Sections 211 and 214 – Framing of charge – Object of – Is to give the accused notice of the matter he is charged with and does not touch jurisdiction – If however, necessary information is conveyed to him in other ways and there is no prejudice, framing of charge is not invalidated. | | |
| Procedural law – Criminal Procedure Code is devised to subserve the ends of justice and not to frustrate them by mere technicalities. | 27 (i) & (ii) | 34 |
| Section 216 – Alteration of charge – Court is empowered to alter or add any charge at any stage before the judgment is pronounced – The Section is comprehensive and includes not only the correction of an error in framing the charge but will also include non-framing of a charge. | 28* | 36 |
| Section 223 – Offences triable by Children’s Court – Scope of the Act and procedure explained. | 363 | 571 |
| Section 229 – Whether request for plea of guilt can be entertained when the stage of Section 229 CrPC was already over and sufficient number of witnesses had been examined ? | 371 | 587 |
| Section 235 (2) – Hearing accused on question of sentence – Duty of Court – The Court has a duty and obligation to elicit relevant facts for awarding a proper sentence from accused or prosecution, even if the accused has kept silent. | 369 | 586 |
| Sections 240 and 401 – Can a Revisional Court appraise the evidence in revision? Held, No – It is the Trial Court which has to decide if evidence on record is sufficient to make out a prima facie case against the accused so as to frame charge against him. | 176 | 273 |
| Section 257 – See Sections 138 and 147 of the Negotiable Instruments Act, 1881 | 370* | 587 |
| Section 282 – See Section 119 of the Evidence Act, 1872. | 107* | 176 |
| Section 300 – Double jeopardy – Test to determine whether both the offences are same – Where ingredients of both the offences and not the allegations are same, they are called same offences. | | |

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| - What is the difference between issue estoppel and double jeopardy? Law explained. | | |
| Whether an accused who was tried for offence under Section 138 of the Negotiable Instruments Act, 1881, be again tried for offence under Sections 407, 420 and 114 of IPC? Held, Yes as both are different offences. | 304 | 464 |
| Sections 303 and 304 – See Article 22 (1) of the Constitution of India. | 162 | 249 |
| Section 304 – At what stage of criminal proceeding right to access to legal aid, to consult and to be defended by a legal practitioner arises and what would be the legal consequences of failure to provide legal aid to an accused ? | 371 | 587 |
| Sections 306, 307 and 308 – Power of Special Court to grant pardon – Held, as a Court of original criminal jurisdiction, Special Court has power to grant pardon to approver both under Sections 306 and 307 CrPC. | 132* | 209 |
| Section 311 – Recall of witness – Held, accused should be extended ample opportunity to defend his case and such right should not be curtailed on account of minor technical grounds and specially in those cases in which capital punishment has been provided under the law. | 94* | 156 |
| Sections 311 and 242 – Right to defer cross examination of main witnesses after trap laying officer's evidence should be accepted. | | |
| Credibility of witness can be tested only when the testimony is put through the fire of cross examination. | | |
| A fair opportunity to the accused to defend himself should be afforded even if there is a possibility of prejudice to prosecution. | 305 | 467 |
| Section 313 – Delayed recovery of weapon of offence at the instance of the accused and the blood stain found on it did not match with the blood of deceased are not sufficient grounds to disbelieve the recovery, particularly when doctor has clearly opined that the injuries on the dead body could be caused by that weapon. | | |
| Murder trial – Circumstantial evidence – If the accused has not given any explanation as regards the circumstances put to him on his examination, the same can be counted as providing a missing link for completing the chain of circumstances. | 311 (iii) | 481 |
| | & (iv) | |
| Section 313 – Examination of accused – Where all incriminating circumstances were put to the accused and no material irregularity causing any prejudice to the accused can be attributed to the prosecution, alleged defect in the examination of the accused insignificant. | 313 | 486 |
| Section 313 – See Sections 302 and 376(2) (f) of the Indian Penal Code, 1860. | 324 | 498 |
| Section 313 – See Section 3(1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. | 137* | 217 |
| Section 313 – Statement of accused u/s 313 Cr. P.C. – Purpose of - Law explained. | | |
| If the accused gave incorrect or false answers during the course of his examination u/s 313 Cr.P.C, the court can draw an adverse inference against him. | 323 (vii) | 494 |
| Section 320 – Compromise in non-compoundable cases – The offences which are not | | |

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| compoundable cannot be allowed to be compounded but where the parties have settled the dispute amongst themselves the factum of compromise may be taken as an extenuating circumstance while imposing substantive sentence. | 95* 156 |
| Section 320 – See Sections 141 and 147 of the Negotiable Instruments Act, 1881. | 130* 208 |
| Section 321 – Withdrawal of case – Trial Court permitted to withdraw one of the counter criminal case – Held, permitting withdrawal of one case would be compelling one party to face trial and giving benefit to the other party – Hence, the withdrawal cannot be said to be in public interest – Order permitting withdrawal set aside. | 177 273 |
| Section 353 – Requirement before pronouncement of Judgment by Criminal court of original jurisdiction – Held, criminal Court of original jurisdiction cannot pronounce the operative part of the judgment and thereafter proceed to write the judgment – Presiding Officer is required to deliver either the whole of the judgment or has to deliver in Court by writing or dictating the judgment or a previously written judgment can be pronounced by reading out the whole or operative part of judgment – Sessions Judge committed manifest illegality by acting in violation of mandate of Sections 353 and 354 of Cr.P.C. – Signing of release warrant in absence of any judgment of acquittal had led to miscarriage of justice – Release warrants quashed – Sessions Judge directed to comply with the provisions of Sections 353 and 354 of Cr. P.C. | 372 589 |
| Sections 357 (1) & (3) and 29 (2) – Award of compensation in case of dishonour of cheque – Scope of. | |
| Compensation in case of conviction in a summary trial – In view of the conferment of the power upon the JMFC by the Amendment Act, 2002, ceiling as to amount of fine stipulated under Section 29 (2) CrPC is removed, consequently a JMFC may impose a fine exceeding ₹ 10,000 and may award compensation from the amount of fine so imposed. | 96 (i) 157 & (ii) |
| Section 357 (3) – Compensation to the victims – It is an important provision but Courts seldom invoke it – The Courts should exercise this power liberally so as to meet the ends of justice in a better way – The compensation must be reasonable – Reasonable period for payment of compensation, if necessary by installments, may also be given – The Court may enforce the order by imposing sentence in default. | 178* 274 |
| Sections 366, 368 and 433-A – Commutation of death sentence to specified minimum term of imprisonment – When the Court has come to the conclusion that the case was not “rarest of the rare cases” warranting death penalty, but a sentence of 14 years or 20 years as referred to the guidelines laid down by the States would be totally inadequate – Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years, rather it always means the whole natural life – Legal position reiterated. | 373 591 |
| Sections 374 and 386 – Extension of benefit of acquittal to non-appealing accused – Appellants succeeded in appeal and acquitted – Same role had been assigned to non-appealing accused – If entire prosecution case has been found to be unreliable and prosecution as a whole has not been able to prove its case beyond reasonable doubt, then benefit should be extended to all accused including non-appealing accused. | 374 594 |

Section 378 – Appellate Court in appeal against acquittal, re-appreciated evidence – Did not state as to how the impugned judgment was perverse in law or in appreciation of evidence but only recording that judgment was perverse – Approach of the appellate Court illegal. **236 (i) 355**

Section 378 – Power of Appellate Court – Court is fully competent to re-appreciate, reconsider and review the evidence and take its own decision – But if two reasonable views are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court. **29 36**

Sections 378 and 386 – Whether delay in disposal of criminal appeal a ground to exonerate the accused? Held, No – Merely because the appeal was disposed of by the High Court after 25 years, it is not a ground to exonerate the accused.

It is also not a ground to exonerate the accused that all accused, except the appellant has died.

It is not possible for the appellate court to interfere in order of acquittal without rendering specific finding that the decision of the trial court is perverse or unreasonable resulting in miscarriage of justice. **378 (i) 604
(ii) & (iv)**

Section 386 – Appeal against acquittal – Where there are compelling circumstances and the impugned judgment is found to be perverse, the appellate Court is justified in interfering with the judgment. **306 (i) 468**

Section 386 – When an order of de novo trial or retrial is ordered and when it is justified too? A de novo trial or retrial of the accused should be ordered by the appellate Court in exceptional and rare cases only when in the opinion of the appellate court such order becomes indispensable to avert failure of justice – The accused has been charged for the offence of committing bomb blast in a public transport bus in which four persons died and twenty four persons were injured – Trial vitiated due to non-compliance of Section 304 CrPC though the accused had been in jail for over fourteen years – Looking to gravity of the offence, retrial is justified. **375 597**

Section 391 – Further/additional evidence – Remanding of case back to the trial Court – Held, the section nowhere authorizes the appellate Court to set aside the conviction and remand the whole case back to the trial Judge for the sole purpose of examining a particular witness and then deciding the matter afresh after recording his evidence – The section is not intended to remedy the negligence or laches of the prosecution. **30* 43**

Section 391 – Scope of taking additional evidence at appellate stage – The provision u/s 391 Cr.P.C. is not limited to recall of a witness for further cross-examination with reference to his previous statement – The Appellate Court may feel the necessity to take additional evidence for any number of reasons to arrive at just decision in the case – The law casts a duty upon the court to arrive at truth by all lawful means.

As a matter of fact, if some later statement, has come to be made in some legal ways, it may be admissible on its own – It is only such statement or development which is otherwise not within the legal framework that would need the exercise of the Court's jurisdiction to bring it before it as part of the legal record with the aid of Section 391 Cr.P.C.

179* 275

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| Sections 397, 401, 407 and 408 – Maintainability of Revision – Application filed under Section 408 for transfer of case rejected – No revision lies against the order – Applicant has remedy of filing application under Section 407 of Cr.P.C. for transfer. | 180 | 275 |
| Section 397(2) – Criminal Revision of Bail Order – A bail Order is interlocutory order, hence no revision lies against it. | 181 | 276 |
| Sections 437 and 439 – As a rule, whether delay in trial a ground for granting bail? Held, No – The same rule should not be applied to all cases, mechanical factors for consideration of bail, explained. | 237 | 357 |
| Sections 437 and 439 – Bail – Relevant consideration in granting or refusing bail – Approach of the Courts. | 97 | 160 |
| Section 438 – Application for anticipatory bail directly to High Court – Whether maintainable – Application under Section 438 should have been filed at the first instance before Sessions Court and thereafter in case necessity arises, the applicants should approach the High Court – Application disposed off with liberty to approach Sessions Court. | 182 | 276 |
| Section 438 – Anticipatory bail – Limited period – Life of the order passed under Section 438 of Cr.P.C. cannot be curtailed – It is not proper to impose any condition to for grant of anticipatory bail. | 376* | 598 |
| Section 438 – See Section 18 of SC/ST (P.A.) Act, 1989 | 404 | 668 |
| Sections 438 and 439 – Bail application filed directly before the High Court –without first approaching the Sessions Court/Trial Court – Permissible subject to the existence of special extraordinary convincing reasons by the applicant. | 238* | 358 |
| Section 439 – Grant of bail on repeat application – After rejection of bail by High Court, the subordinate Court should not oblige to entertain and grant the bail as it affects judicial discipline. | | |
| Successive bail applications – Duty of Public Prosecutor – When bail application is filed and liberty to object or controvert the facts is available to the prosecutor, it is his duty to bring to the knowledge of the Court that bail application filed by the accused person has been rejected by High Court and cannot be entertained by Subordinate Court. | | |
| Cancellation of bail – Bail obtained by accused persons from Trial Court after suppressing material fact and submitting false affidavit with regard to rejection of their bail applications by High Court – Such hoodwinking can not be permitted – Bail granted by the Trial Court is cancelled. | 183 | 277 |
| Section 439 (2) – Cancellation of bail – Bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. | 184 | 279 |
| Sections 451 and 452 – See Sections 39 (1) (D), 50 (4) and 54 of the Wild Life (Protection) Act, 1972. | 70 | 120 |
| Sections 451 and 457 – See Sections 52 and 52-C of the Forest Act, 1927. | 241* | 360 |

Sections 451 and 457 – Supurdnama – Conditions therefor – Condition of deposit of value of seized silver worth ₹ 1,40,00,000 imposed while directing supurdnama to Income Tax Authorities – Held, Income Tax Authority is a Statutory Authority under Income Tax Act which is responsible to its higher authorities/tribunals and Courts of law having jurisdiction – Conditions imposed by Magistrate superfluous and redundant. **31* 43**

Section 482 – Adverse remarks - A Judge of the Superior Court however, strongly he may feel about the unmerited and fallacious order passed by a member of subordinate judiciary, is required to maintain sobriety, calmness, dispassionate reasoning and poised restraint. **307 472**

COMPANIES ACT, 1956

Section 391 – See Sections 138 and 147 of the Negotiable Instruments Act, 1881.

265 404

CRIMINAL TRIAL

- Appreciation of Scientific Evidence. **32 44**

Corpus delicti, recovery of – In a murder case, it is not necessary that the dead body should be found and identified.

Facts especially in the knowledge – Where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn, the burden of proving the facts would be upon the accused by virtue of his special knowledge of such facts. **84 (ii) 139 & (iii)**

- *De novo* trial, permissibility of – Fresh trial of accused after obtaining sanction, though he was initially discharged due to lack of sanction – Held, offence was grave and at no stage was sanction refused by competent authority – Accused never contended that sanction-granting authority was incompetent to grant such sanction – Though sanction was obtained after lapse of 3 years and thereafter accused was asked to face trial but where 14 persons died and several others were injured due to explosion in accused's shop selling explosive substances, obtaining sanction after 3 years cannot be considered as delay which vitiated proceedings – Directions issued for framing of charges under Explosive Substances Act and for trial to be proceeded with **245 365**

- Evidence of common object to murder deceased couple – Could be inferred from: (a) motive, evident from existence of prior animosity and clashes; (b) evidence of related witnesses and (c) medical evidence establishing brutality in attack indicative of intention of accused to kill victims.

Plea of alibi – Tenability of – Trial Court noticed the contradictions appearing in the defence witnesses and also examined the possibility that keeping in view the distance between the factory and the place of occurrence, which was nearly 5 km or so, the possibility of accused going to the factory after the occurrence could not be ruled out – Plea of alibi not tenable. **249 372**

- Murder trial – Appreciation of evidence of child witness – Prosecution witness aged only 8 years, at the time of trial has given a very natural account of how the accused/appellant killed her mother – Her evidence is also corroborated by other evidence available on record – Conviction based on such evidence is sustainable. **246 369**

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| - Murder trial – Non-examination of independent witness – Effect of – By itself may not give rise to adverse inference against prosecution but, when evidence of alleged eye-witnesses raises serious doubt about their presence at the time of actual occurrence, unexplained omission to examine independent witnesses would assume significance. | | |
| - Defective investigation – Effect of – Unless lapse on the part of the Investigating Authorities or such as to cast reasonable doubt on prosecution story or seriously prejudiced defence of accused, Court would not set aside conviction on such ground. | 248 (i) & (ii)* | 371 |
| - See Sections 8, 25, 27, 32 (1) and 106 of the Evidence Act, 1872. | 312 | 483 |
| - See Sections 96, 97 and 100 of the Indian Penal Code, 1860 | 244 | 363 |
| - See Section 302 of the Indian Penal Code, 1860. | 246 | 369 |
| - See Section 302 of Indian Penal Code, 1860. | 194 | 296 |
| - See Section 302 of the Indian Penal Code, 1860 and Section 154 of the Criminal Procedure Code, 1973. | 33 | 45 |
| - See Section 302 r/w/s 34 of the Indian Penal Code, 1860, Sections 9, 24, 27 & 114, Ill. (A) of the Evidence Act, 1872 and Section 313 of the Criminal Procedure Code, 1973. | 323 | 494 |
| - See Sections 302 and 323 r/w/s 34 of the Indian Penal Code 1860, and Section 32 of the Evidence Act, 1872. | 47 | 68 |
| - See Sections 302 and 292 of the Indian Penal Code, 1860 and Sections 24 and 30 of the Evidence Act, 1872. | 46 | 66 |
| - See Sections 302 and 376(2) (f) of the Indian Penal Code, 1860. | 324 | 498 |
| - See Section 376 of the Indian Penal Code, 1860. | 49 | 75 |
| - See Section 302 r/w/s 34 of the Indian Penal Code, 1860. | 384 | 622 |
| - See Section 302 r/w/s 34 and 452 of the Indian Penal Code, 1860. | 385 | 624 |
| - See Sections 173, 207 and 313 of the Criminal Procedure Code, 1973 | 377 | 599 |

EASEMENTS ACT, 1882

Section 7 – Restriction on easement – Plaintiffs are taking water from the well of the first defendant for the last 43 years from the date of filing of the suit – However, they have not acquired any easementary right – Plaintiffs are entitled for decree of injunction to the extent that till defendant obtain necessary order under the law, he shall not obstruct the plaintiffs from taking water from his well.

185* 280

Section 52 – See Section 105 of the Transfer Of Property Act, 1882.

69 118

ELECTRICITY ACT, 2003

Sections 126 and 135 – Unauthorised use of electricity vis-à-vis theft of electricity – Distinction between – Both operate in different fields and have no common premise in law.

98 162

EVIDENCE ACT, 1872

Section 3 – Appreciation of an interested/relative witness – As a rule of prudence and not as a rule of law, the evidence of an interested witness should be scrutinized with a little care – After making the above approach, if the Court is satisfied that the

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| evidence of an interested/relative witness has a ring of truth, then such evidence can be relied upon without corroboration even if other eye witness turns hostile. | 186 | 280 |
| Section 3 – Appreciation of evidence – In matrimonial disputes, family members, relatives, friends and neighbours are the most natural witnesses - It would not be appropriate to expect outsiders to come and depose. | 309 (i) | 474 |
| Section 3 – Appreciation of evidence – Sterling witness is a witness is of very high quality and caliber and whose version is unassailable and acceptable on its face value – Qualities of such a witness restated. | 308 | 473 |
| Section 3 – Appreciation of evidence – Where 17 accused persons were involved in the incident which took place in a very short time, minor contradiction appearing in the evidence of witnesses is to be ignored because any minute detail i.e. meticulous exactitude of individual acts cannot be expected from the eye witnesses. | 43 (iv) | 60 |
| Section 3 – Evidence of hostile witness – It is settled legal position that evidence of such witness cannot be rejected in toto or treated as effaced or washed off the record altogether but the same can be accepted to the extent, their version is found to be dependable on a careful scrutiny thereof. | | |
| Appreciation of evidence – If the maxim falsus in uno falsus in omnibus is applied in all case, it is to be feared that criminal justice system would come to a dead stop. | | |
| Reasonable doubt is a fair doubt based upon reason and common sense. It is not an imaginary, trivial or merely possible or fanciful doubt. | 306 (ii), (iii) & (iv) | 468 |
| Section 3 – Evidence of an injured witness stands on higher pedestal. | 378 (iii) | 604 |
| Section 3 – No statement of a witness can be read in part or in isolation – The Court should read the statement of a witness in its entirety and read it along with the statement of other witnesses in order to arrive at a reasonable conclusion. | | |
| The delay in examination of witness depend upon various factors as also availability of witness, Investigating Officer spending his time in arresting the accused who are absconding, being occupied in other spheres of investigation of the same case which may require his attention urgently and importantly etc. so it is a variable factor – If delay in examination of witnesses because they were of poor strata who had to move from one place to another to earn their livelihood – Investigating Officer was also busy in arresting the absconding accused – Such delay found not fatal. | | |
| Once the last seen theory comes into play, the onus was on the accused to explain as to what happened to deceased after they were seen alive together – If accused persons have failed to render any plausible explanation in this regard, the possible inference would be that the accused are responsible for commission of the murder of the deceased. | 379 (ii) (iii) & (iv) | 606 |
| Section 3 – See Sections 302 and 376 of the Indian Penal Code, 1860. | 48 | 72 |
| Section 3 – See Section 498-A of the Indian Penal Code, 1860. | 34* | 47 |

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Sections 3 and 8 – Interested witness – One who has some direct interest in having the accused somehow convicted for some extraneous reasons and near relative of the victim is not necessarily an interested witness.

Test identification parade – Would have been necessary if the accused was not previously known to the eye witness.

Non-seizure of weapon of offence, when immaterial? Where there was clear and cogent evidence of grandmother of child on record, dead body and footwear recovered at the instance of accused, report of post mortem and F.S.L. was also against the accused – In view of above factual position, non-seizure of weapon of offence is immaterial.

250 374

Sections 3 and 8 – Murder trial – Evidence of solitary witness who is brother of deceased, found worthy of credence and also corroborated by medical evidence, recovery of weapon, FSL report etc. – Conviction proper.

310 (i) 478

Sections 3 and 8 – Whether absence of evidence regarding recovery of used pellets, blood stained clothes etc. will itself detract the case of the prosecution? Held, No, particularly, where direct and reliable evidence coupled with medical evidence is also on record.

Motive – Motive is an emotion which motivates a man to do a particular act – It is very difficult to see into the mind of another – So the case of the prosecution cannot be thrown out in absence of proof of motive particularly where cogent evidence of eye witness corroborate with medical evidence are on record.

**35 (i) 47
& (ii)**

Sections 3 and 9 – Test identification parade – If the accused is a stranger to eye witnesses, then test identification parade would have been necessary at the time of investigation – Where the accused and eye witnesses are residing in the same locality and the eye witnesses were known to the accused, test identification parade not necessary.

Inconsistency between direct and medical evidence – How to be appreciated? Where medical evidence rules out all possibility of it being true, then direct evidence may not be believed.

239 358

Sections 3 and 24 – Conviction based on circumstantial evidence – Conditions reiterated.

232 (ii) 348

Section 3, 24 and 27 – Last seen together – Where duration between last seen and recovery of dead body is not long, the evidence should not be disbelieved.

311 (i) 481

Sections 3, 27 and 154 – Whether a Police Officer can be a sole eyewitness? Held, as a rule it cannot be stated that a Police Officer cannot be a sole eyewitness in a criminal case – It will always depend upon the facts and circumstances of each case.

How to appreciate the evidence of a Police Officer? If the statement of a Police Officer is reliable, trustworthy, cogent and duly corroborated by other evidence on record, then the statement of such witness cannot be discarded only on the ground that he is a Police Officer and may have some interest in the case.

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| Recovery of article – If the same does not inspire confidence, accused would be entitled to benefit of doubt. | |
| How to act upon the testimony of a hostile witness? Explained. | 236 (ii),(iii) 355 (iv)& (v) |
| Sections 3 and 45 – How to appreciate inconclusive F.S.L. report? If circumstantial evidence and medical evidence are taken in their entirety and the involvement of the accused is proved, inconclusive F.S.L. report will not grant benefit of doubt to accused. | 251 (i) 376 |
| Sections 3 and 118 – Child witness aged 9-10 years is natural and there seems to be no element of tutoring about the incident – He gives a clear picture of the incident, which is supported by other prosecution evidence – His statement is also supported by medical evidence – His statement is believable. | 99* 165 |
| Sections 3 and 134 – The quality of evidence is material and not the quantity – The administration of justice has emphasised on the value, weight and quality of evidence rather than the quantity or plurality of witnesses. | |
| Who is an interested witness? One who has some direct interest in having the accused somehow or the other, convicted for some other reason. | |
| Minor contradictions, omissions, inconsistencies or improvements on trivial matters do not affect the prosecution case. | 100 165 |
| Section 6 – Relevancy of facts – Hearsay evidence – Section 6 is exception to the general rule where hearsay evidence becomes admissible – It should be contemporaneous with act and there should not be an interval to allow fabrication. | 101 166 |
| Section 8 – When prosecution case is fully established by reliable ocular evidence coupled with medical evidence, the issue of motive becomes immaterial and loses practically all relevance. | 240 (i) 359 |
| Sections 8, 25, 27, 32 (1) and 106 – The confession made to the police that would implicate the accused himself is barred by Section 25 but other part of the statement not relating to the crime would be admissible under Section 8. | |
| Dying declaration – Capability of making – Where physical capability of maker of dying declaration to speak is not ruled out, the declaration may be accepted. | |
| Burden of proving plea of alibi lies upon the accused. | |
| The conclusion in DNA test report that accused was biological father of foetus carried by the deceased, is a relevant circumstance to prove guilt of the accused. | 312 483 |
| Sections 9 – Object of Test Identification Parade explained. | 379 (v) 606 |
| Sections 9, 24, 27 & 114, III. (a) – Failure of accused to explain existence of his finger prints on the scene of crime, points to his involvement in crime. | |
| Discovery of weapons of offence and recovery of stolen property at the instance of the accused would form valid and admissible evidence. | |
| History given to the doctor at the time of treatment would not be strictly an extra judicial confession, but would be a relevant piece of evidence, as these documents had been prepared by doctor in the normal course of business. | |

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| Delay in holding identification parade per se cannot be fatal. Test identification parade – Publication of photograph of accused in newspaper, months prior to the holding of identification parade is inconsequential as would have lost its effect on the minds of the witnesses. | 323 (ii),(iv) 494 (v) & (vi) |
| Section 14 – Presumption – If a man refuses to answer a question which he is not compelled to answer by law, the answer, if given would be unfavorable to him. | 204 308 |
| Sections 24 and 30 – Confession of co-accused – Appreciation of – Court cannot start with the confession of a co-accused – It must begin with other evidence adduced by the prosecution, then only it is permissible to turn to confession in order to receive assurance as to conclusion of guilt. | 46 (ii) 66 |
| Sections 25 and 27 – Statement of the accused leading to the recovery of dead body was made while he was in custody is a fact, which is admissible in evidence under Section 27 of the Evidence Act. | 313 486 |
| Section 27 – Exclusiveness of IMEI (International Mobile Equipment Identity) number of mobile handset can be utilized to prove the guilt of the accused in whose use and possession such mobile handset, pertaining to murdered person, was found immediately after the occurrence. | 32 44 |
| Section 32 – Change of date of birth – Case based on horoscope – Authenticity of horoscope not proved – Medical certificate is also not supported by medical test – Order directing change of date of birth held, improper. | 36 49 |
| Section 32 – Dying declaration – Normally the courts attach the intrinsic value of truthfulness to such statement if it has been made voluntarily, is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, more so, if corroborating circumstances are present. Multiple contradictory dying declarations – Appreciation of – Factors to be considered. | 314* 487 |
| Section 32 – Motive, proof of – Is not a sine qua non before a person can be held guilty of commission of crime – Motive being a matter of mind, is more often than not, difficult to establish through evidence. Dying declaration – Discrepancies pointed out in recording time, presence of words not in common use, as well as overwriting in the dying declaration, are too trivial to brush aside the overwhelming oral evidence produced by prosecution – In the facts and circumstances, dying declaration, held, reliable. | 47 (iii) 68 & (iv) |
| Section 32 – Oral dying declaration is an exception of rule of inadmissibility of hearsay evidence. Where there exist cogent, reliable and credible evidence against one accused, mere acquittal of other accused will not affect the prosecution's case. | 302 (ii) 461 & (iii) |

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| Section 32 (1) – Dying declaration – If recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of the event, then the dying declaration can certainly be relied upon by the Court and could form the sole piece of evidence resulting in conviction. | 247 (ii)* | 371 |
| Section 32 (1) – Dying declaration – It is the duty of the Court to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination – Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. | 45 | 63 |
| Section 45 – Hand writing expert, opinion of – Application for adducing the opinion of handwriting expert was rejected by trial court – Held, since the blank cheque was issued according to the accused, an opportunity to adduce the opinion of handwriting expert must be given to him in the principles of natural justice. | 205 | 309 |
| Section 45 – Medical examination – Applicant took a defence that wife is having character of hermaphroditism (Ubhaylingata) and prayed for her karyotype medical test – Held, person can not be insisted contrary to her wish to examine herself for any medical examination – Such direction would be violative of Article 21 of Constitution. | 88* | 151 |
| Section 45 – See Article 20 (3) of the Constitution of India. | 102 | 167 |
| Section 45 – See Sections 18, 23 and 54 of the Land Acquisition Act, 1894. | 117* | 190 |
| Sections 53 and 54 – See Section 376 of the Indian Penal Code, 1860. | 328 (i) & (ii) | 505 |
| Section 58 – Admissions in pleadings made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. - Value explained. | 315 | 487 |
| Sections 61, 62, 65 and 90 – Photocopy of a document – It is neither a primary evidence nor secondary evidence – If a party wants to prove a photocopy as secondary evidence, it is required to satisfy the ingredients of Section 65 of the Evidence Act – Furthermore, it is also required to examine the person who took out the photocopy of the original. | | |
| Presumption as to thirty years old documents – The presumption is not applicable to the photocopy of a document. | 103 | 170 |
| Sections 64, 65 (e) & (f), 67 and 68 – Certified copy of sale deed – Plaintiffs produced the certified copy of the sale deed which was taken on record – Plaintiff did not examine any person including the witnesses to the sale, to prove the document – On the contrary, the vendor, categorically denied the execution of the sale deed as well as his signatures thereon – He was also not confronted with the signature on the sale deed – Plaintiffs have failed to prove the document, i.e. proving the fact that it was executed, signed and executed by the vendor. | 64* | 113 |
| Section 65-B – Admissibility of digital photograph and compact discs in evidence – The material comes within the sweep of electronic record and admissible in evidence but for that purpose, the person who is producing the evidence has to satisfy the conditions | | |

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| mentioned under Section 65-B(2) of the Evidence Act and also required to produce a certificate as enumerated under Section 65-B(4) of the Act. | 37 | 50 |
| Section 65 – Illegible photocopy of a fax notice can not be allowed to be taken on record as secondary evidence. | 316* | 488 |
| Section 67 – Exhibiting a document in Court does not amount of proof of its contents - Law explained. | 317* | 489 |
| Section 68 – Execution of Will – Proof of – The propounder would be called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document of his own free will. Proof of Will and other documents – Distinction between – Unlike other documents, the Will speaks from the death of the testator, and so when it is propounded or produced before a Court, the testator who has already departed cannot say whether it is his Will or not; and this aspect naturally introduces an element of solemnity in the decision of question as to whether the document propounded is proved to be the last Will and testament of the departed testator. | 270 | 413 |
| Section 68 – See Section 63 of the Succession Act, 1925. | 142* | 224 |
| Section 73 – Comparison of signature, handwriting etc. – Court is not bound to refer the matter to the handwriting expert when by itself it can note dissimilarity in the handwritings, moreso, where it is fully familiar with the language and script of the document under scrutiny. | 104* | 171 |
| Section 73 – Where the executing court has disputed and admitted signatures before it, it has power to compare the signatures on the documents filed before it under S. 73 of Evidence Act. | 287 | 437 |
| Sections 74, 76, 77 and 79 – Compromise placed on file – Admissibility of its certified copy – Compromise has merged into decree and has become part and parcel to it – Hence, it is a public document in terms of Section 73 and certified copy thereof is admissible in evidence without being proved by calling witnesses. | 105 | 172 |
| Section 74 (2) – See Sections 138 and 141 of the Negotiable Instruments Act, 1881 and Sections 159, 163 and 610 of the Companies Act, 1956. | 128 | 204 |
| Section 90 – Presumption – Period of 30 years has to be calculated from the date on which the document is tendered in evidence and not from the date of filing of suit. Registration of gift – For a valid gift of immovable property, transfer must be affected by a registered instrument signed by or on behalf of donor and attested by atleast two witnesses. Presumption – Rebuttable – Presumption under Section 90 is rebuttable – Once, the execution of the gift deed was denied by the defendants, then it was obligatory on the part of the plaintiff to prove the gift deed in accordance with the provisions of Section 68/ 69 of the Evidence Act. Gift – Receiver should also prove that donor was the absolute owner of the property – Donor died prior to coming into force of Hindu Succession Act, 1956, therefore she was having limited interest in the suit property and was not competent to give the suit property to plaintiffs in gift even though registered gift deed has been executed by her in their favour. | | |

Custom – Custom is not only required to be pleaded but also to be proved by leading evidence – Where a caste is admittedly governed by Hindu law but is asserted that there exists a special custom in derogation of that law, the onus rests upon those who assert the custom to make it out. 106 172

Sections 101 and 102 – Burden of Proof as to sub-tenancy – The initial burden is on the landlord to prove the sub-tenancy as it is secret arrangement between tenant and sub-tenant and the burden shifts on the tenant to disprove that the suit accommodation is not sublet. 148* 229

Section 106 – See Sections 302 and 376(2) (f) of the Indian Penal Code, 1860.

324 498

Sections 106 and 133 – Evidence of an accomplice, appreciation of – An accomplice who has not been made an accused/put to trial, can be relied upon, however, the evidence is required to be considered with care and caution.

Sole eye witness, appreciation of – It is open to a competent court to fully and completely rely on a solitary witness and record conviction, conversely it may acquit the accused inspite of testimony of several witnesses, if it is not satisfied about the quality of evidence.

84 (iv) 139
& (v)

Section 114 (g) – See Section 38 of the Specific Relief Act, 1963. 140* 220

Sections 114 Illustration (b), 133 and 3 – Evidentiary value of approver/accomplice – Legal position explained. 29 36

Section 114 Illustration (f) – Demand notice – Service – Notice was returned back with the endorsement of postman that despite information defendant has not received the notice – Defendant has not disputed the address, as given in the notice – Held, the service of the notice sent on the correct address by registered post may be presumed to be effective service of the said notice – Trial Court erred in law in refusing the decree of eviction on account of non-service of demand notice. 212 327

Section 114 III (g) – Adverse inference under Section 114 (g) of Evidence Act – It is the duty of the party to lead best evidence in his possession, which can throw light on the issue in controversy and in case such material evidence is withheld, the Court may draw adverse inference – Situation which the presumption in terms of Section 114 III. (g) can be drawn discussed. 406 670

Section 115 – Estoppel – The doctrine of estoppel is applicable to do equity – Where the transaction stood concluded between the parties after extensive and exhaustive bilateral deliberations with a clear intention to bring about a quietus to the dispute, then it is not open to either of the parties to lay any claim/demand against the other party.

21 24

Section 119 – If a deaf and dumb witness is able to read and write, it is most desirable to adopt that method being more satisfactory than any sign language.

- A deaf and dumb person is a competent witness in light of Section 119 of the Evidence Act.

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| The purpose of administering of an oath - Law explained - The omission does not invalidate evidence. | 318 | 489 |
| Section 119 – Recording of evidence of deaf and dumb witness, mode of – If the evidence is recorded with the help of interpreter, an oath has to be administered to him and the sign and gesture used by the witness for his statement have to be taken on record. | 107* | 176 |
| Section 120 – Competent witness – Husband is a competent witness for his wife – He can also be permitted to exhibit the documents and there is no need to execute the power of attorney – Husband of the petitioner permitted to depose and exhibit the documents which have been produced by them. | 187 | 281 |
| Section 154 – Statement of hostile witness can be relied upon by Court to the extent it supports the case of prosecution. | 379 (i) | 606 |
| EASEMENTS ACT, 1882 | | |
| Section 52 – See Section 105 of the Transfer of Property Act, 1881. | 349 | 548 |
| EXCISE ACT, 1915 (M.P.) | | |
| Section 34 (2) – Possession of illicit liquor – Prosecution has to prove that accused was in possession of illegal liquor exceeding 50 bulk liters – Seized liquor was not measured either on the spot or during investigation – Containers in which illicit liquor was kept were not produced before Court – Prosecution failed to prove that seized liquor was exceeding the prohibited limit. | 108* | 176 |
| EXPLOSIVE SUBSTANCES ACT, 1908 | | |
| Sections 3, 4, 5 and 6 – See Criminal Trial. | 245 | 365 |
| FAMILY COURT ACT, 1984 | | |
| Sections 7, 8 and 20 – The Family Court has exclusive jurisdiction to try a Suit filed in respect of properties of parties to a marriage. A suit for return of Stridhan against the husband and his family members is maintainable before the Family Court. | 319 | 490 |
| FINANCIAL CODE (M.P.) | | |
| Rule 84 – Correction of date of birth in Service Record. | 38 | 51 |
| Rule 84 – Date of birth – Correction – Date of birth recorded in the service record at the time of entry in service is final and conclusive except in the case of a clerical error, which may be corrected at a later stage – Petitioner approached the authorities for correction of his date of birth after putting 24 years of service on the strength of the certificates issued after his entry in service – Not permissible in view of Rule 84. | 188* | 281 |
| FOREST ACT, 1927 | | |
| Sections 52 and 52-C – Whether Magistrate can release in interim custody a vehicle seized under the provisions of the Forest Act when intimation of confiscation proceeding is already given to him under Section 52 of the Act – Held, No – Being Special Act, Forest Act has an overriding effect on the provisions of other laws including Cr.P.C. Once confiscation proceeding is initiated, the jurisdiction of Criminal Courts in terms of Section 52-C of the Act is barred. | 241* | 360 |

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GENERAL CLAUSES ACT, 1897

Section 27 – See Section 114 Illustration (f) of Evidence Act, 1872. 212 327

GENERAL CLAUSES ACT, 1957 (M.P.)

Section 28 – See Rule 15 of the Accommodation Control Rules, 1966 (M.P). 2 3

GUARDIANS AND WARDS ACT, 1890

Section 9 (i) – Expression “Where the minor ordinarily resides”, scope of – The question vested in the expression is a mixed question of fact and law and cannot be answered without holding enquiry into the factual aspects of controversy – As the applicability of provision of Order 7 Rule 11 of CPC is confined only to the averments made in petition, the mixed question regarding jurisdiction cannot be decided by way of an application under this provision. 109 177

HINDU LAW

Presumption of joint property – There is no presumption that joint family possess a joint property; it is for the person who claims it to prove that the property was purchased from the funds of HUF. 320* 491

HINDU MARRIAGE ACT, 1955

Section 13 (1) – Divorce – General allegations of cruelty – Allegations in the nature of ‘normal wear and tear’ in matrimonial life of a couple cannot fall within the fold of Clauses (i-a) and (i-b) of sub-section (1) of Section 13 of the Act.

Divorce – Allegations of cruelty – Cruelty must be of such a nature that the parties cannot reasonably be expected to live together. 39 54

Section 13 (1) (i-a) – Decree for divorce on the ground of cruelty – Meaning and proof of mental cruelty, explained.

Matrimonial litigation – Credibility of interested/related witnesses, explained. 380 610

Sections 13 (i) (i-a) and 25 – Assessment of mental cruelty? Law explained.

Whether in a divorce petition, on the ground of cruelty, subsequent events can be looked into? Held, Yes.

At the time of fixing permanent alimony, amount paid by virtue of interim order should not be deducted. 309 (ii),(iii) 474 & (iv)

Section 16 – See Section 6 of the Hindu Succession Act, 1955. 242 360

HINDU SUCCESSION ACT, 1956

Section 6 – Nature of property – Property in dispute originally belonged to father of respondent No. 1 which was subsequently partitioned between brothers after his death – Property falling to the share of respondent No. 1 would be self acquired property for all others except his male issue – Share allotted to respondent No. 1 would still be a coparcenary property between him and the appellant though it may be his self-acquired property for the others.

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| Share of daughters – Daughter of a coparcener is also entitled for the same share which a son of coparcener is having in a coparcenary property – Section 16 of Hindu Marriage Act provides that children born out of void or voidable marriage shall be the legitimate children – Although the second marriage of respondent No. 1 is void but the children out of such void marriage will be entitled for their share – Appellant entitled for 1/6th share in the property. | 242 | 360 |
| Section 6 (as amended by Act of 2005) – Partition of coparcenary property by a decree of Court – Modification of preliminary decree – A preliminary decree passed in a partition suit prior to the commencement of Hindu Succession (Amendment) Act, 2005, can be modified to include share of daughter as per Section 6, amended in 2005, granting share in coparcenary property to a daughter. | 41 (ii) | 56 |
| Sections 6 and 14 – Whether property acquired by a daughter by way of gift from her father can be treated to be an ancestral property of her husband's family – Held, No. | 189 | 282 |
| Sections 6, 14 to 16 and 19 – Property acquired by Hindu woman – Hindu woman has full ownership of any property that she has acquired on her own or as stridhan and the same shall not be treated as part of the joint family property. | | |
| Presumption as to joint family property – No presumption can be made as to joint family property in absence of strong evidence in favour of the same. | 40 | 55 |
| Sections 8, 15 and 16 – Property of intestate female, devolution of – In absence of heirs specified in Section 15 (1) (a), the property would devolve upon the heirs of her husband as per Section 15 (1) (b). | 42 | 58 |
| Section 14 – Succession – Son died issueless during the lifetime of his father – Father died prior to commencement of Act, 1956 – Provisions of Act, 1956 would not apply – Share of deceased son would devolve on his father. | 321 | 491 |
| HIRE PURCHASE ACT, 1972 | | |
| Section 21 – Can a Finance Company, in the garb of hire purchase agreement, take over possession of vehicle with use of force from purchaser and sell it? Held, No – Till such time as the ownership is not transferred to the purchaser, it will not entitle the seller on the strength of the agreement to take back the possession of the vehicle by use of force – It is against the guidelines of RBI and principles laid down by the Supreme Court – The recovery process of loan has to be in accordance with law. | 190 | 284 |
| INDIAN PENAL CODE, 1860 | | |
| Section 34 – See Sections 114 III. (b) and 133 of the Evidence Act, 1872. | 29 | 36 |
| Sections 34, 114 and 149 – Charge under Sections 34, 114 and 149 – These sections provide criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention and the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable. | 27 (iii) | 34 |

Section 53 – Prisoner working as a part of punishment – A person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do the work but the jail officer who requires a prisoner, sentenced to rigorous imprisonment, to do hard labour, would be doing so as enjoined by law and mandated by Court. **381 612**

Section 84 & Chapter IV and Section 302 – Act of a person of unsound mind – The onus would be on the accused to prove by expert evidence that he is suffering from such mental disorder or mental condition that he could not be expected to be aware of the consequence of his act.

Epileptic psychosis – Accused killing deceased while in a state of insanity induced by epileptic fit – Accused was entitled to acquittal under Section 84 IPC, though to be detained in safe custody till he was cured. **110 178**

Sections 96, 97 and 100 – Right of private defence – Exercise of – Held, just because one circumstance exists amongst the various factors which appears to favour the person claiming right of self defence, does not mean that he gets the right to cause death of the other person – Further held, even the right of self defence has to be exercised directly in proportion to the extent of aggression. **244 363**

Sections 96 to 106 – Right of private defence – There is nothing on record to show that the deceased, his wife, his son or others had attacked the appellant nor would the surrounding circumstance indicate that there was a reasonable apprehension that the death or grievous hurt was likely to be caused to the appellant by them or others – Plea of private defence rejected. **243 362**

Sections 96 to 106, 300 Exception 4 and Section 304 Part II – Right of private defence – Exercise of – Even in absence of physical injury, such right may be upheld provided there is a reasonable apprehension to life or a grievous hurt to a person.

Right of private defence – Proof of – Onus of proof on the accused as to exercise of right of private defence is not as heavy as on the prosecution to prove guilt of the accused and it is sufficient for him to prove the defence on the touchstone of preponderance of probabilities.

Culpable homicide not amounting to murder – Accused had inflicted one stab wound on the deceased with a penknife after an altercation between two sides – The blow landed on the chest, a vital part of the body of the deceased – The circumstances clearly indicated the accused stabbed the deceased without premeditation on a sudden fight in the heat of passion, though the accused knew that the act by which the death was caused was likely to cause death, but he had no intention to cause death – His case falls under Exception 4 to Section 300 IPC. **111 181**

Section 120-B – Criminal conspiracy – The gist of the offence of conspiracy is an agreement between two or more persons to do or cause to do an illegal act or a legal act by illegal means – There must be meeting of minds resulting in an ultimate decision taken by the conspirator regarding commission of the crime. **191 284**

Section 120 B – Criminal conspiracy – Where the accused was charged with an offence u/s 302 r/w/s 120 B, no separate charge would be required u/s 302 r/w/s 34 I.P.C.

Once the court finds an accused guilty of Section 120 B, where the accused had conspired to commit an offence and actually committed the offence with other accused, they all shall individually be punishable for the offence for which such conspiracy was hatched.

300 (ii) 457

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| Sections 141, 143, 148, 323 and 325 r/w/s 149 – Vicarious liability – The provision under Section 149 of the Code is in two parts – The first part deals with cases in which an offence is committed by any member of the assembly “in prosecution of the common object” of that assembly – The second part deals with cases where the commission of a given offence is not by itself the common object of the unlawful assembly but members of such assembly “knew that the same is likely to be committed in prosecution of the common object of the assembly” – The scope of the vicarious liability with the aid of this provision, explained. | 192 285 |
| Sections 149 and 307 – Whether prior concert in the sense of meeting of the members of unlawful assembly is necessary for common object? Held, No – The common object may form at spur of the moment – It is enough if it is adopted by all the members and is shared by all of them. | 43 (i),(ii) 60 & (iii) |
| Section 188 – See Sections 190 and 195 of Criminal Procedure Code, 1973 | 367 581 |
| Section 279 – Rash and negligent driving should be examined in the light of attendant circumstances – Only driving speedily is not but the manner of driving is determinative factor. | |
| <i>Res ipsa loquitur</i> – This doctrine is applicable to motor accident cases provided the attendant circumstances and the basic facts are proved. | 322 492 |
| Sections 279, 337 and 304-A – Offence relating to motor accident – Quantum of sentence – Held, while considering the quantum of sentence to be imposed for the offence of causing death or injury by rash and negligent driving of automobiles, one of the prime considerations should be deterrence – The person driving motor vehicles cannot and should not take a chance thinking that even if he is convicted, he would be dealt with leniently by the Court. | 112 (i) 184 |
| Sections 285, 286 and 304 – See Criminal Trial. | 245 365 |
| Sections 299, 300, 304 Part I & Part II, 304-A, 337 and 338 – Whether the charge under Sections 304 Part II and 337 and 338 IPC co-exist in respect of a single rash or negligent act as they are mutually destructive? Held, No. | |
| Voluntary act – Connotation of. | |
| Form of charge under Section 304 Part II IPC – Ingredients of – Effect of omission. | |
| Incriminating evidence – Apprising of. | |
| Determination of sentence – No strait-jacket formula for sentencing an accused on proof of crime. | 193 291 |
| Sections 299, 300, 302 and 304 – Culpable homicide when amounts to murder and when not – Legislature in its wisdom covers the entire gamut of culpable homicide amounting to murder as well as not amounting to murder in a composite manner in Section 300 IPC – Legal position reiterated. | 382 613 |
| Section 300 Secondly or Exception 4, Section 302 or Section 304 Pt. II – Murder or culpable homicide – Accused used a wooden pestle singly but with such force that the head of deceased was broken into pieces (multiple fractures on the skull) leading to almost instantaneous death – Injury sustained by the deceased not only exhibits the | |

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| intention of the accused in causing death of the victim but also knowledge of the accused – Act of accused comes under second part of Section 300 IPC and not under Exception to Section 300 IPC. | 44* | 63 |
| Section 302 – Credibility of eye witness – How to assess, explained – The deceased sustained seven gun shot injuries which were sufficient to cause death although he died after 35 days from the date of incident due to septicemia – Conviction under Section 302 IPC, held, proper. | 35 (iii) | 47 |
| Section 302 – Death caused by administration of poison – Case based on circumstantial evidence – Principles which are necessary to prove in order to hold conviction in a case of murder by poisoning, discussed. | 194 | 296 |
| Section 302 – Death sentence – Rarest of rare case, consideration of. | 113 | 186 |
| Section 302 – Motive – Existence of motive for committing a crime is not an absolute requirement of law but is always a relevant factor. | 310 (ii) | 478 |
| Section 302 – Murder trial based on circumstantial evidence – Death due to administration of poison – The law required the accused to provide some explanation as he was last seen in the room with the deceased – Accused failed to offer any explanation therefor, which was the least expected of him – Court was justified in drawing an adverse inference against accused. | 383 | 619 |
| Section 302 – Extra judicial confession – If it is made voluntarily, inspires confidence and by no means tainted, should not be disbelieved on the ground of delay or relationship of witness. | 311 (ii) | 481 |
| Section 302 – Murder trial – Death by burning – Lower half of the body of the deceased had received more burn injuries than her upper part – Dying declaration recorded by the competent officer of the executive are found reliable and whatever is stated in it is supported by other evidence – Prosecution evidence shows that the deceased tried to fight before succumbing to burn assault by the accused – Moreover, the statements of the defence witnesses are untrustworthy – Conviction of the accused upheld. | 247 (i)* | 371 |
| Section 302 – Murder trial – Inconsistency in the medical and ocular evidence – The ocular evidence would have primacy unless it is established that ocular evidence is totally irreconcilable with the medical evidence. | | |
| Related witness can be relied upon provided it is trustworthy – Mere relationship does not disqualify a witness – However, evidence of such a witness is required to be carefully scrutinized and appreciated. | 33 (i) & (ii) | 45 |
| Section 302 – Rarest of rare case – Murder of wife and children – Accused suspected the character of his wife – Crime committed out of that suspicion and frustration – Thereafter, accused tried to commit suicide and informed police about incident – In the facts and circumstances the case does not come under the category of rarest of rare case. | 232 (iii) | 348 |
| Section 302 – See Article 226 of the Constitution of India. | 164 | 251 |
| Section 302 – See Criminal Trial. | 246 | 369 |
| Section 302 – See Sections 3 and 9 of the Evidence Act. | 239 | 358 |

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| Section 302 – See Sections 3 and 134 of the Evidence Act, 1872. | 100 | 165 |
| Section 302 – See Section 32 (1) of the Evidence Act, 1872. | 45 | 63 |
| Section 302 – See Sections 154 and 401 of the Criminal Procedure Code, 1973. | 233 | 350 |
| Section 302 – See Section 378 of the Criminal Procedure Code, 1973 & Sections 3, 27 and 154 of the Evidence Act, 1872. | 236 | 355 |
| Section 302/34 – See Section 154 of the Criminal Procedure Code, 1973 and Criminal Trial. | 248 | 371 |
| Section 302 r/w/s 34 – circumstantial evidence - Each circumstance must be proved like any other fact which will, upon their composite reading, completely demonstrate how and by whom the offence had been committed. | 323 (i) | 494 |
| Sections 302 and 34 – See Sections 3, 9 and 154 of Evidence Act 1872 | 379 | 606 |
| Section 302 r/w/s 34 – Murder trial based on circumstantial evidence – Vicarious liability – Culpability will have to be determined on the basis of individual overt acts on the part of the accused – Legal position explained. | 384 | 622 |
| Sections 302 and 34 – Common intention can form and develop even in course of the occurrence. | 240 (ii) | 359 |
| Sections 302 r/w/s 34 and 452 – Murder trial – Where the occurrence in parts took place inside the house and the rest of it slightly outside the premises of the deceased, under these circumstances, the family members and the close relatives are bound to be the natural witnesses – Legal position reiterated. | | |
| Common intention – Proof of – Previous meeting of minds with pre arranged plans or prior concert is difficult to establish by way of direct evidence – They are to be inferred from the conduct and circumstances – Legal position reiterated. | 385 | 624 |
| Section 302/149 – Every variation or discrepancy in statement of an injured witness cannot belie case of prosecution per se. | | |
| Common object to murder is manifest where all accused persons hid themselves in field and suddenly appeared at the place of occurrence and assaulted the deceased. | 301 | 459 |
| Section 302/149 – See Criminal Trial. | 249 | 372 |
| Sections 302 and 149 – See Sections 3, 8 and 9 of Evidence Act and Sections 154 and 162 of Criminal Procedure Code, 1973 | 378 | 604 |
| Sections 302 and 292 – Murder with robbery – Extra-judicial confession can be used against its maker but as a matter of caution, Courts look for corroboration to the same from other evidence on record. | 46 (i) | 66 |
| Sections 302 and 304 Part I (Section 300 Exception 4) – Murder or culpable homicide not amounting to murder – Single stab injury inflicted upon the deceased with the aid of a knife without premeditation in mind of the accused to cause death of the deceased – The deceased (son) was under the influence of liquor and was misbehaving which created a heat of passion in the accused (father) – The deceased sustained one stab injury 1½ inch in length and 2 inches in depth which was perforated upto intestine – On internal examination, the abdominal wall was found ruptured due to the stab on right | | |

lateral part of abdominal wall and that peritoneal cavity was full of blood, liver was also found ruptured below stab injury – The probable cause of death was injury to a vital organ like the liver, which caused internal haemorrhage and shock – Therefore, unmindful of consequences, though not in a cruel manner, the appellant inflicted a single blow which unfortunately caused severe damage to vital organs resulting into death of the deceased – Conviction of the appellant altered under Section 304 Part I in place of Section 302 IPC. 386* 628

Sections 302 and 304 Pt. 1 – Murder or culpable homicide not amounting to murder – Case of sudden fight – Appreciation of evidence there in – Pushing a person into the sea, with a bleeding head injury may not have been with the intention to kill, but it would certainly show the “intention of causing a bodily injury as was likely to cause death”, within the meaning of S. 300 Secondly and Section 304 Part I IPC. 387 629

Sections 302 and 323 r/w/s 34 – Murder trial – Conduct, reaction and behaviour of eye witnesses – None of the close family members, who were witnesses, made any statement to the police immediately after the incident – They could not have been expected to proceed to the police station to lodge a report when the injured were critical – Any action to be taken against the assailants, would have been a matter of secondary concern – Behaviour of the witnesses not unnatural looking to the facts and circumstances of the case.

Common intention, sharing of – Presence of other accused with prime accused was merely not incidental – Other accused did share common intention of prime accused – Presence does justify conviction of other accused along with prime accused.

47 (i) 68
& (ii)

Sections 302, 364, 342, 344, 346, 201 and 120-B – See Sections 106 and 133 of the Evidence Act, 1872, Criminal Trial and Articles 21 and 22 of the Constitution of India.

84 139

Sections 302 and 376 – All the circumstances have been proved by the prosecution as (a) dead body of deceased recovered by police in the house of accused; (b) deceased was playing with other children in front of the house of accused and she was missing during the play; (c) accused had an opportunity to take deceased inside the house of accused; (d) accused had taken plea of alibi and found false; (e) medical evidence showed sexual assault and death by strangulation etc. – Conviction upheld. 48 72

Sections 302 and 404 – See Criminal Trial and Section 27 of the Evidence Act, 1872.

32 44

Sections 302 and 376(2) (f) – Rape and murder trial – Incriminating circumstances against accused enumerated by Trial Court – Conviction confirmed.

Examination of accused – It is the duty of accused to explain incriminating circumstances proved against him.

Keeping silent and not furnishing any explanation for such circumstance is an additional link in the chain of circumstances.

Rape and murder of minor by father – Principles of awarding death sentence reiterated

324 498

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Sections 302 and 376 – See Sections 3 and 8 of the Evidence Act, 1872.

250 374

Sections 302 and 376(2)(f) – Rarest of rare case – Accused took the victim on the pretext of buying biscuits and raped her – Killed the child and left her in open fields without clothes – Crime was committed in the most brutal manner – This reflects the most unfortunate and abusive facet of human conduct – Death sentence in above fact just and proper.

251 (ii) 376

Sections 304-A and 304 Part II – Drunken driving – Breath Analyzer Test can be applicable only when person is driving or attempting to drive vehicle. It cannot be applied when driver has fled away from place of occurrence.

325 (i) 500

Section 304-B – Unnatural death within 2½ years of marriage – Deceased was harassed for dowry by the accused husband 2 days prior to the incident – It is difficult to imagine a more proximate link.

326 503

Section 304-B – Where persistent demand of dowry has been proved by evidence of relatives of deceased however, in her letter she did not mention about dowry but mentioned ill treatment and cruelty, evidence has to be appreciated in its entirety.

Where the offence was committed in brutal manner for satisfaction of dowry demands and accused takes the false defence of accidental death, it is a fit case for awarding life imprisonment.

327 504

Sections 304-B, 306 and 498-A – Dowry death – Demand of dowry – Appreciation of – There were major improvements/embellishments in the prosecution case and the demand by the accused husband does not find mention in the statements u/s 161 Cr. P.C. – Even if such demands were there, it may not necessarily be a demand of dowry – FSL report falsifies the theory of suicide – The facts regarding sale of house for payment of dowry does not also inspire confidence – No other statements were made u/s 161 of Cr. P.C. – Appellant/accused is acquitted.

388 631

Sections 342, 363 and 364 – Wrongful confinement and abduction for murder – When by force or deceit if any person is compelled or induced to go from any place and such an abduction takes place in order to ultimately eliminate him, the offence would be made out under Section 364 IPC.

389 635

Sections 364-A and 363 – To bring home offence under Section 364-A IPC, following ingredients are required to be proved:

- (a) that the accused kidnapped or abducted the person;
- (b) kept him under detention after such kidnapping or abduction; and
- (c) that the kidnapping or abduction is for ransom.

For offence u/s 364-A IPC, no leniency should be shown in awarding sentence – On the other hand, it should be dealt with in the harshest possible manner irrespective of the fact that kidnapping had not resulted in the death of the victim.

114 187

Section 376 – Age of prosecutrix, determination of – Birth Certificate reveals that prosecutrix was less than 16 years of age on the date of incident – Radiologist's report revealed it as 16 to 17 years – Defence also produced certificate from hospital – Radiologist's report cannot predict exact date of birth – Margin of error in age ascertained by radiological examination is two years on either side.

Rape of minor – Sole testimony of prosecutrix – Her evidence must receive the same weight as is attached to an injured witness in case of physical violence.

Defective investigation – Investigation into a criminal matter must be free from all objectionable features or infirmities – The investigating officer is supposed to investigate an offence avoiding any kind of mischief or harassment to either of the party.

49 75

Section 376 – Conviction can be based upon solitary testimony of the rape victim if it lends assurance of her version.

Whether in a case of rape, the prosecutrix is of easy virtue/unchaste woman itself is a determinative factor? Held, No – The Court is required to adjudicate whether the accused committed rape on the prosecutrix on the occasion complained of. 328 505

Section 376 – Sentence for rape – Sexual violence is not only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honour – It leaves a traumatic and humiliating impression on her conscience – Offending her self-esteem and dignity – It is not only a crime against the person of a woman, but also a crime against the entire society – It indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least, her chastity – It destroys the entire psychology of a woman and pushes her into deep emotional crisis – It is a crime against the basic human rights, and is also violative of the victim's most cherished fundamental rights, namely, the right to life contained in Article 21 of the Constitution – The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity – Such cases need to be dealt with sternly and severely.

390* 636

Sections 376 and proviso – Offence of rape – Awarding punishment lesser than the minimum prescribed is an exception to the general rule – Exception clause is to be invoked only in exceptional circumstances – The power u/s 376(1) proviso is not to be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation.

Reduction of sentence – The statutory requirement for awarding punishment of less than seven years is to record adequate and special reasons in writing – Socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. 391 637

Sections 376 and 302 – Crime against women and children – Rape and murder of 11 year old girl – The primary concern both at national and international level is about the devastating increase in rape cases and cases relating to crime against women in the world – India is no exception to it – Although the statutory provisions provide strict penal action against such offenders, it is for the courts to ultimately decide whether such incident has occurred or not – The courts should be more cautious in appreciating the evidence and the accused should not be left scot-free merely on flimsy grounds – Conviction under Sections 302 and 376 restored and accused sentenced to rigorous imprisonment for life. 392* 638

Sections 405 and 409 – Offence of criminal breach of trust – Ingredients thereof – In order to prove the offence of criminal breach of trust which attracts the provision of Section 409 IPC, the prosecution must prove that the accused, a public servant or banker

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| or agent was entrusted with the property of which he is duty bound to account for; and the accused, has committed criminal breach of trust provided under Section 405 IPC. | 393 | 638 |
| Section 396 – Imposition of death sentence when justified? Crime was pre-meditated – Murders were brutal, grotesque, diabolic, revolting and dastardly which indicated the criminality of the perpetrators of the crime – Even though the accused is young, his criminal propensities are beyond reform and he is menace to the society – Death sentence proper. | 252 | 378 |
| Section 494/109 – Abetment of bigamy – If it is not proved that co-accused has known the fact that decree of divorce was set aside, they cannot be convicted for offence of abetment of bigamy. | 253 | 379 |
| Sections 494 and 498-A – Cognizance of offenses u/s 494 and 498-A IPC on police report – Held, Court can take cognizance for offences both u/s 494 as well as 498-A IPC even on police report. | 368 | 583 |
| Section 497 – Offence of adultery – A woman cannot be prosecuted for adultery under Section 497 of IPC. | 115 | 188 |
| Section 498-A – Credibility of witnesses – Doctor, who wrote the tehrir for dying declaration and Naib Tahsildar, who recorded the dying declaration stated that deceased told them that she got burnt by stove while preparing food – Both are Government Servants and are independent witnesses and reliance could be placed on testimony of these witnesses. | | |
| Cruelty – Behaviour of appellant towards deceased was aggressive – Appellant humiliated and assaulted her in front of near relatives – Deceased was also beaten when she tried to stop the appellant from his illicit relationship with other women – Cruelty proved. | 34* | 47 |
| INTEREST ON DELAYED PAYMENTS TO SMALL SCALE AND ANCILLARY INDUSTRIAL UNDERTAKINGS ACT, 1993 | | |
| Section 6 – The supplier may also file a suit only for higher rate of interest on delayed payment made by the buyer as a new vested right to claim a higher claim of interest as prescribed under the Act of 1993 accrues to the supplier. | 329* | 507 |
| INTERPRETATION OF STATUTES | | |
| Principle “Statute must be read as a whole”, applicability of– The principle is equally applicable to different parts of the same section – The section must be construed ‘as a whole’ whether or not one of the parts is a saving clause or a proviso – The sub-section must be read as part of an integral whole as being inter-dependent, an attempt should be made in construing them to reconcile them if it is reasonably possible to do so and to avoid repugnancy. | 116 | 189 |
| JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 | | |
| Sections 4, 29 and 63 – Constitution of Juvenile Justice Boards, Child Welfare Committees and Special Juvenile Police Units – Apex Court issued directions in this regard. | 50 | 79 |

Section 7-A – Claim of juvenility – Age determination – Scope of procedure and nature of inquiry contemplated under Juvenile Justice (Care & Protection of Children) Act, 2000 and Juvenile Justice (Care & Protection of Children) Rules, 2007 explained – Such inquiry is not expected to be an inquiry of the sort contemplated under Section 2 (g) of the CrPC – Procedure under Rule 12 of 2007 Rules only to be followed and not that under CrPC – Courts in such a situation act as a *parens patriae* because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

There may be situations where the entry made in the Matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct – But Court, Juvenile Justice Board or a Child Welfare Committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business – Only in case where those documents or certificates are found to be fabricated or manipulated, the Court, the Juvenile Justice Board or the Child Welfare Committee need to go for medical report for age determination.

394 640

Section 12 – Bail – Denial of – Bail to a juvenile cannot be denied unless his case falls within any of the exceptions engrafted in Section 12 of the Act.

195 299

Determination of age – Where school record is ambiguous and does not conclusively prove minority of accused, medical opinion assumes importance – If academic certificates and school records are alleged to have been withheld deliberately with ulterior motive, and authenticity of medical evidence is also under challenge by prosecution, the issue would be decided on the basis of evidence led by parties.

254 380

Sections 14, 15 (1)(g), 16 and 20 – Determination of juvenility in pending cases – In all pending cases, which ought to include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility would be in terms of Clause (l) of Section 2, even if the juvenile ceased to be a juvenile on or before 01.04.2001 when the Act of 2000 came into force.

395 645

JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) RULES, 2007

Rule 12 – See Section 7-A of the Juvenile Justice (Care & Protection of Children) Act, 2000.

394 640

LAND ACQUISITION ACT, 1894

Sections 4 and 6 – Civil Court has no jurisdiction to entertain a suit to challenge the acquisition after the award was rendered.

Civil Court also has no jurisdiction to go into the question of validity or legality of the notification under Section 4 and declaration under Section 6 of the Land Acquisition Act.

330 507

Sections 11, 12 and 18 – Limitation for filing reference application – Reference application getting delayed for want of copy of award alongwith the notice under Section 12 (2) of the Act – Held, alongwith the notice under Section 12 (2) of the Act, the landowner, who is not present or is not represented before the Collector at the time of making of award should be supplied with a copy thereof so that he may effectively exercise his right under Section 18 (1) of the Act to seek reference to the Court.

255 382

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| Section 18 – See Section 5 of the Limitation Act, 1963. | 256 | 385 |
| Sections 18 and 19 – Amendment of amount claimed as compensation in reference application – Limitation therefor – There is no obligation on land owner to specify amount of compensation in reference application, therefore, period of limitation is inapplicable for amendment of amount of compensation. | | |
| Amendment in reference application after expiry of period of limitation – Amendment as to changing nature of objections from one category to another is impermissible after expiry of period of limitation specified in Section 18. | 51 | 80 |
| Sections 18, 23 and 28 – Determination of compensation – When there are several exemplars with reference to similar land, it is a general rule that the highest of the exemplars, if it is satisfied then the bonafide transaction has to be considered and accepted. | | |
| Interest on solatium – Claimant would be entitled to the interest on solatium and additional market value if the award of the Reference Court or that of the Appellate Court does not specifically refer to the question of interest on solatium and additional market value or where the claim had not been rejected either expressly or impliedly. | 257 | 387 |
| Sections 18, 23 and 54 – Genuine and bona fide sale transactions in respect of the land under acquisition or in its absence the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands are the real basis to determine the market value. | | |
| Averaging of the prices of two sale deeds not justified – The mere fact that average sale price of transactions relied upon by respondent State was substantially less could not be made a ground for discarding the sale deed. | | |
| Reference Court on the issue of existence of trees on the acquired land and their valuation may consider the value of a consultant (expert) in Agriculture and Horticulture, who personally visited the acquired land and gave the details. | 117* | 190 |
| Sections 23 – Addition towards appreciation in value – Held, no addition should be made towards appreciation in value unless there is specific evidence to show some specific increase within a short period. | | |
| Advantage of a better frontage with respect to an undeveloped agricultural land – Adding of percentage. | | |
| Acquisition of large tracts of undeveloped land – Determination of compensation with reference to the prices faced by a small developed plot. | 52 | 82 |
| Section 23 – Determination of market value of agricultural land – When land is not acquired subject to the tenancy, the market value of acquired land has to be assessed at the same rate as granted to adjoining agricultural land, moreso, where apportionment of compensation between land owner and tenant is not disputed. | 118 | 190 |
| Section 23 – Determination of market value on the basis of exemplar sale transaction – Appropriate deductions from such value – Deductions for keeping aside area/space for providing developmental infrastructure and deduction for developmental expenditure/expenses are considerable components. | 119 | 192 |
| Sections 23, 24 fifthly & sixthly and Section 28 – Determination of compensation – Principle of comparability in context of free hold and restricted user of acquired land | | |

stated – These two lands cannot be subjected to the same compensation even if acquired by the same notification. **53 86**

Sections 23 and 28 – Where there are several exemplars, sale transactions with reference to similar lands, one with the highest of exemplars should be accepted provided that it is a bonafide one.

It is undesirable to take an average of various sale deeds placed before the Courts for fixing fair compensation.

The land owner is entitled to get interest on the aggregate compensation including solatium and additional market value. **331 508**

Sections 23 and 54 – Factors for fixing market value of acquired land stated. **332 509**

Section 48 – Power under Section 48 (1) of the Land Acquisition Act can be exercised by the State only if the possession of the land has not been taken over – If possession has been taken over, the State cannot withdraw from acquisition. **54 91**

LAND REVENUE CODE, 1959 (M.P.)

Section 158 – Declaration as to Bhumiswami rights u/s 158(i)(d) of the Code – Suit property was given to the father of plaintiff as 'Pattedar tenant' by the order of Tehsildar on 29.4.1959 when the Act of 1953 was in force – Held, plaintiff became 'Bhumiswami' of the suit property after death of his father under Section 158(i)(d) of the Code after coming into force of the Code w.e.f. 2.10.1959 – He cannot be said to be a trespasser. **120 196**

Sections 158, 57 (2) & (3) – Bhumiswami – Land given to plaintiffs' forefather in Inam by the then Holkar State and not to the deity – Initially, the plaintiffs' forefather and thereafter, after his death, the plaintiffs became the Bhumiswami on coming into force of the Code.

Dispute with the State Government – Plaintiffs' suit for declaration of Bhumiswami right and injunction against the Government – Held, civil suit is maintainable. **121 197**

Section 190 – See Section 53-A of the Transfer of Property Act, 1882. **276 423**

LEGAL MAXIM

- Applicability of *actus curiae neminem gravabit*. **9 11**

LEGAL SERVICES AUTHORITIES ACT, 1987

Sections 20 and 21 – Validity of award passed by Lok Adalat – Award passed by the Lok Adalat is akin to a compromise decree, its validity can be challenged by a party in a writ petition on the ground that the same has been obtained by playing fraud.

Award passed by Lok Adalat – Where consent to settlement was obtained from the petitioner by playing fraud or even otherwise, parties to the agreement were mistaken as to the matter of fact essential for the agreement, that renders the agreement void – Award passed by Lok Adalat cannot be sustained in the eye of law. **122 198**

Section 21 – Award passed by the Lok Adalat – Nature of – Every award of Lok Adalat shall be deemed to be a decree of a Civil Court and as such is executable by that Court.

129 (ii) 205

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| Section 21 – See Sections 16 and 35 of the Court Fees Act, 1870. | 123 | 200 |
| Section 22-A(b), 22-C(8) and 22-D – Permanent Lok Adalat – Under this scheme the litigation concerning public utility services is sought to be nipped in the bud by first affording the parties to such dispute and opportunity to settle their dispute through the endeavours of the Permanent Lok Adalat. | | |
| - Award passed is final – No appeal is provided - aggrieved party can approach the High Court under Article 226/227. | 333 | 515 |
| LIMITATION ACT, 1963 | | |
| Sections 2 (j) and 15 (2) – Exclusion of period of notice of suit – In computing the period of limitation, the period of notice, provided, notice is given within the limitation period, would be mandatorily excluded. | 124 | 202 |
| Section 3 and Article 58 of the Schedule – Suit for declaration and permanent injunction – When period of limitation will begin to run? If suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues – Successive violation of rights will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued. | 55 | 91 |
| Section 5 – Condonation of delay – If appeal is barred by time, the Court concerned should either return the memorandum of appeal to the appellant to submit it alongwith the application under Section 5 of the Limitation Act, 1963 (In this regard, specific provision under Order 41 Rule 3 CPC also should be kept for consideration) or provide a chance to file application to condone the delay. | 125* | 203 |
| Section 5 – Condonation of delay for Government department – There should be reasonable and acceptable explanation for delay – Government departments are under special obligation to ensure that they perform their duties with diligence and commitment – Condonation of delay is an exception and should not be used as an anticipated benefit for Government departments – Law shelters everyone under the same light and should not be swirled for the benefit of a few. | 258 | 389 |
| Section 5 – Limitation Act, applicability of – As the specific provision for limitation is made under the Land Acquisition Act, the provisions of Limitation Act are not applicable to such cases. | | |
| Application for making reference, limitation of – Where the award is not made in presence of claimant or no notice of award is served to him, the period of limitation will start running from the date of knowledge of the essential contents of the award. | 256 | 385 |
| Section 5 – See Order 22 Rule 9 of the Civil Procedure Code, 1908. | 362 | 568 |
| Section 5 – The expression “sufficient cause”, liberal consideration of – The expression “sufficient cause”, is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice – Though a liberal justice-oriented approach is likely to be adopted, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. | | |
| Application for condonation of delay by the State and its agencies/instrumentalities – The Court can take note of the fact that sufficient time is taken in the decision-making | | |

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process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest. 259 389

Section 5 – Where question of personal liberty is involved, the Court must show greater indulgence and flexibility in applying law of limitation.

The Court should be very reluctant to shut out consideration of the case on merits on ground of limitation or other similar technicalities where question of personal liberty is involved – Delay of 15 months in filing revision condoned. 196 300

Section 18 and Articles 36 and 37 – Document executed after expiry of limitation – Loan amount taken against 12 Hundis between 03.10.1992 to 25.02.1993 – On 10.07.1999 the lonee executed a document acknowledging the non-payment of Hundis which comes to ₹ 62,116 and also agreed to pay the amount of debt by clearing payment of each Hundi on monthly basis – Held, it is a fresh contract.

Limitation under – Document containing the terms of repayment in monthly installments executed on 10.07.1999 – Under the terms of document, the amount was required to be repaid in twelve months – Held, since the amount was repayable in installments and the first installment was due on or before 10.08.1999 and the last installment was due on 10.07.2000 and the suit was filed on 26.07.2002, therefore, the suit filed by the respondent was within time. 20 22

Section 21 – Substitution of parties – Where a new plaintiff or defendant is substituted, the suit shall, as regards to that be deemed to have been instituted when he was so made a party. 334 520

Articles 64 and 65 – Adverse possession – In the larger public interest, law of adverse possession should be abolished or atleast amended by making suitable changes in law. 197 300

Article 65 – Adverse Possession – Party pleading adverse possession apart from pleading actual possession has also to plead the period and date from which he claims the possession – It has to prove that possession was continuous, exclusive and undisturbed to the knowledge that he is the real owner of the land – Also required to demonstrate hostile title and has to communicate his hostility to the real owner. 218* 333

Article 119 (b) – From which date limitation for filing objection for setting aside an award starts? Limitation starts from the date of service of notice of filing of the award and not from the date of its knowledge. 72 124

MADHYASTHAM ADHIKARAN ADHINIYAM, 1983 (M.P.)

Jurisdiction in case of work's contract.

Disputes pertaining to or arising out of work's contract with State of M.P. or its instrumentality will have to be mandatorily referred to M.P. State Arbitration Tribunal irrespective of arbitration agreement as per the provisions of M.P. Madhyastham Adhikaran Adhinyam, 1983 and not under Arbitration and Conciliation Act, 1996 – Earlier decision in *Va Tech Escher Wyass Flovel Ltd. v. M.P. SEB, (2011) 13 SCC 261* held per incuriam.

198* 301

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M.P. POLICE REGULATIONS

Regulation 710 – See Sections 154, 157 and 159 of the Criminal Procedure Code, 1973.

25 28

MOTOR VEHICLES ACT, 1988

Sections 52, 53 and 92 – Prohibition of use of black films on glass panes of motor vehicles – Use of black film or any other matter upon safety glass, wind screen and side windows is impermissible – The Apex Court prohibits the use of black films of any VLT percentage or any other material upon the safety glass, wind screen and side windows of all vehicles throughout the country. 229 (ii) 345

Sections 140 and 163-A – As per Sections 140 (3) and 140 (4), there can be no doubt that compensation claimed under Section 140 is governed by the principle of “no fault” liability.

Sections 163-A (2) and 140 (3) are pari materia to each other – Unlike Section 140 (4), no similar provision is made in Section 163-A Act – Compensation claimed under Section 163-A is governed by the principle of “fault” liability.

Under Section 163-A, it is for the insurer to prove that accident had taken place due to negligence of the deceased and he was not the third party. 199 302

Section 142 – Under all circumstances, it is not necessary that the Tribunal has to blindly accept disability certificate produced by the victim – It has discretion to either accept totally or partially or reject it, but that can be done only after assigning cogent and acceptable reasons. 200 304

Sections 146, 147 and 149 – Insurer's liability against third-party risk, extent of – When cheque issued for payment of premium was dishonoured and subsequent to the accident, insurer cancelled policy of insurance – Held, in such circumstances, statutory liability of insurer to indemnify third parties which policy covered subsists and insurer has to satisfy award of compensation unless policy of insurance was cancelled by insurer and intimation of such cancellation had reached insured before the accident. 260 392

Sections 147, 148, 158 (6), 163-A, 166, 168, 170 and 173 – A claim petition is neither a suit nor adversarial lis in the traditional sense – The Act does not require the claimants to implead the insurer as a party (opponent) but the claimant can choose to implead the insurer as a party voluntarily.

Joint appeal under Section 173 of the Act filed by insured and insurer is maintainable so long as owner is an appellant and he is “a person aggrieved” in law – Question whether he has independently filed the appeal or has filed at the instance of the insurer, is irrelevant. 56 94

Sections 163-A, 165 (1) and 166 – Whether owner or driver of a vehicle can be held responsible for an accident which was caused by explosion on account of planting bomb under a bridge over which the vehicle passed? Held, No. 261 394

Sections 166 and 168 – Determination of compensation in a case of death of owner of three buses-cum-agricultural lands and also driver of one of the buses – Income of deceased out of agricultural lands would still continue to accrue to his family – Likewise, income derived out of three buses would also still accrue to family of deceased – The

only difference would be that during his life time the deceased was managing the three buses and was driving one of these buses, but now, the claimants may have to engage some competent person to manage the asset, which in turn, would require some payment to be made to such a manager and also one driver is to be engaged for one bus which the deceased himself used to drive – Therefore, loss of income (dependency) can be assessed only on the basis of payment to be made for one driver of a bus and a manager engaged for these three buses. 201* 304

Sections 166 and 168 – Determination of just compensation in case of permanent disability – Principles laid down in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.*, (2010) 10 SCC 254 and *Rajkumar v. Ajay Kumar*, (2011) 1 SCC 343 must be followed by all the Tribunals and the High Courts in determining quantum of compensation. 57* 102

Sections 166 and 168 – Tribunal should adopt a proactive approach and ensure disposal of claim cases with required urgency and keeping in view the relevant factors to award just compensation to the victims/their legal representatives.

Under the Act, there is no restriction that the Tribunal cannot award compensation amount exceeding the claimed amount, as the Tribunal is duty-bound to award “just” compensation. 58 103

Section 168 – Mode of payment of compensation in motor accident claims – Guidelines issued by the Apex Court in *Kerala SRTC v. Susamma Thomas*, (1994) 2 SCC 176 were to safeguard the interests of the claimants particularly, minors, illiterates and others whose amounts are sought to be withdrawn on some fictitious grounds – Tribunals to pass appropriate orders after examining each case on its own merits and should not take a rigid stand while considering an application seeking release of the money – Change of attitude and approach on the part of the Tribunals is necessary in the interest of justice. 202 305

Section 168 – Loss of future earnings has to be judged with reference to the nature of the work being performed by the victim – There is a basic premise and once that is grasped, it clearly follows that the same injury or loss may affect different persons in different ways i.e. loss of one leg to a cycle rickshaw puller is different from that of a desk worker in an office. 203 307

Section 168 – Permanent disablement – Amount under the Head of loss of earning capacity is distinct from pain and suffering, loss of enjoyment of life or medical expenses – Future medical expenses should also be considered. 335 522

Section 168 – Personal expenses – A victim who earned less than ₹ 3000 per month and also having a family of 9 members, it shall be unrealistic to universally apply the rule of 1/3rd deduction towards personal expenses.

At the time of accident, the age of deceased was 36 years, so the multiplier of 15 for the purpose of determining the amount of compensation is proper. 396 648

Section 168 – Where the victim is self-employed or is engaged on fixed wages, it would be reasonable to expect that a person's income will grow by 30% over a period of time.

Deceased earning ₹ 1,500 per month and having a family consisting of five persons – Held, such deceased, at best spent 1/10th of his income on himself.

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| Major son does not cease to be a dependant unless he has some source of income. | 336 | 524 |
| Sections 185, 203 and 205 – Death by rash/negligent act or culpable homicide – Accused driving car at high speed in inebriated state and without licence – Mowing down six persons standing on road in wee hours – Not stopping to render help to such injured persons, causing their death – Accused though no intending to cause death - Shall be deemed to have knowledge that his act may result in death. | 325 (ii) | 500 |
| MUSLIM LAW | | |
| - Alienation of undivided property – The alienation cannot be said to be illegal or not recognized by law if a co-owner alienates any specific property without the consent of co-owners – However, the co-owners may sue for partial partition of the property so alienated. | | |
| Interpretation of pleadings – Mufssal pleadings – Parties are villagers – Suit was filed at Tahsil place – Some latitude should be given in case of mufssal pleadings and they should not be construed strictly. | 204 | 308 |
| Doctrine of spes successionis – Bar to transfer of right to spes successionis under the Mohammaden Law – Exception there to and applicability of rule of estoppel – Relinquishment or renunciation of chance of succession to a property by heirs apparent during lifetime of owner of the property by receiving consideration for relinquishing their expectant future share in the property or by entering into a family arrangement or settlement to that effect, either such course of conduct would constitute an exception to bar to transfer of right to spes successionis. | 59 | 105 |
| - See Section 17 of the Registration Act, 1908 & Section 54 of the Transfer of Property Act, 1882. | 343 | 537 |
| N.D.P.S. ACT, 1985 | | |
| Sections 42 and 20 (b) (i) – If a police officer does not record the information at all and does not inform the official superior, it will be a clear violation of Section 42 of the Act. | | |
| Offence under Section 20 (b) (i) of the Act – Proof – Investigation Officer not complying with the provision of Section 42 of the Act – He did not weigh the ganja before seizure – The seized material was also not produced in the Court – No independent witness from adjoining shop was taken for search of contraband – No other witnesses supported the evidence of Investigation Officer – Held, the prosecution failed to prove beyond reasonable doubt that ganja/contraband was seized from the shop or possession of the appellant. | 126* | 204 |
| Sections 50 (1) – Strict compliance of Section 50 (1), what amounts to – Circle Inspector who proposed to search person accused of- asked them “whether they wanted any other gazetted officer for their search and seizure in addition to him” or that “they have a right to have another gazetted officer in addition to him” – Inadequate for strict compliance with Section 50 (1) – Held, the above offer made by Circle Inspector to accused did not amount to a communication of their right to have the search conducted in presence of a Magistrate or a Gazetted officer, since there is no clear communication of the said right. | 262 | 395 |

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| Section 52-A – To ensure the quantities of narcotic drugs and psychotropic substances seized by the police and other agencies do not go back into circulation on account of neglect or apathy, necessary direction to collect information from the concerned agencies issued. | 338 | 526 |
| NATIONAL GREEN TRIBUNAL ACT, 2010 (NGT ACT, 2010) | | |
| Sections 14, 29, 30 and 38 – Bhopal gas disaster – Cases relating to gas disaster and raising environmental issues whether filed before or after enforcement of NGT Act, 2010 are advised/directed to be transferred to National Green Tribunal from all Courts. | 337 | 526 |
| NEGOTIABLE INSTRUMENTS ACT, 1881 | | |
| Sections 3, 72 and 138 – Offence of dishonour of cheque – Essential ingredients for offence of – Cheque has to be produced before the “drawee bank” within six months under clause (a) of proviso of Section 138 – For prosecuting the accused, condition mentioned in clause (a) of Proviso of Section 138 has to be fulfilled and therefore no prosecution can be made against the accused. | 263* | 398 |
| Section 138 – Burden of proof – Accused – It is not necessary for the accused to disprove the existence of consideration by way of direct evidence – Inference of preponderance of probabilities can be drawn not only from the materials on record but also by referring to the circumstances upon which he relies. | 397 | 649 |
| Section 138 – See Section 45 of the Evidence Act, 1972. | 205 | 309 |
| Section 138 – See Section 87 of the Criminal Procedure Code, 1973. | 231 | 348 |
| Section 138 – Whether amendment can be made in a complaint u/s 138 of N.I. Act? Held, Yes – To provide full and effective opportunity to the parties, application requesting amendment in the complaint should be allowed. | 127* | 204 |
| Section 138 – Whether cheque issued for repayment of money demanded and received for providing job comes within the sweep of phrase “any debt or other liability” as provided in Section 138 ? Held, Yes. | 398 | 653 |
| Section 138 – Whether prosecution based upon second or successive dishonour of cheque is permissible? Held, Yes. | | |
| (In <i>Sadanandan Bhadran v. Madhavan Sunil Kumar</i> , (1998) 6 SCC 514 it was held that cause of action for filing complaint u/s 138 of N. I. Act arises only once. Complaint based on a second or successive dishonour of the cheque was not maintainable if no complaint based on earlier dishonour, followed by the statutory notice issued on the basis thereof had been filed – Overruled). | 399 | 655 |
| Sections 138, 140 and 141 – Whether a Director or authorized signatory of a Company would be liable for prosecution under Section 138 of the N.I. Act without the Company being arraigned as an accused? Held, No – For prosecution under Section 141 of the N.I. Act, arraigning of a Company as an accused is imperative. | 264 | 398 |
| Sections 138 and 141 – Dishonour of cheque issued by a Company – Liability of Director – The complainant should specifically spell out how and in what manner the Director was incharge of or was responsible to the Company for conduct of its business and mere bald statement in this regard is not sufficient. | | |

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| Criminal liability of Director – A person who resigned from the Directorship of the Company in the year 1998, cannot be held responsible for the dishonour of the cheque issued in the year 2004. | 128 (i) 204 & (ii) |
| Sections 138 and 142 (b) Proviso – Condonation of delay in filing complaint under section 138 of the Act, procedure for – Accused is not required to be heard before delay is condoned as no provision of the Act enables the accused to participate in the enquiry into condonation of delay in filing of the complaint – The matter lies exclusively between the complainant and the Court – Accused can question legality of the order only after the process is issued. | 400 663 |
| Sections 138 and 143 – Award of compensation in cases of dishonour of cheque – Approach of Court – Direction to pay compensation by way of restitution in regard to the loss on account of dishonour of cheque should be practicable and realistic which would mean not only payment of the cheque amount but also interest thereon at a reasonable rate. | 96 (iii) 157 |
| Sections 138 and 147 – Scheme under Section 391 of the Companies Act will not have effect of automatically compounding the offence under Section 138 of the N.I. Act without consent of the complainant. | |
| Section 147 of the N.I. Act only overrides Section 320 (9) of the CrPC and other procedure enumerated in Section 320 CrPC to compounding of an offence under the N.I. Act applicable. | 265 404 |
| Sections 138 and 147 – Whether in a criminal case under Section 138 of the Negotiable Instruments Act referred by the Magistrate's Court to the Lok Adalat, the award passed by the Lok Adalat can be considered as a decree of a Civil Court and thus, executable by that Court? Held, Yes. | 129 (i) 205 |
| Sections 138 and 147 – Withdrawal of complaint – Application for withdrawal filed instead of application for compromise – The application was filed at the stage of defence with a view to circumventing the guidelines laid down by the Supreme Court in <i>Damodar S. Prabhu v. Sayed Babalal H., AIR 2010 SC 1907</i> – Held, the application was rightly rejected by the trial Court. | 370* 587 |
| Sections 141 and 142 – Complaint by Company – If the payee is a Company, the complaint should be filed in the name of Company - A Company can be represented by an employee or even by a non-employee authorized and empowered to represent the company. | 339* 532 |
| Sections 141 and 147 – Offences by Company – Appellant No. 2 is the signatory of the cheque and appellant No. 3 is the Managing Director of the Company – Both the persons by virtue of their position are vicariously liable for the offence committed by appellant No. 1/Company. | |
| Application for compromise – Application for compromise filed after the pronouncement of judgment – Application is not maintainable as the Court is no more seisin over the case. | 130* 208 |

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| Section 145 – Affidavit – Offence under Section 138 of the Act – Complainant submitted affidavit in support of his complaint which contained entire factual position – Held, proper compliance of Section 200 Cr.P.C. in the light of the provision of Section 145 of the Act – Registration of complaint on basis of affidavit is legal. | 206 | 310 |
| PARTNERSHIP ACT, 1932 | | |
| Section 69 – A suit by unregistered partnership firm – Maintainability of. | 131 | 208 |
| PC & PNDT ACT, 1994 | | |
| Sections 3 and 17 (5) – Female infanticide – Prevention of female infanticide and misuse of pre-natal diagnostic techniques for determination of sex of foetus – Detailed directions are issued by the Hon'ble High Court regarding the same. | 266 | 406 |
| POWERS OF ATTORNEY ACT, 1882 | | |
| Section 1-A – See Section 120 of the Evidence Act, 1872. | 187 | 281 |
| PRECEDENTS | | |
| - Binding effect of rulings of co-ordinate/larger Benches of High Court vis-à-vis itself – Basic postulates of judicial discipline is that Single Bench of the High Court is bound by the Division Bench – Similarly, Division Bench or Single Bench cannot ignore the law laid down by the co-ordinate Bench. | 60* | 109 |
| PRESS AND REGISTRATION OF BOOKS ACT, 1867 | | |
| Sections 5 and 8-B – See Section 34 of the Specific Relief Act, 1963. | 66 | 115 |
| PREVENTION OF CORRUPTION ACT, 1988 | | |
| Sections 3 and 5 (2) – See Sections 306, 307 and 308 of the Criminal Procedure Code, 1973. | 132* | 210 |
| Sections 7 and 13 – Mere recovery of tainted money is not sufficient to prove the guilt but burden lies on appellant to establish that money was accepted other than as reward. | | |
| - Trap case – Presence of a shadow witness in the Trap Party is desirable but not obligatory. | 340 | 532 |
| Sections 7 and 13 – Reduction of minimum prescribed sentence – Corruption by public servant has become a gigantic problem – Long delay in disposal of appeal or any other factor, quantum of amount of bribe demanded by accused or loss of job due to conviction of alleged offence may not be a mitigating circumstance for reduction of minimum prescribed sentence. | 61 | 109 |
| Sections 7, 13 and 20 – It is obligatory upon the Court to apply the presumption under section 20 to each and every case brought under section 7, however, the presumption is rebuttable. | | |
| - Bribe money recovered from appellant's possession by raiding party – Demand and acceptance proved – Conviction proper. | 341 (i) | 534 |
| | & (ii) | |
| Sections 7 and 13 (1) (d) – Demand and acceptance of tainted money for investigating a complaint by accused police officer proved by prosecution – It is immaterial where the | | |

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accused police officer himself was not investigating that complaint or non-sending wallet and one untreated note for forensic examination are minor contradictions.

401 665

Section 13 (2) r/w/s 13 (1) (a) (d) and Section 19 – Sanction for prosecution – It is not an empty formality but a solemn and sacrosanct act which affords protection to Government servants against frivolous and vexatious prosecution – It is a safeguard for the innocent but not a shield for the guilty.

Distinction between absence of sanction and invalidity of sanction – The question of absence of sanction can be raised at the inception and threshold by an aggrieved person – However, where sanction order exists, question of its legality and validity has to be raised in the course of trial.

133 209

Sections 19 (1) and 22 – Access to justice is hallmark of Indian Constitutional Scheme – Private citizen's right to file complaint against public servant and to obtain sanction for prosecuting public servant flows from rule of law – Therefore, freedom of a private citizen to proceed against a corrupt public servant cannot be restricted.

Meaning of 'cognizance', its general scope of consideration by the Courts and also in comparison to special provisions of Section 19 of the Prevention of Corruption Act, 1988 explained.

207 (i) 311
& (v)

PREVENTION OF FOOD ADULTERATION ACT, 1954

Section 7(v) r/w/s 16 (1) (a) – See Rule 32 (a) of the Prevention of Food Adulteration Rules, 1955.

62 111

PREVENTION OF FOOD ADULTERATION RULES, 1955

Rule 32 (a) – Food Inspector purchased sample of 'Vital' Pure Refined Cooking Oil (Soya Oil) from open tin – Report of Public Analyst that sample contravenes the Rule 32 (a) and the sample was mis-branded – To ascertain whether the provision of Rule 32 (a) of the Rules are violated, he sought an inquiry from the Public Analyst, which was not answered by him – Held, prosecution has failed to establish the case against the petitioner-accused beyond reasonable doubt – Accused discharged.

62 111

PROBATION OF OFFENDERS ACT, 1958

Section 4 – Offence relating to motor accident – Extension of probation – Court cannot treat the nature of the offence under Section 304-A as attracting benevolent provisions of Section 4 of the Probation of Offenders Act.

112 (ii) 184

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Section 1 (3) and 3 – The Act has no retrospective effect – As the Act enforced from 26th October 2006, incidents of cruelty occurred before the date are not covered by the Act. (Kindly see *V.D. Bhanot v. Savita Bhanot*, 2012 AIR SCW 1515).

342 536

Section 2 (q) – Interpretation of the expression 'Respondent' – Whether a female member of the husband's family could be made a party to the proceedings under the Domestic Violence Act, 2005? Held, Yes – The Supreme Court held that if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead it provided in the proviso

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that a complaint could also be filed against a relative of the husband or the male partner – No restrictive meaning has been given to the expression “relative”, nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only. 134 212

Sections 3, 12, 18 and 19 – Whether a woman is entitled to protection provided by the Act even if the cause of action arose prior to the coming into force of the Act? Held, Yes – Wife who had a shared household in the past but had left it prior to the enforcement of the Act, would still be entitled to protection under the Act.

Under Section 19 of the Act, a woman is entitled for a suitable portion of the shared household for her residence alongwith all necessary amenities to make such residential premises properly habitable for her – It should also be properly furnished according to the choice of the woman entitled, to enable her to live in dignity in the shared household. 135 214

Section 12 – Order as to relief under the Act – Magistrate has to take into consideration D.I.R. prepared by Protection Officer before passing such an order. 402 666

Sections 12, 18 and 19 – Application u/s 12 of the Act – It was alleged that non-applicants ill-treated and forcibly threw her out from her matrimonial home – No evidence was led on behalf of the applicant to prove the domestic violence in terms of Sections 18 and 19 of the Act which is required to be proved for the purpose of seeking relief u/s 12 of the Act. 63 112

PUBLIC GAMBLING ACT, 1867

Section 4 – Accused were found gambling or present for the purpose of gambling – If there is no evidence to show that the premises were a Common Gambling House, the accused cannot be convicted under Section 4 of the Act. 403 668

REGISTRATION ACT, 1908

Section 17 – Hiba-bil-iwaz – is a gift for consideration – In reality it is a sale and where the value of the property is more than ₹ 100 it must be effected by a registered instrument.

- In order to ascertain the nature of a document, intention of the parties has to be seen and the document has to be read as a whole. 343 537

Section 17 – See Sections 5 and 54 of the Transfer of Property Act, 1882 and Section 63 of the Succession Act, 1925. 143 225

Section 17 – See Section 105 of the Transfer of Property Act, 1882. 350 551

Section 17 (1) (d) – Whether a rent note executed by tenant unilaterally in favour of landlord is compulsorily registrable as per Section 17 (1) (d) of the Registration Act 1908? Held, No. As the document does not come within the meaning of lease as per Section 107 of the Transfer of Property Act, hence it need not be registered compulsorily. 136 216

Section 49 – Non-registration – Effect of – A document which is compulsorily registerable, if not registered, could be used for proving collateral purposes – Nature of possession can be looked upon and for the purpose of admission of plaintiff that entire money was paid by the appellant can be taken into consideration to prove his admission. 73* 125

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| Section 49 – See Section 6 of the Specific Relief Act, 1963. | 268 | 411 |
| Section 57 (5) – See Sections 64, 65 (e) & (f), 67 and 68 of the Evidence Act, 1872. | 64* | 113 |
| SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 | | |
| Section 3 (1) (xi) – Assault to a woman – Where the accused being a stranger knows and has reason to believe that the victim of the offence is a member of such a caste or tribe, the offence would squarely fall under Section 3 (1) (xi) of the Act and it would not be necessary to establish further that the offence was committed on the ground that she belongs to such a caste or Tribe. | 137 | 217 |
| Section 18 – Bar created by Section 18 of SC/ST (PA) Act – How to be applied? A duty is cast on the Court to verify the allegation made in the complaint and to find out whether an offence under Section 3 (1) of the SC/ST Act has been prima facie made out or not – If there is specific averment in the complaint, namely, insult or intimidation with intent to humiliate with the caste name, bar will apply and accused will not be entitled to anticipatory bail, but in above stage, scope for appreciation of evidence and other material on record is limited. | 404 | 668 |
| SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 | | |
| Section 32 – Where remedy under Civil Procedure is selected, is it open for the bank to switch over to a remedy under SARFAESI Act in midway? Held, Yes – The doctrine of election has no application in the facts and circumstances of the act. | | |
| There is no repugnancy or inconsistency between two remedies available in the Civil Procedure Code and under the SARFAESI Act – Therefore, the doctrine of election has no application in the matter. | | |
| Plea of limitation can always be raised in appeal u/s 17 of SARFAESI Act before Debt Recovery Tribunal. | 138 | 219 |
| SERVICE LAW | | |
| Regularisation of temporary/ad hoc judges appointed under temporary Fast Track Court scheme in regular cadre – FTC Judges were appointed under a separate set of Rules than Rules governing regular appointment of State Higher Judicial Services – Appointment of FTC Judges would be ad hoc and temporary and appointees shall not derive any benefit from such appointments and cannot claim any right either to regularization or absorption. | 405 | 669 |
| SPECIFIC RELIEF ACT, 1963 | | |
| Sections 5, 6, 38, 39 and 41 – See Order 6 Rule 2 of the Civil Procedure Code, 1908. | 267 | 408 |
| Section 6 – Restoration of possession under Section 6, requirement of law as to – Restoration under the provision can only be ordered if the plaintiff was in 'lawful possession' of the property and was dispossessed by the defendant unlawfully and not otherwise. | 268 | 411 |

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| Sections 9 and 16 (b) – Discretionary relief of specific performance of contract, entitlement of. | 65 | 114 |
| Section 16 – See Order 1 Rule 10 of the Civil Procedure Code, 1908. | 280 | 427 |
| Section 16 (c) – Suit for specific performance of contract – Absence of necessary averments – Effect of – In the absence of the averment that plaintiff is always ready and willing to perform his part of contract, the decree of specific performance cannot be granted. | 208 (i) | 320 |
| Sections 16 (c) and 20 – Readiness and willingness – Cannot be challenged merely on the ground of absence of specific pleading about continued readiness and willingness and availability of funds – Attendant circumstances have to be kept in mind. | 344 | 539 |
| Section 20 (2) (b) – Whether denial of grant of specific performance on ground of hardship is justified where defendant had not taken any such defence and such issue was also not framed? Held, No. | 345* | 541 |
| Section 34 – Declaratory suit – Suit for declaration of right in joint family property is maintainable without a separate prayer for consequential relief of possession – Bar of Section 34 of the Act not attracted. | 269 | 412 |
| Section 34 – Exercise of judicial discretion as to relief of declaration and injunction – Before granting or refusing relief of declaration or injunction or both, the courts must weigh pros and cons in each case, consider the facts and circumstances in their proper perspective and exercise discretion with circumspection to further the ends of justice. | 66 | 115 |
| Section 34 – See Sections 145 and 146 of the Criminal Procedure Code, 1973. | 209 | 322 |
| Section 34 – Suit for declaration – Suit seeking declaration of title of ownership but where possession is not sought is hit by proviso of Section 34 of the Act of 1963. | 406 | 670 |
| Section 34 – Where a new plaintiff or defendant is substituted, the suit shall, as regards that party, be deemed to have been instituted when he was so made a party. | 334 | 520 |
| Section 34 Proviso – Relief of declaration simpliciter, grant of – Plaintiffs filed suit for declaration simpliciter without claiming relief of possession – Plaintiffs were not possessing the suit property on the date of filing of the suit as per their admissions in depositions – Held, the suit was not maintainable as per Proviso to Section 34 of the Act. | 139* | 220 |
| Section 38 – Permanent injunction – State Government admitting the possession of plaintiff – It has not filed any document in order to show when the suit property came in the ownership of State or when the Bhumiswami rights were extinguished – Held, Appellate Court rightly granted the decree of permanent injunction in favour of respondent/plaintiff, holding him not to be a trespasser on the Government land. | | |

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| Adverse inference – Party in possession of best evidence, which would throw sufficient light on the issue in controversy withholding it – Court should draw an adverse inference against him notwithstanding that onus of proof does not lie on him. | 140* | 220 |
| Section 38 – Watchman, caretaker or servant employed to look after the property can never acquire interest in the property irrespective of his long possession. | | |
| - Importance of proper framing of issues restated. | | |
| - Judicial proceedings – It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process. | | |
| | 346 (i),(ii) & (iv) | 541 |
| Section 41 – Perpetual Injunction – Section 41 of the Specific Relief Act lays down when an injunction cannot be granted – This section does not prohibit Civil Court from granting decree for perpetual injunction in absence of relief regarding declaration of title. | | |
| | 14 (ii) | 15 |
| Section 41 – See Order 22 of the Civil Procedure Code, 1908. | 79 * | 134 |
| STAMP ACT, 1899 | | |
| Sections 29 and 48 – Recovery of Stamp Duty/ Penalty – Society purchased the property from its owners by sale deed and subsequently sold it to the appellants – State has no authority to recover the shortage of stamp duty on the sale deed executed in favour of the Society or penalty therefor, from the subsequent purchasers/appellants. | 68 | 117 |
| Sections 33 and 35 – Impounding of insufficiently stamped instrument – When an insufficiently stamped instrument is tendered in the Court, the Court is duty bound to impound the same – When the instrument is impounded but has not been admitted in evidence, on payment of penalty and duty, the Court has to send the document to the Collector and the Collector is required to deal with the document in the manner prescribed under Section 40. | 210 | 323 |
| Sections 35, 36 and 61 – Objection as to admissibility of document not duly stamped – Once a document is admitted in evidence without any objection, the document shall not be called in question at any stage of the same proceedings on the ground that it has not been duly stamped except to challenge the validity of the Order in revision u/s 61 of the Act. | 407 | 672 |
| Articles 5, 6 and 33 – See Order 18 Rule 4 of the Civil Procedure Code, 1908. | | |
| | 360 | 564 |
| Article 45 (d) of Schedule 1–A [as amended by Stamp (M.P. Amendment) Act, 2002] | | |
| – Fixing of different rates of duty as introduced by Stamp (M.P. Amendment) Article, 2002 | | |
| – Held, Constitutionally valid. | 347 | 544 |
| SUCCESSION ACT, 1925 | | |
| Sections 61, 63 and 71 – Execution of unprivileged <i>Will</i> – Any alteration/correction made in any unprivileged Will after its execution has no effect unless such alteration/correction has been executed in the same manner in which the Will is executed or has been made in the manner laid down in proviso to Section 71. | | |

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| Proof of execution of a second Will as a voluntary act of the testator – At the time of execution of second Will, testator was seriously ill due to acute stomach cancer and he was not in a position to eat and walk – It was also on record that just 14 days after the execution of the second Will, the testator died – Moreso, if the testator had consciously decided to disinherit respondent No. 1 in the first Will by making correction/alteration, there was no reason for him to execute the second Will for disinheriting respondent No. 1 – Execution of second Will was highly suspicious and was not a voluntary act of the testator. | 141 | 221 |
| Section 63 – Execution of Will – It is the duty of propounder to satisfy the Court by adducing evidence that testator was in sound and disposing state of mind, understood the nature and effect of his dispositions at the relevant time and only thereafter, he signed the document of his own free will – Attesting witnesses to the Will are not the residents of same village – Residents of same village have specifically stated that testator had lost his sight, unable to walk as well as he was hard of hearing – Testator was old and aged about 70-72 years – Testimony of neighbours about the physical condition of testator of will appears to be more reliable – Will was also prepared without preparing any draft and without typing any khasra number of land – Trial Court rightly held that appellants have failed to prove the execution of Will beyond suspicion. | 408* | 673 |
| Section 63 – Will – Is to be duly proved in accordance with Section 63 of the Act of 1925 and Section 68 of the Act of 1872 – All the attending circumstances creating doubt must be made clear so as to satisfy the conscience of the Court that the Will was duly executed by testator. | 142* | 224 |
| Section 63 – Will comes into effect only after the death of the testator and is also revocable at any time during the life time of the testator. | 143 (ii) | 225 |
| Section 63 (c) – See Section 68 of the Evidence Act, 1872. | 270 | 413 |
| SUITS VALUATION ACT, 1887 | | |
| Section 8 – Suit for declaration of gift deed to be void – Plaintiff is not party to the document - No ad valorem Court fee is required – Plaintiff is not required to value the suit as per valuation of the document. | 348 | 547 |
| TRANSFER OF PROPERTY ACT, 1882 | | |
| Sections 2 and 6 – See Muslim Law. | 59 | 105 |
| Sections 3 and 123 – See Section 90 of the Evidence Act, 1872. | 106 | 172 |
| Sections 5 and 54 – Transactions of the nature of sale agreement, general power of attorney sales or Will are not valid mode of transfer of immovable property – immovable property can be legally transferred by registered deed only. | 143 (i) | 225 |
| Section 52 – Doctrine of <i>lis pendens</i> – Applicability of. | 211 | 325 |
| Section 53-A – A co-owner can file a suit for recovery of property from a person in wrongful possession and that such a suit is regarded as one on behalf of all the co-owners - Part performance, condition precedent for applicability of doctrine of – Law discussed. | 276 | 423 |

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| Section 53-A – Part performance – Benefit when available. | 67* | 116 |
| Section 54 – Sale – Plea of want of consideration – Recital contained in the registered sale deed shows that the sale is complete – Merely because the sale price is not paid, the sale deed cannot be held to be invalid – At the most, if the seller who has sold the property and has not received the sale consideration, may sue for recovery of the sale consideration. Registered sale deed – Presumption as to – Registered sale deed has been executed by defendant No. 2 in favour of defendant No. 1, which is <i>prima-facie</i> valid and, therefore, a presumption arises with regard to its genuineness – Even assuming that the sale deed was executed without payment of any consideration and the defendant No. 2 was not in a fit physical and mental condition at the time of execution of the sale deed, the same would be binding on defendant No. 2 and would be a voidable document – Since defendant No. 2 has not challenged the same, it would bind her and it would be invalid only to the extent of the share of the plaintiff. | 144* | 226 |
| Section 54 – See Section 17 of the Registration Act, 1908. | 343 | 537 |
| Section 100 – Charge – Liability to pay itself does not create a “charge” over the property – A charge can be created only in two ways, namely (i) by the act of parties i.e. by contract or (ii) by operation of law. | 68 | 117 |
| Section 105 – An agreement between the parties in which certain terms of tenancy were defined and described is not a lease deed so it does not require registration. | 350 | 551 |
| Section 105 – Determination of lease or licence explained. | 349 | 548 |
| Section 105 – Lease and licence – Test for determination of document whether it creates a lease or licence and distinction between the terms – Law explained. | 69 | 118 |
| Sections 105 and 107 – Whether unregistered rent note can be made the basis to prove the relationship of landlord and tenant? Held, No – But such relationship can be proved by other undisputed facts as admission made by tenant in his pleadings or oral evidence, etc. – In a suit for recovery of rent, decree cannot be reversed only on the ground that rent note is not registered. | 409 | 673 |
| Sections 106 and 111 – Splitting up of tenancy – The suit shop was earlier given to defendants on tenancy and later on, after lapse of considerably long period, another adjoining shop was also given to them – Tenants removed partition wall situated between the two shops and single rent was being paid for the two shops and began to give single receipt – Held, still the tenancy of the two shops will be separate – There is no splitting up of tenancy and therefore, plaintiff is entitled to file eviction suit for single shop. | 145 | 226 |
| Section 107 – See Section 17 (1) (d) of the Registration Act, 1908. | 136 | 216 |
| Section 116 – Whether mere acceptance of rent would create new tenancy in absence of any express agreement to make the same – Held, Yes. | 271 | 419 |

URBAN LAND CEILING ACT, 1976

Section 10 (5) – Service on minor grandson of noticee is no service in eyes of law, however, such defect can be ignored, if it is shown that he was aware of the proceedings

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of taking possession and only because of this lapse, the entire action can not to held to be vitiated.

- Non-communication of interim order – Unless and until the prohibitory order is brought to the knowledge of the executing authority, it can not be said that act done by the said authority is a nullity. 351* 552

URBAN LAND (CEILING AND REGULATION) ACT, 1976

Sections 6 and 10 (1) – Transfer of land – Transfer of excess land through sale deed after draft statement and notification is void *ab initio* and does not create any right – Any such transfer shall be deemed to be null and void. 146 228

VINDHYA PRADESH LAND REVENUE AND TENANCY ACT, 1953

Section 2 (1)(xvi)(b) – See Section 158 of the Land Revenue Code, 1959 (M.P.).

120 196

WAKF ACT, 1995

Sections 3, 4, 13, 14, 43 & 112 – Distinction between a Muslims wakfs and trusts created by Muslims – Management of wakf properties registered as trust property – the wakf.

Properties are dedicated to God and the “wakif” and dedicator does not retain any title over the wakf properties. As far as trusts are concern the properties are not vested in God – Legal position explained. 352 553

WILD LIFE (PROTECTION) ACT, 1972

Sections 39 (1) (D), 50 (4) and 54 – For Section 39 (1) (d) to come into play, there has to be a categorical finding by the competent Court of law about the use of seized items such as vehicle, weapon, etc. for commission of the offence – The expression “has been used for committing an offence” in Section 39 (1) (d) cannot be read or understood as “is suspected to have been used for committing an offence”.

None of the provisions under the Wild Life (Protection) Act, 1972 empowers and authorizes the specified officer u/s 54, on composition of the offence, to deal with the seized property much less order forfeiture of the seized property used by the person suspected of commission of offence against the Act – The property seized u/s 50 (1) (c) and Section 50 (3-A) has to be dealt with by the Magistrate according to law. 70 120

WORDS AND PHRASES

- “Fraud” means and includes any of the following acts committed by a party to a contract: (1) the suggestion, as a fact, of that which is not true by one who does not believe it to be true (2) the active concealment of a fact by one having knowledge or belief of the fact (3) a promise made without intention of performing it (4) any other act fitted to deceive (5) any such act or omission as the law specially declares to be fraudulent. 122 198

- Meaning of the expression “defraud” explained. 272 420

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