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CORRIGENDA

- In Editorial- 4th line for "Joudicially" read "Judiciary".
- In Editorial- 2nd para 4th line for "thst" read "that'.
- In Editorial- 2nd para 10th line for "Voluminons" read "voluminous".
- Page 5 2nd line of the answer after "110" full stope be converted into comma and "The" be read as "the" In the same paragraph in13th line for the word "denied" the word "decree" and in the 14th line for the word "denier" the word "denied" and in the last line of the same paragraph for "hs" "as" be substituted. In the next paragraph number "1" printed in the margin be deleted and in the 4th line in place of "file" the word "filed" be substituted.
- Page 8 Below item no. 6 in the 2nd line after 1986 MPLJ the word "Lhort" be read a "Short".
- Page 9 In Second paragaph 2nd line in place of "Satsandgi" the word "Satsangi" should be read and in the same paragraph in the 8th line for the word "acceptins" the word "accepting" be read.
- Page 11- In the para following item no 8 in second line for the word "perion" read "period" and in the 4th line of the same para for the word "foils" read "fails". In the next paragraph in the 6th line in place of word "act" read in word "Act".
- Page 12- In second paragraph in the 1st line after "Article 112 of Limitation Act" add "1963".
- Page 13- 2nd para 4th line in place of "The clandestine" substitute "A clandestine".
- Page 14- 1st para last but one line for "appealat" substitute "appellate".
- Page 15- Last para third line for "viva voce evidences" read "viva voce evidence".
- Page 18- Last para last line for the word "prending" read the word "pending".
- Page 20 In last but one line of second paragraph of item no. 15 after the word "guarantor had" add an other word "had".
- Page 22 In item no. 18 in the third line for the word "disposes" read the word "dispose". In the next following paragraph there is a repetition of the sentense, "The entire approach of the court to the assessment of the evidence would be likely to be different when there is an admission of guilt by the accused" It should be scored.
- Page 26 In clause (a) of Sessions Trials for the word "decoity" the word "Dacoity" be read.
- Page 31 Below "Civil Suit" in clause (b) second line and in Note no (vi) second line the word "contraversy" be corrected as "controversy".
- Page 38- In the last line of 2nd paragraph of the answer of Question no I the last word "corredthess" be corrected as "correctness".
- Page 43- In the sixth line from the top the word "oranted" be read as the word "granted" and in the last line of same paragraph the word "you" be read as "You". On the same page in part (b) of the question sent by Shri Camil Xalxo in the second line the word "could out" be corrected as "could not", and in second line of the Answer of the said question the word "detais" be read as "details".

 (25-5-98)

VOL. I

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JOTI JOURNAL

JUDICIAL OFFICERS' TRAINING INSTITUTE

HIGH COURT OF MADHYA PRADESH
JABALPUR-482 007

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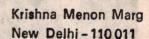
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MESSAGE

A. M. Ahmadi Chief Justice of India

Learning is a continuous process, particularly in the field of law, which is ever growing. No one can claim to know enough. Of late we have laid stress on formal training to our judicial officers with a view to improving the judicial administration both qualitatively and quantitatively. In course of imparting such training the Judicial Officers Training Institute, Madhya Pradesh has thought it necessary to publish a periodical.

J. O. T. I. Journal will be unique, in that, it will cater specifically to the need of judicial officers of Madhya Pradesh. It will publish circulars and directions issued by the High Court as well as notes on important decisions of the High Court and the Supreme Court. In addition it will bring out the problems faced by the judicial officers and solutions that may be suggested by them. Care, however, should be taken to ensure that it has an institutional flavour and does not tend to become a grievance ventilating instrument.

This may prove to be the first important step in the direction of involving judicial officers in improving the system of judicial administration and court management. I congratulate the Judicial Officers Training Institute, Madhya Pradesh and High Court of Madhya Pradesh on the occasion of publication of the maiden number of J. O. T. I. Journal. I am sure the Journal will provide both appetite and food for thought to the judicial officers as well as to the faculty of the Institute. I wish the Journal all success.

New Delhi, September 18, 1995 CHIEF JUSTICE OF INDIA



Justice U. L. Bhat Chief Justice M. P. High Court

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Learning is a continuous process particularly

A. M. Ahmadi

Chief Justice of India

Judicial Officers Training Institute, Madhya Pradesh, High Court, which commenced its activities barely seventeen months ago has come of age with completion of one round of refresher courses for all Judicial Officers other than District Judges and Registry Officers and of training to newly recruited officers. Publication of Journal is a significant mile-stone in the history of the District Judiciary of the State.

Continuous interaction is necessary for the long term efficasy and utility of the Institute. The Journal, and interaction through the Journal will play an important role in the improvement of the quality and efficiency of the Judges.

The Journal is conceived as a bimonthly publication. With the welcome and encouragement it is bound to receive from all quaters, it should be brought out monthly.

The Institute, the Training Committee of the High Court, the Director and Add. Director deserve bouquets for this initiative. I wish all success to the Journal. I hope it will grow from strength to strength and become integral part of the life of Judges.



Justice A. K. Mathur Administrative Judge swag gaibled signed M. P. High Court of adiastration Administration of beditati to viscessary in law is to reach injustice. In our democratic republic no one is above town

and the Constitution is su SSAGE was intich transcends all harriers. Justice should not so a series and an arriers.

Justice S. K. Dubev

High Court of M. P.

I am happy to know that the Judicial Academy is bringing out the Journal of its own. Indeed it is a commendable attempt. The judicial officers through the articles published in this Journal, will be informed of the new ways and means which are involved for administration of Justice by Higher courts. Survival of the Journal depends upon the quality and standard of the articles.

Therefore, the attempt of the Academy should be to see that the articles should be informative and of certain standard so that the lawyers as well as Judicial officers may be benefitted from these articles,

institute to the george through the process of law and to have an interaction with

I wish a success of this Journal;

Institute, was established and instarted functioning from 17-4-1994,



Justice S. K. Dubey High Court of M. P.

From Chairman's Pen

The occasion of release of the first issue of the Journal of the Judicial Officers Train ng Institute, is yet another step towards the fulfilment of the Institute's objective of imparting training to the Judicial Officers of the State of Madhya Pradesh so as to equip them with the best knowledge of law for imparting justice to the people. Justice according to law is the justice which people holding power of the State, may consider

it necessary or justified to provide. Administration of Justice according to law is to reach injustice. In our democratic republic no one is above law and the Constitution is supreme. Justice is a virtue which transcends all barriers. Justice should not only be done but manifestly appear to have been done. No act of Court should harm anybody.

Looking to the needs of the Society the field of law is fast developing. by legislation and the decisions of the Supreme Court and High Courts in the country. Therefore, with a view that justice is administered to grass root level of the people, even in remote areas, the Courts have been established in the state, which is the biggest in area in the Country, and the Judges of these Courts are dispensing justice. In the State of Madhya Pradesh there are about 950 courts manned by nearly equal number of Judicial Officers of Higher and Lower Judiciary. At some places even means of conveyance are not satisfactory. Their Libraries are not properly equipped. Very often they do not have even latest text books what to say of Law Journals. Thus our Judicial Officers are working according to archaic knowledge of law. Considering the necessities of time which require the Judiciary to develop more and more capabilities to give justice to the people through the process of law and to have an interaction with them, an imperative need was felt to have an Institute for the training of Judicial Officers of the Subordinate Judiciary. That need was fulfilled by assiduous efforts of Shri Justice U. L. Bhat, the Chief Justice of Madhya Pradesh, when this Institute was established and it started functioning fram 17-4-1994.

- 3. The object of the Institute is to equip the subordinate judiciary with best and latest knowledge of law and to impart training to them by arranging refresher courses so that they may dispense justice speedily according to law, and justice should be readily available in the dignified manner to those who reach the temple of justice.
- 4. The Institute conscious with its object is going ahead with the task which it had undertaken. With its sincere initiative to keep the Judges abreast of the existing laws, amendment in the laws and latest decisions of the Supreme Court and the High Courts on the various subjects, so that justice be administered according to law, with due regard to judicial ethics, etiquette and by maintaining the dignity of the Chair, the effort of the Institute is to see that each and every Judicial Officer should be well versed with uptodate knowledge of law with its constant changes. 'Law' as Roscoe Pond says "must be stable but it must not stand still".
- The publication of JOTI JOURNAL is yet another step in the same direction of disseminating knowledge of law to the members of the District Judiciary. The JOURNAL will try to make available to the Judicial fraternity of the State the latest case law on various subjects of common use in the Lower Courts. The directions and circulars issued by the High Court from time to time for the guidance of the Lower Courts shall also be published in the JOURNAL. The Directorate of Training will also attend to the Questions and problems of law which the Judges may like to send to it. Those questions may find place with answers in the JOTI JOURNAL so that any other Judge when faced with similar problem may find it easier to solve.
- 6. No body is perfect in this imperfect world. Knowledge is never fully acquired. So also the process of learning never ends. We cannot claim to have acquired full and perfect knowledge of law but it should be our constant and ceaseless endeavour to make steady progress in the process of learning and attaining perfection in our work and skill as a Judge.

Justice S. K. Dubey Chairman Training Committee

ri justice P. N. S. Chouhan on 30-1-83, when he was

J. O. T. I. - A PROFILE

On 3rd of September 1972 in the neighbouring state of Maharashtra the Institute for Training of Judicial Officers, the first of its kind in the country, was inaugurated at Nagpur. Thereafter on 27-9-72 Jammu and Kashmir High Court started a Judicial Officers Training Institute in the High Court itself at Shrinagar.

The above two Institutes sent letters to probably all the High Courts of the country about their establishment. Such letters were received in our High Court also on 3-10-72 Then this idea sprouted for the first time that we should also have such a training Institute in our State. A sub-committee of two Hon'ble Judges – Hon'ble Shri Justice S. M. N. Raina, and Hon'ble Shri Justice M. L. Malik, submitted a report on 18-2-74 that there should be a training Institute in Madhya Pradesh also on the line of the Training Institute of Nagpur and such training institute should be attached to the High Court at Jabalpur. There was a suggestion from the State Govt that such Judicial Training Institute can be opened as a wing in Lal Bahadur Shastri Institute for Public Administration, Bhopal. The Sub Committee of the Hon'ble Judges was categorical in its view that the Judicial training institute should be independent and should not be in a wing in the State Administrative Academy, Bhopal.

Thereafter, in a meeting of the then Hon'ble Chief Justice Shri Justice P. K. Tare, and the Chief Minister on 1-8-74 it was decided that a Law Wing may be added to the present Institute for Public Administration at Bhopal for imparting Training to the newly appointed Judges of the District Judiciary. But later on the State Govt. and also the State Administrative Academy, Bhopal came out with the proposal that instead of adding any separate Law Wing in the Academy, training to judges can be imparted by Law Faculty of the Academy by inviting guest lecturers. High Court would not agree with such proposal. High Court again resolved that there should be an independent Training Institute for imparting training to the newly appointed Civil Judges, Addl. District Judges and District Judges by direct recruitment and also for conducting refresher courses for the in-service Judges.

Correspondence went on between High Court and the Government for years and decades on the question of opening an institute for Judicial Training. Ultimately Hon'ble Shri Justice P. N. S. Chouhan on 30-11-88, when he was Registrar of the High Court, came out with a firm proposal that now it was high time for the High Court to decide whether it wanted an independent judicial training institute or accepted the Government's proposal of imparting training to

judges in State Administrative Academy. The High Court in its Court Meeting on 22-23 April 1989 resolved that a separate Institute for training of Judicial Officers under the control of High Court be established at Jabalpur and the State Govt. be moved to sanction necessary funds for that purpose.

The State Govt. was immediately apprised of the resolution of the High Court and also of the financial implications involved in it. State Govt. though accepted the proposal of establishing an independent institute for judicial training at Jabalpur under the control of the High Court, but expressed its inability to implement it on financial grounds. It again came out with the proposal that, for the present, at least for an other 2/3 years training of Civil Judges may be arranged in the Administrative Academy Bhopal, thereafter it may be convenient to provide facilities for establishing an independent institute at Jabalpur Matter was again shelved for nearly five years. The establishment of independent Judicial Officers Training Institute in the High Court at Jabalpur appeared to be a mirage only.

On 15th of December 1993 our present Chief Justice Hon'ble Shri Justice U. L. Bhat took over as Chief Justice of M. P. High Court. The absence of any Institute for the training of Judges of District Judiciary in this State caught his attention immediately. In December 1993 itself he directed the Registry to take immediate steps in this matter, and within 15 days from the date of taking over as Chief Justice of M. P. High Court the ordered on 1-1-94 that there must be an indpendent Judicial Training Institute at Jabalpur attached to the High Court and the Govt. may be informed that the matter is urgent and to begin with the Institute may have one Director, one Additional Director, one Administrative Officer, one clerk, one Stenographer, one Driver, one Chowkidar, one Sweeper and four Peons. He also directed the Registrar to talk personally to the Law Secretary and tell him about the urgency of establishing a Judicial Officers Training Institute in the High Court. On 14-1-94 Hon'ble Shri Justice V. K. Agrawal, who was then the Registrar of the High Court, wrote and talked to the then Law Secretary of M. P. Government now a Judge of M. P. High Court Hon'ble Shri Justice N. K. Jain.

Owing to firm demand and relentless efforts of Hon'ble the Chief Justice Shri U. L. Bhat, within less than two and half months Judicial Officers' Training Institute was established and Directorate of Training was formed in the High Court at Jabalpur, by the State Government vide Law and Legislative Affairs Department Order No. F. 17 (E)-2/88/21-B (I), dated 22/23-3-1994. With the start of institutional training of the First Batch of 40 newly appointed Civil Judges Class-II the J. O. T. I. was inaugurated by the Hon'ble Chief Justice Shri

U. L. Bhat at 8 AM on 17-4-1994 within the precincts of the High Court in a Court Hall wherein this Institute is at present working. Hon'ble Shri Justice P. N. S. Chouhan speaking at the occasion very aptly said that it was a day of achievement and fulfilment- a day of "dream come true" and Hon'ble Chief Justice Shri U. L. Bhat the architect of all this.

The Hon'ble the Chief Justice graciously conferred on an humble person like me the rare honour and distinction of becoming the first Director of the J. O. T. I. Shri R. G. Agrawal, now District Judge, Balaghat, was appointed as the first Additional Director. In June 1994 he was replaced by Shri A. K. Awasthy H. J. S., but soon he also went away as the Presiding Judge of the Central Government Industrial Tribunal, Jabalpur. Thereafter Shri B. D. Rathi, H.J.S. was appointed as Additional Director, which post he took over on 31-8-94 and is working as such till date.

The training programme consists of pre-service training for newly appointed Civil Judges Class-II and Judicial Magistrates, and in-service training/refresher course for the Judges of all categories i. e. Civil Judges Class-II/Judicial Magistrates First Class, Civil Judges Class I/Judl. Magistrates First Class, and Addl. Chief Judl. Mrgistrates, and Chief Judl. Magistrates, and also the Judges of M. P. Higher Judicial Service who are not District Judges in-charge of any district. Re-orientation Courses for the District Judges in-charge of districts may also be organised in future but for the present there is no such scheme.

The Directorate of J.O.T.I. has so far organised detailed training Courses for 162 newly appointed Civil judges Class-II and 21 in-service and umconfirmed Civil Judges class-II in four batches, each batch for one month. Thereafter all the in-service Judges of all categories namely Civil Judges Class-II. Class-I./ C. J. M./A. C. J. M. and Additional Judges to the Court of District Judge including those who are on deputation have been called for 9 to 10 days' refresher course The refresher course of the last batch of the Judges of H. J. S. shall be complete on 13-10-95. With that the Directorate will be completing first round of training/refresher course for nearly 870 Judges of the State Lower Judicial Service, and State Higher Judicial Service excluding those who are District Judges in-charge of districts or in that category working on deputation. This uphill target could be achieved only due to the zeal and efforts of the Hon'ble the Chief Justice, and the most valuable contribution made by the distinguished lecturers like the Hon'ble Chief Justice himself and the Hon'ble Judges of the High Court who despite their preoccupation with their heavy judicial work spared time not only on holidays but also on working days in the morning before Court hours and after delivering lecture going straight to the Bench for doing whole day's exacting judicial work. Contribution made by retired Hon'ble Judges and the Hon'ble Chief Justices like Shri Justice G. G. Sohani (Retd. C. J.), Shri Justice B. C. Verma (Retd. C. J.), Shri Justice G. G. Gupta (Retd. C. J.), Shri Justice S. M. N. Raina (Retd. Judge), Shri Justice S. Awasthy (Retd. Judge), and the Senior Advocates of High Court Bar, and the Officers of High Court Registry and the Judges of District Judiciary has not been less significant. The J. O. T. I. is specially obliged to Hon'ble Shri Justice B. C. Verma (Retd. C. J.) who delivered the maximum number of lectures on intricate subjects in almost all training/refresher courses and made the whole programme a grand success.

The J. O. T. I. is now housed in the High Court building and is conducting its activities in a Court Room and its Chamber, and one more small room being used for dual purpose of office work and photocopier operating room. It has no Hostel of its own. The State Rural development Training Institute, Adhartal has been accommodating the Judicial Officers in its Hostel and has been extending all possible co-operation to the J. O. T. I. for which we are grateful. The preparation of Map and Plan for the independent building of J. O. T. I. and its Hostel and Guest House is in progress. Efforts shall be made to have such buildings for the J. O. T. I. soon.

Under the directions of the Hon'ble the Chief Justice the J. O. T. I. has chalked out a novel scheme of imparting camp training to the judges of the District Judiciary by organising 'District Camps' in various District headquarters or big Tahsil headquarters where judges of neighbouring Tahsils may also be called for taking part in the Camp. The First such Camp of the Judges of District Judiciary of Jabalpur was organised on 17-9-95 in the presence of the Hon'ble the Chief Justice and the Hon'ble Chairman and Hon'ble Members of the Training Committee and Hon'ble Judges of the High Court The programme was very successful and the participating Judges found it useful, and interesting We hope to organise such Camps in all District headquarters in future

It shall be the constant endeavour of the J O. T. I to equip the judges of District Judiciary with the best and latest knowledge of law so that their work in the Courts becomes smooth, and proves beneficial to the litigant public, for whom the Courts have been created

I shall be committing a sin if I don't place on record my deepest sense of gratitude to Hon'ble Shri Justice S. K. Tiwari, Judge, Calcutta High Court, who as Registrar (Vigilance) of M. P. High Court, prepared the stage for smooth beginning of the J. O. T. I. by doing arduous ground work, before I was called to take charge as Director.

B. K. Shrivastava

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IMPORTANT JUDGEMENTS OF SUPREME COURT AND M. P. HIGH COURT

1. Whether commitment of cases under NDPS Act is necessary?

No-Supreme Court has in the Case of Supreme Court Legal Aid

Committee-Vs.-Union of India, (1994) 6 SCC 731 held:

2. Whether the benefit of proviso to S. 167 (2) Cr. P. C. is available in cases under NDPS Act.

Yes - The Supreme Court in Union of India-Vs-THAMISHARASI, (1995) 4 SCC 190 has held that:

"Applicability of proviso to S. 167 (2) Cr. P. C. not excluded by any of the provisions of NDPS Act. Person arrested for commission of an offence under NDPS Act can claim release on bail on the expiry of total period specified in proviso to S. 167 Cr. P. C. if complaint is not filed within that period. S. 37 of NDPS Act is not inconsistent with S. 167 (2) Cr. P. C. Sec. 37 (1) (b) of NDPS Act applies only when question of granting bail arises on merits and not when grant of bail is automatic on account of default in filing complaint within the specified period. Limitations on granting of bail specified under S. 37 (1) NDPS Act are in addition to limitations provided under S. 437 Cr P. C. and they do not exclude the applicability of the proviso to S. 167 (2) Cr. P. C."

Note: Full Bench decision of M. P. High Court in Ram Dayal vs Central Narcotic Bureau, 1992 MPLJ page 834 is no longer a good law. 3. Whether the Court should suo motu pass the order for bail under the proviso to S. 167 (2) Cr. P. C.

No-In H. V. Thakur vs. State of Maharashtra, A. I. R. 1994 S. C. 2623 Supreme Court has said:

"S. 167, strictly speaking, is not a provision for 'grant of bail' but deals with the maximum period during which a person accused of an offence may be kept in custody and detention to enable the investigating agency to complete the investigation and file the charge sheet, if necessary in the Court. The proviso to S. 167 (2) of the Code.....therefore creates an indefeasible right in an accused person on account of the 'default' by the investigating agency in the completion of the investigation within the maximum period not impressed with the argument of the learned counsel for the appellant that on expiry of the period during which investigation is required to be completedthe Court must release the accused on bail on its own motion without any application from an accused person, on his offering to furnish hail. In our opinion as an accused is required to make an application if he wishes to be released on bail on account of the 'default' of the investigating/prosecuting agency and once such an application is made the Court should issue a notice to the public prosecutor who may show that the challan has been filed in the Court before the expiry of the prescribed period or even that the prescribed period has actually not expired and, thus resist the grant of bail on the alleged ground of 'default'.

4. Whether the right to be released on bail under the proviso to S. 167 (2) Cr. P. C. is available even after the filing of the challan; No-Supreme Court has in Sanjay Dutt Vs. State (1994) 5 SCC 410=1995 Cr. L. J. 477 held that:

"The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If

that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 Cr. P. C. ceases to apply."

5. Whether the provisions of Section 50 of NDPS Act are mandatory.

Yes-In State of Punjab Vs. Balbir Singh, AIR 1994 S. C. 1872 and Ali Mustafa Abdul Rehman Moosa Vs. State of Kerala (1994) 6 SCC 569, Supreme Court has held i

"It is an imperative requirement on the part of the officer intending to search to inform the person to be searched of his right that if he so chooses, he will be searched in the presence of a gazetted officer or a magistrate. Thus the provisions of S. 50 are mandatory."

"On prior information, the empowered officer or authorised officer while acting under S. 41 (2) or 42 should comply with the provisions of S. 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a gazetted officer or a magistrate as provided thereunder. It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires failure to take him to the gazetted officer or the magistrate would amount to non-compliance of S. 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person opted for such a course or not would be a question of fact.

"If police officer without any prior information as contemplated under the provisions of NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offence as provided under the provisions of Cr. P. C. and when such search is completed and any contraband narcotic drug or psychotropic substance is recovered and search is completed at that stage S. 50 will not be attracted and the question of complying with the requirements thereunder would not arise. But the police officer making the recovery if not empowered under the NDPS Act to make investigation he should inform the police officer who is empowered under the Act to proceed thereafter in accordance with the provisions

of the Act. If he is himself the empowered police officer then from that stage onwards he shall carry out the investigation in accordance with the other provisions of the NDPS Act."

6. Whether the provisions of S.52 and 57 of NDPS Act are mandatory.

Supreme Court in State of Punjab Vs. Balbir Singh (Supra) has held:—

"The provisions of these two Sections contain certain procedural instructions for strict compliance by the officers. But if there is no strict compliance of any of these instructions that by itself cannot render the acts done by these officers null and void and at the most it may affect the probative value of the evidence regarding arrest or search and in some cases it may invalidate such arrest or search. But such violation by itself does not invalidate the trial or the conviction if otherwise there is sufficient material. Therefore, it has to be shown that such non-compliance has caused prejudice and resulted in failure of justice. The officers, however, cannot totally ignore these provisions and if there is no proper explanation for non-compliance or where the officers totally ignore the provisions then that will definitely have an adverse effect on the prosecution case and the courts have to appreciate the evidence and the merits of the case bearing these aspects in view. However, a mere non-compliance or failure to strictly comply by itself will not vitiate the prosecution."

7. Appreciation of Evidence-Solitary Witness-S. 134 Evidence Act. In Marwadi Kishor Parmanand Vs. State of Gujrat (1994) 4 SCC 549 Supreme Court has held:

"Generally speaking oral testimony may be classified into three categories, namely, (1) wholly reliable, (2) wholly unreliable, and (3) neither wholly reliable nor wholly unreliable. So far as first category of proof is concerned, the courts have no difficulty in coming to its conclusion either way, that is to say it may convict or may acquit on the testimony of the single witness, if his testimony is found to be above approach or suspision of interestedness incompetence or subordination. In the case of second category of the witness the court has equally no difficulty in coming to the conclusion. But in the third category of cases, the Court has to be circumspect and has to look for

coroboration in material particulars by reliable testimony, direct or circumstantial. Most often there are situations where only a single person is available to give evidence in respect of a disputed fact. Naturally in such a situation the court has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspision, it becomes its duty to act upon it."

8. Benami Transactions (Prohibition) Act (45 of 1988), S. 4 and 7 Whether retrospective in operation.

Supreme Court in a recent judgement in R. Rajagopal Reddy Vs. Padmini Chandrasekharan 1995 MPLJP. 402= (1995) 2 SCC 630 overruling its earlier judgement in Mithilesh Kumari Vs. Prem

Behari Khare, A. I. R. 1989 S. C. 1247 has held that:

"Division Bench erred in taking the view that Section 4 (1) of the Act could be pressed in service in connection with suits filed prior to coming into operation of that section Similarly the view that under Section 4 (2) in all suits filed by persons in whose names properties are held no defence can be allowed at any future stage of the proceedings that the properties are held benami, cannot be sustained. Section 4 (2) will have a limited operation even in cases of pending suits after Section 4 (2) came into force if such defences are not already allowed earlier. It must, therefore, be held, with respect, that the decision of this Court in Mithilesh Kumari's case does not lay down correct law so far as the applicability of Section 4 (1) and Section 4 (2) to the extent hereinabove indicated, to pending proceedings when these sections came into force, is concerned."

- 9. Conflicting decisions of Supreme Court-which is to be followed as precedent
 - (i) In C. S. T. Vs Pine Chemicals Ltd. (1995) 1 SCC 58
 Supreme Court held that decision of a Bench is binding as precedent
 on a subsequent coordinate Bench, and accordingly Supreme Court
 followed the view of earlier co-ordinate Bench.
 - (ii) In Indian Oil Corporation Ltd. Vs. Municipal CorporationA. I. R. 1995 S. C. P. 1480

Supreme Court held that not only the High Court but even a later co-equal Bench of Supreme Court is bound by the earlier decision of co-equal Bench.

By this judgement Supreme Court overruled a Division Bench Judgement of M. P. High Court in Municipal Corporation Indore Vs. Smt. Ratnapbraha, 1989 JLJ 15=1989 MPLJ 20 wherein it was held that when there is a direct conflict between the decisions of Supreme Court more accurate and elaborate judgement is binding, date of rendering judgement is not a guiding principles.

- (iii) In Balkishan Vs State of Madhya Pradesh, 1994 MPLJ p. 381, The High Court by placing reliance on AIR 1974 S.C. 1596, AIR 1976 SC 2433 and AIR 1976 SC 2547 has held that when there are two conflicting decisions of Supreme Court, decision by larger Bench should be followed.
- 10. Judgement and Orders of Supreme Court and the High Court by which permission is granted for composition of non-compoundable offence whether binding as precedent on subordinate courts?
 - (i) In Union Carbide Corporation Vs. Union of India AIR 1992 SC 248 Supreme Court held that prohibitions or limitations or provisions contained in ordinary Laws cannot. ipso facto, act as prohibitions or limitations on the constitutional power under Article 142. The power of Supreme Court under Article 142 in so far as quashing of criminal proceeding is concerned is not exhausted by sections 320 or 321 Cr. P. C. Supreme Court for doing complete justice in any case can pass suitable orders under Article 142 of the Constitution and no prohibitions contained in ordinary law will affect the constitutional powers of Supreme Court.

The Supreme Court in exercise of its powers under Article 142 permitted composition of the offence under section 307 I. P. C. in Mahesh Chandra Vs. State, AIR 1988 SC 2111. Relying on that decision a Single Berch of M. P. High Court in Natthu Khan Vs. State 1995 (1) MPWN 234 permitted composition of a non-compoundable offence. Whether such judgements are binding as precedent was the point for consideration by the Hon'ble the Chief Justice in Criminal Appeal No. 15 of 1993, State of M. P. Vs. Saud and others. His Lordship in his judgement dated 14-8-95 held that:

"In Mahesh Chand's case (A. I, R. 1988 S. C. 2111) the Supreme Court as a matter of fact accorded permission to compound the offence punishable under Section 307 I. P. C. The fact that Supreme Court has done so is no reason to hold that the High Court has jurisdiction to do so. Supreme Court may have plenary jurisdiction to pass such orders as are deemed fit in the interest of justice.

"The Constitution has by Art. 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter before it", which authority the High Court does not enjoy. The jurisdiction of the High Court is circumscribed by the limitations discussed, cannot transgress the limits on the basis of whims or subjective sense of justice varying from judge to judge.

"The jurisdiction of the High Court is invoked under the provisions of Code of Criminal Procedure either in appeal or revision and the restriction imposed on the power Criminal Court in the matter of granting permission to compound is as much applicable to the Courts of Magistrate and the Court of Session as to the High Court. To say that the Supreme Court in a given case adopted a particular course of action is one thing, to say that the High Court or even an inferior Criminal Court can do whatever the Supreme Court did is quite a different thing. The jurisdiction of the High Court should be traced to some provisions of the Code of Criminal Procedure. Under the scheme of S. 320 no person has a right to compound any offence not specifically mentioned therein. I am, therefore, unable to consider the decision of the learned Single Judge in Natthu Khan's case laying down a binding precedent."

11. Whether the accused is entitled to be released on bail under the Proviso to S. 167 (2) Cr. P. C. on the ground that the copies of challan and papers have not been supplied to him within 90/60 days of arrest even though the challan is filed within the said period?

A Division Bench of M. P. High Court (consisting of Hon'ble Shri U. L. Bhat, C. J., and Hon'ble Shri Rajeev Gupta, J) in Misc. Criminal Case No. 2766 of 1994, Mohan Singh and 3 others vs. State of M. P. decided on 10-12-94 has held:

"Mere non supply of the copy of the charge sheet and other documents annexed with it under the provisions of Section 207 of the Code of Criminal procedure within 60/90 days of the arrest of the accused will not entitle him to be released on bail when the charge sheet has been filed within the prescribed period of 60/90 days."

The Division Bench by its above order has overruled Dodha Vs. State 1992 (II) M. P. W. N. 76, and Vimla Naidu Vs. State, 1993 Current Criminal Reports 2602, and explained 1988 JLJ 444.

The Division Bench has also held: "that recommittal orders can be validly passed by the Magistrate even in the absence of the prisoners of the case" when they are not produced from jail before the Magistrate.

12. Whether commitment of a Case to the Special Court under the Scheduled Caste and Scheduled Tribe (Prevention of Arocity) Act, 1989 is necessary? Whether the Special Court constituted under the Act is a Court of original jurisdiction?

The Full Bench of M. P. High Court (consisting of Hon'ble Shri U. L. Bhat, C. J., Hon'ble Shri A. K. Mathur J., and Hon'ble Shri S. K. Dubey, J.) in Cr. Rev. No. 69 of 1994, Anand Swaroop Tiwari Vs. Ramratan Jatav and two others, decided on 23-8-95 has laid down the law as under:

- (i) Special Courts under the Act are not to function as Sessions Courts, but as Courts of original jurisdiction.
 - (ii) Proceedings of Special Court are governed by Section 190, Chapters XV,XVI (other than S 209) as also Chapters X'X,XX as the case may be and such other provisions of the Code as are not inconsistent with the Scheme and provisions of the Act, reading "Special Courts" wherever the expression "Magi trate" occurs.
 - (iii) Section 193 of the Code of Criminal Procedure does not apply to proceedings under the Act and committal orders are not required.
 - (iv) Special Courts can take cognizance on private complaints after following the procedure provided in the Code in relation to private complaints.
 - (v) Where cognizance has already been taken on the basis of committal order in Police challan case it is not necessary for the courts to retrace their steps to take cognizance afresh.

(vi) Where cognizance has already been taken on the basis of committal orders in private complaint cases, the Special Courts may deal with the cases as if they are dealing with private complaint cases under section 200 of the Code.

The Full Bench has approved of the Single Bench decision in Sukhlal Jatav Vs. State of M. P., 1993 J. L. J. 679, and has overruled the Division Bench decision in Meera Bai Vs. Bhujbal 1995 Cr. L.J. 2376.

13. Whether the trial of a case under S. 16 (1) of the P. F. A. Act will be vitiated if it is not tried in a summary manner but is tried as a regular warrant case?

A Division Bench of Madhya Pradesh High Court in Cr. Rev. No. 236 of 1994 and Cr. Rev. No. 629 of 1994 decided on 3-1-95 has held:

"The trial of an offence under the Prevention of Food Adulteration Act, 1954 not in a summary way but following the procedure prescribed for trial of a warrant case and without passing an order as contemplated in the Proviso to Section 16-A of the Act, is a curable irregularity and the trial is not vitiated, if the accound does not satisfy the Court that there has been failure of justice or prejudice caused to him."

14. Whether delay in launching prosecution under the P. F. A. Act causes prjudice to the accused and frustrates his right to get the sample examined by the Director, Central Food Laboratory in as much as the sample gets decomposed?

A Division Bench of M. P. High Court in Cr. Rev. No. 468 of 1993 Govinda Prasad Vs. State of M. P. and another, decided on 7-9-95 has held:

"The decision on the question whether right of the accused has been denied and he has been prejudiced in his detence is not a matter of presumption or assumption, and there must be material to show that the sample would not have remained fit for analysis by the time the accused is served in the case and to show that decomposition is traceable to lapse of time occuring on account of laches of the prosecution, either in filling complaint or otherwise and not due to other reasons.

"The fact that in certain other case either on the basis of evidence adduced in such case or on the basis of other material, Courts have arrived at findings of fact that the sample had become decomposed by the time prosecution was launched or the accused was served in the case is no ground to hold that in every case, the same result would follow. The doctrine of precedents applies to principles of law laid down by Courts and not to finding of fact arrived at by the Courts. Findings of fact may become conclusive on the principles of res judicata or the doctrine of issue estoppel. The finding of fact arrived at by the Supreme Court in Ghasiram's case (A. I. R. 1967 S. C. 970) is not applicable to other cases which are not inter parties. Art. 141 of the Constitution renders the law declared by the Supreme Court to be binding on Courts in India. The principles of law declared in Ghasiram's case (A. I. R. 1967 S. C. 970) has been explained by Larger Benches of the Supreme Court in latter cases (Babulal Hargovind's case A. I. R. 1971 S. C. 1277, and Ajitprasad Ramkishan's case A. I. R. 1972 S. C. 1631) and we are bound to follow the law declared by the later case. Since the revision petitioner did not invoke his right under section 13 (2) of the Act and did not examine the Public Analyst to show that part of sample of milk in the case would necessarily have become unfit for analysis by the time summons was served on him and did not adduce evidence to that effect, it cannot be said that the part of the sample would have become decomposed and that it was futile for him to invoke his right u/s 13 (2) or that it could be presumed or assumed under the circumstances that he has been prejudiced in his defence." committed of the case to the Sessions Court or even at a

Note:-State of M. P. Vs. Ms. Deola, 1970 MPLJ SN 47, and State of M. P. vs. Tulsiram 1970 MPLJ 177 have been deen declared to be no longer good law.

15. Whether any person apprehending arrest may surrender in the Court and apply for being remanded to judicial custody or for being released on bail and whether the Courts can remand such accused to judicial custody or release him on bail without seeing Case Diary, and when so requested by police remand him to police custody also?

Yes.-Kinnly see Directorate of Enforcement Vs. Deepak Mahajan, A. I. R. 1994 S. C. 1775, and Surendra Kumar Vs. State of M. P. 947, and C. B. I. Special Investigation Cell, New Delhi Vs Anupam J. Kulkarni, A. I. R. 1992 S. C. 1768, and Kosanapu Ramreddy Vs. State of A. P. A. I. R. 1994 S. C. 1447.

16. Whether the Court can pass an interim order in an application under Section 438 Cr. P. C. restraining arrest, and whether anticipatory bail application is maintainable after the Magistrate has issued a warrant of arrest against the accused?

Delivering judgment on behalf of the Full Bench of M. P. High Court Hon'ble the Chief Justice in Nirbhaya Singh Vs. State of M. P. 1995 MPLJ 296 has held:

- (i) Section 438 of the Criminal Procedure Code speaks of a person having reason to believe that he may be arrested on an 'accusation', There may be an accusation even before a case, is registered by police. After registration of the case filing of the charge sheet, or filing of the complaint or taking cognizance or issuance of warrant, the accusation shall not cease to be an accusation. An application under section 438 will be maintainable even after the Magistrate has issued process under section 204 or at the stage of committal of the case to the Sessions Court or even at a subsequent stage, if circumstances justify the invocation of the provision.
- (ii) Where an order of anticipatory bail is passed after issue of non-bailable warrant of arrest by a Magistrate, the duty of the police officer entrusted with execution of the warrant would be to arrest the person and produce him before the Magistrate who thereupon shall deal with the accused as required by the order of anticipatory bail.
- (iii) In an application under section 438 Cr. P. C. the Court cannot pass an interim order restraining arrest. The same view was held by a Division Bench in Surendra Kumar Vs. State of M. P. 1994 MPLJ 947 which is affirmed.

17. Whether a non-confessional report lodged by the accused can be used against him? If so, in what manner?

A Division Bench of M. P. High Court in Hakim Singh Vs. State of M. P. 1994 MPLJ 306 has held:

"A non-confessional report lodged by accused may in the case in which he figures as a complainant attract only the provisions of law of evidence as to corroboration and contradiction and may be no more admissible than a former statement of a witness, yet in the case in which he figures as an accused, it is admissible against him as admission under section 21 of the Evidence Act The bar under section 162 Criminal Procedure Code or section 25 of the Evidence Act would not apply to it. while using the material as admission against the accused it is open to dissect it and accept a part or parts of it relating to distinct matter or matters even while rejecting the other part on the ground of inherent improbability."

18 TRIAL OF CROSS CASES.

In the above meditioned case of Hakim Singh 1994 MPLJ 306 it has been laid down that:

"Where cross-cases arise out of the same incident it is always desirable in the interest of justice that both the cases should be heard one after the other by the same Judge and judgements should be delivered simultaneously after the completion of trial of both the cases to avoid conflicting findings, though each case should be decided on the evidence led in each case"

- 19. Whether chemical examination is essential in cases under section 34 M. P. Excise Act.
 - (i) Kalloo Khan Vs. State of Madhya Pradesh, 1980 JLJ 509

"In order to determine whether a particular liquid is liquor or not it is not absolutely necessary to get it tested chemically and it is really for the Courts of fact to decide whether upon a consideration of the totality of the facts in a case it has been satisfactorily established that the objects recovered from the possession of the accused was liquor of prohibited strength AIR 1974 SC 639 relied on.

(ii) SukhlalRamlal Gond Vs. State of Madhya Pradesh 1995 MPLJ p. 266

"Chemical examination could produce foolproof or cast-iron evidence as to whether the liquid analysed is liquor or not. But that is not the only manner in which the identity of the liquid can be proved. It can be proved by persons having expertise in the field. It is not desirable to lay down an inflexible rule in regard to proof of questions of fact. The Court of fact can in appropriate cases rely on the evidence of an expert who identified articles by applying smell test or litmus test.

20. Whether a compromise petition under order 23 Rule 3 C. P. C. has to be necessarily signed by the parties.

In Byram Pestonji Gariwala Vs. Union Bank of India, AIR 1991 SC 2234

It was held that the word "signed by the parties" includes counsel and agent of party. Counsel's power to enter into compromise not curtailed even impliedly by 1976 C. P. C. amendment.

But the Bench deciding the above case did not take notice of an earlier judgement of co-equal Bench in Gurpreet Singh Vs. Chaturbhuj Goel, AIR 1988 S. C. 400 in which it was clearly laid down that "under rule 3 as it now stands when a claim in suit has been adjusted wholly are in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with.

An other co-equal Bench of Supreme Court in Banwarilal Vs. Chando Devi, AIR 1993 SC 1139 noticed the conflict of opinion in the above mentioned two decisions of co-equal Benches and preferred to follow the earlier view as expressed in Gurpreet Singh Vs. Chatur Bhuj Goel AIR 1988 SC 400 and held that the petition of compromise which was not signed by the parties should not have been recorded.

21. What shall be annual value of any building for the purposes of determining property tax under the M. P. municipal Corporation Act?

In Misc Petition No. 3244/90 Municipal Corporation Vs. Hindustan Petroleum Corporation Ltd. Bhopal, (decided on 28-9-94) Hon'ble Shri Justice A. K. Mathur speaking for the full Bench of M. P. High Court dealing with the provisions of Sec. 138 (b) of M. P. Municipal Corporation Act, declared the law as under.

In view of the decisions of the Hon'ble Supreme Court in Indore Municipality Vs. Ratnaprabha AIR 1977 S. C. 308, Devan Daulat Rai Kapoor Vs. New Delhi Municipality AIR 1980 SC 541 and Morvi Municipality Vs. State of Gujrat AIR 1993 SC1508, the provisions of Section 7 and 10 of the M. P. Accommodation Control Act, 1961 will not be applicable for determination of rental value, and it will be determined under the Municipal Corporation Act. The view taken in the case of Municipal Corporation, Indore Vs. Ratnaprabha, 1989 MPLJ 20 does not lay down the correct law.

Note: This full Bench decision, unfortunately remained unreported, but it has been upheld by the Supreme Court in Indian Oil Corporation Ltd. Vs. Municipal Corporation AIR 1995 S. C. 1480.

22. Grant of maintenance-pendente lite-under section 24 of the Hindu Marriage Act, 1955-factors to be taken in consideration.

In a recent judgement in Archana Vs. Yogendra Tiwari, 1994 MPLJ 285 Hon'ble Shri Justice R. P. Awasthy has held:

"It is a settled principle of law that there is no hard and fast rule for allowing one-fifth or one-fourth or one-third of the income of the husband as maintenance allowance. In this regard, the present section on the subject of alimony must necessarily turn on the circumstances of each case and no fixed rules can be expected on the question. Therefore, neither the minimum nor the maximum in terms of percentage can be fixed for the maintenance allowance under section 24 of the Act. This section does not stipulate

anything about the standard to be maintained by either of the parties that the wife must be maintained at the same standard as the husband or vice versa. Nevertheless, it has also to be considered that while awarding alimony under sec. 24 of the Hindu Marriage Act, the Court must keep in view that one cannot live like a princess and the other like a lord and the other like a maid nor one can live like a servant. There must be some balance. It cannot be that while one lives in penury the other lives in grand style."

23. Is it necessary to first follow the requirement of section 23(2) of Hindu Marriage Act, 1955 for reconciliation before passing an order of interim maintenance u/s 24 of the said Act.

A Division Bench of M. P. High Court in Dharmendra Kumar Vs. Pushpa Devi - 1995 MPLJ 555 has held a

"A proceeding under section 24 of the Hindu Marriage Act is of summary nature and the scope of the enquiry is limited. The end sought to be achieved is the removal of the disability of the party without sufficient income. The words "relief under this Act" in section 24 of the Hindu Marriage Act can be understood only in the light of the scheme and purpose of the Act. The reliefs under the Act, as used in section 23 (2) of the Act, of restitution of conjugal rights, judicial separation, and divorce are substantive reliefs which can be secured by the aggrieved spouse who approaches the Court or by respondent under section 23-A. Section 24 cannot be regarded as controlled by section 23 (2) and section 23 (2) cannot be regarded as applying to the interim relief under section 24. This is not to say that the Court is disabled from attempting rectionciliation before passing an order under section 24 if it appears to the Court that the position of the parties is such that it would be appropriate to attempt reconciliation at that stage. The failure of the court to bring about reconciliation of parties before passing an order under section 24 does not make the order illegal. 1993 (1) MPJR 455, OVERRULED, 1980 (II) MPWN Note 76, Approved." majetenance allowance. In this readd.



fixed rules can be expected on the question. Therefore, neither the minimum

CIRCULARS

HIGH COURT OF MADHYA PRADESH, JABALPUR

MEMORAMBUM

No. I-8-5/79 (Judl.)

Jabalpur, dated the 2nd June, 1979.

Jabalpur, deled the 18th Lebreacy, 1, or

All Sessions Judges in the State.

It is noticed that in some cases wherein Judgments or orders of this Court are certified to Lower Courts as required by Sections 388 and 405 of the Code of Criminal Procedure involving the release of a prisoner from Jail, action has been delayed on receipt of the certificates sent by this Court either due to lapses on the part of the convicting Trial Courts or the concerned jail authorites resulting in un-warranted detention of the accused persons which, is highly objectionable. To remedy this situation, the Hon'ble the Chief Justice is pleased to order for strict compliance as under :—

- 1. Whenever a Supersession warrant is issued to the jail authorities by the convicting trial Courts, copy of the supersession warrant, shall invariably be issued to this Registry at the earlist for information and record.
- 2. All the sessions Judges/Additional Sessions Judges in the State shall maintain a register of the certificate received from the High Court in criminal matters and issuance of supersession warrants pursuant to the certificates received from the High Court or Supreme Court and that they shall send every month latest by 5th a statement of the monthly entries in that Register.

ADDITIONAL REGISTRAR
(JUDICIAL)

"Nobody can be above the institution which he is supposed to serve. He is merely the creature of the institution, he can exist only if the institution exists. To project the individual mightier than the institution would be grave mistake."

A. M. Ahmadi, Chief Justice of India, in
T. N. Sheshan v. Union of India, (1995) 4 SCC 631 para 19

IMMEDIATE

HIGH COURT OF MADHYA PRADESH, JABALPUR

MEMORANDUM

No. A/1837/I-8-5/79

Jabalpur, dated the 18th February, 1981

To.

The District and Sessions Judge, GWALIOR.

Subject:

Maintenance of a register of the certificates issued by the High Court in criminal matters and intimation about issuance of supersession warrants.

It has come to the notice of the High Court that inspite of instructions contained in this Registry Memorandum No. I-8-5/79 (Judl.), dated the 2nd June, 1979 (copy enclosed for ready reference), in certain cases, prompt action was not taken on the certificates sent by the High Court, resulting in unwarranted delay in compliance of the orders.

I am, therefore, to request you that the instructions contained in this Regis'ry Memorandum dated 2-6-1979, referred to above, may please be followed strictly. Any breach thereof, in future, would be viewed seriously.

The position above may please also be brought to the notice of the Chief Judicial Magistrate/Additional Chief Judicial Magistrate/other Judicial Magistrates and their court-clerks, for their note and strict compliance.

(Sd/-N. K. SINGH)
REGISTRAR

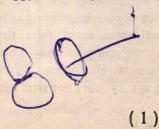
"The 'sacred cows' of shadowy doubts and marginal mistakes, processual or other, cannot deter the Court from punishing crime where it has been sensibly and substantially brought home."

Justice Krishna Iyer in Narotam Singh V. State of Punjab, A. I. R. 1978 SC 1542

EDITORIAL

With the publication of the first issue of 'JOTI JOURNAL' we entered into a new era of disseminating knowledge of law and providing material of permanent value to the Judges of the District Judiciary in their day to day work of dispensation of justice to the people of the State. The utility of the Journal has been acknowledged by all concerned. The appreciation which the first issue earned from the Judges has encouraged us and we are, despite our all pre occupations, coming with the second issue of the Journal within the scheduled time of two months. The Hon'ble Chairman of the Training Committee had in his message conveyed to the Judges that the Directorate of Training will also attend to the questions and problems of law which Judges may like to send to it and answers of those questions shall find place in the 'JOTI JOURNAL'. so that any other Judge when faced with similar problems may find it easy to solve. It appears that the said message has not gone home upon the Judges because the Directorate of Training has not received any question or any legal problem from any of the Judges of the State. It is unbelievable that Judges are not faced with legal problems. Of course, the Directorate of Training shall be happy if the silence of Judges is indicative of the fact that either they have no problems or are capable of solving their own problems. Occassions are not infrequent when I get the previlege of meeting the Judges of Jabahpur District Judiciary and of other Districts, and in almost all meetings I have found that every Judge was having some problem on some point of law which has been my pleasure to discuss with them and find out satisfactory solution, I shall be very happy if the learned Judges send their questions and problems in writing to me which I may be able to solve and those questions with their answers will become a valuable printing material for the subsequent issues of the 'JOTI JOURNAL'

Placing the second issue of the 'JOTI JOURNAL' in the hands of its esteemed readers. I personally and the Directorate of Training as a whole wish them all a very Happy and Prosperous New year.



B. K. Shrivastava Director

IMPROTANT JUDGMENTS OF SUPREME COURT AND M.P. HIGH COURT

- 1. Whether a Magistrate u/s 190 Cr. P. C. and Court of Session u/s 193 Cr. P. C. can summon any person as accused in any case without recording evidence u/s 319 of the code
 - (i) The M. P. High Court in Atibal Singh Vs. State of M. P. 1992 JLJ 277-has held:

"Under Section 190 of the Code, the concerned Magistrate on receiving a police report takes judicial notice of the allegation of commission of offence with a view to taking some kind of action provided in the Code to bring the offender to justice. Taking cognizance is a judicial act necessarily implying application of mind to ascertain from the papers of the police report as to what offence, if any, appears to have been committed and if so, by whom and whether or not the offence is triable exclusively by the Court of Session and on such application of mind, if the Magistrate discovers from the material contained in the police papers that apart from the accused as named by the police any person is alleged to have committed offence, he is supposed to take action to bring such offender also to justice. Such power of the Magistrate is incidental to taking cognizance of any offence under Sec. 190 of the Code and not to Sec. 319 of the Code, and can be exercised before committing the case to the Court of Session under Sec. 209 of the Code for trial of all the accused persons.

- (ii) The Supreme Court in Kishan Singh Vs. State of Bihar 1993
- (2) SCC 16, and Mahabir Biswas Vs. State of W. B. (1995) 2 SCC 23-has held:
- A: The sweep of Section 319 is limited, in that, it is an enabling provision which covers the postcognizance stage where in the course of an inquiry or trial the involvement or complicity of a person or persons not named by the investigating agency has surfaced which necessitates the exercise of the discretionary power conferred by the said provision. This may happen not merely in cases where despite the name of a person figuring in the course of investigation the investigating agency does not send him up for trial but

even in cases where the complicity of such a person comes to light for the first time in the course of evidence recorded at the enquiry or trial.

- B: On a plain reading of Section 193, as it presently stands, once the case is committed under Sec. 209 to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted thereby investing the court of Session with complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on recoro.
 - (iii) M.P. High Court also in Abdul Karim Khan Vs. State of M.P. 1995 MPLJ 620, has held:

On Magistrate committing the case under Section 209 to the Court of Session it has full jurisdiction to summon any individual accused of the crime. The bar under Section 193 in such case stands removed.

2. Whether the Court can examine the Counsel for the accused u/s 313 Cr. P. C. in a warrant case instead of examining the accused personally?

The Supreme Court in Usha K. Pillai Vs. Raj K. Srinivas A. I. R. 1993 SC 2090 has hele:

In a summons case where the Court has dispensed with the personal attendance of the accused it would be open to the Court to dispense with the examination of the accused under Cl. (b) of Sec. 313 of the Code. But in a warrant case even in cases where the Court has dispensed with the personal attendance of the accused under Sec. 205 (1) or Sec. 317 of the Code, the Court cannot dispense with the examination of the accused under Cl. (b) of Sec. 313 of the Code because such examination is mandatory. If the accused is a company or a juridical person it may be open to examine the person conversant with the facts of the case. It would thus appear that the mandate of Sec. 313 (1) (b) demands that the accused person, if not a company or other juridical person, must be personally examined to explain the incriminating circumstances appearing against him in the prosecution evidence and the examination of his lawyer would not be sufficient combpiance with the mandate of said provision.

The Supreme Court in Chandulal Chandrakar Vs. Pooranmal, AIR 1988 SC 2163, had permitted the accused to be examined through Counsel under Section 313 Cr. P. C. but that order was passed on the concession made on behalf of the accused that he will not challenge the final order of the court on the ground that he was not examined personally. That order of the Supreme Court since passed on the concession of the parties does not have the force of a precedent under Art. 141 of the Constitution. Kindly see in this behalf the view of Supreme Court in Laxmi Shanker Vs. State AIR 1979 SC 451.

3. Whether an accused can be exempted from personal appearance in any criminal case from the very begining?

According to Section 205 of the Code of Criminal Procedure whenever a Magistrate issues a summons he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader and the Magistrate in his discretion at any stage of the proceedings direct the personal attendance of the accused and if necessary enforce such attendance by coercive process. If the Magistrate has, instead of issuing a summons, issued a warrant of arrest he may not exempt the accused from personal appearance under Section 205, though there are certain contrary views also, yet Section 205 alone is not repository of the entire powers of the Court. Section 317 of the Code does give power to the court to exempt any accused from personal appearance in the Court for reason to be recorded. While granting exemption from personal appearance, the Court must keep the status and the nature of duties of the accused in consideration. The Hon'ble High Court of M. P. in Dr. A. G. Sharma Vs. Muzaffar Hussain 1978 (II) MPWN 137, where the accused was a doctor and had sought exemption from personal appearance under Section 205, observed that while considering such applications the status and the duties of the accused are necessary factors to be considered.

The process of Court is not meant to wreak vengeance upon any body. It's main aim is to achieve justice. If the accused is a Government Servant, and occupies a responsible post where he has to discharge important duties, he may be exempted from personal appearance since the very beginning of the case and may be required to appear in the Court in person whenever it is necessary for the trial of the case.

Charge can be framed against the accused in his absence and his defence plea can be recorded through his counsel, as has been held by Hon 'ble M. P. High Court in Shri Kishan Vs. State of M.P., 1991 JLJ 38-1991 MPLJ 85.

4. Whether evidence can be taken in the course of trial of any case, in the absence of accused? What will be the position when the accused is in judicial custody and is not produced from jail?

Section 273 of the Cr. P.C. lays down that all evidence taken in course of trial shall be taken in the presence of the accused or when his attendance is dispensed with in the presence of his pleader. So where the accused is not personally present in Court and he has been exempted from personal appearance under Section 205 or Sec 317 or Sec. 273 Cr. P.C. the evidence can be recorded in his absence. The position is slightly different in the case of an accused who is an under trial prisoner and is detained in jail and the desence counsel consents to the taking of evidence in the absence of the accused, such consent will not validate the trial and such taking of evidence will not be in accordance with Section 273 of the Cr. P.C. A Division Bench of M.P. High Court in a very recent judgment in a State of M.P. Vs. Budhram, 1995 MPLJ 906 has held that where the accused was not produced from iail and there was no prayer by the accused himself that the evidence may be recorded in his absence, the Court could not record the evidences of witnesses in his absence on the request of the defence counsel. If on such evidence the accused is convicted the whole trial is vitiated, and conviction is liable to set aside, and the case has to be remanded back to the trial court for examining those witnesses afresh.

Note: - The above mentioned Judgment is being published in this JOURNAL also.

5. Whether a Magistrate can grant provisional bail despite the rejection of earlier bail applications by the Supreme Court or the High Court?

No. The Supreme Court in Vimala Devi Vs. State of Bihar (1994) 2 SCC, Page 8 has held that where two bail applications of the accused were successively rejected by the High Court yet the Judicial Magistrate granted provisional bail, it is a disturbing feature, The Course adopted by the Magistrate is not only contrary to settled principles of

judicial discipline and propriety but also contrary to the statutory provisions laid down by the Supreme Court in Shahzad Khan Vs. Ishtiyaq Khan A. I. R. 1987 SC 1613. The Supreme Court directed that the Chief Justice of Patna High Court should take such action against the Magistrate on the administrative side as may be deemed fit by him.

6. Whether a Criminal Appeal filed u/s 374, Cr. P.C. can be dismissed in default of appearance of the appellant or his conusel?

No. In the case of Shyam Deo Vs. State of Bihar A.I.R. 1971 SC 1606 the Supreme Court said that in a criminal appeal it is duty of the Court to go through the records irrespective of the fact whether the appellant appears or does not appear, if he appears he is bound to be heard, if not, the record should be persued and the appeal disposed of on the merits. Though a civil appeal where the appellant did not appear may be dismissed in default of appearance, under the provisions of Order 41 C.P.C., and the appellate court is not bound to decide the appeal on merits as held by the Supreme Court in Sukhpal Singh Vs. Kalyan Singh A.I.R. 1963 SC 146, but the powers of the Civil Court under the provisions of Order 41 are distinguishable from that of the Criminal Court under the provisions of Section 386 of the Cr. P. C. A criminal appeal cannot be dismissed in default.

The Supreme Court reiterated the same view in Khaili Vs. State of U.P. 1981 (Suppl.) Supreme Court Cases 75 and also in Kabira Vs. State of U.P. 1981 (suppl.) Supreme Court Cases, 76, and held that in a criminal appeal where the appelant or his counsel do not appear the Court should not dismiss the appeal merely on such non-appearance and instead should appoint an advocate as Amicus Quriae and then proceed to dispose of the appeal on merits. In Parasuram patel Vs. State of Orissa 1994 (II) M.P.W.N. 136 the Supreme Court has very clearly held that criminal appeal cannot be dismissed in default of appearance and it should be decided on merits even in the absence of appellant or his counsel, M.P. High Court also has, in Dhanapati Vs the State of M.P. 1994 (II) M.P.W.N 195, held that a criminal appeal against conviction cannot be dismissed in default of appearance.

In Ramnaresh Yadav Vs. State of Bihar AIR 1987 Supreme Court 1500 the Supreme Court has although expressed the view that a criminal appeal filled against conviction can be dismissed for non-prosecution but the appeal cannot be dismissed on merits unless the accused or his counsel are heard. The Supreme Court hos also said that the Court can dismiss the appeal for non-prosecution and enforce discipline but the matter can be disposed on merits only after hearing the appellant or his counsel. The Court might still appoint a counsel at State cost to argue on behalf of the appellant. Relying on this case of the Supreme Court a Singhe Bench of M. P. High Court had dismissed the Criminal Appeal No. 117 of 1986 Mangilal Vs. State of M. P. in default of appearance of the accused or his counsel. In appeal against that Order of M. P. High Court, the Supreme Court in Mangilal Vs. State of M. P. (1994) 4 Supreme Court cases 564, held that dismissal of the accused or his counsel is not proper. The Supreme Court set aside the Order of dismissal of appeal and remanded the aopeal to the High Court for hearing and disposal according to law.

Thus the consistent view of the Supreme Court and also of High Court of M. P. is to the effect that a Criminal appeal filed under Section 374 of the Cr. P. C. against the order of conviction cannot be dismissed in default of appearance of the appellant or his counsel. The Appellate Court should appoint a counsel at State cost or an Amicus Curiae and hear the appeal and decide the same on merits.

The question may arises as to whether a criminal appeal under Section 374 Cr. P. C, which has been dismissed in default of appearance, can be restored for rehearing? The answer is very simple. Because there is no provision in the Cr. P.C. for the dismissal of an appeal in default of appearance, therefore the appeal can be said to be validily disposed of only when it has been decided on merits. As such the appeal should be restored for rehearing. But the question may be different when the Judge while dismissing the appeal against conviction in default of appearance also expresses his view on the merits of appeal and mentions, even though cryptically, that the appeal has no merits. In such circumstances the appeal cannot be restored for hearing because that will amount to reviewing the final judgment of the Court which is specifically barred by Section 362 of the Cr. P. C. In Sankatha Singh Vs. State of U. P. AIR 1962 SC 1208 the Sessions Judge while

dismissing an appeal against conviction in default of appearance of the accused and his counsel also wrote in the order that he had perused the judgment of the learned Magistrate and seen the record and he found no ground for interference. The application for restoration of the appeal was dismissed by Sessions Judge and that order was upheld by the High Court. In appeal, Supreme Court held that the order passed by the Sessions Judge was in the nature of judgment because it finally disposed of the appeal on merits and such judgment or order could not be reviewed in the light of the provisions of the Section 369 Cr. P. C. (Section 362 of the new Cr. P. C.) Therefore the Supreme Court held that the criminal appeal could not be restored for rehearing.

Thus the position of law is that when a criminal appeal against conviction has been dismissed purely in default of appearance without expressing any opinion on the merits of the case, such appeal can be restored for hearing but if, while dismissing the appeal in default of appearance, the judge also expresses his opinion touching the merits of the case that the appeal has no force and there is no ground to interfere with the judgment of the Lower Court, such appeal cannot be restored because of the bar created by Section 362 of the Cr. P.C.

7. Very often the Trial Courts are faced with the problem as to what will be the right of the defendant whose defence has been struck off. under the provisions of Section 13 (6) of MP. Accomodation Control Act, or the defendant who has been deprived of the right to file written statement under Order 8 Rule 10 C.P.C. or the defendant who has not at all filed his written statement under Order 8 Rule 5 sub rule (2) of the C.P.C.?

When the defence against eviction is struck off by the Court under the provisions of the Section 13 (6) of the Accommodation Control Act the effect thereof is that the defendant is precluded from taking benefits of the provisions of the said Act, but defences under the provisions of general law will be available to him. A Division Bench of Madhya Pradesh High Court has taken the same view in Prem Das Vs. Laxmi Narayan, 1964, JLJ 87. The Division Bench has also held that the defendant despite his defence under the Accommodation Control Act having been struck off, shall be entitled to lead evidence in regard to the issues based on the defences other than those available under the Accommodation Control Act.

It has been held by M.P. High Court in number of cases that though the defence of the defendant may be struck off under Section 13 (6) of the Accomodation Control Act still he will have right to cross examine the plaintiff and his witnesses in order to demolish their testimony though he may not be entitled to lead any evidence of his own regarding the defences available to him under the provisions of the Act. Such view was taken in Gurumukh Das Vs. Shaligram 1975, JLJ Short Note 73, Badrilal Vs. Dhool Chand, 1985 MPWN 154.

In a case pertaining to W.B. Premises Tenancy Act 1956, the Supreme Court in Modula India Vs. Kamakshya Singh Deo, AIR 1989, SC 162 held that in eviction suit filed under the said Act if the defence of the tenant has been struck off under Section 17 (3), the tenant will still be entitled to cross examine plaintift's witnesses and address argument on besis of plaintift's case. However when the defendant is afforded the aforesaid right he would not be entitled to lead any evidence on his own nor can his cross examination be permitted to travel beyond the very limited objective of pointing out the falsity or weakness of the plaintiff's case.

In this very case the Supreme Court has also held that where the defendant has either not filed his written statement under Order 8 Rule 5 (2) or where he has been dealed the right of Filing written statement under the provisions of Order 8 Rule 10 C.P.C. he shall still have the right to cross examine the plaintiff and his witnesses who may be examined in the Court.

Recently a Division Bench of M.P. High Caurt in Keval Kumar Sharma Vs. Satish Chndra Gothi 1991, JLJ 86, relying on 1964 JLJ 87 and AIR 1989 SC 162 has held that where the defence against eviction is struck out under Section 13 (6) of M.P. Accomodation Control Act, the tenant can still cross examine witnesses of landlord and can also address the court to point out falsity or weaknesses of plaintiff's case.

Thus the law on the point is very clear that when the defence of the defendant is struck off under Section 13 (6) of M.P. Accommodation Control Act or when he has not filed a written statement or has been deprived of the right of filing written statement under Order 8 Rule 10 C.P.C he can cross examine the plaintiff and his witness in order to touch the falsity and the weakness of their testimonies, but he cannot be permitted to lead any evidence of his own or set up his own case for which there is no pleading.

8. Whether in an eviction suit filed under the M.P. Accommodation Control Act, the defendant, who had denied the title of plaintiff/landlord and thereby created a ground of eviction u/s 12 (1) (c) of the Act, can be permitted to withdraw that denial by amending written statement?

Hon'ble High Court of Madhya pradesh in a recent judgment in Bhagwati Prasad Vs. Ramesh Chand 1994 MPLJ 619 has held that such amendment cannot be allowed. It has further held that the sin which the tenant committed by denying the title of the landlord cannot be wiped out even if the amendment is allowed. Once the tenant has incurred the liability for ejectment under Clause (c) of Section 12 (1) of the Act merely because he chose, to withdraw the denial belatedly the cause of action accrued to the landlord/plaintiff could not be wiped out in the absence of there being a specific provision to that effect in the Act. Navalmal Vs. Laxman Singh 1991 MPLJ 812 and Prabhakaran Nair Vs. State of Tamil Nadu, AIR 1987, SC 2117 referred to.

9. Whether a party in a suit can be permitted to withdraw its admission by amending its pleadings?

In M/s. Modi Spinning and Weaving Mills Co. Ltd. Vs. M/s. Ladharam and Co., A.I.R. 1977 SC, 680a Bench of three Hon'ble Judges of the Supreme Court held that the defendants cannot be allowed to change completely the case made in W S. and substitute an entirely different and new case. But later on in Panchadeo Narain Shrivastava Vs. Jyoti Sahai and Others A. I. R. 1983, SC, 462 a Bench of two Hon'ble Judges of Supreme Court held that admissions can be permitted to be withdrawn by making amendment in the pleadings. A co-equal Bench of Supreme Court has recently reiterated the same view in Akshaya Resta-

rant Vs. P. Anjanappa, A. I. R. 1995, SC 1498 and has held that admissions can be explained away by the parties by making amendment in their pleadings.

The earlier view expressed by larger bench of Supreme Court in Modi Spinning and Weaving Mills Co. (Supra) has not been over ruled. In Mattu Lal Vs. Radhe Lal A. I. R. 1974 SC 1596, Union of India Vs. K. S. Subramanian A. I. R. 1976 SC 2433 and State of U.P. Vs. Ramchandra Trivedi A. I. R. 1976 SC 2547, Supreme Court itself has laid down the law that decission given by larger Bench of Supreme Court should be followed in preference to decisions of smaller Benches. Supreme Court has further declared the law that when there are conflicting decisions of co-ordinate Benches, the earlier decision shall be binding on the subsequent Bench. This View has been propounded in C.S. T. Vs. Pine Chemicals Ltd. (1995) I SCC 58 and Indian Oil Corporation I.td. Vs. Municipal Corporation A. I. R. 1995 SC 1480. Thus the law laid down by the Supreme Court in M/s. Modi Spinning and Weaving Mills Ltd. (Supra) still holds the field and is binding as precedent the ratio of which is that no such amendment can be allowed by which the party seeks to withdraw admissions made by it in its pleadings.

10. Wnether Civil Court has Jurisdiction to entertain suit against the validity of notification under Section 4 and declaration under Section 6 of the Land Acquisition Act and whether the Civil Court can issue temporary injuction against land acquisition proceedings?

A. I. R. 1995, Supreme Court 1955=1995 MPLJ 751 has held that the Land Acquisition Act is complete Code in itself and is meant to serve public purpose, and by necessary implication the power of Civil Court to take cognizance of a suit under Section 9 of CPC stands excluded and Civil Court has no Jurisdiction to go into the question of the validity and legality of land acquisition proceedings. No civil suit is maintainable and no injunction can be granted by the Civil Court in respect of land acquisition proceedings. The remedy available to the agreed party is to approach the High Court under Article 226 of the Constitution.

Cr. Ref. No. 3 of 1995 State of M. P. V. Budhram

JUDGMENT JLJ 1996 Jan. Gust was delivered by: 80

The following Judgment of the Court was delivered by:

- P. N. S. Chouhan, J:-This Judgment shall dispose Cr. A. No. 431/95 (Budhram V. State) as well.
- 2. Additional Sessions Judge, Sakti of Bilaspur Sessions Division, vide judgment, dated 10-3-1995, passed in S. T. No. 41/94 has held Budhram son of Kunkuram Satnami aged 28 Years, resident of Basti Baradwar, P. S. Baradwar, District Bilaspur guilty u/s 302 IPC and sentenced him to death. Cr. Ref. No. 3/95 is reference u/s 366 of the Code of Criminal Procedure made by him for confirmation of the aforesaid sentence of death. Cr. A. No. 431/95 is the appeal preferred by condemned man.
- The prosecution case is that kunkuram first married Heerabai. She gave 3. birth to a daughter Urmila and a son Budhram (the appellant). When Budhram was 3 Years' old and his sister Urmila 5 Years old, Kankuram deserted his wife and children and left towards Allahabad with another woman Ravibai. During the absence of Kankuram his wife Heerabai reared the children and married them. She was living with Budhram in a house constructed on the ancestral lands recorded in the name of Raghuvar, her father-in-law. She was also cultivating the lands recorded in the name of Raghuvar. In or about 1990-91 Kankuram returned back to the village Basti Baradwar alongwith his second wife Ravibai and children begotton by her, namely, Shankarlal, Chatua, Nankua, Juguntabai, and Muliyabai. On his return Kankuram took possession of large part of the house in which Heerabai and Budhram were living. Kankuram also took in possession live stock and also agricultural land and started treating Heerabai with cruelty. He created a situation in which Budhram was forced to leave the house. In or about September, 1993 Budhram was blessed with a daughter, but soon thereafter she died. In the course of funeral functions Kankuram, Ravibai and their children did not participate. All this bred in Budhram the animal's urge of retribution. The allegation is that in the night intervening 25th & 26th of November, 1993. Budhram committed the murder of

his father Kankuram, step mother Ravibai and all their five children aforementioned. On 26-11-93, after day break, Budhram changed his clothes and set out for the police station. On the way he met village Kotwar Patel Das and confessed to him that he had committed the murder of his father, step mother, step brother and step sisters. Patel Das then took Budhram to the Police Station Basti Baradwar and lodged the first information report, Ex P 17, Exs. P-18, P-19, P-20, P-21, P-22, P-23 and P-24 are the Marg intimation recorded in the police station relating the aforesaid murder. Crime was registered and investigation taken up. Exs. P. 26 to P-32 are the inquest proceedings held on the seven dead bodies. All these dead bodies were sent for postmortem examination to the doctor alongwith requisitions, Exs. P. 52 to P-58. Dr. J. Singh (P. W. 9) performed autopsy on the dead bodies of Ravibai, Nankua, Shankarlal and Muliyabai. His reports are Ex. P-8 to P-11 respectively. Dr. J. C. Meshram (P. W. 12) conducted autopsy on the dead bodies of Kankuram, Chatua and Ku. Jugunta vide reports Exs. P. 40 to P-42 respectively. The doctors confirmed that all these deaths were homicidal caused by sharp edged weapon. In case of Ravibai, Shankarlal and Jugunta the trachea was found severed. During the course of investigation the Gandasa was recovered at the instance of appellant and was siezed vide Ex. P. 38. When the trial commenced the accused was not defended by a lawyer. Opportunity was afforded to him to engage a lawyer as he had made a request to the Court in that behalf. Ultimately he engaged a lawyer. During the course of the trial on a number of occasions the accused was not produced before the Court and the trial had to be adjourned. On 31-1-95 the story was repeated and the appellant/accused was not produced before the Court. On that date Bhogilal (P.W. 14), Urmilabai (P.W.-15) Kamlabai (P.W.16) Kiranbaj (P. W. 17) and Nandram (P. W. 18) Awadhesh Kumar (P. W. 19) and Investigating Officer C. P. Jhariya (P. W. 20) were present. The learned counsel representing the accused informed the Court that he had no objection if the witnesses in attendance were examined and, accordingly, the learned Judge recorded the evidence of all these witnesses in absence of the accused. Ultimately, the matter ended in conviction based mainly on the testimony of P. W, 10 Kotwar Patel Das who testified to the extra-judicial confession made by the accused to him.

4. Shri S. C. Datt, Senior Advocate, appearing for the appellant, argued that the trial must be held to be vitiated for violation of section 273 of the Code of Criminal procedure. His submission is that the mandate of law in this behalf is that all the evidence against an accused must be recorded in his presence, barring

the exceptions expressly provided in Code or in any other law for the time being in force. Under section 273 of the Code the accused has a right to request the Court for exempting him from personal appearance and if such request is accepted and the personal attendance of the accused is dispensed with then only evidence may be recorded in presence of the pleader representing the accused. In the instance case, contends the learned counsel, no such request was over made for dispensing with the attendance of the accused on 31-1-1995 Therefore, the pleader representing the accused had no authority to inform the Court that he will have no objection if evidence is recorded in absence of the accused. In such circumstances, recording of evidence of Bhogilal, Urmilabai, Kamlabai, Kiranbai Nandram, Awadhesh Kumar and the Investigating officer in absence of the accused has resulted in violation of section 273 of the Code of Criminal Procedure and the same has vitiated the trial. Reliance was placed on Daryav Singh V. State of M. P. (Cr. A. No. 345/88) decided by this Court on 5-5-1988 Photostat copy of the said judgment has been filed today. In somewhat similar situation in the case of Daryav Singh, evidence of one prosecution witness was recorded on 12-12-1987 when the accussed was not produced and the counsel had requested the Court to examine the withess on the back of the accused. This was held to be in violation of section 273 and the case was remanded back to the trial Court for recording the evidence of said witness Rajkumar in presence of the accused and for redeciding the case after' examining the appellant u/s 313 of the Code of Criminal Procedure in the light of the evidence of Rajkumar and after affording opportunity to the accused to lead evidence in defence, if any. In that case also Darvav Singh was sentenced to death and the Court was hearing the reference u/s 366 of the Code of Criminal Procedure as also the appeal presented by the accused. The learned Deputy Advocate General has no reply to the above argument.

5. It is a matter of grave concern that a man facing trial on charge of having committed seven murders and ultimately found guilty and sentenced to death has to wait for the outcome of his fate lorger than necessary but in the facts and circumstances of the case it cannot be helped. The infirmity pointed out above goes to the root of the matter and the case must be remanded back for re-trial It is equally a matter of concern that in such important trials the accused person is not produced before the trial Judge from jail on some pretext or the other. This clearly amounts to obstructing the course of justice and the constitutional process. The time has come when this Court is to take stock of the situation and try to evolve remedial measures, with this aim and view a copy of this

judgment be placed before the Hon'ble the Chief Justice for being discussed in the next full Court meeting.

In result, we set aside the reference and allow the appeal aforesaid. 6. Appellant's conviction and sentence of death aforesaid are hereby set aside. The case is ordered to be sent back immediately to the trial Judge for recording the evidence of Bhogilal, Urmilabai, Kamlabai, Kiranbai, Nandram, Awadhesh Kumar and Investigation Officer, C. P. Jhariya (P. W. 14 to 20 respectively) a fresh in presence of the appellant who should be given full opportunity to cross-examine them. Thereafter the statement of the appellant u/s 313 Cr. P. C. should be re-recorded and if he wants to adduce evidence in defence the same should be recorded. The case should then be decided afresh. Considering the agony in such situation of a man who has been condemned to death, we expect that the learned trial Judge will do everything within his power to expedite the trial and conclude it within a month from receipt of record by him.

sd/- P. N. S. Chouhan 180 Sanda and tank at the sd/- D. K. Jain

JUDGE 9-5-1995

DOULES to 15 days, both days inchesive. 9-5-1995 Triel Coun's record further shows that because or his absence on

HIGH COURT OF MADHY PRADESH: INDORE BENCH, INDORE same day. The annelling agat O M a M : and 1241.87. He was arrested

17-11-26 and 12-11-80 warrant of arrest were issued against him. He graved for

No. 1718 3 191 of ban size of the 13-8-91 ac much

Indore, dated 3 February, 1989

To,

The District and Sessions Judge,

In compliance of Judgment dated 19-1-1989 passed in Cri. Appeal No. 196/87 (Jabbar Shah Vs. State of H. P.) I am to enclose herewith copy thereof, with the request that the same be circulated amongst all the Courts subordinate to you, with instructions for strict compliance of directions and observations contained therein regarding specific mention in Judgment or order, of period of detention during investigation, enquety and trial, for afterding benefit under Section 428 Cr. P. C. to the convict.

DEPUTY REGISTRAR,

CRIMINAL APPEAL NO. 196 OF 1987

Jabbar Shah

Vs. State of M. P.

JUDGMENT DES DES JUDGMENT

There is a report received from the C. J. M. Mandsaur that the accused appellant failed to furnish bail bonds in compliance of the order dtd. 22-4-87 The appellant was charged with offence punishable u/s 307 IPC. He was however found to be guilty u/s 324 IPC and sentenced to undergo six months RI,

- 2. Going through the record of the trial Court it is clear from order sheet dtd. 1-4-87 that appellant's application for suspension of sentence u/s 389 (3) Cr. P. C. was rejected by the trial Court on the ground that during trial he was not on bail. It is further clear from the record that the appellant was arrested on 16-3-86 vide arrest Memo Ex. P. 5 and he was ordered to be released on bail on 28-3-86 but it was on 2-4-86 that the appellant's bail bonds could be furnished. This period comes to 18 days, both days inclusive.
- 3. Trial Court's record further shows that because of his absence on 17-11-86 and 18-11-86 warrants of arrest were issued against him. He prayed for either cancellation or withdrawal of these warrants on 27-11-86. The trial Court by its order dtd. 29-11-86 ordered fresh bail bonds which were furnished on the same day. The appellant again abstained on 8-1-87 and 22-1-87. He was arrested and projuced before the trial Court on 19-3-87 and continued to remain in jail till 1-4-87 when the trial Court's judgement was pronounced.

This period comes to 13 days. Although the accused appellant was produced on 19-3-87, the arrest Memo shows that he was in fact arrested on 12-3-87. This period of seven days will also be added, to the total period undergone by him in jail. Thus total period during which the accused remained in custody comes to 38 days during trial.

4. As has been noted above the application for suspension u/s 389 (3) Cr. P. C. was rejected by the trial Court. The order of suspension of sentence was passed by this Court on 22-4-87 and in view of the report dtd. 17-7-87, submitted by the CJM, Mandsaur and the Note Sheet of the Registry it is abundantly clear that the appellant has undergone the sentence as imposed by the trial Court. That explains his absence as well as that his counsel's.

- In the circumstances this appeal has now become infructuous and none appears for the appellant for all these months ever since the passing of the suspension order on 22-4-87, but not availed of as per C.J.M'S report. The appeal is dismissed for want of prosecution.
- Before parting with this appeal I feel it necessary to impress upon the 6. (ourts below that while imposing any sentence of imprisonment it is not sufficient merely to indicate that the accused is entitled to the benefit of provisions u/s 428 Cr. P. C. Mere reference to the section hardly serve the purpose. Even without such reference the entitlement of the accused is not lost, if he otherwise fulfills the requirements of Sec. 428 Cr. P. C. If this provision of law is to serve its purpose and achieve its object, it is not enough for the Court to merely refer to the entitlement of the convicted accused u/s 428 Cr. P. C. To make it meaningful, it is necessary that the actual period of detention undergone by the accused must he specifically stated in terms of days. This Court has come across a large number of cases, where the period of detention undergone by the accused. during investigation, inquiry or trial, is not at all stated. A mere reference to Sec. 428, hardly serves any purpose. The Courts must calculate the number of days spent in detention by the accused and state the same in its judgement or orders sentencing while the accused to undergo imprisonment. What is expected of the trial Court, and indeed, it is its duty, to specify the actual number of days undergone by the accused in detention during investigation, inquiry or trial. This calculation should not be avoided, by the mere reference to the provision of law.
- 7. A copy of this judgement be sent to the Registry for being circulated amongst all the lower Courts.

Under section 23s of the Code of Crisinal President Code, 1973

8. The appeal stands finally disposed.

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CIRCULARS

HIGH COURT OF MADHYA PRADESH, JABALPUR

Y. B. SURYAVANSHI REGISTRAR D. O. No. 2086 Criminal Checker, Jabalpur Jabalpur, dated the 10th Oct, 1986

Subject:

Furnishing pro-forma detailing period of Police and Judicial custody from the date of arrest till the date of delivery of Judgement.

Dear Shri,

It has been observed by the High Court that the instructions contained in this Registry Circular No. 7442 dated 22-5-1975 are not being followed in some of the districts.

I am, therefore, directed to forward again a copy of the said Circular with a request to observe instructions contained therein strictly.

I am, further, directed to request you to bring these instructions again to the notice of Additional Judges to the Sessions Judges Chief Judicial Magistrates/Additional Chief Judicial Magistrates/Judicial Magistrates including Trainee Judges and impress upon them strict observance.

Please acknowledge receipt of the D.O. Letter. with regards,

Encl. Copy of Circular No. 7442 dt. 22-5-75

Yours sincerely,
(Y. B. SURYAVANSHI)

CIRCULAR

No. 7442/

Dated, Jabalpur, the 22nd May 1975.

To,

The District and Sessions Judge, JABALPUR

Under section 428 of the Code of Criminal Procedure Code, 1973 (Act 2 of 1974), set off, of the period spent by the convict in detention during investigation, enquiry or trial of the same case has to be given in the term of imprisonment imposed on him. This is a new provision adopted in this Code keeping in view the long term spent by people in custody before they are convicted.

2. There may be some difficulities in keeping a current record of the period of detention undergone-by the accused before conviction. Sometimes

warrants are not returned to the Courts of issue, but for that the Inspector General of Prisons is being requested to instruct all jail authorities to return warrants to the Courts of issue immediately when the accused is released on bail or otherwise. It would, however, be necessary for the Magistrates, Sessions Judges and Addl. Sessions Judge to keep a proper vigilence in such a matter. A legal provision has to be given due effect even of theremay be inconveniences. It is, therefore, impressed upon all the presiding officers to consider it a part of their duty to keep a complete and correct record of the period spent by the persons in detention who are being tried by them. The High Court expects that each presiding officer will clearly state in his judgment as to what is the period that is to be given set off under section 428 of the Code of Criminal procedure and what is the period of sentence that is ultimately passed on him. It is only when such a certificate duly signed by the presiding officer is kept on record that the appellate judge would be in a position to assess the period of sentence

- 3. Similarly, the Sessions Judges and Additional Sessions Judges would keep a record of the period spent by the accused in custody while the matter was pending before them. The High Court expects from these presiding Officers also that when they dispose of an appeal or revision, they will similarly mention the period spent by the accused in custody, while the matter was pending before them in their Judgment itself.
- 4. When the records are sent to the High Court, it will be the personal responsibility of the presiding officers to put similar information on record about the period spent by the accused in custody till the time of despatch of records. Renders of the Courts concerned will be personally responsible for keeping these records and include them in the certificate to be sent to the High Court or the Court of Sessions at the time of sending of records, but that will not absolve the presiding officer also of this responsibility.

(Sd/-)
ADDITIONAL REGISTRAR

The certificate may be given in the following form :-

- 1. Date of arrest of convicted accused
- 2. Detention in police custody from _____ to......
- 3. Detention in judicial custody from..... to to
- 4. Whether he was released on bail and if so, the duration of his being on bail.
- 5. Total period spent in detention which will be set off against the term of imprisonment imposed on him.

JUDGE/MAGISTRATE

No F. 4(3)-EF. VI/57
Government of India,
Ministry of Finance,
(Department of Economic Affairs)
New Delhi, 14th May, 1957

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C. S. Krishnamoorthi,

Dy. Secretary to the Government of India.

Subject :- Disposal of Confiscated gold and silver.

I am directed to state that reference have been received from State Governments seeking clarification as to the manner of disposal of confiscated gold and silver held by them. To secure uniformity in the practice obtaining in all State Governments I am directed to indicate the position in the succeeding paragraphs for the information of all State Government.

- 2. It has been the consistant policy of the International Monetary Fund to encouragemember Governments to take measures to ensure that gold should held in the maximum extent practicable in official reserves rather then go into private hoards. This policy with which the Government of India agree and which, as the members of the International Monetary Fund, they are bound to support is necessitated by the fact that ultimately it is only if gold is held in official reserves, that it can be used by the Central Monetary Authority to maintain exchange stability. It would, therefore be in the overall national interest if gold, which for any reason has come under the control of the State Government is transferred to the control of this Government, who will take it over at the price of Rs. 62.80 per tola, based on the International price of £ 35 per fine oz. fixed by the International Monetary Fund, the maximum price at which the Government of India, as a member of the International Monetary Fund can buy gold.
- 3. So far as silver is concerned, while state Government no doubt have full authority to dispose of confiscates silver, irrespective of the qualities involved, in the open market at the prevailing rates, it is suggested, however, in order to avoid under-irable effects on the market, State Government may first consult the Reserve Bank of India, Bombay before going to the market.

No. F. 12/2/68/68-GS
Government of India,
Ministry of Finance,
(Department of Economic Affairs)
New Delhi, dated the 20th May, 1970

P. D. Kasbekar

Joint Secy. to the Govt. of India

To,

The Chief Secretaries of all States and Union Territories.

Subject :- Disposal of confiscated gold and silver.

Sir,

I am directed to refer to this Ministry's letter No. F. 4 (3)-EF-VI/57, dated 14-5-57 on the subject cited above (copy enclosed for ready reference) and with particular reference to paragraph 3 thereof to say that Government of India now feels that Confiscated silver also should be kept in official reserves as far as possible instead of allowing it to be sold in the market as heretofore. The Government of India are therefore prepared to take over, at the prevailing market rates, any silver confiscated by the State Government. I am to request that the State Government may kindly issue suitable instructions to all Judicial and other authorities enocerned that silver confiscated by them and which otherwise would have been disposed of by sale in the market should hereafter be transferred to Master, India Government Mint, Bombay with on indication of the head of account to which the value of the silver should be credited. On receipt of the silver, it will be assayed at the Government of India Mint at Bombay and necessary credit for the value of the silver at the market price prevailing on the date of receipt will be afforded to the State Government under the head of account to be indicated by the confiscating authorities.

HIGH COURT OF MADHYA PRADESH

Names and Telephone Nos. of Hon. Judges

JABALPUR STD Code No. 0761

Fax No. 0761-320659

Sr. No.	Name	E.P.A.B.X Extn.No.	Office	Residence
1-	Hon, Shri Chief Justice	301	323653	321444, 32385
2-	Hon. Shri Justice A. K. Mathur	302	321553	322801
3-	Hon. Shri Justice S. K. Dubey	303	o to les	321408
4-	Hon. Shri Justice D. P. S. Chauhan	305		321053
5-	Hon. Shri Justice N. P. Singh	306		322053
6-	Hon. Shri Justice D. K. Jain	309		321153
7-	Hon. Shri Justice R. P. Awasthy	310		322430
8-	Hon. Shri Justice Rajeev Gupta	311		320761
9-	Hon. Shri Justice R. S. Garg	312		322052
10-	Hon. Shri Justice S. C. Pande	308		321764
11-	Hon. Shri Justice V. K. Agrawal	304		321316
12-	(Vacant Court)	313		
13-	(Vacant Court)	307		
GWA	LIOR BENCH S. T. D. Code N	o. 0751	Fax I	No. 0751-32029
non act	Pincode No. 47	4001		a potracy i
1-	Hon. The Chief Justice	3	20970	
2-	Hon. Shri Justice D. M. Dharmac	lhikari		341180
3-	Hon. Shri Justice S. Dwivedi			341183
4-	Hon. Shri Justice A. S. Tripathi			341181
5-	Hon Shri Justice Tej Shankar			341182
6-	Hon. Shri Justice T. S. Doabia			342892

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S. No. NAME	E. P. A. B. X. Extn. No.	Office	Residence
INDORE BENCH	S. T. D. No. 0731 Pincode No. 452 001	Fax No	. 0731–432330
3- Hon. Shri Justi 4- Hon. Shri Justi 5- Hon. Shri Justi 6- Hon. Shri Justi 7- Hon. Shri Justi	ce R. D. Shukla ce A. R. Tiwari ce R. D. Vyas ce J. G. Chitre ce C. K. Prasad ce Deepak Verma ce S. B. Sakrikar	431005 431080	535900 535575 402526 400748 401666 538508 430900 432212

Names and Telephone Nos. of Officers

JABALPUR

REGIS	TRAR GENERAL				
1-	Shrì C. S. Gupta	314		321259	321932
REGIS	TRAR (VIG)				
2-	Shri S. S. Saraf	315		321185	323365
DIREC	CTOR (J.O.T.I.)				
3-	Shri B. K. Shrivastava	316		325995	324465
38	320291 - 341				
ADDI	TIONAL REGISTRARS				
1- 98	Shri N S Rajput (VIG)	332	S.R.S	322073	322784
2-	Shri K. P. Tiwari (D.E.)	317	,	321381	323766
3-	Shri R C. Mishra (JUDL)	319		322709	324766
4-	Shri N. K. Gupta (V.L.)	332		326852	321884
5-	Shri R. S. Tripathi (ADMN)	331		320659	325570
				326953	
6-	Shri B. D. Rathi (ADDL. DIR,	T. I.)		325995	27150
7-	Shri G. L. Jha (ESTT.)			325803	28160

Sr. No. Name	E.P.A.B.X Extn.No.	Office	Residence
A. R. CUM-SECRETARY TO HON	. THE CHIEF	JUSTICE	
8- Shri S. B. Shrungarpure	330	321553	325589
D. RCUM-P. P. S. TO HON. THE	CHIEF JUST	TICE	
1- Shri A. M. Yeolekar		323653	316464
DEPUTY REGISTRARS			
1- Shri R. B. Mourya (JUDL.) 2- Shri C. S. Parm (ADMC.P		Lo section	
PROTOCOL OFFICER			
1- Shri Ajay Pawar	329		321169
INDORE BENCH			
REGISTRAR			
1- Shri M. R. Pandey,		432330	402306
DY. REGISTRAR 2- Shri J. N. Tiwari, PROTOCOL OFFICER		431555	534553
3- Shri P. N. Dwlvedi,		430808	472708
GWALIOR BENCH	6		
REGISTRAR	E P		10 10 11
1- Shri S. A. Naavi, DY. REGISTRAR		320291	341186
2- Shri V. Peetambaran, 3-PROTOCOL OFFICER		320291	364187 324889
7 30,000 00000			

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List of Telephone Numbers of District and Sessions Judges

20590			I have all	LACTES LABOR
s. N	o. Name of District	S. T. D. Code	Office	Residence
1	BALAGHAT	07632	70948	70993
2	BASTAR	07782	22589	22587
3	BETUL	07141	22348	30049
4	BHIND	07534	2242	2246
5	BHOPAL	0755	535701	541361
			533279	
6	BILASPUR	07752	23271	23571
7	CHHATARPUR	07682	22212	22251
8	CHHINDWARA	07162	2307	2284
9	DAMOH	07812	22397	22333
10	DATIA	07522	2354	2336
11	DEWAS	07272	72980	73794
12	DHAR			
13	DURG	0788	322307	322308
14	KHANDWA	0733	24145	24146
15	GUNA	07542	52640	52716
16	GWALIOR	0751	320119	343233
17	HOSHANGABAD	07574	365 5	2328
18	INDORE	0731	534579	400625
19	JABALPUR	0761	320902	320552
20	JHABUA	07392	43350	43351
21	MANDLA	07642	50731	50614
22	MANDSAUR	07422	50778	50779
23	MORENA	07532	7094	7296
24	NARSINGHPUR	07792	30845	30983
25	PANNA	07732	52079	52081

S No. 1	Name of District	S. T. D. Code	Office	Residence
26 RA	IGARH	07762	22077	22078
27 RA	IPUR STO	0771	426742	423870
28 RA	ISEN	07482	2071	2077
29 RA	JGARH (BIAORA)	07372	5017	5165
30 RA	JNANDGAON	07744	6189	6190
31 RA	TLAM	07412	31450	30321
32 RE	WA	07662	22847	22606
33 SA	GAR	07582	22602	22839
34 SA	TNA	07672	55288	2181
35 SE	HORE	07562	4237	4238
36 S E	ONI	07692	20469	20441
37 SH	AHDOL	07652	5091	MHO 5090
38 SH	AJAPUR	07364	21593	21594
39 SH	IVPURI	07492	2767	2770
40 S IC	72900 IHC	07822	2216	2270
41 SA	RGUJ4	07774	22295	22312
42 TII	KAMGARH	07683	32456	32454
43 UJ.	MAIL SERES NAIL	0734	50367	50366
44 VII	DISHA	07592	33171	33161
45 W.	N. MANDLESHWA		32024	32034
		01574	IANGABAD -	
		0731		DOMI 81
320552	320902	1070	TECH	
43351	42350	\$6600		20 JHAR
		07642		MAM 19
50779	50778	07422	DSAUR	
			ENA	
		07792	SINGHPUR	
		07732	AN	25 PAN