29th Year

Pursuit of Excellence

JOTI JOURNAL

(BI-MONTHLY)

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JUNE 2023

JUNE 2023

MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

GOVERNING COUNCIL

JOTI JOURNAL JUNE - 2023

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(ARTICLES & MISC.)

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RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013
भूमि अधिग्रहण, पुनर्वास और पुनर्स्थापन में उचित प्रतिकर एवं पारदर्शिता का अधिकार अधिनियम, 2013

Section 24 (2) – Lapse of acquisition proceeding – Whether failure to take possession of acquired land or non-payment of compensation leads to lapse of acquisition proceedings? Held, No – The word "OR" mentioned in between taking of possession or payment of compensation in section 24 (2) of the Act is to be read as "AND".

धारा 24 (2) – अधिग्रहण कार्यवाही का व्यपगत होना – क्या अधिग्रहीत भूमि का कब्जा लेने में विफलता या प्रतिकर का भुगतान न करने से अधिग्रहण की कार्यवाही व्यपगत हो जाती है? अभिनिर्धारित, नहीं – अधिनियम की धारा 24(2) में कब्जा लेने या प्रतिकर के भुगतान के बीच वर्णित ''या'' शब्द को ''और'' के रूप में पढ़ा जाना चाहिए। **119 169**

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EDITORIAL

Warm greetings to everyone,

It is a true saying that 'time flies' for it feels like yesterday, when I had the honour of presenting the first edition of JOTI JOURNAL of the year 2023 and now, we are half past the year already, reading the June edition of JOTI JOURNAL. Speaking of time, I take the liberty of quoting the following *Shloka*

नहि कश्चित् विजानाति किं कस्य भविष्यति |

अतः श्वः करणीयानि कुर्याद्यैव बुद्धिमान ||

Meaning thereby, one never knows what will happen tomorrow. Therefore, wise men should do tomorrow's task today itself. Time is a luxury, time once lost can never be regained. How one chooses to spend their time has a crucial role in shaping their tomorrow. Hence, be wary of its adequate utilization.

Relating to the activities undertaken by the Academy, I would like to make mention of the first phase Induction Training of the Civil Judges Junior Division, 2022 Batch, which concluded on 6th May 2023. The Academy attempted to widen its horizon by focusing on the technical Law subjects and also, on the overall mental and physical well being of the Trainee Judges by introducing field trips, yoga classes, public speaking courses and striking work life balance amongst many others in the Schedule of the Course. Keeping in pace with the changing times, Academy experimented with teaching methodologies as well and endeavoured to make the sessions interactive so as to have the best take away from the sessions. The teaching methodologies comprised of role plays, talk shows, presentations by participants, book reviews and doubt clearing sessions. I sincerely hope that this experimentation fetches the desired result.

Also, it is pertinent to make mention of the Specialized Training Programme for District & Additional Sessions Judges, nominated as Visitor Judges conducted on 6th May 2023. This flagship programme was organized in collaboration with the Juvenile Justice Committee, High Court of Madhya Pradesh. The objective of this programme was to sensitize the Visitor Judges towards their role regarding inspection of Child Care Institutions. This is a vital duty as it goes a long way in ensuring the well-being of the children kept in such institutions. One major role of Academy is to sensitize their officers towards the duty they have been assigned. This programme was conducted for the first time,

with this very hope, keeping in view the larger goal of securing comfort and security and overall development of such children.

In addition, Hon'ble Chief Justice Shri Ravi Malimath administered oath of office to seven Judges from the District Judiciary as they got elevated to Hon'ble High Court. We wish Their Lordships the best of tenure ahead. It is worth mentioning that first time in the history of High Court of Madhya Pradesh, Hon'ble Chief Justice administered oath of office to two District Judges (Entry Level) directly recruited from the Bar on 26.06.23 at a ceremony organized at High Court of Madhya Pradesh, Jabalpur. Following the oath ceremony, the two District Judges underwent a three day Orientation Programme at the Academy.

One important event from the past few days was the completion of 50 years of the pronouncement of judgment in the landmark case of ***His Holiness Kesavananda Bharati Sripadagalavaru v. State of Kerala, AIR 1973 SC 1461***. This case went on to becoming the face of the Indian Constitutional Law as it introduced the Doctrine of Basic structure thereby, upholding the rule of law and reinstating the principles of democracy in our country. To commemorate this event, the Hon'ble Supreme Court has created a designated link on its website, which gives a brief overview of this case. This is one of the many inspiring events from our magnanimous history which instills a deep sense of pride towards our institution.

As I conclude, I would like to draw your kind attention that JOTI JOURNAL is our legacy which is in its 29th year of publication. Today we proudly possess an immensely rich knowledge bank courtesy this Journal. I would request our esteemed readers to please send your valuable suggestions and legal difficulties. On receipt of your valuable suggestions, we will seamlessly integrate them, culminating in the delivery of a significantly enhanced rendition. I look forward to your contribution.

Krishnamurty Mishra
Director

GLIMPSES OF OATH CEREMONY OF DISTRICT JUDGES (ENTRY LEVEL) DIRECTLY RECRUITED FROM BAR

OATH ADMINISTERED BY HON'BLE CHIEF JUSTICE SHRI RAVI MALIMATH AT HIGH COURT OF MADHYA PRADESH, JABALPUR (26.06.2023)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

First Phase Induction Training Course for Civil Judges (Entry Level) (2022 Batch) Group-I
(13.03.2023 to 06.05.2023)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

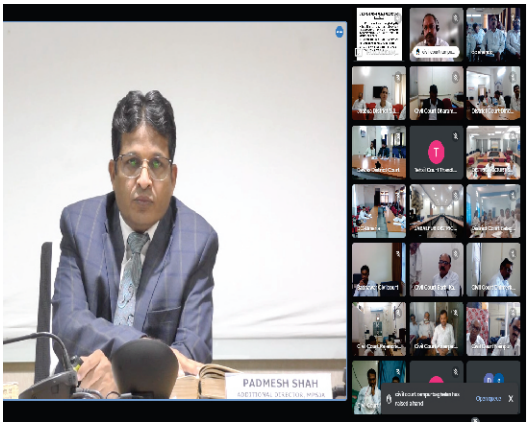
First Phase Induction Training Course for Civil Judges (Entry Level) (2022 Batch) Group-II
(13.03.2023 to 06.05.2023)

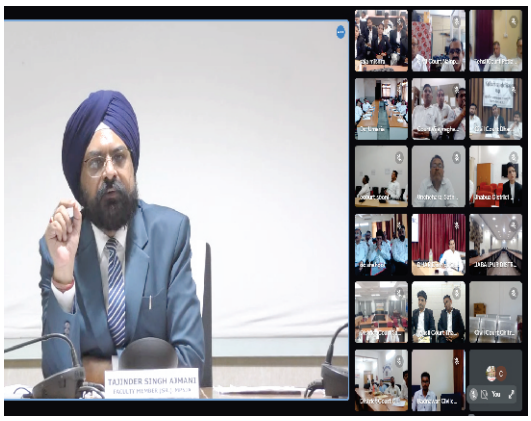
MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Online Specialized Training Programme for
District & Additional Sessions Judges (Nominated as Visitor Judges)
(06.05.2023)

Workshop on – Key issues relating to Labour Laws
(07.05.2023 & 08.05.2023)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR





Regional Workshop for Advocates conducted online
(19.05.2023 & 20.05.2023)

Regional Workshop for Advocates conducted online
(16.06.2023 & 17.06.2023)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Refresher Course for Civil Judges (2014-2017 Batch) (on completion of five years of Judicial Service)
(19.06.2023 to 24.06.2023)

TRANSFER OF HON'BLE SHRI JUSTICE ATUL SREEDHARAN TO HIGH COURT OF JAMMU & KASHMIR AND LADAKH

Hon'ble Shri Justice Atul Sreedharan, who occupied the august office of the Judge of the High Court of Madhya Pradesh for seven years, has been transferred to the High Court of Jammu & Kashmir and Ladakh as Judge.

His Lordship was born on 24th May, 1966. After obtaining degrees of B.A. (History) from the University of Madras in 1987 and LL.B. from Meerut University in the year 1992, His Lordship was enrolled as an Advocate of M.P. State Bar Council on 3rd April, 1992 and practiced under the able guidance of Mr. Gopal Subramanium till 1997 and assisted him in Civil and Criminal matters before the Supreme Court of India, High Court of Delhi and Trial Court at Delhi. From 1997 to December, 2000, practised independently at Delhi. Thereafter, shifted to Indore in the year 2001 and has been practicing continuously before the High Court of M.P., Bench at Indore. His Lordship has also been closely associated with Shri Satyendra Kumar Vyas, Sr. Advocate at Indore. His Lordship practised in Civil, Criminal, Writ, Service matters and matters relating to medical negligence before Trial Court, High Court and Consumer Forum. His Lordship also represented State of Madhya Pradesh as Panel Advocate before the High Court of Madhya Pradesh, Bench at Indore. His Lordship was appointed as Central Government Counsel to appear on behalf of Union of India from 19th September, 2005 to 19th September, 2008 and as Central Government Counsel (Senior Panel) from 19th February, 2010 to 19th February, 2013. His Lordship took oath as Additional Judge, High Court of Madhya Pradesh on 7th April, 2016 and Permanent Judge on 17th March, 2018.

During His Lordship's tenure in the High Court of Madhya Pradesh, rendered invaluable services as Judge, Administrative Judge and Member of various Administrative Committees of the High Court including Committee for Overall Working of Judicial Officers' Training & Research Institute (MPSJA). His Lordship, addressed the participants of various training programmes/workshops conducted by the Academy on divergent topics on many occasions and provided wholehearted support to the Academy.

His Lordship was accorded farewell ovation on 8th May, 2023 at High Court of Madhya Pradesh, Bench at Gwalior.

We on behalf of JOTI Journal wish His Lordship a very happy and successful tenure at High Court of Jammu & Kashmir and Ladakh.

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APPOINTMENT OF JUDGES IN THE HIGH COURT OF MADHYA PRADESH

Hon'ble Shri Justice Roopesh Chandra Varshney, Hon'ble Smt. Justice Anuradha Shukla, Hon'ble Shri Justice Sanjeev S. Kalgaonkar, Hon'ble Shri Justice Prem Narayan Singh, Hon'ble Shri Justice Achal Kumar Paliwal, Hon'ble Shri Justice Hirdesh and Hon'ble Shri Justice Avanindra Kumar Singh were administered oath of office on 1st May, 2023 as Judges of the High Court of Madhya Pradesh by Hon'ble Shri Justice Ravi Malimath, Chief Justice, High Court of Madhya Pradesh in a Swearing-in-Ceremony held in the Conference Hall of South Block of High Court of Madhya Pradesh at Jabalpur.

Hon'ble Shri Justice Roopesh Chandra Varshney was born on 27th December, 1962 at Etah (U.P.). His Lordship, after obtaining degrees of B.A., LL.B., joined Madhya Pradesh Judicial Services as Civil Judge Class II on 28th September, 1987. His Lordship was promoted to Higher Judicial Services as officiating District Judge w.e.f 25th October, 2004. His lordship was granted Selection Grade Scale w.e.f. 2nd January, 2012 and Super Time Scale w.e.f. 1st January, 2018.

As Judge of District Judiciary, His Lordship worked in different capacities at various places namely; Shivpuri, Sabalgarh (Morena), Karera (Shivpuri), Ragogarh (Guna), Bhander (Datia), Rewa, Gwalior, Morena, Bhind, Neemuch and Chhindwara. His Lordship also served as District & Sessions Judge (the then designation), Mandla and Principal District & Sessions Judge, Rewa and was superannuated on 31st December, 2022. Thereafter, on 1st May, 2023, His Lordship was appointed as Judge of High Court of Madhya Pradesh.

Hon'ble Smt. Justice Anuradha Shukla was born on 13th June, 1967 at Muradabad (U.P.). Her Ladyship, after obtaining degrees of B.Sc., LL.B., joined Madhya Pradesh Judicial Services as Civil Judge Class II on 17th September, 1990. Her Ladyship was promoted to Higher Judicial Services as officiating District Judge w.e.f. 18th June, 2007. Was granted Selection Grade Scale w.e.f. 18th June, 2012 and Super Time Scale w.e.f. 1st January, 2018.

As Judge of District Judiciary, Her Ladyship worked in different capacities at

various places namely; Gwalior, Jabalpur, Bhopal, Ratlam, Indore, Bhind, Khandwa, Satna and Rewa. Her Ladyship also held the posts of Deputy Welfare Commissioner, Bhopal Gas Victims and Legal Advisor, Economic Offences Bureau (EOW) at Bhopal and Principal Judge, Family Court at Khandwa and Jabalpur. Her Ladyship also worked as District & Sessions Judge (the then designation) at Damoh and District Judge (Inspection), High Court of M.P., Zone Jabalpur. Her Ladyship was Principal District & Sessions Judge, Ratlam from 1st January, 2023 till elevation.

Hon'ble Shri Justice Sanjeev S. Kalgaonkar was born on 23rd February, 1970. His Lordship, after obtaining degrees of B.Sc., LL.B., joined Madhya Pradesh Judicial Services as Civil Judge Class II on 24th May, 1994. His Lordship was promoted to Higher Judicial Services as officiating District Judge w.e.f. 18th June, 2007. His Lordship was granted Selection Grade Scale w.e.f. 18th June, 2012 and Super Time Scale w.e.f. 1st January, 2018.

As Judge of District Judiciary, His Lordship worked in different capacities at various places namely; Balaghat, Seoni, Chhindwara, Multai (Betul), Bhopal and Vidisha. His Lordship also held the posts of Deputy Welfare Commissioner, Bhopal Gas Victims, Officer on Special Duty, High Court of Madhya Pradesh, Jabalpur on various occasions and Additional Registrar & Registrar (Admn.) at High Court of Madhya Pradesh, Jabalpur.

His Lordship also served as Additional Director, In-charge Director and Director, Madhya Pradesh State Judicial Academy between June, 2016 to October, 2018 and has contributed a lot for the growth of the Academy.

His Lordship also served as Registrar, Dharmashastra National Law University, Jabalpur, Officer-on-Special Duty and Secretary General, Supreme Court of India twice i.e. in between 3rd November, 2018 and 20th December, 2018 and again, from 31stOctober, 2022 till elevation.

His Lordship attended Two weeks residential Training Programme on Court Management and Procedures for Judges at University of California, Berkely from 20th August, 2017 to 2nd September, 2017 in the capacity of Director, MPSJA.

Hon'ble Shri Justice Prem Narayan Singh was born on 14th August, 1963 at Ghazipur (U.P.) in a family of Lawyers. After obtaining degrees of B.A., M.A. and LL.B. from Allahabad University, His Lordship joined the Madhya Pradesh Judicial Service as Civil Judge Class II on 16th July,1990 at District Chhatarpur. His Lordship was promoted to Higher Judicial Services as officiating District Judge w.e.f. 18th June, 2007. His Lordship was granted Selection Grade Scale w.e.f. 18th June, 2012 and Super Time Scale w.e.f. 1st April, 2018.

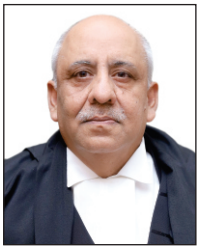
As Judge of District Judiciary, His Lordship worked in different capacities at various places namely; Chhatarpur, Nowgaon (Chhatarpur), Gharghora (Raigarh), Kukshi (Dhar), Raghogarh (Guna), Jabalpur, Morena, Satna and Itarsi (Narmadapuram). His Lordship held the posts of Deputy Welfare Commissioner, Bhopal Gas Victims, Registrar (Vigilance) and Principal Registrar (Vigilance) at High Court of Madhya Pradesh, Jabalpur. His Lordship also served as Principal Judge Family Court at Rewa and District & Sessions Judge (the then designation), Panna. His Lordship was Principal District & Sessions Judge, Gwalior from 12th July, 2021 till elevation.

Hon'ble Shri Justice Achal Kumar Paliwal was born on 26th December, 1963 at Etah (U.P.). His Lordship, after obtaining degrees of B.A., LL.B., joined the Madhya Pradesh Judicial Services on 14th July, 1990. His Lordship was promoted as an officiating District Judge in the Higher Judicial Services w.e.f. 18th June, 2007. His Lordship was granted Selection Grade Scale w.e.f. 18th June, 2012 and Super Time Scale w.e.f. 1st April, 2018.

As Judge of District Judiciary, His Lordship worked in different capacities at various places namely; Bhind, Gwalior, Ambah (Morena), Kolaras (Shivpuri), Lahar (Bhind), Gwalior, Chhindwada, Sausar (Chhindwara), Pipariya (Narmadapuram), Indore and Sidhi. His Lordship also held the post of Additional Secretary, Government of Madhya Pradesh, Law & Legislative Affairs Department, Bhopal and District & Sessions Judge (the then designation), Katni. His Lordship was Principal District & Sessions Judge, Vidisha from 11th January, 2021 till elevation.

Hon'ble Shri Justice Hirdesh was born on 28th May, 1964 in Gorakhpur (U.P.). His father Late Shri Buddhi Sagar Shrivastava was renowned Professor in Law, Gorakhpur University. After obtaining degrees of B.Sc. and LL.B. (Gold Medalist, His Lordship joined the Madhya Pradesh Judicial Services as Civil Judge Class II on 5th July,1990. His Lordship was promoted as an officiating District Judge in the Higher Judicial Services w.e.f. 8th June, 2007. His Lordship was granted Selection Grade Scale w.e.f. 18th June, 2012 and Super Time Scale w.e.f. 13th June, 2018.

As Judge of District Judiciary, His Lordship has served in different capacities at different places namely; Panna, Rewa, Patan (Jabalpur), Gwalior, Guna, Shivpuri, Pichhore (Shivpuri), Sagar and Betul. His Lordship also served as President, District Consumer Forum, Jabalpur, Principal Judge, Family Court, Jabalpur and District & Sessions Judge (the then designation), Neemuch. His Lordship was Principal District & Sessions Judge, Chhatarpur from 17th July, 2021 till elevation.



Hon'ble Shri Justice Avanindra Kumar Singh was born on 18th September, 1964 at Etah (U.P.). His Lordship, after obtaining degrees of B.Sc. and LL.B., joined the Madhya Pradesh Judicial Service as Civil Judge Class II on 31st May, 1990. His Lordship was promoted as an officiating District Judge in the Higher Judicial Services on 18th June, 2007. His Lordship was granted Selection Grade Scale w.e.f. 18th June, 2012 and Super Time Scale w.e.f. 13th June, 2018.

As Judge of District Judiciary, His Lordship has served in different capacities at different places namely; Itarsi (Narmadapuram), Bhopal, Morena, Sakti (Bilaspur, now in Chhattsgarh), Jabalpur, Ratlam, Sidhi, Katni, Indore, Khandwa and Seoni. His Lordship also served as Deputy Welfare Commissioner, Bhopal Gas Victims, Principal Judge, Family Court, Jabalpur and District & Sessions Judge (the then designation), Chhatarpur. His Lordship also held the post of Principal Registrar (ILR & Exam), High Court of Madhya Pradesh. His Lordship was Principal District & Sessions Judge, Dhar from 11th June, 2022 till elevation.

We on behalf of JOTI Journal wish Their Lordships a very happy and successful tenure.

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HON'BLE SMT. JUSTICE ANJULI PALO AND HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA) DEMIT OFFICE

Hon'ble Smt. Justice Anjuli Palo and Hon'ble Shri Justice Rajendra Kumar (Verma) demitted office on attaining superannuation.

Hon'ble Smt. Justice Anjuli Palo was born on 19th May, 1961. After obtaining degrees of B.Sc. and LL.B., joined M.P. State Judicial Services as Civil Judge Class II on 5th November, 1985 at Jabalpur. Her Ladyship was promoted to Higher Judicial Services as officiating District Judge on 9th June, 1997. Her Ladyship was granted Selection Grade Scale w.e.f. 1st October, 2003 and Super Time Scale w.e.f. 1st January, 2013.

Her Ladyship, as Judge of District Judiciary, worked in different capacities at various places. Her Ladyship was District & Sessions Judge, Damoh from 1st October, 2015 till elevation. Her Ladyship took oath as Additional Judge, High Court of Madhya Pradesh on 13th October, 2016 and permanent Judge on 17th May, 2018. During Her Ladyship's tenure in the High Court of Madhya Pradesh, rendered invaluable services as Judge and Member of various Administrative Committees of the High Court.

Hon'ble Shri Justice Rajendra Kumar (Verma) was born on 1st July, 1961 at town Lakhna, District Etawah (U.P.). After obtaining LL.B. degree from Allahabad University, His Lordship joined Madhya Pradesh Judicial Services on 28th September, 1987 at Bhind. His Lordship was promoted as officiating District Judge in Higher Judicial Services on 31st July, 2000. His Lordship was granted Selection Grade Scale w.e.f. 1st August, 2008 and Super Time Scale w.e.f. 5th October, 2016.

His Lordship, as Judge of District Judiciary, has served in different capacities at various places. His Lordship was Principal District & Sessions Judge, Bhopal from 1st December, 2018 till elevation. His Lordship took oath as Judge of High Court of Madhya Pradesh on 25th June 2021.

During His Lordship's tenure in the High Court of Madhya Pradesh, rendered invaluable services as Judge and Member of various Administrative Committees of the High Court.

We on behalf of JOTI Journal, wish Their Lordships a healthy, happy and prosperous life.

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PART I

OUR LEGENDS

Justice Purushottam Vinayak Dixit
3rd Chief Justice of High Court of Madhya Pradesh

In this June edition we bring to you the inspiring narrative of a magnificent personality Hon'ble Shri Justice Purushottam Vinayak Dixit. His Lordship was the 3rd Chief Justice of High Court of Madhya Pradesh. He served in this capacity for almost a decade i.e. from 1959 to 1969. It is in this duration that he gained reputation of being one of the most distinguished Chief Justices of our High Court and due to this unimpeachable reputation he was also appointed as the first Lokayukta of Madhya Pradesh to curb the menace of corruption in the State.

To begin with the narration of this motivating and impressive journey, His Lordship was born on 19.03.1907 at Nagpur in a renowned family of lawyers. His father and uncle were Barristers which gave him the insight and environment of law and justice since childhood. The family was known to have made large charities at Nagpur, the famous Rajaram Library is one of such instances which was established in the memory of His Lordship's grandfather Rao Bahadur Rajaram Sitaram Dixit.

His Lordship took initial education at Patwardhan High School, Nagpur and did B.Sc. in First Division from Science College, Nagpur. Thereafter, he joined Christ's College at Cambridge (U.K.) and pursued Bar at-law. On his return to India, he joined Bar and started practicing in High Court of Judicature at Nagpur in the year 1931.

In 1939, His Lordship shifted to Gwalior in response to the call from Maharaja of Gwalior. His Lordship joined Gwalior State Judicial Services in 1940 as District and Sessions Judge and later, held many important posts in the

erstwhile Gwalior State. He was elevated as a Judge of the Gwalior High Court in the year 1945-46. He became Chief Justice of Gwalior High Court in 1946 and later, Judge of the Madhya Bharat Union High Court in 1948. His Lordship became the Chief Justice of Madhya Bharat High Court on 1.10.1956.

Subsequently, when the States Reorganisation Act, 1956 was enacted and the new State of Madhya Pradesh came into existence, His Lordship became a Judge of the newly formed High Court of Madhya Pradesh. He got appointed as its Chief Justice on 22.09.1959 and went on to serve in this capacity for a remarkable 9½ years. His Lordship also served as acting Governor of Madhya Pradesh in February, 1966 during the tenure as Chief Justice. It was on 19th March, 1969 that His Lordship retired from the post of Chief Justice. As a Chief Justice, it is the longest tenure till now. It is pertinent to mention that he filled the office of Chief Justice with great eminence and distinction.

Barely sometime after his retirement, he was appointed as President of Prize Court, Bombay to decide the fate of ships confiscated by India during Indo-Pak War of 1971. This work was accomplished within 3 months of his appointment. Similar expeditious work he had delivered while presiding over Ratlam Incidents Enquiry Commission and Gwalior Firing Enquiry Commission. Such was the recognition of His Lordship's work that he was appointed as Chairman of the State Law Commission and also later became Chairman of the Central Law Commission in 1979, the first person from the State to get this assignment. He worked till 1980 and in a short span of time produced 72 reports for Law Ministry. On his return from Delhi, he was appointed as Lokayukta in February 1982 for a term of five years. The very fact of his appointment as a first Lokayukta of Madhya Pradesh itself speaks highly of his integrity. His Lordship left for his heavenly abode on 08.03.1986.

His Lordship made a unique contribution to the growth and development of law. His Judgments are characterised by lucidity of language, clarity of thought and correct enunciation of law without being verbose. His judgements are considered classic and continues to be cited and read as great authority. Judges all over India though not met him but were conversant with him through his judgments. His logic was forceful and style lucid.

Another interesting fact about this legendary personality is that as Chief Justice, he would often preside over the civil bench and adjudicate civil matters arising from the district courts. "I must know how my judges are working" which

shows his concern towards maintaining the quality of justice rendered to the litigants by District Judiciary.

His knowledge of jurisprudence was deep and so was his concept of law. Apart from the judicial functions, he discharged the administrative functions with equal efficiency. The plan of the High Court Bench at Indore was finalised by him and can be attributed to his visionary working. It won't be an exaggeration to state that His Lordship was an able administrator and was responsible for building up the Judiciary in the State. During his tenure as Lokayukta, several cases of corruption in the State were detected and brought to book which served as effective check on corrupt practices. Clarity, brevity and wisdom of logic were remarkable features of his working style.

It is a common feature that a person might be a great writer but struggle in public speaking and *vice-versa*. However, His Lordship was equally a great writer and an eloquent speaker. He had his own style of expression. His command over many languages was impeccable. Besides English, he could speak and write with authority Hindi, Urdu, Marathi and Gujarati. Music, theatre and literature were amongst many other great passions of His Lordship. His memory was unparalleled. It is famous about him that he had a pictographic memory whether it be the events or names of five decades, he could tell meticulously.

He led a very simple life dictated by high standards. He discouraged the practice of subordinates visiting without any work. If he had to assign any task, only then, he would call the Deputy Registrar by his car and drop him off by his car as well. He was a man of great learning, a brilliant orator and a veracious reader.

As a Judge and Chief Justice of High Court of Madhya Pradesh, he passed several landmark Verdicts, performed the very crucial job at the formative stage of this court and nourished it with high traditions and dignity. He gave to Judicial fraternity, leading Judges who went on to adorning the Highest Court. He was a saviour of democratic rights. His Lordship made a lasting contribution to the Judiciary. The same could be gathered from the fact that at the reference held on account of demise of His Lordship, he was acclaimed with the expression "Elegance Thy Name was Dixit."

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HINDU TEMPLES & LAW OF PUBLIC TRUST

– Institutional Article

Introduction

In civilized societies Religious and Charitable Trusts exist in some shape or the other. Instincts of devoutness and compassion, inherent in human nature, made them to find religious and charitable trusts. Hindu Law also has its own unique history of development as to the concept of legal identity of its religious and charitable endowments, and rules fastened thereto. It marks a departure from the English principles. The norms and doctrines that exist in the Hindu religion of modern times were not devised during Vedic period. The law which is administered today in India with respect to the endowed Hindu temples and religious institutions is, to a substantial extent, the creation of a Judge. Temples were numerous in India, and they had the largest endowments, especially in the shape of lands, revenue and jewellery.

Hindu Law on Dedication

A religious trust by way of debutter comes into existence only on dedication of property for worship or service of idol. For a valid dedication, there should be proof of renunciation of the ownership of (dedicated) property, by the owner. In case of a dispute as to dedication, the court decides the same on the basis of its particular facts and circumstances. The ceremonies of *Sankalp* and *Samarpana* are relevant to show the intention of the owner. If there is clear evidence of divesting of ownership with the intention of devoting it to religious or charitable purpose, dedication can be inferred even without specific evidence of ceremonies.

In ***Deoki Nandan v. Murlidhar, AIR 1957 SC 133*** it is observed:

> "It is a settled law that an endowment can validly be created in favur of an idol or temple without the performance of any particular ceremonies, provided the settler has clearly and unambiguously expressed his intention in that behalf. Where it is proved that ceremonies were performed, that would be valuable evidence of endowment, but absence of such proof would not be conclusive against it. A dedication is irrevocable even at the instance of the donor"

In ***Menakuru Dasaratharami Reddi v. D Subba Rao*, *AIR 1957 SC 797,*** it is observed:

> "The principles of Hindu Law applicable to the consideration of questions of dedication of property to charity are well settled. Dedication to charity need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and use of the property which shows the extinction of the private secular character of the property and its complete dedication to charity."

In ***Kuldip Chand v. Advocate General to Government of H.P, AIR 2003 SC 1685*** while dealing with a Dharamsala, it is observed:

> "Dedication of property either may be complete or partial. When such dedication is complete, a public trust is created in contradiction to a partial dedication which would only create a charity. A dedication for public purposes and for the benefit of the public would involve complete cessation of ownership on the part of the founder and vesting of the property for the religious object. A dedication, it may bear repetition to state, would mean complete relinquishment of his right of ownership and proprietary."

It is pointed out in ***M. Siddiq (D) Thr. LRs. v. Mahant Suresh Das, (2020) 1 SCC 1***, (popularly known as '*Ayodhya Case*') that it is undoubtedly possible for a founder to dedicate property in the form of a gift; he can also, if he likes, create a trust through the medium of trustees', a dedication by a Hindu for religious or charitable purposes which is neither a 'gift' nor a 'trust' in the strict legal sense. Under Hindu law, if an endowment is made for a religious or charitable institution, without the instrumentality of a trust, and the object of the endowment is one which is recognized as pious, being either religious or charitable under the accepted notions of Hindu law, the institution will be treated as a juristic person capable of holding property.

It is also observed in ***Ram Swaroop v. Thakur Ram Chandra, AIR 1953 Nag 35*** that dedication of property is not a sacrament but a secular Act. The only difference between a dedication and secular gift is that in former no acceptance is necessary; mere renunciation of ownership by the donor with a particular object being sufficient to create an endowment. The rule against perpetuities embodied Section 14 of the Transfer of Property Act is not applicable to properties dedicated for public religious and charitable purposes.

Purpose of gift to a Religious Endowment

Hon'ble the Apex Court, in ***Deoki Nandan*** (supra) has observed that the true purpose of a gift of properties to the Idol is not to confer any benefit on God, but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship.

In ***Shriomani Gurudwara Prabandhak Committee, Amritsar v. Shri Somnath Das, AIR 2000 SC 1421,*** it has been again redirected by the Hon'ble Apex Court, that purpose of making a gift to a temple is not to confer a benefit on God but to confer a benefit on those who worship in that temple, by making it possible for them to have the worship conducted in a proper and impressive manner. This is the sense in which a temple and its endowments are regarded as a public trust.

Endowment of Hindu Religious Institutions – Requirement of Trust

A Hindu can establish a religious or charitable institution even without creating a trust i.e. one can endow an institution without appointing trustees. Mulla's Commentary on Hindu Law (21st Edition at page 600) reads:

> "A Hindu who wishes to establish a religious or charitable institution may, according to his law, express his purpose and endow it. Trust is not required for that purpose. All that is necessary is that the religious or charitable purposes should be clearly specified, and that the property intended for the endowment should be set apart for or dedicated to those purposes".

Similarly, Dr. B.K. Mukherjea on *the Hindu Law of Religious and Charitable Trusts* (Tagore Law Lectures, page 158), explains as to debutter property as under:

> "The mere fact that an idol has been established does not by itself create a debutter. A religious trust by way of debutter can come into existence only when property is dedicated for worship or service of the idol. When there is no endowment in favur of an established idol, no trust in the legal sense of the term can possibly come into being; it is only the moral duty of the person who founds the deity or his heirs to carry on the worship in such a way as they think proper."

Debutter/*Devaswom* Property

Though the dedicated asset of a temple is described as 'Property of the Gods' or '*Devaswom*', according to the texts, the Gods have no beneficial enjoyment of the property and they can be described as their owners only in a figurative sense. [See: ***Deoki Nandan*** (supra)].

Hon'ble the Apex Court, in ***Ram Jankijee Deities v. State of Bihar, AIR 1999 SC 2131*** observed as under:

> "In the conception of Debutter, two essential ideas are required to be performed: In the first place, the property which is dedicated to the Deity vests in an ideal sense in the Deity itself as a Juristic Person and in the second place, the personality of the Idol being linked up with natural personality of the *Shebait*, being the manager or being the *Dharamkarta* and who is entrusted with the custody of the Idol and who is responsible otherwise for preservation of the property of the Idol."

Hindu Temples and Principles of Trust

Again the Apex Court held, in ***PF Sadavarthy v. Commissioner, HR and CE, AIR 1963 SC*** as under:

> "To constitute a temple, it is enough if it is a place of public religious worship and if the people believe in its religious efficacy irrespective of the fact whether there is an Idol or a structure or other paraphernalia. It is enough if the devotees or the pilgrims feel that there is some super human power which they should worship and invoke its blessings."

From the aforementioned discussion, it is clear that two conditions are to be satisfied for considering a religious institution as a Hindu Temple; first, it should be a place of public religious worship; and the other is that it should have been dedicated for the benefit of, or is used as of right by the Hindu Community, or any section thereof, as a place of religious worship. Apart from these principles, the other factors which can determine whether the temple is a public temple are – (a) Repairs and maintenance by public funds; (b) Nature of land on which temple was made; (c) Association of strangers in the management of institution; and (d) location of temple.

Special characteristics of Charitable Trusts under Hindu Law

- Under Hindu Law, charitable trusts of private nature are also accepted as valid;
- In the case of temples and Mutt; property can vest in the deity or in the institution, considered as juristic persons;
- Mutt is the owner of the endowed property; and that, like an idol, the Mutt is a juristic person having the power of acquiring, owning and possessing property and having the capacity of suing and being sued.
- *Shebaites* are only persons in-charge of administration of the temple and its property. They are not recognized, in the strict legal sense, as trustees, for the main reason that the property does not vest in them. They are only Managers.
- Beneficiaries have only beneficial interest and not beneficial ownership.
- The administrators of religious trusts in India have no title to the trust properties and the properties are vested in them for administration and management alone.
- The beneficiaries have an interest in trust property as distinct from a right against the trustee.

Types of Trusts

Trusts are designed for the benefit of a class or the public. There are two types of trusts in India; private trusts and public trusts. While private trusts are governed by the Indian Trusts Act, 1882, public trusts are divided into charitable and religious trusts. In general, trust must be created for charitable, educational, religious or scientific purposes. There is no Central Act applicable for Public trusts, but various States have enacted their own Acts suitable to their conditions and administration. Public trusts are popular because it is relatively easy to register and manage them. All that one needs to do is to draft a trust deed stating the trustees, the objectives of the trust, and the intended beneficiaries who are a part of the general public. The trust is then registered under the State Trusts Act, thereby making the trust eligible for government tax rebates, namely; the Income Tax Act.

Generally, a public trust is of a more permanent nature than a private trust. Religious endowments and wakfs are variants of public trusts that come into being when an endowment, usually, property, is dedicated for religious purposes. The creation of religious charitable trusts is governed by the personal laws of the

religion. The administration of these religious trusts can either be left to the trustees as per the dictates of the religious names or it can be regulated by statute. In case of Hindus, the personal law provisions regulating the religious trusts have not been codified and are found dispersed in various religious books and epics.

Like the private trusts, public trusts may be created *inter vivo* or by will. The working of such trusts can be regulated and supervised by both, the State and the beneficiaries. To create a charitable trust, three certainties are required which are:

a. Declaration of trust made by settler which is binding upon him;

b. Setting apart certain property by settler and thereby depriving himself of the ownership rights; and

c. A statement of object for which the property is thereafter to be held, that is the beneficiaries.

It is essential that the transferor of the property *viz*. the settler or the author and the trustee are competent to contract. It is also necessary that trustees should signify their assent for acting as trustees to make the trust a valid one. Once the trust is created and the property is transferred to the trust, it cannot be revoked. In the State of Madhya Pradesh, law relating to public trusts is governed by M.P. Public Trust Act, 1951 and M.P. Public Trust (Amendment and Validation) Act, 1964. In addition, Madhya Pradesh Public Trust Rules, 1962 are also framed to ensure the proper functioning of public trust, although private temples are not covered by the provisions of Madhya Pradesh Public Trusts Act, 1951.

Difference between Public Trust and Private Trust

In ***Ram Swaroop v. S.P. Sahi, AIR 1959 SC 951,*** it was observed that Public and private trust can be distinguished in a number of ways. A simple way to differentiate between a public and a private trust is to know the beneficiaries of the trust. If the beneficiaries make up a large or substantial body of public, then the trust in question is public. A public trust exists "for the purpose of its objects, the members of an uncertain and fluctuating body," and is managed by a board of trustee. If, however, the beneficiaries are a narrow and specific group such as the employees of a company, then the trust is private. So the basic difference between both the trusts is that in the former, the interest is vested in an uncertain and fluctuating body whereas in the latter, beneficiaries are definite and ascertained individuals.

Section 2(4) defines "public trust" and it means an express or constructive trust for a public, religious or charitable purpose and includes a temple, a muth, a mosque, a church, a wakf or any other religious or charitable endowment and a society formed for a religious or charitable purpose.

Section 3 provides that the Collector shall be the Registrar of Public Trusts and he shall maintain the register of public trusts and such other books and registers and in such form as may be prescribed. Section 4 provides that within three months from the date of coming into force of theAct, the working trustees of every public trust shall apply to the Registrar having jurisdiction for the registration of the public trust.

Sub-section (3) of Section 4 lays down that the application shall be in such form as may be prescribed and shall contain the particulars enumerated in this sub-section. Sub-section (5) of section 4, provides an appeal against the decision made by the Registrar regarding registration of a public trust and it also lays down that the order of the appellate authority shall be final. Section 5 enjoins the Registrar to make inquiry in the prescribed manner for the purposes of ascertaining whether the trust is a public trust; whether any property is the property of the trust; the names and addresses of the trustees and managers and the mode of succession to the office of the trustee of such trust; the amount of gross average annual income and expenditure, etc. Under section 28, power of Civil Court is vested in Registrar and he is duty bound to make an enquiry about all the matters mentioned in sub-section (v) of section 5.

Section 6 lays down that on completion of the inquiry provided for u/s 5, the Registrar shall record his findings with reasons as to the matters mentioned in the said Section. Section 8 lays down that any working trustee or person having interest in a public trust or any property found to be trust property, feeling aggrieved by any finding of the Registrar u/s 6 may, within six months from the date of the publication of the notice under sub-section (1) of section 7, institute a suit in a civil court to have such finding set aside or modified.

Section 26 lays down that if the Registrar is satisfied on the application of any person interested in the public trust or otherwise that the original object of the trust has failed; or the trust property is not being properly managed or administered; or the direction of the Court is necessary for the administration of the public trust, he may after giving the working trustee an opportunity to be heard, direct such trustee to apply to Court for directions within a specified time.

Where the trustee so directed fails to make an application as required and the Registrar considers it expedient to do so, he shall himself make an application to the Court. sub-section (1) of section 27 lays down that on receipt of such application, the Court shall make or cause to be made such inquiry into the case as it deems fit and pass such order thereon as it may consider appropriate. The powers which can be exercised by the Court have been enumerated in sub-section (2) of this Section. Sub-section (3) of Section 27 is important and it lays down that any order passed by the Court under sub-section (2) shall be deemed to be a decree of such Court and an appeal shall lie therefrom to the High Court. Sub-section (4) provides that no suit relating to public trust u/s 92 of the Code of Civil Procedure shall be entertained by any Court on any matter in respect of which an application can be made u/s 26.

Nature of Trust – Necessity of determination by Trial Court

In ***Pooranchand v. Idol Radha Krishan Ji, 1978 MPJL 660,*** it is observed that where it is admitted that an idol was installed in the temple and certain property including the property in dispute was permanently endowed to it, consequently, a trust in legal sense or religious endowment known as 'Debuttar' came into existence. Where it come to the notice of the trial court that the endowment was a trust, it was necessary for the trial court to determine whether it was a public or a private trust.

In case of debuttar, a trust may be public or private and therefore, the point for decision in the case was whether the trust is public or private, and this point has to be decided with reference to the term of documents if any and upon inference which could be legitimately drawn from the evidence adduced in the case, the material evidence being the actual user and public repute.

Registration of Public Trust – Objections in suit

In ***Bhuralal v. Kailashchand, AIR 1982 MP 203,*** it is observed that when an objection is raised before court that, whether the suit is on behalf of a public trust which is required to be registered. Enquiry for *prima facie* decision is essential. Unless it is decided, the court cannot reach to a conclusion, the suit should be stayed. The finding so reached is a provisional finding for the purpose of section 32. Where a suit is ordered to be stayed u/s 32, the court is not debarred from granting an application for temporary injunction or appointment or receiver.

The use of words "heard and decided" distinctly go to show that what is prohibited is the hearing or decision of the suit and not the institution of the suit itself. That being so, in a case where an objection is subsequently raised proper

course is to order the party to appear before Registrar and apply for registration of a trust and after conducting the inquiry under Chapter II of the Act, Registrar will issue the certificate, which is to be presented before the court, thereafter, the court will hear the case.

Whether Idol a 'Juristic Person'?

It was only in an ideal sense that property could be said to belong to an idol. It had been expressly laid down in a number of cases that the consecrated idol in a Hindu temple was a juridical person. Some of the important cases are ***Vishvanath v. Thakur Radha Ballvi, AIR 1967 SC 1044, Parbandhak Committee v. Som Nath Dass, AIR 2000 SC 1421*** and ***M Siddiq*** (supra).

[*For details on this topic: Readers are requested to go through the Article on* ***Legal Position of Acquisition of title of property of an idol or deity by adverse possession,*** *published in Part-I of JOTI Journal August, 2010 at page no 155]*

Mutt as Juristic person

The Apex Court in ***Sarangadeva Periy Matam v. Ramaswami Goundar, AIR 1966 SC 1603*** has observed that the Mutt was the owner of the endowed property; and that, like an Idol, the Mutt is a juristic person having the power of acquiring, owning and possessing property and having the capacity of suing and being sued.

In ***Smt. Mahani Dasi v. Paresh Nath Thakur, AIR 1954 Ori. 198,*** it was observed that one of the main differences with respect to charitable trusts between English Law and Hindu Law (temples, Mutts, schools, etc.) is that under Hindu Law, property vests in the Idol or deity or in the institution; whereas under English Law trust-property vests in trustees.

Property vested with Idol – Management remains with *Shebait*

The possession and management of the dedicated property of a temple, which is vested with the idol, has to be in actual possession of some human-being. It is *Shebait* (शेबैत). The responsibilities undertaken by *Shebaits*, in different parts of India, are similar. However, those persons are identified by different names.

- *Shebait* (Shebaite) is the name used in Bengal and North India;
- It is Dharmakarthas in Tamil and Telugu area; and
- Uralens/Ooralans in Kerala.

The *Shebait* being entitled to deal with all the temporal affairs of the idol and to manage its property, the vesting of property with the Idol, as legal owner thereof, is qualified. Because of the fiduciary position, their liability equates that

of trustees. The Supreme Court in ***Deoki Nandan*** (supra) after considering various decisions and Sanskrit texts, observed as under:

> "Thus, according to the texts, the Gods have no beneficial enjoyment of the properties, and they can be described as their owners only in a *figurative sense* (Gaunartha), and the true purpose of a gift of properties to the Idol is not to confer any benefit on God, but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship."

It is held by the Supreme Court in ***M Siddiq*** (supra) as following:

> "Courts recognize a Hindu idol as the material embodiment of a testator's pious purpose. Juristic personality can also be conferred on a Swayambhu deity which is a self-manifestation in nature. An idol is a juristic person in which title to the endowed property vests. The idol does not enjoy possession of the property in the same manner as do natural persons. The property vests in the idol only in an ideal sense. The idol must act through some human agency which will manage its properties, arrange for the performance of ceremonies associated with worship and take steps to protect the endowment, inter alia by bringing proceedings on behalf of the idol. The shebait is the human person who discharges this role."

Where to file civil suit against findings of Registrar?

In ***Badri Prasad v. Uma Shankar, 1961 JLJ 329*** it is held that there can be no doubt that wherever the word "Court" is used in the Act, it would undoubtedly mean the principal Civil Court of Original Jurisdiction in the district which means the court of District Judge alone and no other Court. But a different phraseology is used in sections 8 and 12 of the Act, where the words used are "a Civil Court". The phrase "a Civil Court" has not been defined by the Act. Section 3 of the M.P. Civil Courts Act, 1958 describes various Civil Courts. It is this definition of a Civil Court, which would be applicable to the phrase "a Civil Court" occurring in section 8 and 12 of the M.P. Public Trust Act, 1951.

In ***Shri Dev Mahadevji Mandir, Raheli v. Rajesh Kumar, 2012 (4) MPLJ 675,*** Hon'ble High Court of Madhya Pradesh held that "Court" means the principal Civil Court of original jurisdiction in the District.

So it is clear that Civil Suit against the finding of the Registrar u/s 8 will be filed before Civil Judge and application to court for directions u/s 26 will be filed before Principal District Judge.

Jurisdiction of Registrar to decide contested questions of title

In ***A. Karim v. Raipur Municipality, 1965 SC 1744***, it is observed that the Act is concerned with the registration of public religious and charitable trust in the State of Madhya Pradesh, and the enquiry with its relevant provision contemplates is an enquiry into the question as to whether the trust in question is public or private. The enquiry permitted by the said provision does not take into account the sweep question whether the property belongs to a private individual and not the subject matter of any trust at all. It cannot be ignored that the Registrar who, no doubt, is given the power of a civil court u/s 28 of the Act, holds a kind of summary enquiry and the points which can fall under his jurisdiction are indicated in clauses (i) to (x) of section 4(3) only.

Section 8 (1) permits a suit to be filed by a person having an interest in the public trust or any property to be found to be trust property. The interest to which this section refers must be read in the light of Section 5 (2) to be the interest of a beneficiary or the interest of a person who claims the right to maintain the trust or any other interest of a similar nature. It is not the interest which is adverse to the trust set up by a party who does not claim any relation with the trust at all. The right to file a suit is given to a person who is aggrieved by the finding of the Registrar. Private individuals having grievances may not be a party before the Registrar. A person claiming interest adverse to public trust cannot file suit u/s 8 (1) of the Act". Therefore, the remedy available for private individuals is to file a separate suit for declaration of title.

Notice u/s 80 CPC before institution of suit

In ***State of Maharashtra v. Chandra Kant, AIR 1977 SC 148,*** it has been observed that the Registrar under the Act is a public officer and the order passed by him declaring a *sansthan* to be a public trust is an act purporting to be done in his official capacity. Therefore, for a suit u/s 8 to set aside the order, notice u/s 80 of the Code of Civil Procedure was necessary. The suit contemplated in section 8 is against the public officer in his official capacity**.**

Who may be joined as defendant to the suit?

Section 8 of the Act does not lay down who shall be joined as defendant in the suit; but on principles applicable generally to the suits of this nature, it is obvious that persons vitally interested in the finding sought to be challenged, who

would be adversely affected if the finding is set aside, should be joined as defendants. The trustees determined by the Registrar are charged with the management of the trust property. As such they are interested in the question whether trust is a public trust or not. The very existence as trustees and the duties they are required to perform depends entirely on this question. They are therefore, necessary parties to the suit and should be joined as such.

Along with that, section 12 also stipulates that any document purporting to create a public trust is produced or any question before such Court or officer is likely to affect any entry in the register such Court or officer shall give notice to the Registrar of such proceedings and shall, if the Registrar applies in that behalf, make him a party to such proceedings.

No bar to hear and decide suit when trust property is sold by Manager

In ***Smt. Urmila Patel v. Ravindra Patel, 2003 (2) MPHT 308,*** it is observed that provisions u/s 32 of the Act create a bar to enforce a right of a public trust which is not registered under this Act. However, this provision could not be stretched to means that it prohibits any suit being filed against the public trust which is not registered. If the property belonging to a temple is sold by a manager and if a suit is filed by worshippers for declaration that the sale deed executed by the manager was null and void, the suit was held to be maintainable. Plaintiffs can claim their independent right in the suit property and under the right they have also sought a decree of injunction.

Application to Court for directions

The Registrar on application by any person interested in public trust or otherwise is satisfied that object of trust has failed, or trust property is not properly managed, or administration or direction of the court is necessary for the administration, of public trust, he may give working trustee an opportunity to be heard direct such trustee to apply to court for directions and if the trustee fails to make an application, the Registrar shall make an application to the court. Before passing the order u/s 26, the Registrar has to record a finding u/s 23 that if there is any loss caused to the public trust and ascertain the amount. The Registrar is required to decide u/s 25 the allegations of non-filling of vacancies of the trust. The order passed u/s 23 is also appealable to the district court.

Jurisdiction for Reference

In ***Kailash v. Rewaram, 1965 JLJ 716,*** it is observed that application u/s 26 does not lie unless temple is declared public trust. Section 26 gives jurisdiction to the Registrar and court only if there is public trust.

In ***Ravi Prakash v. Hemraj, 1990 JLJ 152,*** it is observed that reference made by Registrar under this section can be heard by District Judge (now Principal District Judge) and can be heard by any Additional District Judge attached to the District Court having Jurisdiction when received on transfer.

In ***Temple Achleshwar v. Temple Shri Achleshwar, 1999(1) JLJ 74,*** it was observed that in view of Section 27(4) of Act, no civil court has any jurisdiction to entertain any suit u/s 92 CPC in relation to a public trust about any matter in respect of which an application u/s 26 can be made.

Effect of non-filling of vacancies by working trustees

In ***Phool Chand v. Registrar, Public Trusts, Satna, 1973 MPLJ 658,*** it has been observed that if the elections were not conducted by managing trustees within stipulated time period as per trust deed, the Registrar can certainly give directions to hold such election and in event of non-compliance, the only course open to the Registrar will be to apply to the court for removal of the trustees and for appointment, of fresh trustees. But the Registrar has no power to nominate fresh trustees.

Power of Court for hearing of reference or appeal

In ***Ram Mandir Trust v. State of MP, 2011 (2) MPLJ 560,*** it is observed that while hearing the reference of order of Registrar u/s 26 to the District Judge, a party agreeing to the order of Registrar has a remedy to submit objections u/s 27 before the district court. The District court will hear it and finally decide after conducting requisite inquiry.

Section 27 of the Act deals with the court's power to adjudicate application. It provides that on receipt of such application the Court shall make or cause to be made such inquiry into the case as it deems fit and pass such orders thereon as it may consider appropriate. Section 30 of the Act lays down that State in so far as they may be inconsistent with anything contained in this Act the provision of CPC shall apply to all proceedings before the court under this Act. The words "as it deems fit" occurring in section 27 of the Act do not mean that the court may reduce the inquiry to a mere farce. The word "pass such orders they are on as it may consider appropriate" in section 27 (1) of the Act are also very significant. They clearly suggest that the power of the court in passing an order after the inquiry is not necessarily confined to or limited by the prayers made in the application, but it may pass such orders which the court may consider proper in the fact and circumstance of the case. It is further clear that a court has wider jurisdiction. No doubt the scope of inquiry will depend upon the allegations and

the purpose of application. Needless to say that while selecting and appointing a person as a trustee, the paramount consideration for the court would be the welfare of the trust. With that the court would be entitled to take into consideration not only the wishes and right of any of the founder or name a trustee but also the history of the institution and the conduct of person claiming to be a trustee prior to and after the death of last trustee.

In ***Dharampal Singh v. Hari Ram, AIR 1974 MP 32,*** it has been observed that u/s 27, the District Judge is given authority to decide whether the trust is being properly managed or not, the trust about which a declaration has already been given; and if the trust is not being managed properly, to remove the trustees, appoint new trustees and to give directions regarding the management of trust. Now, when a trustee is removed, it follows that he is to hand over possession of the property to the newly appointed trustee; and unless that is done, that direction as to how the property is to be managed by the new trustee becomes otiose. The authority to give directions to the trustee who is removed to deliver possession of the property is implicit in the provisions of section 27 itself and, that power is covered under clause (f) of section 27 of Madhya Pradesh Public Trust Act, 1951. The transferees from the managing trustee are in the position of trustees *de son tort* and hence, they can always be directed to deliver possession of the property and it is not necessary that the new trustee should be forced to file a suit for possession of the property.

Alienation of Trust Property

Section 14 imposes an embargo on the sale, mortgage or gift of any immovable property of the Public Trust as well as lease for a period exceeding seven years in the case of agricultural lands, or for a period exceeding three years in case of a non-agricultural land or building. Such transactions shall not be valid without the previous sanction of the Registrar. Sub-section (2) limits the power of the Registrar to refuse the sanction in respect of transactions covered by sub-section (1). The Registrar can refuse sanction only when he is satisfied that the transactions will be prejudicial to the interests of the Public Trust.

In ***The Khasgi (Devi Ahilyabai Holkar Charities) Trust, Indore & anr. v. Vipin Dhanaitkar & ors., 2022 Live Law (SC) 623,*** it is observed that a Trust property cannot be alienated unless it is for the benefit of the Trust and/or its beneficiaries. The Trustees are not expected to deal with the Trust property, as if it is their private property. It is the legal obligation of the Trustees to administer the Trust and to give effect to the objects of the Trust.

Conclusion

Thus, it is abundantly clear from the above discussion that the scope of Civil Court and District Court relating to matters dealing with Public Trust is completely different. The discussion may be summarized as follows:

- If there is clear evidence of divesting of ownership with the intention of devoting it to religious or charitable purpose, dedication can be inferred even without specific evidence of ceremonies.
- The true purpose of a gift of properties to the Idol is not to confer any benefit on God, but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship.
- Two conditions are to be satisfied for considering a religious institution as a Hindu Temple; One, it should be a place of public religious worship; and the other is that it should have been dedicated for the benefit of, or is used as of right by the Hindu Community, or any section thereof, as a place of religious worship.
- There is no Central Act applicable for Public trusts, but various States have enacted their own Acts suitable to their conditions and administration. Public trusts are popular because it is relatively easy to register and manage them.
- Public and private trust can be distinguished in a number of ways. A simple way to differentiate between a public and a private trust is to know the beneficiaries of the trust. If the beneficiaries make up a large or substantial body of public, then the trust in question is public.
- A trust may be public or private and therefore, the point for decision in the case was whether the trust is public or private, and this point has to be decided with reference to the term of documents if any and upon inference which could be legitimately drawn from the evidence adduced in the case, the material evidence being the actual user and public repute.
- When an objection is raised before court that whether the suit is on behalf of a public trust which is required to be registered. Enquiry for *prima facie* decision is essential.
- The consecrated idol in a Hindu temple is a juridical person.
- Where, the Mutt was the owner of the endowed property; and that, like an Idol, the Mutt is a juristic person having the power of acquiring, owning and possessing property and having the capacity of suing and being sued.

- The possession and management of the dedicated property of a temple, which is vested with the idol, has to be in actual possession of some human-being. It is *Shebait.*
- Civil Suit against the finding of the Registrar u/s 8 will be filed before Civil Judge and application to court for directions u/s 26 will be filed before Principal District Judge.
- The right to file a suit is given to a person who is aggrieved by the finding of the Registrar. Private individuals having grievances may not be a party before the Registrar. A person claiming interest adverse to public trust cannot file suit u/s 8 (1) of the Act. Therefore, the remedy available for private individuals is to file a separate suit for declaration of title.
- For a suit u/s 8 to set aside the order, notice u/s 80 of the Code of Civil Procedure was necessary.
- If the property belongs to a temple is sold by manager and if a suit is filed by worshippers for declaration that the sale deed executed by the manager was null and void, the suit was held to be maintainable.
- No civil court has any jurisdiction to entertain any suit u/s 92 CPC in relation to a public trust about any matter in respect of which an application u/s 26 can be made.
- While hearing the reference of order of Registrar u/s 26 to the District Judge, a party agreeing to the order of Registrar has a remedy to submit objections u/s 27 before the district court. The District court will hear it and finally decide after conducting the inquiry.
- The District Judge is given authority to decide whether the trust is being properly managed or not, the trust about which a declaration has already been given; and if the trust is not being managed properly, to remove the trustees, appoint new trustees and to give directions regarding the management of trust.
- Trust property cannot be alienated unless it is for the benefit of the Trust and/or its beneficiaries. The Trustees are not expected to deal with the Trust property, as if it is their private property. It is the legal obligation of the Trustees to administer the Trust and to give effect to the objects of the Trust.

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STATEMENT OF ACCUSED: A VITAL PIECE OF A LEGAL PUZZLE

- Institutional Article

The golden thread which runs through the cobweb of criminal administration of justice is presumption of innocence of accused. Another cardinal principle is that no one should be condemned unheard. To meet the requirements of the doctrine of natural justice i.e. *audi alteram partem,* it is required that an opportunity should be given to the accused to furnish explanation regarding the incriminating material which had come against him during the trial. With regard to this, a distinct and specific provision has been incorporated in the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") which ensures that these principles be followed in all criminal trials. Section 313 of Cr.P.C. provides for recording of **"Statement of Accused."**

Bare Provision

As per section 313 of Cr.P.C., accused may be examined at any stage of proceedings and shall after completion of evidence of prosecution. At this juncture, to further understand the concept of examination of accused, it is pertinent to reproduce section 313 of Cr.P.C., which provides that:

> "**313.** In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him**,—**
>
> (1) (a) The Court may, at any stage without previously warning the accused, put such question to him as the Court considers necessary;
>
> (b) The Court shall, after the prosecution witnesses have been examined and before the accused is called upon to put up his defence, question him generally on the case: Provided that in a summons case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).
>
> (2) No oath shall be administered to the accused when he is examined under sub-section (1).
>
> (3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the court may permit filing of written statement by the accused as sufficient compliance of this section".

On bare reading of section 313 of Cr.P.C, it is clear that the first part gives discretion to the court to question accused at any stage of enquiry without previous warning where as the second part is mandatory. The use of the word "may" in clause (a) shows that discretion is vested in the court. However, clause (b) uses the word "shall" and makes the questioning mandatory.

Certain ancillary provisions regarding examination of accused are also incorporated in Rules 161 to 168 of M.P. Rules and Orders (Criminal) which are of great importance and should be borne in mind while recording statement of accused.

Object

The section itself clarifies the object, in explicit language, that it is "for the purpose of enabling the accused personally to explain any circumstance appearing in the evidence against him." It casts a duty upon the courts to question the accused fairly, the accused in clear words knows the exact case that the he has to meet and thereby an opportunity is extended to him to explain any such point.

In ***Parsuram Pandey v. State of Bihar, (2004) 13 SCC 18,*** the Supreme Court has held that section 313 Cr.P.C. is imperative to enable an accused to explain any incriminating circumstances brought by the prosecution.

Scope and Purpose

The scope of section 313 of the Cr.P.C. is to test the veracity of the prosecution case. The questions put to the accused and answers given by him are of immense importance. Although, the accused has a right to remain silent and he cannot be compelled to speak during investigation and subsequent there on, the purpose of empowering the court to examine the accused under section 313 Cr.P.C. is to meet the requirement of the principle of natural justice. Another purpose is to establish a direct dialogue between the court and the accused and to put every important incriminating piece of evidence to the accused and grant him

an opportunity to answer and explain them as held in the case of ***Sanatan Naskar & anr. v. State of West Bengal, AIR 2010 SC 3507***. At the same time, also to permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime.

Methodology of Recording of Statement of Accused

When an accused is being examined u/s 313 Cr.P.C., no oath is to be administered to him. The answers which are given by the accused in such examination may be taken into consideration and put in evidence, for or against him in that or any other inquiry or trial, for any other offence which such answers may tend to show that he has committed.

While examining accused courts have to take into consideration socio-economic and academic qualification of accused and his capacity to understand questions posed to him. Court has to take due care while examining rustic and illiterate accused. The accused, if he is not an intelligent person with a sharp memory, may not even remember all the circumstances put to him while giving his explanation.

The questioning must be fair and framed in a form so that an ignorant and illiterate person may be able to appreciate and understand. Even if the accused is not illiterate, his mind is bound to be perturbed when he is facing a trial of murder. If vague questions are put to the accused he may not have opportunity to explain promptly and effectually. This may lead to miscarriage of justice. Evidence of each witness and incriminating evidence found there upon should be asked individually but not in a formal way questioning all the accused at one time.

Separate and Simple Questions about each Material Circumstance

While examining the accused, trial court has to take into consideration that the questions should be based on the incriminating evidence adduced by prosecution. The questions should be formulated in clear, logical and understandable manner leaving no ambiguity. It is not appropriate and sufficient compliance of the provision to string together long series of facts and ask the accused what he has to say about them. He must be questioned simply and separately about each material circumstance which is intended to be used against him. The practice of putting the entire evidence against the accused in a single question and giving an opportunity to explain the same is improper. In questioning the accused, compound questions should be avoided as held in the case of ***State of Punjab v. Swaran Singh, (2005) 6 SCC 10***.

Therefore, it is required that each material circumstance should be put simply and separately in a way that even an illiterate person can appreciate and understand. This opportunity of examination under section 313 given to the accused, is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence. It is imperative that each and every question must be put to the accused separately and their answers must also be recorded separately. Recording of statements shall be in full and not in monolithic answers.

Circumstantial Evidence

The importance of this provision is same in the cases of circumstancial evidence also. They are not kept in seperate pedastal. In ***Munish Mubar v. State of Haryana, AIR 2013 SC 912***, the court held that it is obligatory on the part of the accused while being examined under section 313 Cr.P.C. to furnish some explanation with respect to the incriminating circumstances associated with him and the court must take note of such explanation even in a case of circumstantial evidence so as to decide whether or not the chain of circumstances is complete.

Same view was taken in the case of ***Mushir Khan @ Badshah Khan and anr. v. State of Madhya Pradesh, AIR 2013 SC 762,*** wherein the court observed that, circumstantial evidence is a close companion of factual matrix, creating a fine network from which there is no escape for the accused, primarily, because such facts when taken as a whole, do not permit us to arrive at any other inference but one, indicating the guilt of accused.

In ***Madhu @ Madhurantha and anr. v. State of Karnataka, AIR 2014 SC 394,*** the court held that in cases where the accused was last seen with the deceased victim just before the incidence (last seen together theory), it becomes the duty of accused to explain the circumstances under which the death of victim occurred and further it is the obligation on the part of the accused while being examined under section 313 Cr.P.C. to furnish some explanation regarding the incriminating circumstances associated with him. The court must take note of such explanation even in a case of circumstantial evidence to decide whether or not the chain of circumstances is complete**.** Same view has been taken in ***Mushir Khan*** (Supra) and ***Dr. Sunil C. Dennial v. State of Punjab, AIR 2013 SC (Cri) 193.***

Multiple Accused

Questioning of more than one accused at a time about incriminating evidence found from prosecution evidence is not a proper approach, as role and participation of each accused may be different according to the facts and

circumstances of each case. Therefore, it is always desirable to question each accused separately about the incriminating evidence found against him in a case. Recording of statement of the accused persons simultaneously and putting same set of questions to all the accused may cause prejudice to the accused and in catena of judgements, it was held not a proper approach.

Absence of Accused: Alternate Arrangement

In the case of ***Basavaraj R. Patil v. State of Collector, AIR 2000 SC 3214***, the Apex Court has held that as a general rule, it is necessary that in all cases the accused must answer the questions put to him under section 313 (1) (b) of the Code by personal presence in the court. However, if personal presence involves undue hardship and huge expenses, the court can dispense such examination on application by accused even in warrant cases, after adopting a measure to comply with the requirements of section 313 Cr.P.C. in a substantial manner.

The application and the affidavit of the accused must also contain the narration of undue hardship and huge expense etc., the assurance that no prejudice would be caused to him by dispensing with his personal presence and an undertaking that he would not take any grievance on that score at any stage of the case.

In ***K. Anbazhagan v. Supdt. of Police, AIR 2004 SC 524***, it was reiterated that the general rule is the accused must answer the questions put to him under section 313 (1) (b) Cr.P.C., by personally remaining in the court and only in exceptional circumstances of undue hardship and large expense etc., the general rule of personal presence can be dispensed with. In this case, the court held that the accused was holding the position of Chief Minister of Tamil Nadu and there was no exceptional exigencies or circumstance such as to undertake a tedious long journey or incur a whopping expenditure to appear in the court to answer the questions under section 313 Cr.P.C. Thus, none of the facts which have weighed with the consideration of the court in ***Basavaraj R. Patil case*** (supra), were available in the given case. In ***Inspector, Customs, Akhnorr, Jammu and Kashmir v. Yashpal, (2009) 4 SCC 769***, the observation given in ***Basavaraj R. Patil case*** (supra) was followed in less serious warrant cases.

In the present era of information and communication technology, situations mentioned above as well as extreme situations which arose during spread of COVID-19 may be tackled through video - conferencing. The District Courts of Madhya Pradesh Video Conference and Audio Electronic Linkage Rules, 2020 published in Madhya Pradesh Gazzette on 19.06.2020 provide for

recording of statement of accused through video conference. Rule 11 provides for "Examination of accused and witnesses". The provision of recording accused statement is incorporated in Rule 11.2 which reads as follows:

> "Save as otherwise provided, the Court may, in exceptional circumstances, for reasons to be recorded in writing, examine a witness or record the statement of the accused under Section 313 Cr.P.C. through video conferencing, while observing all due precautions to ensure that the witness or the accused, as the case maybe, is free of any form of coercion, threat or undue influence."

Here, it is pertinent to mention that this rule in itself contemplates that recording of statement of accused is to be done through video conferencing exceptionally and while doing that all the precautions are to be taken.

Whether Examination of Counsel is Permissable ?

A pleader authorised to appear on behalf of the accused does a lot of work for the accused and makes statements on his behalf like in bail petitions and other applications. The Supreme Court has held that a proposition that a pleader authorised to appear on behalf of the accused can do all acts which the accused himself can do, is too wide. When the prosecution evidence is closed, only the accused must be questioned for the incriminating evidence against him and his pleader cannot be examined in his place. This position is clearly established in plethora of precedents such as ***Bibhuti Bhusan Das Gupta v. State of W.B., AIR 1969 SC 381, Basavraj R. Patil*** (supra) and several more. It is observed that section 313 Cr.P.C. does not envisage the examination of the counsel in place of the accused.

The accused cannot answer the questions with legal advise and consultancy, as it will not amount to examination of the accused personally. Denial of legal consultancy and advice to the accused at the time of examination under section 313 Cr.P.C. would not amount to violation of fundamental rights contemplated under Articles 21 and 22 (1) of the Constitution.

How Many Times an accused may be Examined ?

If examination of the accused has taken place, the court can call the accused to answer incriminating circumstances again. There is no implied prohibition on calling upon the accused multiple times to answer questions. However, this should not be used in a routine or mechanical manner. In the case

of ***Emperor v. Bhau Dharma, (1928) 30 Bom LR 385,*** it was held that if fresh prosecution witnesses are examined after the examination of the accused, it is obligatory to further examine the accused under section 313 Cr.P.C.

Statement of Accused: When not Necessary?

It is settled law that it is not obligatory in each case to examine the accused. If there are no circumstances appearing against the accused in evidnece, then the court should not put any question. When the accused had pleaded guilty to the charge, then the question of examination does not arise. In the same way, when there is an admission made by the accused himself, then it is not necessary to put that allegation on the accused in examination. It is not the intent of the legislature to elicit explanation from accused in which there is no evidence.

Proviso to section 313 (1) (b) Cr.P.C. provides that in a summons case where the court has dispensed with the personal attendance of the accused, it may also dispense with his examination under section 313 Cr.P.C. whereas in a warrant case no discretion is given to the court section 313 (1)(b) Cr.P.C.

Effect of Non – Examination of the Accused

It is a settled principle of law that the incriminating material which has not been put up before the accused cannot be used against him. Now the next question which lingers is what if the accused was not examined in the light of section 313 Cr.P.C.? In ***Gyan Chand and ors v. State of Haryana, AIR 2013 SC 3395***, plea of non-compliance of the provisions of section 313 Cr.P.C. was taken before the Supreme Court. But there was hardly any material showing as to what prejudice has been caused to the accused persons, if incriminating fact was not put to them. Thus, the court held that the trial was not vitiated for non - compliance of the provisions of section 313 Cr.P.C. Non-examination of accused under section 313 of Cr.P.C does not vitiate the entire proceedings or case of the prosecution. Accused can make good of the same even at appellate stage. It is not sole base for eviction unless accused shows miscarriage of justice.

Therefore, it is of utmost importance that the accused be examined for each and every inculpatory piece of prosecution evidence. There may be cases where occular evidence does not support prosecution case or have turned hostile and the court decides not to conduct examination of accused but on the other hand there is other incriminating clear cut or scientific evidence such as DNA profile report is available on record and if the same has not been put up before the accused for explaination then the same cannot be used against him and even if it is used, it would amount to grave prejudice to the accused.

Faulty or improper Examination of Accused

In ***Shivaji Sahabrao Bobade & anr. v. State of Maharashtra, (1973) 2 SCC 793,*** the Court considered the fallout of the omission to put a question to the accused on vital circumstance appearing against him and the Court has held that the appellate court can question the counsel for the accused as regards the circumstance omitted to be put to the accused. In ***State (Delhi Administration) v. Dharampal, AIR 2001 SC 2924,*** it was held that:

> "Thus it is to be seen that where an omission, to bring the attention of the accused to an inculpatory material has occurred that does not ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission. Further, in the event of an inculpatory material not having been put to the accused, the appellate Court can always make good that lapse by calling upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against the accused but not put to him.....remanding the case again for re-trial of the case from that stage of recording of statement under section 313 and the same cannot be said to be amounting to filling up lacuna in the prosecution case."

In ***Nar Singh v. State of Haryana, AIR 2015 SC 310***, the Supreme Court held that:

> "...Accused in the instant case is prejudiced on account of omission to put the question as to the opinion of Ballistic Expert which was relied upon by the trial court as well as by the High Court. Trial court should have been more careful in framing the questions and in ensuring that all material evidence and incriminating circumstances were put to the accused. However, omission on the part of the Court to put questions under section 313 Cr.P.C. cannot enure to the benefit of the accused. Therefore, the matter is remitted back to the trial court for proceeding with the matter afresh from the stage of recording of statement of the accused under section 313 Cr.P.C."
>
> Therefore, it is clear that mere defective/improper examination under section 313 Cr.P.C. is no ground for setting aside the conviction of the accused, unless it has resulted in prejudice to the accused. Unless the examination under section 313, Cr.P.C. is done in a perverse way, there cannot be any prejudice to the accused and it will not vitiate the entire proceeding or trial.

Evidentiary Value

Once such a statement is recorded, the next question that has to be considered by the Court is to what extent such statement can be used during the enquiry and the trial? Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence. The statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case.The same view was taken in ***Dehal Singh v. State of H.P., AIR 2010 SC 3594*** and ***State of M.P. v. Ramesh, (2011) 4 SCC 786.***

In the cases where there is a presumption into play, the Supreme Court has clarified in one such case ***Sher Singh v. State of Haryana, AIR 2015 SC 980*** that because of the language employed in section 304-B, IPC which deals with dowry death, the burden of proving innocence shifts to the accused which is in stark contrast and dissonance to a person's right not to incriminate himself. It is only in the back-drop of section 304-B that an accused must furnish credible evidence which is indicative of his innocence either under section 313 Cr.P.C. or by examining himself in witness-box or through defence witnesses, as he may be best advised. Having made this clarification, refusal to answer any question put to the accused by the court in relation to any evidence that may have been presented against him by the prosecution or the accused giving an evasive or unsatisfactory answer, would not justify the court to record a finding of guilt on this score. The burden is cast on the prosecution to prove its case beyond reasonable doubt and once this burden is met, the statements under section 313 Cr.P.C. assume significance to the extent that the accused may cast some incredulity on the prosecution version.

Even though it is the right of accused to keep silent or to give any false statement which does not bind him or the court cannot prosecute him on false statements given by him in examination. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders. An adverse inference can be taken against the accused only and only if the incriminating materials stood fully established and the accused is not able to furnish any explanation for the same as held in ***Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan, AIR 2013 SC 3150.*** False denial made by the accused of established facts can be used against him.

The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution as held in the case of ***Sanatan Naskar*** (supra). Conviction of the accused cannot be based merely on the statement made under Section 313 of the Cr.P.C. as it cannot be regarded as a substantive piece of evidence as it was held in ***Mohan Singh v. Prem Singh & anr., AIR 2002 SC 3582.***

In the case of ***Manu Sao v. State of Bihar, (2011) 1 SCC (Cri) 370,*** it was held that it is true that the statement under section 313 Cr.P.C. cannot be the sole basis for conviction of the accused but certainly it can be a relevant consideration for the courts to examine, particularly when the prosecution has otherwise been able to establish the chain of evidence. The statements given by accused under section 313 Cr.P.C examination cannot be used to fill up the laches on the part of prosecution. In case prosecution evidence is not sufficed to give conviction to accused then, inculpatory statements given by accused cannot be taken into consideration.

On the basis of the aforesaid discussion, it is evident that the statement under section 313 Cr.P.C. is neither recorded after administering oath to the accused nor subjected to cross-examination. Hence, it can neither be treated as evidence nor can be used to fill up the lacuna in prosecution's case. Though the accused has a right if he chooses to be a witness, and once he makes that option, he can be administered oath and examined as a witness in defence as required under section 315 Cr.P.C. An adverse inference can be taken against the accused only and only if the incriminating material stood fully established and the accused is not able to furnish any explanation for the same. Accused statement cannot be a sole basis of convicton.

Examination of Accused u/s 313 Cr.P.C. is Not Mere Formality

Examination of the accused u/s 313 Cr.P.C. is not a mere formality. Answers given by the accused to the questions put to him during such examination have a practical utility for criminal courts. Apart from affording an opportunity to the delinquent to explain incriminating circumstances against him, they would help the court in appreciating the entire evidence adduced in the court during trial. Trial judge should take care that questions of an inquisitorial nature should be put to an accused, simply because statements given by accused under this section is not sole base for conviction, presiding officer cannot be treated as formality as it carries much importance in appreciation of evidence.

Hon'ble High Court of Madhya Pradesh in the matter of ***Dinesh Yadav v. State of M.P. and anr.,*** Criminal Appeal No. 728 of 2019, judgment dated, 12.04.23, held that:

> **"**Section 313 of Cr.P.C. is codification of principles of natural justice in a procedural statute. The court should eschew the practice of preparing questions in a cursory and mechanical manner. The question so put to the accused must be specific and pregnant with necessary clarity and elaboration. It cannot be forgotten that the root cause and basic purpose for putting incriminating material to the accused is to provide him an adequate, sufficient and reasonable opportunity to give explanation. No cryptic question or a question framed for namesake can substitute the requirement of principles of natural justice."

Recently in the case of ***Kalicharan v. State of Uttar Pradesh, (2023) 2 SCC 583*** the Hon'ble Apex Court held that:

> "Questioning an accused under section 313 CrPC is not an empty formality. The requirement of section 313 CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under section 313 CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be able to properly defend himself."

On the basis of aforesaid discussion, it can be said that broadly the points for consideration while examining an accused are:

(1) The presence and involvement of the accused at the scene of occurrence.

(2) The part alleged to be played by him at the scene of occurrence in commission of the offence.

(3) The motive for crime.

(4) Anything revealed by the medical evidence against him.

(5) Any objects recovered from him tending to incriminate him.

(6) Confession.

(7) Extra-judicial confession

(8) Motive of the witnesses to depose against him.

(9) Dying declaration, etc.

(10) Any scientific or other report which may be used against him.

This list is not exaustive and courts while using discretion are at liberty to incorporate questions on any incriminating material against the accused on record.

Conclusion

This topic can be concluded in these words that Section 313 Cr.P.C. is based on the fundamental principle of fairness. It is mandatory in nature and casts a duty on the court to give an opportunity to the accused to explain the incriminating material against him and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material. Every incriminating evidence should be put to the accused separately. Therefore, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. Examination of the accused is not intended to be a mere formality, it has to be carried out in the spirit of the legislative intent, interest of justice and fair play to the accused.

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कठिनाई का मतलब असंभव नहीं है। इसका सीधा सा मतलब है कि आपको कड़ी मेहनत करनी होगी।

– डॉ. ए.पी.जे. अब्दुल कलाम

विधिक समस्यायें एव समाधान

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

1. अचल संपत्ति के विक्रय करार में कब्जा परिदत्त होने की दशा में दस्तावेज कि प्रकृति क्या होगी, उस पर कितना स्टाम्प शुल्क का संदाय अपेक्षित है तथा अपर्याप्त स्टाम्पित होने की दशा में विधि क्या है?

भारतीय स्टाम्प अधिनियम, 1899 की अनुसूची 1– क के अनुच्छेद 6 (ड) में वर्णित अनुसार यदि करार स्थावर संपत्ति के विक्रय से संबंधित है तथा हस्तांतरण–पत्र निष्पादित किये बिना कब्जा परिदत्त किया जाता है या परिदत्त किये जाने का करार किया जाता है, तब वही शुल्क लगता है, जो संपत्ति के बाजार मूल्य के लिये हस्तांतरण–पत्र पर लगता है।

धारा 2 (10) भारतीय स्टाम्प अधिनियम, 1899 में ''हस्तांतरण–पत्र'' को परिभाषित किया गया है जिसमें विक्रय पर हस्तांतरण–पत्र तथा ऐसी प्रत्येक लिखत सम्मिलित है जिसके द्वारा जंगम अथवा स्थावर संपत्ति का जीवित व्यक्तियों के बीच अंतरण होता है एवं जिसके सम्बन्ध में उक्त अधिनियम की प्रथम अनुसूची या अनुसूची 1–क में विनिर्दिष्ट उपबंध नहीं किया गया है।

इस प्रकार अचल सम्पत्ति के ऐसे विक्रय करार जिसमें संपत्ति का कब्जा परिदत्त होना दर्शित है, वह ''हस्तांतरण–पत्र'' की श्रेणी का दस्तावेज है, जिस पर अधिनियम की अनुसूची 1–क के अनुच्छेद 25 में वर्णित अनुसार स्टाम्प शुल्क निम्नानुसार देय होगा–

> ''उस संपत्ति के जो कि हस्तांतरण–पत्र की विषय–वस्तु है, बाजार मूल्य या उसमें उपवर्णित प्रतिफल की रकम का, इनमें से जो भी अधिक हो, का पांच प्रतिशत स्टाम्प शुल्क संदाय होगा।''

पर्याप्त स्टाम्प शुल्क न होने अथवा बिना स्टाम्प शुल्क की दशा में ऐसा विक्रय करार सिविल न्यायालय के समक्ष साक्ष्य में प्रस्तुत किये जाने पर धारा 33 भारतीय स्टाम्प अधिनियम, 1899 में परिबद्ध कर लिया जावेगा। ऐसा परिबद्ध विक्रय करार धारा 35 भारतीय स्टाम्प अधिनियम, 1899 के अनुसार ही साक्ष्य में ग्राह्य होगा।

अधिनियम की धारा 35 स्पष्ट प्रावधान करती है कि ऐसा अपर्याप्त रूप से स्टाम्पित विक्रय करार, स्टाम्प शुल्क को पूरा करने के लिए अपेक्षित स्टाम्प शुल्क तथा उक्त स्टाम्प शुल्क पर लिखत के निष्पादन की तारीख से प्रतिमाह 2 प्रतिशत के बराबर शास्ति का भुगतान कर दिये जाने पर साक्ष्य में ग्राह्य होगा। किसी भी दशा में शास्ति की राशि बकाया स्टाम्प शुल्क की राशि से अधिक नहीं होगी।

अधिनियम की धारा 38 से यह भी स्पष्ट है कि सिविल न्यायालय के समक्ष ऐसे विक्रय करार को साक्ष्य में प्रस्तुत करने की अपेक्षा करने वाला पक्ष यदि अपेक्षित स्टाम्प

शुल्क मय शास्ति के न्यायालय में संदाय करता है, तब न्यायालय लिखत को साक्ष्य में ग्राह्य करने के उपरांत उसकी अधिप्रमाणित प्रति, स्टाम्प शुल्क एवं शास्ति के विवरण सहित लिखित प्रमाण पत्र एवं रकम कलेक्टर को भेजेगा। यदि अपेक्षित स्टाम्प शुल्क एवं शास्ति न्यायालय में प्रस्तुत नहीं की जाती है तब उस दशा में न्यायालय ऐसे विक्रय करार को मूलतः स्टाम्प पूर्ति हेतु कलेक्टर के पास भेजेगा।

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2. वाणिज्यिक न्यायालयों में लंबित माध्यस्थम संबंधी प्रकरणों की सुनवाई की क्षेत्राधिकारिता के संबंध में स्थिति स्पष्ट करें।

वाणिज्यिक न्यायालय अधिनियम, 2015 की धारा 3 वाणिज्यिक न्यायालयों के गठन के संबंध में प्रावधान करती है। जिसकी उपधारा 3 के अनुसार जिला न्यायाधीश स्तर तथा उससे कनिष्ठ स्तर अर्थात सिविल जज वरिष्ठ खंड के स्तर के न्यायाधीश को वाणिज्यिक न्यायालय का पीठासीन अधिकारी नियुक्त किया जा सकता है।

माध्यस्थम एवं सुलह अधिनियम, 1996 की धारा 2 (1)(ड) में न्यायालय शब्द को परिभाषित किया गया है जो माध्यस्थम संबंधी प्रकरणों की सुनवाई की क्षेत्राधिकारिता के संबंध में प्रावधान करती है जिसके अनुसार जिला न्यायाधीश स्तर के न्यायाधीशों को ही माध्यस्थम संबंधी प्रकरणों की सुनवाई की अधिकारिता है।

माननीय म.प्र. उच्च न्यायालय ने ***यश वर्धन रघुवंशी विरूद्ध जिला एवं सेशन न्यायाधीश, 2021 एससीसी ऑनलाईन एमपी 457*** में यह प्रश्न उत्पन्न होने पर कि वाणिज्यिक न्यायालय अधिनियम, 2015 के अंतर्गत नोटिफाईड सिविल जज वरिष्ठ खंड के न्यायाधीशों को माध्यस्थम संबंधी प्रकरणों की सुनवाई की क्षेत्राधिकारिता होगी अन्यथा नहीं, यह व्यवस्था दी थी कि वाणिज्यिक न्यायालय अधिनियम, 2015 के अंतर्गत ऐसे प्रकरणों की सुनवाई की क्षेत्राधिकारिता प्रधान सिविल न्यायालय को ही होगी।

इसके पश्चात् माननीय सर्वोच्च न्यायालय के समक्ष ***जेसी हाउसिंग प्रा. लि. एवं अन्य विरूद्ध रजिस्ट्रार जनरल, उड़ीसा हाईकोर्ट, कटक एवं अन्य, 2022 एससीसी ऑनलाईन एस.सी. 1457*** में यही प्रश्न उत्पन्न हुआ। माननीय सर्वोच्च न्यायालय ने वाणिज्यिक न्यायालय अधिनियम, 2015 को लागू करने के उद्देश्यों को देखते हुए यह न्यायिक सिद्धांत प्रतिपादित किया कि वाणिज्यिक न्यायालय अधिनियम, 2015 की धारा 3 के अंतर्गत गठित सिविल न्यायाधीश वरिष्ठ खंड को माध्यस्थम एवं सुलह अधिनियम, 1996 से उद्भूत आवेदन की सुनवाई की क्षेत्राधिकारिता होगी।

इस प्रकार माननीय सर्वोच्च न्यायालय द्वारा उपरोक्त वर्णित न्यायदृष्टांत में दी गई व्यवस्था के अनुसार वाणिज्यिक न्यायालय अधिनियम, 2015 के अंतर्गत गठित सिविल जज वरिष्ठ खंड को भी माध्यस्थम एवं सुलह अधिनियम, 1996 से संबंधित प्रकरणों की सुनवाई की क्षेत्राधिकारिता आर्थिक क्षेत्राधिकारिता के अधीन रहते हुए होगी।

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3. पुलिस रिपोर्ट से भिन्न आधार पर संस्थित किसी वारंट मामले में यदि न्यायालय द्वारा धारा 244 दं.प्र.सं. के अंतर्गत आरोप विरचित किये जाने से पूर्व अभियोजन को सुने बिना और आरोप पूर्व साक्ष्य का अवसर प्रदान किये बिना आरोप विरचित कर दिये जाते है तो क्या उपचार उपलब्ध है?

अध्याय 19 ख दण्ड प्रक्रिया संहिता पुलिस रिपोर्ट से भिन्न आधार पर संस्थित मामलों के संबंध में प्रक्रिया विहित करती है। धारा 244 दं.प्र.सं. के अंतर्गत मजिस्ट्रेट के समक्ष अभियुक्त के हाजिर होने पर या लाये जाने पर मजिस्ट्रेट को अभियोजन को सुनने के लिये और ऐसी साक्ष्य लेने के लिये अग्रसर होना आवश्यक है जो अभियोजन के समर्थन में प्रस्तुत किये जाये और यदि ऐसी साक्ष्य ले लिये जाने पर मजिस्ट्रेट की राय में ऐसी उपधारणा करने का आधार है कि अभियुक्त ने इस अध्याय के अधीन विचारणीय अपराध किया है जिसका विचारण करने के लिये मजिस्ट्रेट सक्षम है और पर्याप्त रूप से दण्डित कर सकता है तब वह अभियुक्त के विरूद्ध आरोप लिखित रूप से विरचित करेगा। प्रश्न यह है कि यदि अभियोजन को सुनवाई का एवं साक्ष्य प्रस्तुत करने का अवसर दिये बिना सीधे आरोप विरचित किये जाते है तो क्या पश्चात्वर्ती प्रक्रम पर इसे सुधारा जा सकता है।

न्यायदृष्टांत ***निर्मलजीत कौर विरूद्ध स्टेट ऑफ एम.पी., 2004 (7) एससीसी 558*** में प्रक्रियात्मक त्रुटि के संबंध में यह प्रतिपादित किया गया है कि त्रुटि को कायम रखना उचित नहीं है इसे सुधारना न्यायिक चेतना की आवश्यकता है। इसके अतिरिक्त न्यायदृष्टांत ***उड़िसा राज्य विरूद्ध ममता मोहन्ती, 2011 (3) एससीसी 436*** में भी यह सिद्धांत प्रतिपादित किया गया है कि एक बार न्यायालय के संज्ञान में यदि ये तथ्य आ जाता है कि कोई प्रक्रियात्मक त्रुटि हुई है तब उसे बनाये रखने के स्थान पर सुधारना विधिपूर्ण है। न्यायालय कि किसी प्रक्रियात्मक त्रुटि के कारण किसी व्यक्ति को कोई हानि नहीं होनी चाहिये।

न्यायदृष्टांत ***बंसीलाल पुत्र गंगाराम जी विरूद्ध स्टेट ऑफ एम.पी., 2002 एससीसी ऑनलाईन एम.पी. 498*** में प्रतिपादित किया गया है कि यदि मजिस्ट्रेट द्वारा आरोप पूर्व साक्ष्य का अवसर दिये बिना आरोप विरचित कर अभियोजन साक्ष्य अंकित की गई और साक्ष्य समाप्त घोषित कर धारा 313 दं.प्र.सं. के कथन लेखबद्ध किये है। इसके पश्चात् उभय पक्ष को सुनने के उपरांत यह लेखबद्ध किया कि, यह एक प्रक्रियात्मक त्रुटि है और पूर्व में लिये गये कथनों को आरोप पूर्व साक्ष्य मानते हुये पुनः आरोप विरचित कर धारा 246 (4) एवं (5) दं.प्र.सं. के अंतर्गत अभियोजन साक्षीगण पर प्रतिपरीक्षण और पुनः परीक्षण करने का अवसर प्रदान किया। तब यह माना जायेगा कि आरोपी को दूसरा अवसर साक्षीगण पर प्रतिपरीक्षण करने का प्राप्त हुआ है और उक्त आदेश न्यायोचित है।

अतः इस विधिक स्थिति के प्रकाश में यदि पुलिस रिपोर्ट से भिन्न आधारों पर संस्थित वारंट मामले में आरोप विरचित किये जाने से पूर्व अभियोजन को सुने बिना और आरोप पूर्व साक्ष्य का अवसर प्रदान किये बिना आरोप विरचित कर दिये जाते है, तो न्यायालय के पास यह उपचार उपलब्ध है कि वह अभियोजन की ओर से प्रस्तुत साक्ष्य को आरोप पूर्व साक्ष्य मानते हुये पुनः आरोप विरचित कर प्रकरण में अभियोजन को आरोप पश्चात् साक्ष्य का अवसर प्रदान कर सुनवाई कर सकता है।

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PART- II

NOTES ON IMPORTANT JUDGMENTS

78. ADVERSE POSSESSION:

Adverse possession against Government – Mere use or occupation without intention of claiming ownership will not be sufficient to create any right adverse to the government. [*R. Hanumaih v. State of Karnataka, (2010) 5 SCC 203* relied upon]

प्रतिकूल कब्जा:

शासन के विरूद्ध प्रतिकूल आधिपत्य – स्वत्व के दावे के आशय के बिना केवल उपयोग का आधिपत्य , शासन के विरूद्ध किसी तरह का अधिकार सृजित करने हेतु पर्याप्त नहीं होगा । [*आर. हनुमैया विरूद्ध स्टेट ऑफ कर्नाटका, (2010) 5 एस.सी.सी. 203* विश्वास किया]

Satya Narayan Ramniwas Petrol Pump (M/s.) v. State of M.P. and ors.

Judgment dated 05.01.2023 passed by the High Court of Madhya Pradesh in First Appeal No. 1625 of 2022, reported in ILR 2023 MP 517

Relevant extracts from the judgment:

The law relating to adverse possession is well settled. In ***R. Hanumaih v. State of Karnataka, (2010) 5 SCC 203***, the Supreme Court held in paragraph 22 that the mere use or occupation without the intention of claiming ownership will not be sufficient to create any right adverse to the Government. It further held that in order to oust the title of the Government, the party has to establish a clear title superior to the state or establish perfection of title by adverse possession for a period exceeding thirty years. Such possession must be open, visible, and hostile to the owner. The Ld. Trial Court has also referred to the judgement of the Supreme Court in ***P. Lakshmi Reddy v. Lakshmi Reddy, AIR 1957 SC 195*** and also the judgment of the Supreme Court in ***Karnataka Board of Waqf v. Government of India, (2004) 10 SCC 779*** and culled out the requirements under the law that a party claiming perfection of title through adverse possession has to establish (a) the date from which the he was in possession of the land (b) the nature of his possession/occupation. (c) whether the possession was in the knowledge of the person suffering the adversity? (d) for how many days he

continued to be in such possession and (e) whether the possession was vacant and peaceful.

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79. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 12 (5) and 34

(i) Arbitral award – Challenged on the ground that appointment of arbitrator is violative of section 12 (5) – Appointment of arbitrator was prior to the amendment – Section 12 (5) of the Act applicable only prospectively. [*Bharat Broadband Network limited v. United Telecoms Limited, (2019) 5 SCC 755* relied upon].

(ii) Delay in deciding application – Defeats the very purpose of the Act – Such applications are to be decided expeditiously – In case of failure in deciding such application within a year information be sent to the Registry – Directions issued.

माध्यस्थम और सुलह अधिनियम, 1996 – धाराएं 12 (5) एवं 34

(i) माध्यस्थम पंचाट – धारा 12 (5) के अतिलंघन के आधार पर मध्यस्थ की नियुक्ति को चुनौती – मध्यस्थ की नियुक्ति संशोधन पूर्व से – धारा 12 (5) केवल भविष्यवर्ती रूप से लागू [भारत ब्रॉडबैंड नेटवर्क लिमिटेड विरूद्ध यूनाइटेड टेलीकॉम लिमिटेड (2019) 5 एससीसी 755 पर विश्वास किया गया]।

(ii) आवेदन के निराकरण में विलंब – अधिनियम के उद्देश्य को विफल करता है – ऐसे आवेदनों पर शीघ्रता से निर्णय लिया जाना चाहिए – एक वर्ष के भीतर ऐसे आवेदन निराकृत करने में विफलता की दशा में रजिस्ट्री को सूचना प्रेषित की जाए – निर्देश जारी किए गए।

Dharamdas Tirathdas Constructions Pvt. Indore v. Union of India and anr.

Judgment dated 28.10.2022 passed by the High Court of Madhya Pradesh (Indore Bench) in Arbitration Appeal No. 33 of 2022, reported in 2023 (2) MPLJ 111

Relevant extracts from the judgment:

The only question which falls for consideration before this Court is that whether an arbitration award can be set at nullity on the ground that the appointment of the Arbitrator itself was in violation of the provisions of Section 12 (5) of the Act of 1996, even though the appointment was made prior to 23.10.2015 when the Arbitration and Conciliation (Amendment) Act of 2015

(hereinafter, the Amendment Act, 2015) came into force. In the considered opinion of this Court, the answer to this issue has already been given by the Supreme Court in the case of ***Bharat Broadband Network limited v. United Telecoms Limited, (2019) 5 SCC 755***. Relevant para 18 of which, reads as under:-

> "18. On the facts of the present case, it is clear that the Managing Director of the appellant could not have acted as an arbitrator himself, being rendered ineligible to act as arbitrator under Item 5 of the Seventh Schedule, which reads as under:
>
> "Arbitrator's relationship with the parties or counsel
>
> xxx
>
> The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration" Whether such ineligible person could himself appoint another arbitrator was only made clear by this Court's judgment in ***TRF Ltd. v. Energo Engineering Projects Ltd., (2017) 8 SCC 377*** on 03.07.2017, this Court holding that an appointment made by an ineligible person is itself *void ab initio*. Thus, it was only on 03.07.2017, that it became clear beyond doubt that the appointment of Shri Khan would be *void ab initio*. Since such appointment goes to "eligibility", i.e., to the root of the matter, it is obvious that Shri Khan's appointment would be void. There is no doubt in this case that disputes arose only after the introduction of Section 12 (5) into the statute book, and Shri Khan was appointed long after 23.10.2015.
>
> The judgment in ***TRF Ltd***. (supra) nowhere states that it will apply only prospectively, i.e., the appointments that have been made of persons such as Shri Khan would be valid if made before the date of the judgment. Section 26 of the Amendment Act, 2015 makes it clear that the Amendment Act, 2015 shall apply in relation to arbitral proceedings commenced on or after 23.10.2015. Indeed, the judgment itself set aside the order appointing the arbitrator, which was an order dated 27.01.2016, by which the Managing Director of the respondent nominated a former Judge of this Court as sole arbitrator in terms of clause 33(d) of the Purchase Order dated 10.05.2014. It will be

noticed that the facts in the present case are somewhat similar. The APO itself is of the year 2014, whereas the appointment by the Managing Director is after the Amendment Act, 2015, just as in the case of ***TRF Ltd***. (supra). Considering that the appointment in the case of ***TRF Ltd.*** (supra) of a retired Judge of this Court was set aside as being non-est in law, the appointment of Shri Khan in the present case must follow suit."

A bare perusal of the aforesaid observations made by the Supreme Court leaves no manner of doubt that provisions of S.12 (5) would be applicable prospectively by the reason of section 26 of the Amendment Act, 2015 which provides that the Amendment Act, 2015 shall apply in relation to arbitral proceedings commenced on or after 23.10.2015. Admittedly, in the case in hand, the arbitrator was appointed on 03.1.2007, whereas the award itself was passed on 28.01.2009 and the impugned order u/s 34 of the Act of 1996 was passed on 15.3.2022, and thus, given the aforesaid chronology, this court has no doubt to hold that the ground u/s 12(5) of the Act of 1996 is not available to the appellant by virtue of section 26 of the Amendment Act, 2015. And since no other ground was urged before this court, no case for interference is made out in the impugned order dated 15.03.2022.

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80. CIVIL PROCEDURE CODE, 1908 – Sections 96 and 100

(i) Civil appeal filed against findings in the judgment – Not maintainable as it lies only against the decree.

(ii) Multiple civil appeals – Arising from a single judgment – Appellate Court is bound to decide all such appeals by a common judgment to avoid unnecessary and unwanted complications.

सिविल प्रक्रिया संहिता, 1908 – धाराएं 96 एवं 100

(i) निर्णय में निष्कर्ष के विरूद्ध प्रस्तुत सिविल अपील – पोषणीय नहीं क्योंकि अपील केवल डिक्री के विरूद्ध की जा सकती है।

(ii) एकाधिक सिविल अपीलें – एकल निर्णय से उत्पन्न – अपील न्यायालय ऐसी सभी अपीलों को अनावश्यक और अवांछित कठिनाईयों से बचने हेतु एक ही निर्णय द्वारा विनिश्चय करने हेतु बाध्य है ।

Hazara Bi (dead) and ors. v. Abdul Karim

Judgment dated 28.11.2022 passed by the High Court of Madhya Pradesh in Second Appeal No. 127 of 2001, reported in 2023 (1) MPLJ 500

Relevant extracts from the judgment:

Ignoring the provisions contained in section 96, Order 41 Rule 22 and 33 CPC, learned first appellate Court has on the basis of decision of co-ordinate bench of this Court in the case of ***Hiralal v. Omprakash, 1981 MPLJ SN 52*** held the defendant's Civil Appeal No.3-A/99 to be maintainable, which was filed merely against the findings, whereas entire decree was in favour of the respondent/defendant, whereby suit for eviction filed by the plaintiff-Noor Mohd. was dismissed in its entirety on all the grounds. As such the decision in the case of ***Hiralal*** (supra) is not applicable at all to the proposition that the appeal is not maintainable merely against finding(s).

Due to impractical procedure followed by the first appellate Court, the aforesaid complications have arisen, therefore, I am of the considered opinion that whenever two or more appeals (against judgment and decree passed in one and single Civil Suit), are filed by different sets of plaintiffs or defendants, the appellate Court, with a view to avoid unnecessary and unwanted complications, must/is bound to decide both/all the Civil Appeals together by a common judgment and decree.

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81. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 2
EVIDENCE ACT, 1872 – Sections 101, 102 and 114

(i) Deposition in lieu of principal party – Facts, documents and material which are in the personal knowledge of the principal party cannot be proved by any other witness.

(ii) Admission – Effect – Admission of a party in the proceedings, either in pleadings or oral, is the best evidence – Needs no further corroboration.

(iii) Non-examination of party – Adverse inference can be drawn against such party that they have no case.

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 2
साक्ष्य अधिनियम, 1872 – धाराएं 101, 102 एवं 114

(i) मुख्य पक्षकार के स्थान पर अभिसाक्ष्य – तथ्य, दस्तावेज और सामग्री जो कि मुख्य पक्षकार की व्यक्तिगत जानकारी में है किसी अन्य साक्षी द्वारा साबित नहीं की जा सकती ।

(ii) स्वीकृति – प्रभाव – कार्यवाही में किसी पक्षकार के अभिवचन या मौखिक रूप से स्वीकृति सर्वोत्तम साक्ष्य है – आगे किसी संपुष्टि की आवश्यकता नहीं ।

(iii) पक्षकार का परीक्षण न कराया जाना – ऐसे पक्षकार के विरूद्ध यह प्रतिकूल निष्कर्ष निकाला जा सकता है कि उसका कोई मामला नहीं है।

Avinash Kumar Ray v. Dr. Ku. Chhaya Ray and ors.
Order dated 22.08.2022 passed by the High Court of Madhya Pradesh in First Appeal No. 584 of 2021, reported in 2023 (1) MPLJ 515

Relevant extracts from the order:

The principle of law laid down as regard to who can depose on behalf of the original principal plaintiff has been regarding the facts, documents and material which are in the personal knowledge of the principal plaintiff and the facts, documents and material were not in the personal knowledge of the witness who came in the witness box and the principal plaintiff did not come in the witness box to prove her own case. On perusal of the plaint, documents and evidence available on record, it is evident that there is an admission that the defendant no. 2 had no knowledge about any kind of acts or transaction or execution of the documents prior to the year 2010. The admission would be best evidence and thus, in view of the aforesaid admission, the other party is not required to adduce and prove the case because the plaintiff is bound on her own admission and presumption can be drawn against the plaintiff. In ***Awadh Bihari Asati and ors. v. Shyam Bihari Asati and ors., 2004 (1) MPLJ 225*** it has been held that it is well settled that admission made by the opposite party is the best evidence on which other party can rely upon. Similar view has also been taken by Hon'ble the Apex Court in ***Ahmedsaheb v. Sayed Ismail, AIR 2012 SC 3320*** in which it has been observed that it is needless to emphasize that admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration.

In ***Moolchand v. Radha Sharan and anr., 2006 (2) MPLJ 600*** on the basis of the principles enumerated in paragraphs 9 to 12 and on the basis of the principle laid down in the case of ***Gulla Kharagit Carpenter v. Harsingh Nandkishore Rawat, AIR 1970 MP 225*** and in ***Martand Pundharinath Chaudhari v. Budhabai Krishnarac Deshmukh, AIR 1931 Bombay 97***, in which it has been held that non-entrance of the respondents-plaintiffs in witness box to prove their case as per pleadings are sufficient circumstances to draw an adverse

inference against them that they have no case against the appellant but by ignoring this principle the case was considered on merits only on pleadings of parties which is not sustainable under the law as such in the absence of evidence the suit should have been decreed.

The principle laid down in the aforesaid case laws is fully applicable in the present case and in absence of non-entrance of principal plaintiff Dr. Kumari Chhaya Rai in the witness box to prove her case as per plaint and the documents executed much prior to the year 2010; in which, in absence of evidence of principal, the opportunity to cross examine her has not been given to the appellant / plaintiff.

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82. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11 and Order 39 Rules 1 & 2

COMMERCIAL COURTS ACT, 2015 – Sections 6, 7 and 12-A

(i) Rejection of plaint – Jurisdiction of Court – Court has to take into account the averments and documents meticulously to decide whether cause of action has arisen in its jurisdiction.

(ii) Pre-institution mediation – Pre-condition only in a class of suits – All suits or suits falling in different classes cannot be rejected on this ground.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11 एवं आदेश 39 नियम 1 और 2

वाणिज्यिक न्यायालय अधिनियम, 2015 – धाराएं 6, 7 एवं 12–क

(i) वाद का नामंजूर किया जाना – न्यायालय की अधिकारिता – न्यायालय को सावधानी से अभिकथनों एवं दस्तावेजों पर विचार कर यह सुनिश्चित करना चाहिए कि वादकारण उसके अधिकार क्षेत्र में उत्पन्न हुआ है या नहीं।

(ii) संस्थापन पूर्व मध्यस्थता – केवल कुछ श्रेणी के वादों की एक पूर्ववर्ती शर्त है – सभी वादों या विभिन्न वर्ग में आने वाले वादों को इस आधार पर नामंजूर नहीं किया जा सकता।

OMFR Pipes and Products, Bhopal and anr. v. Itarsi Pipe Sales, Itarsi and ors.

Order dated 13.02.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 439 of 2023, reported in 2023 (2) MPLJ 210 (DB)

Relevant extracts from the order:

If the present matter is examined on the touchstone of principles laid down by Division Bench in ***Curewin Pharmaceuticals Private Ltd. v. Curewin Hylico Pharma Ltd., 2021 (3) MPLJ 715***, it will be clear like noon day that to examine the aspect of cause of action, the Court needs to examine each fact and averment meticulously. In addition, the documents filed with the suit must be gone into to examine whether any part of or in other words, a minuscule part of cause of action has arisen within the jurisdiction of the Court room.

As noticed above, it cannot be said that there was no pleading whatsoever about existence of cause of action within the territorial jurisdiction of Commercial Court, Jabalpur. The Court below was obliged to examine the aforesaid paragraphs mentioned in the Civil Suit and in the injunction application. After having dealt with those paragraphs and the relevant documents filed by the appellant, the Court below could have given a finding regarding availability of cause of action in its jurisdiction. In our considered opinion, the Court below did not deal with those averments in specific and also failed to see the documents filed with the suit. Thus, the order became vulnerable and liable to be interfered with.

The Second reason for dismissing the suit is non-compliance of requirement of section 12-A of the Act of 2015. It is apposite to quote relevant portion of the same:

> *12A. Pre-Institution Mediation and Settlement* – (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

The language employed in Section 12-A itself is very clear which leaves no room for any doubt that in cases where interim relief is prayed for, the appellant cannot be non-suited for want of pre-institution mediation process. The curtains are finally drawn on this aspect in the recent judgment of Supreme Court in ***Patil Automation Pvt. Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1.*** The relevant para reads as under:

> "74. It is noteworthy that Section 12-A provides for a bypass and a fast-track route without for a moment taking the precious time of a court. At this juncture, it must be immediately noticed that the lawgiver has, in Section 12-A, provided for pre-

institution mediation only in suits, which do not contemplate any urgent interim relief. Therefore, pre- institution mediation has been mandated only in a class of suits. We say this for the reason that in suits which contemplate urgent interim relief, the lawgiver has carefully vouchsafed immediate access to justice as contemplated ordinarily through the courts. The carving out of a class of suits and selecting them for compulsory mediation, harmonises with the attainment of the object of the law. The load on the Judges is lightened. They can concentrate on matters where urgent interim relief is contemplated and, on other matters, which already crowd their dockets."

In view of foregoing analysis, we are unable to give our stamp of approval to the order dated 10.01.2023 passed by learned Commercial Court, Jabalpur. The instant suit is pregnant with an application for interim relief. In view of urgency shown, suit assumes a different character. In a case of this class/character, pre-institution mediation is not a pre-condition. The Court below has clearly erred in rejecting the plaint on this count in purported exercise of power under Order VII Rule 11 of CPC.

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83. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11
LIMITATION ACT, 1963 – Section 17

(i) Fraud – Essential ingredients – It is required to specifically aver in the plaint that fraud has been played – Mere pleading of fraud is not enough.

(ii) Rejection of plaint – Limitation – By clever drafting, plaintiff tried to bring the suit within the period of limitation which otherwise is barred by limitation – Such plaint should be rejected.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11
परिसीमा अधिनियम, 1963 – धारा 17

(i) कपट – आवश्यक तत्व – वाद में इसका विशिष्ट रूप से प्रकथन अपेक्षित – वाद में केवल कपट किये जाने का अभिवचन करना पर्याप्त नहीं है।

(ii) वाद का नामंजूर किया जाना – परिसीमा – परिसीमा से वर्जित वाद को चतुराई पूर्वक लेख कर वादी ने वाद को परिसीमा के भीतर लाने का प्रयास किया – ऐसा वाद नामंजूर किया जाना चाहिए ।

C. S. Ramaswamy v. V. K. Senthil and ors.

Judgment dated 30.09.2022 passed by the Supreme Court in Civil Appeal No. 500 of 2022, reported in 2023 (1) MPLJ 572 (SC)

Relevant extracts from the judgment:

Even the averments and allegations in the plaint with respect to fraud are not supported by any further averments and allegations how the fraud has been committed/played. Mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely by using the word "fraud", the plaintiffs would try to get the suits within the limitation, which otherwise may be barred by limitation. Therefore, even if the submission on behalf of the respondents – original plaintiffs that only the averments and allegations in the plaints are required to be considered at the time of deciding the application under Order VII Rule 11 CPC is accepted, in that case also by such vague allegations with respect to the date of knowledge, the plaintiffs cannot be permitted to challenge the documents after a period of 10 years. By such a clever drafting and using the word "fraud", the plaintiffs have tried to bring the suits within the period of limitation invoking Section 17 of the limitation Act. The plaintiffs cannot be permitted to bring the suits within the period of limitation by clever drafting, which otherwise is barred by limitation. At this stage, a recent decision of this Court in the case of ***Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead by LRs.), (2020) 16 SCC 601*** is required to be referred to. In the said decision, this Court had occasion to consider all earlier decisions on exercise of powers under Order VII Rule 11 CPC, which are considered by this Court in paragraphs 6.4 to 6.9 as under:-

> "6.4. In ***T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467***, while considering the very same provision i.e. Order 7 Rule 11 CPC and the decree of the trial court in considering such application, this Court in para 5 has observed and held as under:
>
> "5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever

drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits."

Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order VII Rule 11 CPC to the facts of the case on hand and the averments in the plaints, we are of the opinion that both the Courts below have materially erred in not rejecting the plaints in exercise of powers under Order VII Rule 11(d) CPC. The respective suits have been filed after a period of 10 years from the date of execution of the registered sale deeds. It is to be noted that one suit was filed by the minor, which was filed in the year 2006, in which some of the plaintiffs herein were also party to the said suit and in the said suit, there was a specific reference to the Sale Deed dated 19.09.2005 and the said suit came to be dismissed in the year 2014 and immediately thereafter the present suits have been filed. Thus, from the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting, the plaintiffs have tried to bring the suits within the period of limitation, which otherwise are barred by limitation. Therefore, considering the decisions of this Court in the case of ***T. Arivandandam*** (supra) and other decision of ***Raghwendra Sharan Singh*** (supra), and as the respective suits are barred by the law of limitation, the respective plaints are required to be rejected in exercise of powers under Order VII Rule 11 Civil Procedure Code.

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84. CIVIL PROCEDURE CODE, 1908 – Order 21 Rules 84, 85 and 90 SPECIFIC RELIEF ACT, 1963 – Section 16(c)

Execution proceedings – Sale of Property by auction – Deposit of 25% amount not made as per Order 21 Rule 84, balance 75% was also not deposited – Deposit of full amount after prescribed duration – Non-compliance of mandatory provisions – Proceeding of auction sale vitiated.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 84, 85 एवं 90 विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 16 (ग)

निष्पादन कार्यवाहियाँ – संपत्ति का नीलामी द्वारा विक्रय – आदेश 21 नियम 84 के अनुसार 25 प्रतिशत राशि जमा नहीं की गई, शेष 75 प्रतिशत भी जमा नहीं की गई – निर्धारित अवधि के बाद पूरी राशि जमा – आदेशात्मक प्रावधानों का अपालन – नीलाम विक्रय की कार्यवाही दूषित।

Gas Point Petroleum India Ltd. v. Rajendra Marothi and ors.

Judgment dated 10.02.2023 passed by the Supreme Court in Civil Appeal No. 619 of 2023, reported in 2023 (2) MPLJ 216 (SC)

Relevant extracts from the judgment:

In the case of ***Manilal Mohanlal Shah and ors. v. Sardar Syed Ahmed Syed Mohammad and anr., AIR 1954 SC 349***, it is observed and held that the provision regarding the deposit of 25% of the amount by the purchaser other than the decree holder is mandatory and the full amount of the purchase money must be paid within fifteen days from the date of the sale. It is further observed and held that if the payment is not made within the period of fifteen days, the Court has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the Court to resell the property is imperative. In paragraph 8 of the decision, it is observed and held as under:

> "8. The provision regarding the deposit of 25 per cent by the purchaser other than the decree holder is mandatory as the language of the Rule suggests. The full amount of the purchase money must be paid within fifteen days from the date of the sale but the decree holder is entitled to the advantage of a set off. The provision for payment is, however, mandatory…. (Rule 85). If the payment is not made within the period of fifteen days, the court has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the court to resell the property is imperative. A further consequence of non payment is that the defaulting purchaser forfeits all claim to the property.… (Rule 86)."

The decision of this Court in the case of ***Manilal Mohanlal Shah*** (supra) fell for consideration before this Court in the subsequent decision in the case of ***Rosali v. Taico Bank and ors., (2009) 17 SCC 690***. In the said decision this Court interpreted the word "immediately" in Order 21 Rule 84. In the said decision, this Court considered paragraph 11 of the decision in the case of ***Manilal Mohanlal Shah*** (supra) in paragraph 20 as under: -

> "20. What would be the meaning of the term "immediately" came up for consideration before this Court, as noticed hereinbefore, in ***Manilal Mohanlal Shah*** (supra) wherein it was held :
>
> > "Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit

of 25 per cent of the purchase money immediately, on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of the law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all."

Applying the law laid down by this Court in the aforesaid decisions to the facts of the case in hand, it is evident that there is non-compliance of mandatory provisions of Order 21 Rule 84 and Order 21 Rule 85 and therefore, the sale was vitiated.

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***85. CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 1(3) (b)**

Withdrawal of suit along with permission to file fresh suit – Failure to make necessary averments in plaint – Trial not started – No prejudice to the defendant – Such grounds are "sufficient grounds" as contemplated in Order 23 Rule 1 for withdrawal of suit.

सिविल प्रक्रिया संहिता, 1908 – आदेश 23 नियम 1(3)(ख)

नवीन वाद संस्थित करने की अनुमति सहित वाद का प्रत्याहरण – वाद में आवश्यक प्रकथन करने में विफलता – विचारण प्रारंभ नहीं – प्रतिवादी पर कोई प्रतिकूल प्रभाव नहीं – आदेश 23 नियम 1 के आलोक में ऐसे आधार, वाद वापस लेने हेतु ''पर्याप्त आधार'' हैं।

Trilochansingh v. Indrajeet Kaur

Order dated 21.12.2022 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 60 of 2020, reported in 2023 (2) MPLJ 141

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86. COMMERCIAL COURTS ACT, 2015 – Sections 3, 3-A, 3(1a), 10, 15 and 21

ARBITRATION AND CONCILIATION ACT, 1996 – Sections 2 (1) (e), 9, 14 and 34

(i) Commercial Courts – Constitution and Jurisdiction – Whether all matters under Arbitration and Conciliation Act, 1996 other than international commercial arbitration can be heard by Designated Commercial Court/Judge below the rank of principal civil court in the District? Held, Yes.

(ii) Contradictory/Divergent provisions in statutes – Applicability – Settled presumption that legislature was aware of law prior in time while enacting subsequent enactment – Subsequent law will prevail – The Act of 2015 will have overriding effect.

वाणिज्यिक न्यायालय अधिनियम, 2015 – धाराएं 3, 3–क, 3(1क), 10, 15 एवं 21

माध्यस्थम और सुलह अधिनियम, 1996 – धाराएं 2(1)(ङ), 9, 14 और 34

(i) वाणिज्यिक न्यायालय – गठन और अधिकारिता – क्या माध्यस्थम और सुलह अधिनियम, 1996 के अंर्तगत अंतर्राष्ट्रीय वाणिज्यिक माध्यस्थम के अतिरिक्त, अन्य सभी मामलों की सुनवाई मनोनीत वाणिज्यिक न्यायालय/न्यायाधीश जो कि जिले में प्रधान सिविल न्यायालय से निम्न पद के है, द्वारा की जा सकती है? अवधारित, हॉ।

(ii) अधिनियमों में विरोधाभासपूर्ण/ भिन्न प्रावधान – प्रयोज्यता – स्थापित उपधारणा कि विधायिका को पश्चातवर्ती विधि निर्मित करते समय पूर्ववर्ती विधि की जानकारी थी – पश्चात्वर्ती विधि प्रभावी होगी – अधिनियम, 2015 का अधिभावी प्रभाव रहेगा।

Jaycee Housing Private Limited and ors v. Registrar (General), Orissa High Court, Cuttack and ors.

Judgment dated 19.10.2022 passed by the Supreme Court in Civil Appeal No. 6876 of 2022, reported in (2023) 1 SCC 549

Relevant extracts from the judgment:

The Objects and Reasons of Commercial Courts Act, 2015 is to provide for speedy disposal of the commercial disputes which includes the arbitration proceedings. To achieve the said objects, the legislature in its wisdom has specifically conferred the jurisdiction in respect of arbitration matters as per Section 10 of the Act, 2015. At this stage, it is required to be noted that the Act,

2015 is the Act later in time and therefore when the Act, 2015 has been enacted, more particularly Sections 3 & 10, there was already a provision contained in Section 2(1)(e) of the Act, 1996. As per settled position of law, it is to be presumed that while enacting the subsequent law, the legislature is conscious of the provisions of the Act prior in time and therefore the later Act shall prevail.

It is also required to be noted that even as per Section 15 of the Act, 2015, all suits and applications including applications under the Act, 1996, relating to a commercial dispute of specified value shall have to be transferred to the Commercial Court. Even as per Section 21 of the Act, 2015, Act, 2015 shall have overriding effect. It provides that save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Therefore, considering the aforestated provisions of the Act, 2015 and the Objects and Reasons for which the Act, 2015 has been enacted and the Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts are established for speedy disposal of the commercial disputes including the arbitration disputes, Sections 3 & 10 of the Act, 2015 shall prevail and all applications or appeals arising out of arbitration under the provisions of Act, 1996, other than international commercial arbitration, shall be filed in and heard and disposed of by the Commercial Courts, exercising the territorial jurisdiction over such arbitration where such commercial courts have been constituted.

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87. CONTEMPT OF COURTS ACT, 1971 – Section 12

Contempt of Court – Disobedience of order of superior Court – When amounts to contempt? Understanding of the trial court is quite a different issue than disobedience – One has to show that the disobedience is willful to the orders passed by the superior courts – If there is any scope for interpretation in the directions issued, that cannot constitute contempt.

न्यायालय अवमान अधिनियम, 1971 – धारा 12

न्यायालय की अवमानना – वरिष्ठ न्यायालय के आदेश की अवज्ञा – कब अवमानना के तुल्य होगी ? विचारण न्यायालय की समझ और अवज्ञा परस्पर भिन्न विषय हैं – यह दर्शित करना होता है कि वरिष्ठ न्यायालयों द्वारा

पारित आदेशों की अवज्ञा जानबूझकर की गई है – यदि जारी किये गये निर्देशों में निर्वचन की कोई संभावना है तब अवमानना गठित नहीं होगी।

Majid Beg and ors. v. Shri Tej Pratap Singh

Order dated 20.09.2022 passed by the High Court of Madhya Pradesh in CONC No. 1987 of 2022, reported in ILR 2023 MP 97 (DB)

Relevant extracts from the order:

On considering the contentions, we are of the considered view that no contempt would arise in this matter. There is no specific order directing the trial court not to summon the witnesses or anything of the like nature. This Court after setting aside the order dated 10.05.2022 which is an order under Section 311 of the Cr.P.C., directed the CJM to decide the matter afresh after granting opportunity. 'Afresh' necessarily means from the beginning. Opportunity has already been granted. Therefore, we do not find any willful disobedience as pleaded by the petitioners. Hence, the petition is liable to be dismissed on this ground itself.

Every order that is passed by a superior court is liable to be followed by the lower court. Even assuming the case of the petitioners is to be accepted of certain misapplication of the law that does not amount to contempt. The understanding of the trial court is quite a different issue than disobedience. One has to show that the disobedience is willful to the orders passed by the superior courts. If there is any scope for any interpretation in the directions being issued then that cannot constitute a contempt. In the instant case, the impugned order therein was set aside with a direction to consider the matter afresh. Therefore, the trial court has to consider the matter afresh. As to how that amounts to contempt, we are unable to follow. Therefore, we are of the view that this is nothing but a pure adventurism by the petitioners in making such reckless allegations against the trial judge. We deprecate such attitude. We do not appreciate that every wrong order passed by the trial court is to be brought under contempt and the concerned judge has to be proceeded against. Trying to threaten the judges with petitions for contempt, in our considered view, is not going to be accepted. Since this matter is arising for the first occasion we have restrained ourselves from taking strict action but only direct a warning to the petitioners to desist from such adventurism.

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88. CRIMINAL PROCEDURE CODE, 1973 – Sections 53, 164-A (2), 167 (2) and 173 (2) (h)
INDIAN PENAL CODE, 1860 – Section 376
SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Sections 3 (1)(w)(i) and 3 (2)(v)

Default bail – Non-filing of FSL report or DNA report along with chargesheet – Not a ground for bail.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 53, 164–क (2), 167(2) एवं 173(2)(ज)
भारतीय दण्ड संहिता, 1860 – धारा 376
अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धाराएं 3 (1)(ब)(i) एवं 3 (2)(v)

व्यतिक्रम जमानत – अभियोग–पत्र के साथ एफ.एस.एल. या डी.एन.ए. प्रतिवेदन का प्रस्तुत नहीं किया जाना – जमानत का आधार नहीं।

Dilip Sikdar v. State of M.P. & anr.
Order dated 20.09.2022 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 7213 of 2022, reported in ILR 2023 MP 174

Relevant extracts from the judgment:

As per section 164-A of Cr.P.C., victim of rape is to be medically examined by medical practitioner, which includes description of material taken from person of women for DNA profiling. Said medical examination does not contain FSL report or DNA report. Examination report has to give description of material taken from prosecutrix for DNA profiling. Report will come at subsequent stage and same is not mentioned in Section 164- A(2). Therefore, it is not mandatory for prosecution to file FSL report or DNA report alongwith the challan and can also produce in Court later on. On basis of non-filing of said report, appellant is not entitled for grant of default bail.

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89. CRIMINAL PROCEDURE CODE, 1973 – Section 164
CRIMINAL TRIAL:

(i) Non-examination of witness – Effect – Discretion of prosecution to lead as much evidence as is necessary for proving the charge – Quality and not quantity of witnesses matters.

(ii) Statement u/s 164 CrPC – Discretion of investigating officer – If not recorded, will not affect the testimony of witness and other material evidence.

दण्ड प्रक्रिया संहिता 1973 – धारा 164

आपराधिक विचारण:

(i) साक्षी का परीक्षण न कराया जाना – प्रभाव – अभियोजन अपने विवेक से केवल उतनी साक्ष्य प्रस्तुत कर सकता है जो आरोप प्रमाणित करने के लिये आवश्यक हो – साक्षीगण की गुणवत्ता का महत्व है न की संख्या का।

(ii) धारा 164 द.प्र.सं. के अंतर्गत कथन – अनुसंधान अधिकारी का विवेकाधिकार – यदि लेखबद्ध नहीं कराया तो साक्षी की विश्वसनीयता एवं अन्य तात्विक साक्ष्य को प्रभावित नहीं करेगा।

Ajai alias Ajju & ors. v. State of Uttar Pradesh
Judgment dated 15.02.2023 passed by the Supreme Court in Criminal Appeal No. 598 of 2013, reported in 2023 (1) Crimes 204 (SC)

Relevant extracts from the judgment:

Non-examination of Ms Rashmi and Horam, father of Vijay Pal Singh also has no material bearing. It is the discretion of the prosecution to lead as much evidence as is necessary for proving the charge. It is not the quantity of the witnesses but the quality of witnesses which matters. Smt Pinky (PW-1) was the injured witness having received grievous and life-threatening injuries. We are not impressed by this argument also.

Non-examination of the statement under section 164 Cr.PC also has no relevance or bearing to the findings and conclusions arrived at by the courts below. It was for the Investigating Officer to have got the statement under section 164 Cr.PC recorded. If he did not think it necessary in his wisdom, it cannot have any bearing on the testimony of PW-1 and the other material evidence led during trial.

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90. CRIMINAL PROCEDURE CODE, 1973 – Sections 173 and 207
EVIDENCE ACT, 1872 – Section 74
RIGHT TO INFORMATION ACT, 2005 – Section 4 (2)

Copy of chargesheet – Can neither be said to be a 'Public document' nor fall under definition of section 4(1)(b) of the RTI Act –

Investigating agency is required to furnish copies of report and documents only to the accused and not to others.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 173 एवं 207

साक्ष्य अधिनियम, 1872 – धारा 74

सूचना का अधिकार अधिनियम, 2005 – धारा 4 (2)

अभियोगपत्र की प्रति – न तो 'लोक दस्तावेज' कही जा सकती है और न ही सूचना के अधिकार अधिनियम की धारा 4(1)(ख) की परिभाषा के अंतर्गत आती है – अनुसंधान अभिकरण के लिये केवल अभियुक्त को अभियोग पत्र एवं दस्तावेजों की प्रतियां प्रदान करना अनिवार्य है एवं अन्य को नहीं।

Saurav Das v. Union of India and ors.
Judgment dated 20.01.2023 passed by the Supreme Court in Writ Petition (Civil) No. 1126 of 2022, reported in 2023 (1) Crimes 279 (SC)

Relevant extracts from the judgment:

On conjoint reading of Section 173 Cr.P.C. and Section 207 Cr.P.C. the Investigating Agency is required to furnish the copies of the report along with the relevant documents to be relied upon by the prosecution to the accused and to none others. Therefore, if the relief as prayed in the present petition is allowed and all the chargesheets and relevant documents produced along with the chargesheets are put on the public domain or on the websites of the State Governments it will be contrary to the Scheme of the Criminal Procedure Code and it may as such violate the rights of the accused as well as the victim and/or even the investigating agency. Putting the FIR on the website cannot be equated with putting the chargesheets along with the relevant documents on the public domain and on the websites of the State Governments.

So far as the reliance placed upon on Sections 74 and 76 of the Evidence Act is concerned, the reliance placed upon the said provisions are also absolutely misconceived and misplaced. Documents mentioned in Section 74 of the Evidence Act only can be said to be public documents, the certified copies of which are to be given by the concerned police officer having the custody of such a public document. Copy of the charge-sheet along with the necessary documents cannot be said to be public documents within the definition of Public Documents as per Section 74 of the Evidence Act. As per Section 75 of the Evidence Act all other documents other than the documents mentioned in Section 74 of the Evidence Act are all private documents. Therefore, the charge-sheet/documents

along with the charge-sheet cannot be said to be public documents under Section 74 of the Evidence Act, reliance placed upon Sections 74 & 76 of the Evidence Act is absolutely misplaced.

Now, so far as the reliance placed upon Section 4 of the RTI Act is concerned, under Section 4(2) of the RTI Act a duty is cast upon the public authority to take steps in accordance with the requirements of clause (b) of sub-Section 1 of Section 4 of the RTI Act to provide as much information *suo motu* to the public at regular intervals through various means of communications. Copies of the charge-sheet and the relevant documents along with the charge-sheet do not fall within Section 4(1)(b) of the RTI Act. Under the circumstances also the reliance placed upon Section 4(1)(2) of the RTI Act is also misconceived and misplaced.

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91. CRIMINAL PROCEDURE CODE, 1973 – Sections 211, 212, 213, 313 and 464

(i) Improper Charge – Effect – The decisive point would be whether failure of justice occasioned due to improper charge? Conviction or sentence would be invalid only if there was failure of justice as per Section 464 CrPC.

(ii) Examination of accused – Duty of court – Section 313 of the Code not an empty formality – On this basis, the accused decides to examine defence witness or adduce any other evidence.

(iii) Unlawful assembly – Requirement – Five or more persons constitute an unlawful assembly – One out of five convicts have been acquitted, charge under section 148 or 149 IPC cannot be sustained against other four accused.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 211, 212, 213, 313 एवं 464

(i) अनुचित आरोप – प्रभाव – निर्णायक बिन्दु यह होगा कि, क्या अनुचित आरोप के कारण न्याय की विफलता हुई ? धारा 464 द.प्र.सं. के आलोक में दोषसिद्धि व दण्डादेश केवल तभी अवैध होंगे जब न्याय विफल हुआ हो।

(ii) अभियुक्त का परीक्षण – न्यायालय का कर्त्तव्य – संहिता की धारा 313 मात्र औपचारिकता नहीं है – इस आधार पर अभियुक्त बचाव साक्ष्य या कोई अन्य साक्ष्य प्रस्तुत करना तय करता है।

(iii) विधि विरूद्ध जमाव – आवश्यकता – पांच या अधिक व्यक्ति एक विधि विरूद्ध जमाव गठित करते हैं – पांच में से एक की दोषमुक्ति होने पर धारा 148 या 149 भ.द.सं. के अंतर्गत अन्य चार अभियुक्त के विरूद्ध आरोप स्थिर नहीं रखा जा सकता।

Kalicharan and ors. v. State of Uttar Pradesh
Judgment dated 14.12.2022 passed by the Supreme Court in Criminal Appeal No. 122 of 2021, reported in (2023) 2 SCC 583

Relevant extracts from the judgment:

We have given careful consideration to the submission. As pointed out earlier, the present appellants were convicted for the offence punishable under Section 148 of IPC. All of them were convicted for the offences punishable under Sections 302 and 307 with the aid of Section 149. The condition precedent for attracting offences punishable under Sections 148 and 149 is that there should be an unlawful assembly as provided in Section 141 of IPC. Section 141 of IPC defines "unlawful assembly" to mean an assembly of five or more persons. In this case, the four appellants and accused Bangali were named in the charge sheet. As noted earlier, appellant no.3-accused no.3 Diwan Singh was acquitted by this Court by order dated 1st July 2021 in ***Kalicharan v. State of U.P, 2021 SCC OnLine SC 3401*** by setting aside the conviction as against him. Therefore, for considering the question whether there was an unlawful assembly, appellant no.3 Diwan Singh will have to be kept out of consideration. Then only four accused remain. Hence, the charge under Sections 148 and 149 of IPC cannot be sustained.

Section 215 lays down when errors in the particulars required to be stated in the charge can be treated as material. It lays down that the error cannot be said to be material unless the accused was misled by such error or omission and that such error or omission has caused a failure of justice. Section 464 deals with the effect of error or omission made while framing charges on the finding and sentence of the competent Court. The Section provides that the finding and sentence of the Court cannot be invalid merely on the ground of error in framing charge or omission in framing charge. The finding and sentence will be invalid only if in the opinion of the Court of appeal, the error or omission has occasioned a failure of justice.

Questioning an accused under Section 313 CrPC is not an empty formality. The requirement of Section 313 CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that accused

can offer an explanation. After an accused is questioned under Section 313 CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be able to properly defend himself.

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92. CRIMINAL PROCEDURE CODE, 1973 – Section 389 (1)

Suspension of conviction – Power of Appellate Court – Can be exercised only when exceptional hardship is shown – Duty of Court to look at all aspects including the ramifications of such suspension.

दण्ड प्रक्रिया संहिता, 1973 – धारा 389 (1)

दोषसिद्धि का निलंबन – अपीलीय न्यायालय की शक्ति – केवल तब प्रयोग में लाई जा सकती है जब आपवादिक कठिनाई दर्शायी जाए – न्यायालय का कर्त्तव्य है कि वह निलंबन के प्रभाव सहित अन्य सभी पहलू देखे।

Umrao Singh Mourya v. State of M.P.
Order dated 14.11.2022 passed by the High Court of Madhya Pradesh (Bench Indore) in Criminal Appeal No. 5824 of 2021, reported in ILR 2023 MP 536

Relevant extracts from the judgment:

There is no dispute on the point that law has been settled that power of suspension of conviction is vested to the appellate court under Section 389(1) of CrPC, but this power should be exercised in very exceptional cases having regard to all aspects including ramification of such suspension.

It is clear that unless exceptional hardship is shown, the conviction and sentence should not be suspended.

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93. CRIMINAL PROCEDURE CODE, 1973 – Section 438
INDIAN PENAL CODE, 1860 – Sections 406 and 420
DOWRY PROHIBITION ACT, 1961 – Sections 3 and 4

Pre-arrest bail – Process of criminal law cannot be utilized for arm-twisting and recovery of money – Discretion is required to be exercised with reference to material on record and parameters governing bail considerations.

दण्ड प्रक्रिया संहिता, 1973 – धारा 438
भारतीय दण्ड संहिता, 1860 – धाराएं 406 एवं 420
दहेज प्रतिषेध अधिनियम, 1961 – धाराएं 3 एवं 4

गिरफ्तारी पूर्व जमानत – आपराधिक विधि की प्रक्रिया का उपयोग डराकर या जबरदस्ती धन की वसूली करने के लिए नहीं किया जा सकता – जमानत के संदर्भ में निर्धारित मानकों एवं अभिलेख पर उपलब्ध तथ्यों के आधार पर ही विवेकाधिकार का उपयोग करना चाहिये।

Bimla Tiwari v. State of Bihar & ors.
Order dated 16.01.2023 passed by the Supreme Court in Special Leave Petition (Crl.) No. 834 of 2023, reported in 2023 (1) Crimes 271 (SC)

Relevant extracts from the order:

We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.

We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.

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94. DIVORCE ACT, 1869 – Section 10-A
HINDU MARRIAGE ACT, 1955 – Section 13-B (2)
SPECIAL MARRIAGE ACT, 1954 – Section 28

Divorce by mutual consent – A secular concept – Discrimination not allowed on the ground of religion.

विवाह विच्छेद अधिनियम, 1869 – धारा 10-क
हिन्दू विवाह अधिनियम, 1955 – धारा 13–ख (2)
विशेष विवाह अधिनियम, 1954 – धारा 28

पारस्परिक सहमति से विवाह विच्छेद – एक पंथनिरपेक्ष प्रावधान है – पंथ के आधार पर विभेद अनुमत नहीं ।

Pritish Nandi and anr. v. Not mentioned
Order dated 22.11.2022 passed by the High Court of Madhya Pradesh in Writ Petition No. 21344 of 2022, reported in ILR 2023 MP 478

Relevant extracts from the order:

Section 10A of the Divorce Act, 1869 reads as follows,

"10A. Dissolution of marriage by mutual consent.- (1) Subject to the provisions of this Act and the rules made thereunder, a petition for dissolution of marriage may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Indian Divorce (Amendment) Act, 2001, on the ground that they have been living separately for a period of two years or more, that they have not been able to live together and thy have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn by both the parties in the meantime, the Court shall, on being satisfied, after hearing the parties and making such inquiry, as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of decree."

The provisions contained in Section 10 A of the Divorce Act, 1869, are, in substance, a verbatim reproduction of the provisions contained in Section 13 B of the Hindu Marriage Act, 1955 and Section 28 of the Special Marriage Act, 1954. The only substantial difference is that, instead of the period of one year mentioned in Section 13 B (1) of the Hindu Marriage Act, 1955 and O.P.(FC) No.577/2018 Section 28 (1) of the Special Marriage Act, 1954, a period of two years of separate residence is provided under Section 10A(1) of the Divorce Act, 1869. The beneficiaries under the abovementioned provisions of different Statutes are persons who want divorce by mutual consent and who file joint petition for that relief. There can be no discrimination among them on the ground of religion Divorce by mutual consnt is a secular concept.

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95. EVIDENCE ACT, 1872 – Section 65 (c)

(i) Admissibility of evidence – Production of photocopy of document without revealing its source – Not permissible to be tendered as secondary evidence.

(ii) Photocopy of the instrument insufficiently stamped – Cannot be admitted as secondary evidence.

(i) Consideration of photocopy as secondary evidence – Plaintiff is required to examine the person who took out the photocopy of the original – When and where photocopy was taken and whether it is the same and exact copy of the original.

साक्ष्य अधिनियम, 1872 – धारा 65 (ग)

(i) साक्ष्य की ग्राह्यता – दस्तावेज की छायाप्रति के स्त्रोत की जानकारी दिये बिना उसका प्रकटीकरण – द्वितीयक साक्ष्य के रूप में प्रस्तुत किया जाना अनुमत नहीं।

(ii) अपर्याप्त रूप से स्टाम्पित लिखत की छायाप्रति – द्वितीयक साक्ष्य के रूप में ग्राह्य नहीं ।

(iii) छायाप्रति को द्वितीयक साक्ष्य के रूप में विचार में लिया जाना – वादी के लिये आवश्यक है कि वह उस व्यक्ति का परीक्षण कराये, जिसने मूल की छायाप्रति तैयार की – कब और कहां छायाप्रति ली गई तथा यह कि छायाप्रति मूल की समान और सटीक प्रति है।

Tulsiram and ors. v. Rajaram and ors.

Order dated 02.11.2022 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 1352 of 2020, reported in ILR 2023 MP 481

Relevant extracts from the order:

It is the consistent view of the Supreme Court and also of the High Court that as per Section 65 of the Evidence Act, photocopy is inadmissible in evidence. The High Court in case of ***Haji Mohd. Islam and anr. v. Asgar Ali and anr, AIR 2007 MP 157,*** relying upon various Supreme Court decisions, has considered the impact of Section 65 of the Evidence Act and held that photocopy without any revelation of sources is not permissible to be tendered as secondary evidence.

Further, this Court in a case of ***Sunil Kumar Sahu v. Smt. Awadhrani, W.P. No. 8224/2010***, relying upon a decision of the Supreme Court in case of ***Hariom Agrawal v. Prakash Chand Malviya, (2007) 8 SCC 514*** has observed as under:-

> "Now the question arises whether the document which was insufficiently stamped, a photo-copy of such document can be

admitted as secondary evidence. This question has been considered by Apex Court in ***Hariom Agrawal*** (supra) wherein the Apex Court considering the question held that:

The copy of the instrument which was on insufficient stamp cannot be admitted as secondary evidence under Section 65 of the Indian Evidence Act.

Moreso, in a case of ***Pravin v. Ghanshyam and others M.P. No. 1144/2017),*** this Court relying upon a decision of ***Ratanlal v. Kishanlal, 2012 (3) MPJR 24,*** has observed as under:

"Apart from this even if it is stretched to the extent to bring the photocopy of Will Ex. P/1 within the sphere of secondary evidence, the plaintiff was required to satisfy the ingredients to Section 65 of the Evidence Act which speaks about the secondary evidence. The plaintiff was further required to examine the person who took out the photocopy of the original."

"The photocopy is neither a primary evidence nor secondary because the party is required to prove when and where the photocopy was taken and it is the same and exact copy of the original"

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96. ESSENTIAL COMMODITIES ACT, 1955 – Section 7

Power of investigation – Act does not authorize Sub-Inspector of Police to take action unless authorised for this purpose by Central or State Government – Proceeding initiated is unauthorised.

आवश्यक वस्तु अधिनियम, 1955 – धारा 7

अन्वेषण की शक्ति – अधिनियम पुलिस उप निरीक्षक को कार्यवाही करने हेतु अधिकृत नहीं करता जब तक कि केन्द्र अथवा राज्य सरकार द्वारा अधिकृत न किया गया हो – प्रारंभ की गई कार्यवाही अनधिकृत है।

Avtar Singh and anr. v. State of Punjab

Judgment dated 23.03.2023 passed by the Supreme Court in Criminal Appeal No. 1711 of 2011, reported in 2023(2) Crimes 12 (SC)

Relevant extracts from the judgment:

Section 7 of the Essential Commodities Act nowhere prescribes that a Sub-Inspector of the Police can take action. No doubt, the aforesaid Clause provides that in addition to the specified officers, the persons authorised by the Central or State Government may take action under the order. However, nothing

has been placed on record to support the argument that the Sub Inspector of the Police was authorised to take action under the aforesaid order.

It is a settled law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods are necessarily forbidden. Reference can be made to ***Dharani Sugars and Chemicals Ltd. v. Union of India and ors., (2019) 5 SCC 480***.

In the absence of the authority and power with the Sub Inspector to take action as per the Order, the proceedings initiated by him will be totally unauthorised and have to be struck down.

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***97. EVIDENCE ACT, 1872 – Sections 65-A and 65-B**

Electronic evidence – Analysis of CDR and method of proof – Principles summarised.

साक्ष्य अधिनियम, 1872 – धाराएं 65–क एवं 65–ख

इलेक्ट्रॉनिक साक्ष्य – सीडीआर का विश्लेषण और प्रमाणित करने की विधि – सिद्धांत सारांशित।

Mohd. Arif alias Ashfaq v. State (NCT of Delhi)
Judgment dated 03.11.2022 passed by the Supreme Court in Criminal Appeal No. 98 of 2009, reported in (2023) 3 SCC 654

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98. EVIDENCE ACT, 1872 – Section 101

(i) Execution of Will – Burden of proof – Lies on the party which substantially asserts the issue affirmatively.

(ii) Proof of will – Two rules – Firstly, *onus probandi* lies on the party propounding Will – Secondly, propounder of Will shall remove suspicion and prove that executor knew and approved the contents of the Will – Onus shifts on the opposite party to prove fraud or undue influences, or other facts.

साक्ष्य अधिनियम, 1872 – धारा 101

(i) वसीयत का निष्पादन – सबूत का भार – उस पक्षकार पर होता है, जो विवाद्यक के सकारात्मक रूप का सारतः प्राख्यान करता है ।

(ii) वसीयत का साबित किया जाना – दो नियम – प्रथम, सबूत का भार उस पक्षकार पर होता है, जो वसीयत प्रस्तावित कर रहा है – द्वितीय, वसीयत का प्रस्तावक संदेह को दूर कर यह प्रमाणित करेगा कि निष्पादक वसीयत की अंतर्वस्तु को जानता था तथा अनुमोदन

किया था – इसके उपरांत, प्रमाण भार विपक्षी पक्षकार पर होगा कि वह कपट अथवा असम्यक असर अथवा अन्य तथ्य प्रमाणित करे।

Sanjay Ingle and anr. v. Panchfula Bai and anr.
Order dated 11.11.2022 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 5039 of 2022 reported in ILR 2023 MP 489

Relevant extracts from the order:

Relying upon the judgment of ***Anil Rishi Vs. Gurbaksh Singh, (2006) 5 SCC 558,*** Hon'ble Supreme Court held that under the provisions contained in Sections 101, 102 and 106, reversal of burden of proof is permissible when hardship in proving the affirmative of the issue and possession of original materials. It is held that original burden of proving a fact rests on party which substantially asserts the affirmative of the issue.

Chapter-XIX in Article 366 of Hindu Law by Sir Dinshaw Fardunji Mulla, 23rd Edition by Lexis Nexis provides that burden of proof in regard to a Will is governed by two rules namely, *onus probandi* lies in every case upon the party propounding a Will, and he must satisfy the conscience of the Court that the instrument so propounded is the last Will of free and capable testator.

Second Rule is that if a party writes or prepares a Will under which he takes a benefit, or if any other circumstances exist which excite the suspicion of the Court, and whatever their nature may be, it is for those who propound the Will to remove such suspicion, and to prove affirmatively that the successor knew and approved the contents of the Will and it is only where this is done that onus is thrown on those who oppose the Will to prove fraud or undue influence, or whatever they rely on to displace the case for proving the Will. [***Sukhdei v. Kedarnath, (1901) 23 All 405***].

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99. HINDU MARRIAGE ACT, 1955 – Sections 9 and 13

(i) Divorce on ground of cruelty – Allegation about illicit relationship without any basis and prohibiting the in-laws to meet their grandson – Amounts to cruelty.

(ii) Subsequent events – When subsequent events and entire backdrop shows that it is not possible for the parties to live together, the decree of divorce should be granted.

(iii) Permanent alimony – No application u/s 25 of the Act is made to the Court – Family Court cannot decide the aspect of alimony.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 9 एवं 13

(i) क्रूरता के आधार पर विवाह विच्छेद –बिना किसी आधार के अवैध संबंधों का आक्षेप लगाया जाना और ससुरालजन को उनके पोते से मिलने से रोकना – क्रूरता की श्रेणी में आता है।

(ii) पश्चात्वर्ती घटनाक्रम – जब पश्चात्वर्ती घटनाएं एवं संपूर्ण पृष्ठभूमि यह दर्शाती हो कि पक्षकारों का एकसाथ रहना संभव नहीं है, तब विवाह विच्छेद की डिक्री प्रदान की जानी चाहिए।

(iii) स्थायी गुजारा भत्ता – अधिनियम की धारा 25 के अंतर्गत न्यायालय में कोई आवेदन प्रस्तुत नहीं – कुटुम्ब न्यायालय गुजारा भत्ता के विषय में निर्णय नहीं कर सकता।

Abhishek Parashar v. Neha Parashar

Judgment dated 17.01.2023 passed by the High Court of Madhya Pradesh in First Appeal No. 1124 of 2019, reported in 2023 (1) MPLJ 648 (DB)

Relevant extracts from the judgment:

In para-116 of the impugned judgment, the Court below clearly opined that the allegation of wife against the husband that he had illicit relation with some other woman and also the allegation about his illicit relation with real sister without any basis amounts to serious 'mental cruelty'. In the next paragraph, the Court below opined that the statement of husband could not be demolished in the cross-examination. Thus, the wife has committed 'cruelty' with the husband. Similarly, in para-121, the Court below after considering the statement of Abhishek Parashar (PW-1) opined that when parents of husband came to meet their grandson, the wife did not permit them even to touch the grandson. The parents of husband went back weeping. The Court below for this reason also held that husband was subjected to 'cruelty'.

The legal journey shows that way back in the case of ***Jitbandhan v. Gulab Devi, 1982 SCC OnLine MP 275***, Justice G.P. Singh considered the language used in Section 25 of the Act and came to hold that said provision does not permit the Court to decide the question of alimony in absence of an express application. The ratio of this judgment was followed by Division Bench in ***Chhaya Kshatriya v. Pramod Kumar Kshatriya*** decided on 30.09.1997 (MANU/MP/0699/1997). In ***Chhaya Kshatriya*** (supra), this Division Bench also considered the previous judgments of ***Bhikalal v. Kamlabai, 1 (1982) DMC 83***

and ***Meerabai v. Laxminarayan Mishra, 1 (1984) DMC 120***. This principle was followed by Single Bench in ***Mahesh Prasad v. Smt. Chhoti Bai, 2003 (2) MPLJ 560***. Lastly, another Division Bench in ***Manoj v. Raksha, 2014 (2) MPLJ 252*** (decided on 23.10.2012) poignantly held that without an application made to the Court under Section 25 of the Hindu Marriage Act, the Family Court cannot decide the aspect of alimony.

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100. HINDU MARRIAGE ACT, 1955 – Sections 13 and 24

Divorce proceeding – Order of maintenance – Filing of execution application by the wife does not dispense with the requirement of paying maintenance *pendente lite* by the husband during the main proceeding – Duty of Court to ensure compliance of the maintenance order before passing any final order/judgment.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 13 एवं 24

विवाह–विच्छेद कार्यवाही – भरण पोषण का आदेश – पत्नी द्वारा निष्पादन के लिये आवेदन मात्र प्रस्तुत करना, मुख्य कार्यवाही के दौरान पति को वादकालीन भरण पोषण अदा करने की जिम्मेदारी से मुक्त नहीं करता – न्यायालय का यह कर्तव्य है कि वह कोई भी अंतिम आदेश/निर्णय पारित करने से पूर्व उस भरण पोषण आदेश का अनुपालन सुनिश्चित करें।

Sangeeta Grover (Smt.) v. Ranjan Grover
Order dated 06.09.2022 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 3017 of 2022, reported in ILR 2023 MP 127

Relevant extracts from the order:

As per the decision in the case of ***Rajnesh v. Neha and anr., (2021) 2 SCC 324***, the petitioner/wife has remedy of executing the order of maintenance which she has already availed by filing execution application but in the considered opinion of this Court, filing of execution application by the petitioner/wife does not dispense with the requirement of depositing/paying the maintenance *pendent lite* by the respondent/ husband to the petitioner/wife during the main proceedings pending before the Family Court under Section 13 of the Hindu Marriage Act.

As a sequel of the above discussion, it is held that before passing any final order/judgment on the application under Section 13 of the Hindu Marriage Act, it shall be the duty of the Family Court to see as to whether the respondent/ husband has complied the order dated 17/01/2019 in its entirety or not and if the husband/ respondent has not complied the order dated 17/01/2019 then it may pass appropriate order as has been discussed herein above.

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***101. HINDU MARRIAGE ACT, 1955 – Sections 13(1)(i), 13(1) (i-a) and 13(1) (i-b)**
CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 27

Divorce – Ground of adultery – Essentials – Description of date, place, name and details of person with the act committed are to be mentioned – Bare allegation or names will not suffice.

हिन्दू विवाह अधिनियम,1955 – धाराएं 13 (1) (i), 13 (1) (i-क) एवं 13 (1) (i-ख)
सिविल प्रक्रिया संहिता, 1908 – आदेश 41 नियम 27

विवाह विच्छेद – जारता का आधार – आवश्यकताएँ – तिथि, स्थान, व्यक्ति का नाम तथा विवरण का उल्लेख कारित कृत्य के साथ किया जाना आवश्यक – केवल आक्षेप या नाम पर्याप्त नहीं।

Kunal Kant Saxena v. Sangeeta and anr.
Judgment dated 20.12.2022 passed by the High Court of Madhya Pradesh in First Appeal No. 16 of 2010, reported in 2023 (2) MPLJ 234 (DB)

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102. HINDU SUCCESSION ACT, 1956 – Section 2 (2)

Female belonging to Scheduled Tribe – Claim of share in compensation on the basis of survivorship – Compensation awarded for acquisition of ancestral land – Such claim may be in accordance with equity but not maintainable u/s 2 (2) of the Act – Act not applicable on female members of STs. – Central Government directed to consider amendment.

हिन्दू उत्तराधिकार अधिनियम, 1956 – धारा 2 (2)

अनुसूचित जनजाति से संबंधित महिला – उत्तरजीविता के आधार पर मुआवजे में हिस्सेदारी का दावा – मुआवजा पैतृक भूमि के अधिग्रहण के लिए दिया गया – ऐसा दावा साम्या के अनुरूप हो सकता है लेकिन अधिनियम की धारा 2(2) के अंतर्गत प्रचलनशील नहीं – अधिनियम अनुसूचित जनजाति की महिला पर लागू नहीं – केन्द्र सरकार को संशोधन पर विचार करने का निर्देश दिया गया।

Kamla Neti (Dead) Through LRs. v. Special Land Acquisition Officer and ors.
Judgment dated 09.12.2022 passed by the Supreme Court in Civil Appeal No. 6901 of 2022, reported in (2023) 3 SCC 528

Relevant extracts from the judgment:

Under the circumstances in view of Section 2(2) of Hindu Succession Act and the appellant being the member of the Scheduled Tribe and as the female member of the Scheduled Tribe is specifically excluded, the appellant is not entitled to any right of survivorship under the provisions of Hindu Succession Act. No error has been committed by the High Court.

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103. INDIAN PENAL CODE, 1860 – Sections 84, 300, 302 and 498-A EVIDENCE ACT, 1872 – Section 32

(i) Multiple dying declarations – Reliability – Written by Executive Magistrate after getting opinion of the concerning doctors –statement given voluntarily – No possibility of tutoring – No inconsistencies in material particulars – Dying declarations are trustworthy.

(ii) Murder – Exceptions – Deceased succumbed to the furious behaviour of the accused – Case does not fall in the Fourth Exception – Accused intentionally caused death of deceased.

भारतीय दण्ड संहिता, 1860 – धारा 84, 300, 302 एवं 498–क
साक्ष्य अधिनियम, 1872 – धारा 32

(i) एकाधिक मृत्युकालीन कथन – विश्वसनीयता – कार्यपालक मजिस्ट्रेट द्वारा संबंधित चिकित्सक की राय लेने के बाद अभिलिखित – स्वेच्छा से कथन दिये गये – सिखाए जाने की कोई संभावना नहीं – तात्विक तथ्यों में कोई विसंगतियाँ नहीं – मृत्युकालीन कथन विश्वसनीय हैं।

(ii) हत्या – अपवाद – अभियुक्त के उग्र व्यवहार के कारण मृतिका की मृत्यु हुई – प्रकरण चौथे अपवाद की परिधि में नहीं आता – अभियुक्त ने साशय मृतिका की मृत्यु कारित की।

Ashish Chaturvedi v. State of M.P.
Judgment dated 18.08.2022 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 698 of 2011, reported in ILR 2023 MP 155 (DB)

Relevant extracts from the judgment:

Prabhat Mishra (PW/7) being an Executive Magistrate/Naib Tahsildar is an independent witness, he recorded dying declaration of deceased in question and answer form, he also took the opinion of the doctor regarding fitness of mental state of the deceased. Therefore, the statement of Prabhat Mishra (PW/7) and dying declaration (Ex.P/13) of deceased are reliable. The statement in (Ex.P/13) the dying declaration is unmistakably clear that appellant Ashish Chaturvedi poured kerosene and set his wife/deceased on fire.

Therefore, the dying declaration (Ex.P/14) cannot be doubted on the basis of it being written in Marathi language. Both the dying declarations (Ex.P/13 & P/14) are written by Executive Magistrate/Naib Tahsildar, both the Executive Magistrate have written the dying declarations after getting opinion of the concerning doctors that whether the deceased is mentally fit to give her statement. It also appears that the deceased has given her statement voluntarily and there was no possibility to teach her. There is no circumstance giving rise to any suspicion about its truthfulness. There is no inconsistencies between the two dying declarations in material particulars. Therefore, both the dying declarations are trustworthy, hence, the learned trial court has rightly held the dying declarations to be reliable.

It is quite apparent that appellant/accused had taken undue advantage and acted in a cruel or unusual manner, as the appellant set deceased on fire by pouring kerosene on her is one of the most cruel some ways to kill someone, mere pressing of abscess or quarrels cannot lead to such furious behaviour. There is no sign that deceased even tried to defend herself while the appellant/accused was pouring kerosene on her, after he set the deceased on fire. The instant case is not of a fight but a case where the deceased succumbed to the furious behaviour of appellant/accused. Certainly the behaviour of appellant/accused was the one acted in a cruel manner, hence, does not fall in the fourth exception to murder as well. There is no other exception to murder u/s 300 of IPC where the instant case falls.

Therefore, it is clear that the accused has intentionally caused death of deceased which falls under the definition of murder u/s 300 of IPC.

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104. INDIAN PENAL CODE, 1860 – Sections 90 and 375
EVIDENCE ACT, 1872 – Section 114A

Rape – Misconception of fact – Distinction between false promise and breach of promise – Breach of promise to marry cannot be treated as a false promise to prosecute a person for committing rape.

भारतीय दण्ड संहिता, 1860 – धाराएं 90 एवं 375
साक्ष्य अधिनियम, 1872 – धारा 114क

बलात्संग – तथ्य का भ्रम – मिथ्या वचन करना और वचन भंग करने में अंतर – विवाह करने के वचन के उल्लंघन को असत्य वचन मानकर व्यक्ति को बलात्संग कारित करने के लिए अभियोजित नहीं किया जा सकता।

Naim Ahamed v. State (NCT of Delhi)
Judgment dated 30.01.2023 passed by the Supreme Court in Criminal Appeal No. 257 of 2023, reported in 2023 (1) Crimes 318 (SC)

Relevant extracts from the judgment:

It would be germane to note that the basic principles of criminal jurisprudence warrant that the prosecution has to prove the guilt of the accused beyond reasonable doubt by leading cogent evidence, however, considering the ethos and culture of the Indian Society, and considering the rising graph of the commission of the social crime – 'Rape', the courts have been permitted to raise a legal presumption as contained in Section 114A of the Indian Evidence Act. As per Section 114A, a presumption could be raised as to the absence of consent in certain cases pertaining to Rape. As per the said provision, if sexual intercourse by the accused is proved and the question arises as to whether it was without the consent of the woman alleged to have been raped, and if she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

The exposition of law in this regard is discernible in various decisions of this Court, however the application of such law or of such decisions would depend upon the proved facts in each case, known as legal evidence. The ratio laid down in the judgements or the law declared by this Court do provide the guidelines to the judicial mind of the courts to decide the cases on hand, but the

courts while applying the law also have to consider the evidence before them and the surrounding circumstances under which the alleged offences are committed by the accused.

In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as 'rape' by the appellant, would be stretching the case too far.

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105. INDIAN PENAL CODE, 1860 – Section 302
EVIDENCE ACT, 1872 – Section 3

Circumstantial evidence – Last seen theory – Coupled with other circumstances, such as time when the deceased was last seen with accused, close proximity of time, recovery of the corpus, non-explanation or furnishing wrong explanation, establishment of motive and recovery of weapon – Completes the chain of circumstances.

भारतीय दण्ड संहिता, 1860 – धारा 302
साक्ष्य अधिनियम, 1872 – धारा 3

परिस्थितिजन्य साक्ष्य – अंतिम बार साथ देखे जाने का सिद्धांत – साथ में अन्य परिस्थितियाँ जैसे मृतक एवं आरोपी दोनों को साथ देखे जाने का समय, समय की निकटता, शव की बरामदगी, स्पष्टीकरण न देना या गलत स्पष्टीकरण देना, हेतुक का प्रमाणित होना एवं हथियार की बरामदगी – परिस्थितियों की श्रृंखला को पूर्ण करती हैं।

Ram Gopal v. State of Madhya Pradesh
Judgment dated 17.02.2023 passed by the Supreme Court in Special Leave Petition (Crl.) No. 9221 of 2018, reported in 2023 (1) Crimes 210 (SC)

Relevant extracts from the judgment:

Last seen theory as propounded by the prosecution in a case based on circumstantial evidence may be a weak kind of evidence by itself to base conviction solely on such theory, when the said theory is proved coupled with

other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused does owe an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death might have taken place. If the accused offers no explanation or furnishes a wrong explanation, absconds, motive is established and some other corroborative evidence in the form of recovery of weapon etc. forming a chain of circumstances is established, the conviction could be based on such evidence.

So far as the facts in the instant case are concerned, it was duly proved that the death of the deceased was homicidal. It was not disputed that the petitioner had taken the deceased with him on the previous day evening and thereafter he was also seen with the deceased by the witness Vijay Singh (PW-4) and the very next day early morning, the dead body of the deceased was found lying in the field at village Chachiha. The time gap between the period when the deceased was last seen with the accused and the recovery of the corpse of the deceased being quite proximate, the non-explanation of the petitioner with regard to the circumstance under which and when the petitioner had departed the company of the deceased was a very crucial circumstance proved against him. Having regard to the oral evidence of the witnesses, the enmity between the deceased and the petitioner had also surfaced. The corroborative evidence with regard to recovery of the weapon-axe alleged to have been used in the commission of crime from the petitioner, also substantiated the case of prosecution.

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106. INDIAN PENAL CODE, 1860 – Section 302
EVIDENCE ACT, 1872 – Section 134

(i) Defective investigation – Non-examination of a witness causing prejudice to the defence – It is a question of fact – Inference is required to be drawn having regard to the facts and circumstances of each case.

(ii) Non-examination of material witness by I.O. and failure to seize weapon – Effect – Adversely impacts the prosecution – Vital circumstance for granting benefit of doubt.

भारतीय दण्ड संहिता, 1860 – धारा 302
साक्ष्य अधिनियम, 1872 – धारा 134

(i) दोषपूर्ण विवेचना – साक्षी का परीक्षण न होने से बचाव पक्ष पर प्रतिकूल प्रभाव – यह तथ्य का प्रश्न है – प्रत्येक मामले के तथ्य एवं परिस्थितियों के आधार पर निष्कर्ष निकाला जाना चाहिये।

(ii) विवेचक द्वारा तात्विक साक्षी का परीक्षण न किया जाना एवं आयुध जब्त करने में असफलता – प्रभाव – अभियोजन पर विपरीत प्रभाव – संदेह का लाभ देने हेतु महत्वपूर्ण परिस्थिति है।

Munna Lal v. State of Uttar Pradesh

Judgment dated 24.01.2023 passed by the Supreme Court in Criminal Appeal No. 491 of 2017, reported in 2023 (1) Crimes 294 (SC)

Relevant extracts from the judgment:

As far as non-obtaining of ballistic report is concerned, it is no doubt true that its essentiality would depend upon the circumstances of each case. Here, since no weapon of offence was seized, no ballistic report was called for and obtained. Although Mr. Giri contended that Munna Lal had a licensed gun, this Court has not been able to trace any evidence in the records in regard thereto. However, nothing turns on it. The failure/neglect to seize the weapons of offence, on facts and in the circumstances of the present case, has the effect of denting the prosecution story so much so that the same, together with non-examination of material witnesses constitutes a vital circumstance amongst others for granting the appellants the benefit of doubt.

Although, mere defects in the investigative process by itself cannot constitute ground for acquittal, it is the legal obligation of the Court to examine carefully in each case the prosecution evidence de hors the lapses committed by the Investigating Officer to find out whether the evidence brought on record is at all reliable and whether such lapses affect the object of finding out the truth. Being conscious of the above position in law and to avoid erosion of the faith and confidence of the people in the administration of criminal justice, this Court has examined the evidence led by the prosecution threadbare and refrained from giving primacy to the negligence of the Investigating Officer as well as to the omission or lapses resulting from the perfunctory investigation undertaken by him. The endeavour of this Court has been to reach the root of the matter by analysing and assessing the evidence on record and to ascertain whether the appellants were duly found to be guilty as well as to ensure that the guilty does not escape the rigours of law. The disturbing features in the process of investigation, since noticed, have not weighed in the Court's mind to give the benefit of doubt to the appellants but on proper evaluation of the various facts and circumstances, it has transpired that there were reasons for which PW-2 might have falsely implicated the appellants and also that PW-3 was not a wholly reliable witness. There is a fair degree of uncertainty in the prosecution story and the courts below appear to have somewhat been influenced by the oral testimony

of PW-2 and PW-3, without taking into consideration the effect of the other attending circumstances, thereby warranting interference.

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107. INDIAN PENAL CODE, 1860 – Sections 302 r/w/s 149

(i) Non-recovery of weapon – Effect – This cannot be a ground to discard the evidence of injured eye witness. (*Rakesh v. State of U.P., (2021) 7 SCC 188* followed).

(ii) Vicarious liability – Number of convicts below five on account of death of co-accused – Still applicable on surviving co-accused – Reduction in number of co-accused on account of death or acquittal are completely different and distinct circumstance.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 सहपठित 149

(i) आयुध की बरामदगी न होना – प्रभाव – यह आहत् चक्षुदर्शी साक्षी की साक्ष्य को अमान्य करने का आधार नहीं हो सकता। (*राकेश बनाम यूपी राज्य, (2021) 7 एससीसी 188* अनुसरित)।

(ii) प्रतिनिधिक दायित्व – सह–अभियुक्त की मृत्यु के कारण दोषियों की संख्या पांच से कम – जीवित सह–अभियुक्तों पर अभी भी लागू – मृत्यु अथवा दोषमुक्ति के कारण दोषियों की संख्या पॉच से कम हो जाना पूर्णतः भिन्न और अलग परिस्थिति है।

Gurmail Singh and anr. v. State of Uttar Pradesh and anr. Judgment dated 17.10.2022 passed by the Supreme Court in Criminal Appeal No. 965 of 2018, reported in (2022) 10 SCC 684

Relevant extracts from the judgment:

We will consider the effect, if any, of non-recovery of weapons allegedly used in the commission of offences charged against the accused. In that regard, it is only appropriate to refer to the decision in ***Rakesh v. State of U.P., (2021) 7 SCC 188.*** It, insofar as relevant, reads thus:

> "… For convicting an accused, recovery of the weapon used in commission of offence is not a *sine qua non*. PW 1 and PW 2, as observed hereinabove, are reliable and trustworthy eyewitnesses to the incident and they have specifically stated A-1 Rakesh fired from the gun and the deceased sustained injury. The injury by the gun has been established and proved from the medical evidence and the deposition of Dr Santosh Kumar, PW 5. Injury 1 is by gunshot. Therefore, it is not possible to reject the credible ocular evidence of PW 1 and PW 2 –

eyewitnesses who witnessed the shooting. It has no bearing on credibility of deposition of PW 1 and PW 2 that A-1 shot deceased with a gun, particularly as it is corroborated by bullet in the body and also stands corroborated by the testimony of PW 2 and PW 5. Therefore, merely because the ballistic report shows that the bullet recovered does not match with the gun recovered, it is not possible to reject the credible and reliable deposition of PW 1 and PW 2."

In the said circumstances and in the light of the decision in ***Rakesh v. State of U.P.*** (supra), the non-recovery of the weapons cannot be a ground to discard the evidence of the injured eyewitnesses**.**

In ***Nethala Pothuraju v. State of A.P., (1992) 1 SCC 49*** also this position was reiterated. That was a case where the case of the prosecution was that seven accused persons formed an unlawful assembly and committed murder in pursuance of a common object and they were charged under Sections 302/149IPC. Four of them were acquitted. In the appeal this Court held that in the said factual situation the remaining three accused could not have been convicted by applying Section 149 IPC. At the same time, it was further held that the non-applicability of Section 149 IPC would not be a bar for convicting accused/appellants if evidence would disclose commission of offence in furtherance of a common intention.

The said provision and the decisions referred to above would reveal that the test is that persons having the common object must be five or more. We may also hasten to add that persons who are simple onlookers are to be excluded in that matter.

As stated above, the effect and impact of reduction of the number of convicts pending an appeal owing to the death of co-convicts is bound to be different from the effect and impact of reduction of the number of accused/convicts on account of acquittal. Going by Section 394(1) CrPC every appeal under Section 377 or Section 378 shall finally abate on the death of the accused. Sub-section (2) thereof provides that every other appeal under Chapter XXIX (except an appeal from a sentence of fine) shall finally abate on the death of the appellant. The position is that every appeal, except an appeal against the sentence of fine, would abate on the death of the appellant, because the sentence under appeal in such circumstances, could no longer be executed.

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108. INDIAN PENAL CODE, 1860 – Section 302

(i) Identification parade – Value – If the accused is previously known to the witness, holding of identification parade is of no use.

(ii) Judgment – Basis – To avoid miscarriage of justice, it should consist of reasons and appreciation of evidence but should not be based on the principle of preponderance of probability.

भारतीय दण्ड संहिता, 1860 – धारा 302

(i) शिनाख्त परेड – मूल्य – यदि साक्षी अभियुक्त को पहले से जानता है तब शिनाख्त परेड किया जाना अनुपयोगी है।

(ii) निर्णय – आधार – न्यायहानि से बचने के लिये निर्णय में कारण और साक्ष्य के मूल्यांकन को समाविष्ट होना चाहिए न कि अधिसंभाव्यता की प्रबलता के सिद्धांत पर आधारित होना चाहिए।

Udayakumar v. State of Tamil Nadu

Judgment dated 16.03.2023 passed by the Supreme Court in Criminal Appeal No. 1741 of 2010, reported in 2023 (2) Crimes 58 (SC)

Relevant extracts from the judgment:

Examining the testimony of PW-1, we find him to be materially contradicted and his version belied through the testimony of the Investigation Officer, (PW-23). This is with regard to the identification of the accused. Whereas the former states that he identified the accused in front of the judge, pursuant to the summons issued to him for making himself available at Pulhal Jail, Chennai for the purpose of identifying the accused, but the latter, in unequivocal terms states that, "… it is correct to say that PW-1 would give the statement that they came to know that the second accused Udayakumar had murdered Purushothaman" and that "it is correct to say that only after identifying the accused at the Police Station, they had identified the accused at the identification parade." Now, if the identity of the accused was already in the knowledge of the police or the witnesses, then we only wonder, where would the question of conducting the identification parade arise? We reiterate that the entire necessity for holding an investigation parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. [***Heera v State of Rajasthan, (2007) 10 SC 175***]. We may also state that

the investigation parade does not hold much value when the identity of the accused is already known to the witness. [***Sheikh Sintha Madhar v. State, (2016) 11 SCC 265***].

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109. LIMITATION ACT, 1963 – Section 5
CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 3A

Civil Appeal – Condonation of delay – Ground for delay was incapability to deposit court fees – Not a sufficient ground.

परिसीमा अधिनियम, 1963 – धारा 5
सिविल प्रक्रिया संहिता, 1908 – आदेश 41 नियम 3क

सिविल अपील – विलम्ब की माफी – विलम्ब का आधार न्यायालय शुल्क जमा करने में असमर्थता – पर्याप्त आधार नहीं।

Ajay Dabra v. Pyare Ram and ors.
Judgment dated 31.01.2023 passed by the Supreme Court in Civil Appeal No. 716 and 717 of 2023, reported in 2023(2) MPLJ 38 (SC)

Relevant extracts from the judgment:

What we have here is a pure civil matter. An appeal has to be filed within the stipulated period, prescribed under the law. Belated appeals can only be condoned, when sufficient reason is shown before the court for the delay. The appellant who seeks condonation of delay therefore must explain the delay of each day. It is true that the courts should not be pedantic in their approach while condoning the delay, and explanation of each day's delay should not be taken literally, but the fact remains that there must be a reasonable explanation for the delay. In the present case, this delay has not been explained to the satisfaction of the court. The only reason assigned by the appellant for the delay of 254 days in filing the First Appeal was that he was not having sufficient funds to pay the court fee! This was not found to be a sufficient reason for the condonation of delay as the appellant was an affluent businessman and a hotelier. In any case, even it is presumed for the sake of argument that the appellant was short of funds, at the relevant point of time and was not able to pay court fee, nothing barred him from filing the appeal as there is provision under the law for filing a defective appeal, i.e., an appeal which is deficient as far as court fee is concerned, provided the court fee is paid within the time given by the Court. We would refer to Section 149 of Civil Procedure Code, 1908 which reads as under :

> "*Section 149: Power to make up deficiency of Court Fees*.- Where the whole or any part of any fee prescribed for any document by the law

for the time being in force relating to court fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

It also needs to be emphasized that this Court as well as various High Courts, have held that Section 149 CPC acts as an exception, or even a proviso to Section 4 of Court Fees Act 1870.

In terms of Section 4, an appeal cannot be filed before a High Court without court fee, if the same is prescribed. But this provision has to be read along with section 149 of CPC which we have referred above. A short background to the incorporation of Section 149 in CPC would explain this aspect.

●

110. MOTOR VEHICLES ACT, 1988 – Section 128 and 194 (c)

Contributory negligence – Tripling on bike without helmet – Violation of traffic rules is no ground to hold negligence, unless there is evidence that either accident could have been averted or impact could have been minimized.

मोटर यान अधिनियम, 1988 – धारा 128 एवं 194 (ग)

योगदायी उपेक्षा – दोपहिया वाहन पर बिना हेलमेट के तीन सवारी – ट्रैफिक नियमों का पालन न करना स्वतः ही उपेक्षा का आधार नहीं माना जा सकता जब तक इस बात की साक्ष्य न हो कि दुर्घटना को टाला जा सकता था या प्रभाव कम किया जा सकता था।

Anjana Narayan Kamble and ors. v. Branch Manager, Reliance General Ins. Co. Ltd. and anr.
Judgment dated 04.08.2022 passed by the Supreme Court in Civil Appeal No. 5113 of 2022, reported in 2023 ACJ 346

Relevant extracts from the judgment:

The Learned Counsel for the Appellant relied upon the judgment of this Court in ***Mohammed Siddique v. National Insurance Co. Ltd., 2020 ACJ 721 (SC),*** wherein this Court held that the deceased was negligent as 3 persons on a motor cycle could have added to the imbalance. It was held that motor cyclist may be violating the Motor Vehicle Act, 1988 for which the deceased may be liable to penalty but such violation by itself, cannot lead to a finding of contributory negligence. This court held:

"13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle....."

In the present case, there is no such evidence of contributory negligence except fact of three riders on the motor cycle and of not wearing helmet by the deceased. Therefore, in view of the enunciation of law, we find that the High Court was not justified in deducting 30% of the amount of compensation assessed by the Tribunal for the reason that the deceased was triple riding the Motor Cycle or was not wearing a helmet. The violation of rules for driving a motor vehicle is not a ground to deduct the amount of compensation awarded unless there is proof of either the accident could have been averted or the impact could have been minimized.

•

111. MOTOR VEHICLES ACT, 1988 – Section 166

Composite negligence – Necessary party – No pleading in the claim petition to show the negligence of other vehicle, the theory of composite negligence does not arise.

मोटर यान अधिनियम, 1988 – धारा 166

संयुक्त उपेक्षा – आवश्यक पक्षकार – दावा याचिका में अन्य वाहन की उपेक्षा दर्शाने हेतु कोई अभिवचन नहीं – संयुक्त उपेक्षा का सिद्धांत उत्पन्न नहीं होता ।

Nisha Kotwani and ors. v. Hamid Khan and ors.
Order dated 27.01.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 2585 of 2016, reported in 2023 (1) MPLJ 601

Relevant extracts from the order:

After hearing learned counsel for the parties and going through the record, Appeal filed by the IFFCO Tokio General Insurance Company Ltd. insurer of the Qualis in which deceased was travelling deserves to be allowed, inasmuch as, reliance placed by Shri Kapil Patwardhan on the law laid down by Supreme Court in case of *Khenyei v. New India Assurance Co. Ltd., (2015) 9 SCC 273*, wherein it is held that in case of composite negligence, claimants can claim compensation from either of the joint tortfeasors will not be applicable to the facts of the present case because there is no pleading in the claim petition to show that even the driver and owner of the Qualis was a joint tortfeasors. Thus, this judgment will have no application to the facts of the present case where in the pleadings claimants had attributed sole negligence to the driver of the bus who had suddenly applied brakes.

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112. NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 8(b), 18(c), 29, 46 and 47

(i) Illegal cultivation – Duty of 'land holder' – Tenant, contractor, power of attorney holder and any other person having actual authority over the land is duty bound as 'land holder' to give information of illegal cultivation.

(ii) Neglect in furnishing information of illegal cultivation by land holder or any officer of Government – Attracts punishment u/s 32 of the Act.

(iii) Intentionally aiding by illegal omission in not furnishing timely information about illegal cultivation – Whether crime may or

may not have been committed – Attracts abetment for commission of offence u/s 29 of the Act.

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 8(ख), 18(ग), 29ए 46 एवं 47

(i) अवैध खेती – 'भूमिधारक' का कर्तव्य – किरायेदार, ठेकेदार, मुख्तारनामा धारक अथवा अन्य कोई व्यक्ति, जो स्वामी न होते हुए भी किसी विशिष्ट अधिक्षेत्र पर वास्तविक अधिकार रखता है, 'भूमिधारक' की तरह अवैध खेती की जानकारी देने हेतु दायित्वाधीन है ।

(ii) भूमिधारक अथवा शासन के किसी अधिकारी द्वारा अवैध खेती की सूचना देने में उपेक्षा – अधिनियम की धारा 32 के अंतर्गत दण्डनीय।

(iii) अवैध खेती की समयबद्ध सूचना देने में अवैध लोप द्वारा साशय मदद करना – अपराध घटित हुआ हो अथवा नहीं – अधिनियम की धारा 29 के अंतर्गत अपराध का दुष्प्रेरण आकर्षित।

Gopal Krishna Gautam @ Pandit v. Union of India

Order dated 02.12.2022 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Criminal Revision No. 2068 of 2021, reported in ILR 2023 MP 561

Relevant extracts from the order:

Even the tenant, contractor, power of attorney holder or any other person who is having actual authority over a particular dominion despite not being the owner is also attracted with the corollary duty to disclose any illegal act being committed on the said dominion under the NDPS Act and mechanically the owner is not liable (he may or may not) for the said disclosure, if for any of the reasons, he is not coming under the category of landholder and for the time being is not exercising actual control over the property, which is in entirety a factual question to be considered on case -by -case basis.

The violation whilst neglecting in furnishing the information of illegal cultivation by land holder or any officer of the government etc. attracts the punishment u/s 32 of the Act for imprisonment for a term which may extend to six months, or with fine or with both. More so, the actions of illegal omission of the officers can also come within the ambit of abetting the commission of offences under the NDPS Act, which is specifically dealt u/s 29 of the Act.

To bring the actions of authorities under this section, it is to be proved that that abetment was made vide intentionally aiding the perpetrators by illegal omission, i.e. not furnishing immediate/timely information to the concerned officer about illegal cultivation, which forms one of the essential ingredients to

constitute offence of abetment as defined u/s 107 of the Indian Penal Code which clearly applies to the NDPS Act by virtue of section 3 of the General Clauses Act, 1897.

There is a legal duty upon the landholder and the officers to furnish information to the competent and concerned authority established under the NDPS Act in relation to illegal cultivation and therefore, they can also be held liable for abetment of the said crime, which may or may not have been committed. It is important to highlight that even preparation has also been brought into the category of offence.

It is clear that if petitioner is found to be involved in abetment of the crime then independently also he can be punished for the offence even if other penal provisions may or may not be attracted subsequently.

The scope of revision under Section 397 r/w/s 401 of Cr.P.C. is very limited only to the extent of jurisdictional error, procedural irregularity or impropriety or perversity. It is only to be seen that whether prima facie ingredients of offence are available to take the petitioner for trial or not.

•

113. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 15, 56 and 138

Part payment – Loan partly or wholly paid before presentation of cheque – Lack of endorsement on the cheque – Offence u/s 138 not attracted unless specific endorsement to this effect is made on the cheque.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 15, 56 एवं 138

आंशिक भुगतान – चैक प्रस्तुति के पूर्व ऋण का आंशिक अथवा पूर्णतः भुगतान – चैक पर पृष्ठांकन का अभाव – धारा 138 का अपराध तब तक आकर्षित नहीं जब तक कि चैक पर इस आशय का विनिर्दिष्ट पृष्ठांकन न हो।

Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel and anr.

Judgment dated 11.10.2022 passed by the Supreme Court in Crimianl Appeal No. 1497 of 2022, reported in (2023) 1 SCC 578

Relevant extracts from the judgment:

Section 138 of the Negotiable Instruments Act provides that a drawer of a cheque is deemed to have committed the offence if the following ingredients are fulfilled:

(i) A cheque drawn for the payment of any amount of money to another person;

(ii) The cheque is drawn for the discharge of the 'whole or part' of any debt or other liability. 'Debt or other liability' means legally enforceable debt or other liability; and

(iii) The cheque is returned by the bank unpaid because of insufficient funds.

However, unless the stipulations in the proviso are fulfilled the offence is not deemed to be committed. The conditions in the proviso are as follows:

(i) The cheque must be presented in the bank within six months from the date on which it was drawn or within the period of its validity;

(ii) The holder of the cheque must make a demand for the payment of the 'said amount of money' by giving a notice in writing to the drawer of the cheque within thirty days from the receipt of the notice from the bank that the cheque was returned dishonoured; and

(iii) The holder of the cheque fails to make the payment of the 'said amount of money' within fifteen days from the receipt of the notice.

In view of the discussion, we summarise our findings below:

(i) For the commission of an offence under section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;

(ii) If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque.

(iii) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under section 138 will stand attracted.

(iv) The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under

section 138 of the Act when the cheque was dishonoured for insufficient funds.

(v) The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided.

•

114. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138 CRIMINAL PROCEDURE CODE, 1973 – Section 256

Non-appearance of complainant – Effect – Where complainant had already been examined as a witness in the case – Not appropriate to pass an order of acquittal.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

दण्ड प्रक्रिया संहिता, 1973 – धारा 256

परिवादी की अनुपस्थिति – प्रभाव – जहां परिवादी का प्रकरण में साक्षी के रूप में परीक्षण किया जा चुका था – दोषमुक्ति का आदेश पारित करना उचित नहीं।

BLS Infrastructure Ltd. v. Rajwant Singh and ors.
Judgment dated 01.03.2023 passed by the Supreme Court in Criminal Appeal No. 657 of 2023, reported in (2023) 4 SCC 326

Relevant extracts from the judgment:

In ***Associated Cement Co. Ltd. v. Keshvanand, (1998) 1 SCC 687,*** the purpose of inserting a provision like Section 256 of the Code was discussed and in light thereof, in para 16, it was observed as under:

> "*16*. What was the purpose of including a provision like Section 247 in the old Code (or Section 256 in the new Code). It affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary. The section, therefore, affords protection to an accused against such tactics of the

complainant. But that does not mean if the complainant is absent, the court has a duty to acquit the accused in invitum."

After observing as above, it was held that where the complainant had already been examined as a witness in the case, it would not be appropriate for the Court to pass an order of acquittal merely on non-appearance of the complainant. Thus, the order of acquittal was set aside and it was directed that the prosecution would proceed from the stage where it reached before the order of acquittal was passed.

•

115. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 142

Complaint by company – Filing of complaint in the name of company through power of attorney holder is perfectly legal – Due knowledge about transaction and proving contents of complaint is required on part of power of attorney holder. [*A.C. Narayanan v. State of Maharashtra & ors., (2014) 11 SCC 790* followed]

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 142

कंपनी द्वारा परिवाद – पावर ऑफ अटॉर्नी द्वारा कंपनी की तरफ से प्रस्तुत किया गया परिवाद पूर्णतः वैध – पावर ऑफ अटॉर्नी को संव्यवहार के संबंध में सम्यक ज्ञान होना तथा परिवाद के तथ्यों को प्रमाणित करना आवश्यक। [*ए.सी. नारायणन विरूद्ध महाराष्ट्र राज्य व अन्य (2014)11 एस.सी.सी. 79 अनुसरित*]

Mita India Pvt. Ltd. v. Mahendra Jain

Judgment dated 20.02.2023 passed by the Supreme Court in Criminal Appeal No. 546 of 2023, reported in 2023 (1) Crimes 233 (SC)

Relevant extracts from the judgment:

The Apex Court through the above decision has laid down the following principles:

(i) Filing of a complaint under Section 138 Negotiable Instruments Act, 1881 through power of attorney holder is perfectly legal provided he has due knowledge about the transaction (s) in question;

(ii) Power of attorney holder can depose and verify on oath to prove the contents of the complaint if he has witnessed the transaction;

(iii) The complaint filed through power of attorney holder must contain an assertion/ that he had the knowledge about transactions in question;

(iv) Functions under general power of attorney cannot be delegated to another person without a specific clause permitting the same in the general power of attorney.

(v) The affidavits of complainant, his witnesses or his power of attorney holder are permissible and sufficient for taking cognizance on the complaint; and

(vi) The complaint by power of attorney holder on behalf of the original complainant is maintainable though he cannot file a complaint in his own name.

It is in the light of the above dictums of law laid down by this Court in the above case, it is to be examined if the complaint as filed is maintainable and the High Court is justified in exercise of its power under Section 482 Cr.PC to set aside the orders of the trial court and that of the Revisional Court holding that the complaint is maintainable as it has been filed by the authorised representative/power of attorney holder and that the said power of attorney holder is legally entitled to depose in support of the complaint.

A bare perusal of the complaint filed by the appellant-company reveals that it has been filed in the name of the company through its authorised representative, Ripanjit Singh Kohli. Therefore, the complaint is by the appellant company in its own name. It has not been filed in the name of the power of attorney holder. The complainant, that is the appellant company is entitled to file the complaint in its own name through its power of attorney holder.

There is a general power of attorney of the appellant company in favour of one of its directors, Kavindersingh Anand. The said power of attorney was executed after it was duly approved by the board of directors in its meeting dated 01.05.2010. Therefore, one of the directors of the appellant-company, i.e. Kavindersingh Anand is holding power of attorney of the appellant-company and is the true and lawful attorney of the same.

•

116. PREVENTION OF CORRUPTION ACT, 1988 – Section 7

Illegal gratification – Demand and acceptance – Proof of – If there is no evidence produced on record to prove demand, then merely on the basis of recovery of money from the accused, it cannot be held that there was demand.

भ्रष्टाचार निवारण अधिनियम, 1988 – धारा 7

अवैध परितोषण – मांग और स्वीकृति – प्रमाण – यदि मांग को साबित करने हेतु अभिलेख पर कोई साक्ष्य प्रस्तुत नहीं किया गया है, तब मात्र इस आधार पर कि अभियुक्त से धनराशि बरामद की गई, यह अवधारित नहीं किया जा सकता कि कोई मांग की गई थी।

Jagtar Singh v. State of Punjab
Judgment dated 23.03.2023 passed by the Supreme Court of India in Criminal Appeal No. 2136 of 2010, reported in 2023 (2) Crimes 14 (SC)

Relevant extracts from the judgment:

The conclusions of the Constitution Bench judgment in ***Neeraj Dutta v. State (Govt. of NCT of Delhi), (2022) SCC Online SC 1724*** have been summarized in paragraph 74, which read thus:

> "74. What emerges from the aforesaid discussion is summarised as under:
>
> (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a *sine qua non* in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d) (i) and (ii) of the Act.
>
> (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.
>
> (c) Further, the fact in issue, namely the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.
>
> (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:
>
> (i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and circumstantial evidence to prove the demand.

•

117. PREVENTION OF MONEY LAUNDERING ACT, 2002 – Sections 43 (1), 44 (1)(a) and 44(1)(c) r/w/s 4

(i) Jurisdiction – Trial of scheduled offences should take place in the Special Court which has taken cognizance of offence of money landering – trial of scheduled offence should follow the trial of the offence of money landering and not *vice versa*.

(ii) Determination of territorial jurisdiction – Explained.

धन शोधन निवारण अधिनियम, 2002 – धाराएं 43(1), 44(1)(क) एवं 44(1)(ग) सहपठित धारा 4

(i) क्षेत्राधिकार – अनुसूचित अपराधो का विचारण उस विशेष न्यायालय मे होना चाहिए जिसने धन शोधन के अपराध का संज्ञान लिया है – अनुसूचित अपराध के विचारण को धनशोधन के अपराध का अनुसरण करना होगा न कि विलोमतः।

(ii) क्षेत्रीय अधिकारिता का निर्धारण – समझाया गया।

Rana Ayyub v. Directorate of Enforcement
Judgment dated 07.02.2023 passed by the Supreme Court in Writ Petition (Crl.) No. 12 of 2023, reported in (2023) 4 SCC 357

Relevant extracts from the judgment:

It is clear that the trial of the scheduled offence should take place in the Special Court which has taken cognizance of the offence of money-laundering. In other words, the trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money-laundering and not vice versa.

Since the Act contemplates the trial of the scheduled offence and the trial of the offence of money-laundering to take place only before the Special Court constituted under Section 43(1), a doubt is prone to arise as to whether all the offences are to be tried together. This doubt is sought to be removed by Explanation (*i*) to Section 44(1). Explanation (*i*) clarifies that the trial of both sets of offences by the same court shall not be construed as joint trial.

A careful dissection of clauses (*a*) and (*c*) of sub-section (1) of Section 44 shows that they confer primacy upon the Special Court constituted under Section 43(1) of the PMLA. These two clauses contain two rules, *namely* : (*i*) that the offence punishable under PMLA as well as a scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence of money-laundering has been committed; and (*ii*) that if cognizance has been taken by one Court, in respect of the scheduled offence and cognizance has

been taken in respect of the offence of money-laundering by the Special Court, the Court trying the scheduled offence shall commit it to the Special Court trying the offence of money-laundering.

Coming to the second question arising for our consideration, clause (a) of sub-section (1) of Section 44 leaves no semblance of any doubt that the offence of money-laundering is triable only by the Special Court constituted for the area in which the offence of money-laundering has been committed. To find out the area in which the offence of money-laundering has been committed, we may have to go back to the definition in Section 3 of the PMLA.

As we have pointed out earlier, the involvement of a person in any one or more of certain processes or activities connected with the proceeds of crime, constitutes the offence of money-laundering. These processes or activities include: (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; or (vi) claiming as untainted property.

In other words, a person may (i) acquire proceeds of crime in one place, (ii) keep the same in his possession in another place, (iii) conceal the same in a third place, and (iv) use the same in a fourth place. The area in which each one of these places is located, will be the area in which the offence of money-laundering has been committed. To put it differently, the area in which the place of acquisition of the proceeds of crime is located or the place of keeping it in possession is located or the place in which it is concealed is located or the place in which it is used is located, will be the area in which the offence has been committed.

In addition, the definition of the words "proceeds of crime" focuses on "deriving or obtaining a property" as a result of criminal activity relating to a scheduled offence. Therefore, the area in which the property is derived or obtained or even held or concealed, will be the area in which the offence of money-laundering is committed.

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118. PREVENTION OF MONEY LAUNDERING ACT, 2002 – Section 45 r/w/s 3 and 4
CRIMINAL PROCEDURE CODE, 1973 – Section 438

Anticipatory bail – Economic offence having impact on the society – Court must be cautious in exercising the discretion u/s 438 of the Code – The provisions of section 45 of the Act shall be applicable.

धन – शोधन निवारण अधिनियम, 2002 – धारा 45 सहपठित धारा 3 एवं 4

दण्ड प्रक्रिया संहिता, 1973 – धारा 438

अग्रिम जमानत – समाज पर आर्थिक अपराध का प्रभाव – न्यायालय को संहिता की धारा 438 के अंतर्गत विवेक का उपयोग करने में सतर्क होना चाहिए – अधिनियम की धारा 45 के प्रावधान लागू होंगे।

The Directorate of Enforcement v. M. Gopal Reddy and anr.

Judgment dated 24.02.2023 passed by the Supreme Court in Criminal Appeal No. 534 of 2023 reported in 2023 (2) Crimes 2 (SC)

Relevant extracts from the judgment:

While granting anticipatory bail the High Court has observed that the provisions of Section 45 of the Act, 2002 shall not be applicable with respect to the anticipatory bail applications/proceedings under Section 438 CrPC. For which the High Court has relied upon the decision of this Court in the case of ***Nikesh Tarachand Shah v. Union of India and anr., (2018) 11 SCC 1***. In the case of ***Asst. Director Enforcement Directorate v. Dr. V.C. Mohan, 2022 SCC OnLine SC 452*** this Court has specifically observed and held that it is the wrong understanding that in the case of ***Nikesh Tarachand Shah*** (supra) this Court has held that the rigour of Section 45 of the Act, 2002 shall not be applicable to the application under Section 438 CrPC. In the case of ***Dr. V.C. Mohan*** (supra) in which the decision of this Court in the case of ***Nikesh Tarachand Shah*** (supra) was pressed into service, it is specifically observed by this Court that it is one thing to say that Section 45 of the Act, 2002 to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in connection with offence under the Act, 2002, the underlying principles and rigours of Section 45 of the Act, must get triggered – although the application is under Section 438 CrPC. Therefore, the observations made by the High Court that the provisions of Section 45 of the Act, 2002 shall not be applicable in connection with an application under Section 438 CrPC is just contrary to the decision in the case of ***Dr. V.C. Mohan*** (supra) and the same is on misunderstanding of the observations made in the case of ***Nikesh Tarachand Shah*** (supra). Once the rigour under Section 45 of the Act, 2002 shall be applicable the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 is unsustainable.

Even otherwise on merits also, the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 is erroneous and unsustainable. While granting the anticipatory bail to respondent No. 1 the High Court has not at all considered the nature of allegations and seriousness of the offences alleged of money laundering and the offence(s) under the Act, 2002. Looking to the nature of allegations, it can be said that the same can be said to be very serious allegations of money laundering which are required to be investigated thoroughly. As per the investigating agency, they have collected some material connecting respondent No. 1 having taken undue advantage from Srinivas Raju Mantena. From the impugned judgment and order passed by the High Court, it appears that the High Court has considered the matter, as if, it was dealing with the prayer for anticipatory bail in connection with the ordinary offence under IPC.

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119. RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 – Section 24 (2)

Lapse of acquisition proceeding – Whether failure to take possession of acquired land or non-payment of compensation leads to lapse of acquisition proceedings? Held, No – The word "OR" mentioned in between taking of possession or payment of compensation in section 24 (2) of the Act is to be read as "AND". [*Pune Municipal Corporation v. Harakchand Misrimal Solanki, (2014) 3 SCC 183* overruled and *Indore Development Authority v. Manoharlal, (2020) 8 SCC 129* followed]

भूमि अधिग्रहण, पुनर्वास और पुनर्स्थापन में उचित प्रतिकर एवं पारदर्शिता का अधिकार अधिनियम, 2013 – धारा 24(2)

अधिग्रहण कार्यवाही का व्यपगत होना – क्या अधिग्रहीत भूमि का कब्जा लेने में विफलता या प्रतिकर का भुगतान न करने से अधिग्रहण की कार्यवाही व्यपगत हो जाती है? अभिनिर्धारित, नहीं – अधिनियम की धारा 24(2) में कब्जा लेने या प्रतिकर के भुगतान के बीच वर्णित ''या'' शब्द को ''और'' के रूप में पढ़ा जाना चाहिए। [*पुणे नगर निगम विरूद्ध हरकचंद मिश्रीमल सोलंकी, (2014) 3 एससीसी 183* उलट दिया गया एवं *इंदौर विकास प्राधिकरण विरूद्ध मनोहरलाल, (2020) 8 एससीसी 129* अनुसरित]

Government of NCT of Delhi and anr. v. Ram Prakash Sehrawat and ors.

Judgment dated 15.12.2022 passed by Supreme Court in Civil Appeal No. 9201 of 2022, reported in (2023) 2 SCC 348

Relevant extracts from the judgment:

It is the case on behalf of Respondents 1 and 2 that the actual possession of the land in question was not taken over and that there is an illegal residential colony on the land in question for which the regularisation proceedings are going on and a writ petition is pending for the same before the High Court. However, it is required to be noted that it was the specific case on behalf of the appellants and as so mentioned in the counter-affidavit filed before the High Court that the possession of the land in question was taken over and handed over to the DDA on 22-9-1986, and, therefore, the alleged possession of the acquired land and the status of the original writ petitioners are nothing but one having illegal possession and unlawful encroachment on the government land.

It is required to be noted that before the High Court and even before this Court, possession proceedings have been placed on record to show that the possession of the land in question along with other lands were taken over and handed over to the Land and Building Department on 22-9-1986. Apart from the same, even, according to Respondents 1 and 2, Writ Petition No. 9366 of 2005 for regularisation of the illegal construction of the residential colony on the land in question is still pending in the High Court. Meaning thereby, the original writ petitioner-Respondents 1 and 2 admit that the possession and construction on the land in question is illegal. From the aforesaid, it can be seen that there may be an illegal residential colony in which some other persons might be staying. Therefore, it cannot be believed that Respondents 1 and 2, original writ petitioners are in possession of the land in question and/or at the relevant time possession was not taken.

The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

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120. SPECIFIC RELIEF ACT, 1963 – Sections 9 and 22
CONTRACT ACT, 1872 – Section 74

(i) Specific performance of contract – Agreement to sale – Clause for confiscation of earnest money in case of non-execution of sale deed within prescribed time – Refund of earnest money – Whether Prayer Clause is a *sine qua non* for granting decree of refund of earnest money? Held, Yes.

(ii) Time is the essence of contract – Penalty clause in the event of breach of contract provided – Actual loss or damage need not be proved.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 9 एवं 22
संविदा अधिनियम, 1872 – धारा 74

(i) अनुबन्ध का विनिर्दिष्ट अनुपालन – विक्रय का अनुबन्ध – निर्धारित समय के भीतर विक्रय विलेख का निष्पादन न करने की स्थिति में अग्रिम राशि को जब्त करने संबंधी प्रावधान – अग्रिम धन की वापसी – क्या अग्रिम धनवापसी की डिक्री देने के लिए अनुतोष प्रार्थित करना अनिवार्य है ? अवधारित, हाँ।

(ii) समय संविदा का सार – अनुबंध के उल्लंघन की स्थिति में शास्ति संबंधी शर्त का प्रावधान – वास्तविक हानि या क्षति का प्रमाणित होना आवश्यक नहीं।

Deshraj and or s v. Rohtash Singh

Judgment dated 14.12.2022 passed by the Supreme Court in Civil Appeal No. 9217 of 2022, reported in (2023) 3 SCC 714

Relevant extracts from the judgment:

On a plain reading of the above provision of section 22 of Specific Relief Act, 1963, we have no reason to doubt that the plaintiff in his suit for specific performance of a contact is not only entitled to seek specific performance of the contract for the transfer of immovable property but he can also seek alternative relief(s) including the refund of any earnest money, provided that such a relief has been specifically incorporated in the plaint. The court, however, has been vested with wide judicial discretion to permit the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternative relief of refund of the earnest money. The litmus test appears to be that unless a plaintiff specifically seeks the refund of the earnest money at the time of filing of the suit or by way of amendment, no such relief can be granted to him. The prayer clause is a *sine qua non* for grant of decree of refund of earnest money.

In our considered opinion, section 74 of Contract Act primarily pertains to the grant of compensation or damages when a contract has been broken and the amount of such compensation or damages payable in the event of breach of contract, is stipulated in the contract itself. In other words, all pre-estimated amounts which are specified to be paid on account of breach by any party under a contract are covered by Section 74 of Contract Act as noted by this court in ***Kailash Nath Associates v. DDA, (2015) 4 SCC 136***. In ***Fateh Chand v. Balkishan Dass, AIR 1963 SC 1405*** the Constitution Bench ruled that Section 74 dispenses with proof of "actual loss or damage" and attracts intervention by Courts where the pre-estimated amount is 'penal' in nature.

We may at this juncture also note the following observations made by this court in ***ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705***:

> " ….Section 74 emphasizes that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not actual loss is proved to have been caused by such breach. Therefore, the emphasis is on reasonable compensation. If the compensation named in the contract is by way of penalty, consideration would be different and the party is only entitled to reasonable compensation for the loss suffered. But if the compensation named in the contract for such breach is genuine pre-estimate of loss which the parties knew when they made the contract to be likely to result from the breach of it, there is no question of proving such loss or such party is not required to lead evidence to prove actual loss suffered by him. Burden is on the other party to lead evidence for proving that no loss is likely to occur by such breach…."

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121. SPECIFIC RELIEF ACT, 1963 – Section 16

Readiness and Willingness – Non-production of account and pass books – Adverse inference cannot be drawn unless plaintiff was called upon to produce pass book either by defendant or Court orders him to do so.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 16

तैयारी और तत्परता – खाता और पासबुक प्रस्तुत न करना – प्रतिकूल निष्कर्ष तब तक नहीं निकाला जा सकता जब तक कि वादी को प्रतिवादी द्वारा पास बुक प्रस्तुत करने के लिए नहीं कहा जाता या न्यायालय उसे ऐसा करने का आदेश नहीं देता है।

Basavraj v. Padmavathi and anr.
Judgment dated 05.01.2023 passed by the Supreme Court in Civil Appeal No. 8962 of 2022, reported in (2023) 4 SCC 239

Relevant extracts from the judgment:

In ***Indira Kaur v. Sheolal Kapoor (1988) 2 scc 488*** this Court after considering the observations made by this Court in ***Ramrati Kuer v. Dwarika Prasad Singh, AIR 1967 SC 1134*** has set aside the findings recorded by three courts below whereby an adverse inference had been drawn against the plaintiff therein for not producing the passbook and thereby holding that the plaintiff was not ready and willing to perform his part of the agreement. It is observed and held that unless the plaintiff was called upon to produce the passbook either by the defendant or, the court orders him to do so, no adverse inference can be drawn.

Applying the law laid down by this Court in the aforesaid two cases to the facts of the case on hand, no adverse inference could have been drawn by the High Court. The High Court seriously erred in reversing the findings recorded by the learned trial court on the readiness and willingness of the appellant.

Considering the circumstances narrated hereinabove, we are of the opinion that the High Court has materially erred in quashing and setting aside the judgment and decree passed by the learned trial court by reversing the findings on the readiness and willingness of the appellant. Under the circumstances, the impugned judgment(s) and order(s) passed by the High Court is/are held to be unsustainable and the same deserve to be quashed and set aside. However, at the same time, to do complete justice, we are of the opinion that if the plaintiff is directed to pay a further sum of 10 lakhs towards sale consideration, it will meet the ends of justice.

In view of the above discussion and for the reasons stated above, the present appeals succeed. The impugned judgment(s) and order(s) passed by the High Court are hereby quashed and set aside. The judgment and decree passed by the learned trial court for specific performance of the agreement to sell dated 13.3.2007 is hereby restored. However, to do complete justice, we direct the plaintiff to pay to Defendant 1 a further sum of 10 lakhs to be deposited within a period of eight weeks from today and on such payment, Defendant 1 is directed to execute the sale deed in favour of the original plaintiff - appellant within a period of two weeks therefrom. Defendant 1 shall also be permitted to withdraw the

amount i.e. 9,74,000 deposited by the plaintiff on 31-10-2011, pursuant to the judgment and decree passed by the learned trial court, with the interest accrued thereon, which shall be paid to Defendant 1 by an account payee cheque.

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122. TRANSFER OF PROPERTY ACT, 1882 – Section 48

Multiple sale deeds – Executed by owner/*Bhumiswami* of the same land – Principle of priority of rights created by transfer applies – Each previous sale deed will prevail over the later sale deeds.

सम्पत्ति अंतरण अधिनियम, 1882 – धारा 48

एकाधिक विक्रय विलेख – एक ही स्वामी/भूमिस्वामी द्वारा निष्पादित – अंतरण द्वारा सृष्ट अधिकारों की पूर्विकता का सिद्धांत लागू – पूर्ववर्ती विक्रय विलेख पश्चात्वर्ती विक्रय विलेख पर अभिभावी होंगे ।

Fatima Bi (Smt.) (Dead) and ors. v. Ku. Najnin and ors.
Judgment dated 23.11.2022 passed by the High Court of Madhya Pradesh in Second Appeal No. 80 of 2003 reported in ILR 2023 MP 512

Relevant extracts from the judgment:

As per provision contained in Section 48 of the Transfer of Property Act, 1882 and in the light of decisions of the Supreme Court in the case of ***Atla Sidda Reddy v. Busi Subba Reddy and ors., (2010) 6 SCC 666*** and of this Court in the case of ***Mohd. Ashraf and anr. v. M.P. Housing Board and ors. 2011 (1) MPLJ 444;*** and ***Sunil Kumar v. Dr. Omprakash Garg and ors., 2010 RN 315,*** in case of two or more sale deeds of same land, the previous sale deed(s) will prevail over later sale deed(s).

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PART – IIA

GUIDELINES ISSUED BY HON'BLE SUPREME COURT TO BE FOLLOWED IN MOTOR ACCIDENT CLAIM CASES

In ***Gohar Mohammed v. Uttar Pradesh State Road Transport Corporation and ors., (2023) 4 SCC 381***, Hon'ble Supreme Court focused on the newly amended Chapters XI and XII of the Motor Vehicle Act, 1988 and the newly framed Rules. This Judgment further dwells upon the necessity of insurance, duties specified to the stakeholders such as police officers, registering authorities, insurance companies and also, measures to be taken for expeditious adjudication of motor accident claim cases. Appropriate directions were issued so as to implement the legislative intent and spirit of the Act and Rules and expedite disposal of Motor Accident Claim cases. The directions issued are as follows :-

i) On receiving the intimation regarding road accident by use of a motor vehicle at public place, the SHO concerned shall take steps as per section 159 of the Motor Vehicles Amendment Act.

ii) After registering the FIR, Investigating Officer shall take recourse as specified in the Motor Vehicles Amendment Rules, 2022 and submit the FAR within 48 hours to the Claims Tribunal. The IAR and DAR shall be filed before the Claims Tribunal within the time limit subject to compliance of the provisions of the Rule 21.

iii) The registering officer is duty bound to verify the registration of the vehicle, driving licence, fitness of vehicle, permit and other ancillary issues and submit the report in coordination to the police officer before the Claims Tribunal.

iv) The flow chart and all other documents, as specified in the Rules, shall either be in vernacular language or in English language, as the case may be and shall be supplied as per Rules. The Investigating Officer shall inform the victim(s)/legal representative(s), driver(s), owner(s), insurance companies and other stakeholders with respect to the action taken following the M.V. Amendment Rules and shall take steps to produce the witnesses on the date, so fixed by the Tribunal.

v) For the purpose to carry out the direction No. (iii), distribution of police stations attaching them with the Claims Tribunals is required. Therefore, distribution memo attaching the police stations to the Claims Tribunals shall be issued by the Registrar General of the High Courts from time to time, if not already issued to ensure the compliance of the Rules.

vi) In view of the M.V. Amendment Act and Rules, as discussed hereinabove, the role of the Investigating Officer is very important. He is required to comply with the provisions of the Rules within the time limit, as prescribed therein. Therefore, for effective implementation of the M.V. Amendment Act and the Rules framed there under, the specified trained police personnel are required to be deputed to deal with the motor accident claim cases. Therefore, we direct that the Chief Secretary/Director General of Police in each and every State/Union Territory shall develop a specialized unit in every police station or at town level and post the trained police personnel to ensure the compliance of the provisions of the M.V. Amendment Act and the Rules, within a period of three months from the date of this order.

vii) On receiving FAR from the police station, the Claims Tribunal shall register such FAR as Miscellaneous Application. On filing the IAR and DAR by the Investigating Officer in connection with the said FAR, it shall be attached with the same Miscellaneous Application. The Claims Tribunal shall pass appropriate orders in the said application to carry out the purpose of Section 149 of the M.V. Amendment Act and the Rules, as discussed above.

viii) The Claims Tribunals are directed to satisfy themselves with the offer of the Designated Officer of the insurance company with an intent to award just and reasonable compensation. After recording such satisfaction, the settlement be recorded under Section 149(2) of the M.V. Amendment Act, subject to consent by the claimant(s). If the claimant(s) is not ready to accept the same, the date be fixed for hearing and affording an opportunity to produce the documents and other evidence seeking enhancement, the petition be decided. In the said event, the said enquiry shall be limited only to the extent of the enhancement of compensation, shifting onus on the claimant(s).

ix) The General Insurance Council and all insurance companies are directed to issue appropriate directions to follow the mandate of Section 149 of the M.V. Amendment Act and the amended Rules. The appointment of the Nodal Officer prescribed in Rule 24 and the Designated Officer prescribed in Rule 23 shall be immediately notified and modified orders be also notified time to time to all the police stations/stakeholders.

x) If the claimant(s) files an application under Section 164 or 166 of the M.V. Amendment Act, on receiving the information, the Miscellaneous Application registered under Section 149 shall be sent to the Claims Tribunal where the application under Section 164 or 166 is pending immediately by the Claims Tribunal.

xi) In case the claimant(s) or legal representative(s) of the deceased have filed separate claim petition(s) in the territorial jurisdiction of different High Courts, in the said situation, the first claim petition filed by the claimant(s)/legal representative(s) shall be maintained by the said Claims Tribunal and the subsequent claim petition(s) shall stand transferred to the Claims Tribunal where the first claim petition was filed and pending. It is made clear here that the claimant(s) are not required to apply before this Court seeking transfer of other claim petition(s) though filed in the territorial jurisdiction of different High Courts. The Registrar Generals of the High Courts shall take appropriate steps and pass appropriate order in this regard in furtherance to the directions of this Court.

xii) If the claimant(s) takes recourse under Section 164 or 166 of the M.V. Amendment Act, as the case may be, he/they are directed to join Nodal Officer/Designated Officer of the insurance company as respondents in the claim petition as proper party of the place of accident where the FIR has been registered by the police station. Those officers may facilitate the Claims Tribunal specifying the recourse as taken under Section 149 of the M.V. Amendment Act.

xiii) Registrar General of the High Courts, States Legal Services Authority and State Judicial Academies are requested to sensitize all stakeholders as early as possible with respect to the provisions of Chapters XI and XII of the M.V. Amendment Act and the M.V. Amendment Rules, 2022 and to ensure the mandate of law.

xiv) For compliance of mandate of Rule 30 of the M.V. Amendment Rules, 2022, it is directed that on disputing the liability by the insurance company, the Claims Tribunal shall record the evidence through Local Commissioner and the fee and expenses of such Local Commissioner shall be borne by the insurance company.

xv) The State Authorities shall take appropriate steps to develop a joint web portal/platform to coordinate and facilitate the stakeholders for the purpose to carry out the provisions of M.V. Amendment Act and the Rules in coordination with any technical agency and be notified to public at large

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"Judges can play a significant role in ridding the justice system of harmful stereotypes. They have an important responsibility to base their decisions on law and facts in evidence, and not engage in gender stereotyping. This requires judges to identify gender stereotyping, and identify how the application, enforcement or perpetuation of these stereotypes discriminates against women or denies them equal access to justice. Stereotyping might compromise the impartiality of a judge's decision and affect his or her views about witness credibility or the culpability of the accused person."

- S. Ravindra Bhat, J. *in Aparna Bhat v. State of Madhya Pradesh (2021) SCC 230, para 38*

PART – IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE MADHYA PRADESH LABOUR LAWS (AMENDMENT) ACT, 2022

(No.9 of 2023)

[Received the assent of the Governor on the 23rd January, 2023; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 30th January, 2023.]

An Act further to amend the Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982 and the Madhya Pradesh Slate Pencil Karmkar Kalyan Nidhi Adhiniyam, 1982.

Be it enacted by the Madhya Pradesh Legislature in the Seventy-third year of the Republic of India as follows:-

PART-I
PRELIMINARY

1. **Short title and commencement –** (1) This Act may be called the Madhya Pradesh Labour Laws (Amendment) Act, 2022.

(2) It shall come into force on the date of its publication in the Madhya Pradesh Gazette.

PART II
AMENDMENT OF THE MADHYA PRADESH SHRAM KALYAN NIDHI ADHINIYAM, 1982

2. **Amendment of Section 31 –** In Section 31 of the Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982 (No. 36 of 1983), after sub-section (2), the following new sub-section shall be added, namely:-

> "(3) (a) Any person alleged with an offence under this Act, before or after the institution of prosecution may be allowed to compound the offence on payment of such amount as may be fixed by the State Government, by notification in the official Gazette and the State Government may also notify and thereby authorise any officer not below the rank of an Assistant Labour Officer for the purpose of

compounding and determination of its amount. (b) On payment of the amount of contribution due and payable under the Act, if any, and on payment of such amount of compounding, as determined by the authorized officer under provision of clause (a),----

(i) The offender shall not be liable to any prosecution; and

(ii) If any prosecution has already been instituted, the compounding shall amount to acquittal of the offender."

PART III
AMENDMENT OF THE MADHYA PRADESH SLATE PENCIL KARMKAR KALYAN NIDHI ADHINIYAM, 1982

3. **Amendment of Section 19 –** Section 19 of the Madhya Pradesh Slate Pencil Karmakar Kalyan Nidhi Adhiniyam, 1982 (No. 13 of 1983), shall be numbered as sub-section (1) thereof and after sub-section as so numbered the following new sub-section shall be added, namely :-

"(2) (a) Any person alleged with an offence under this Act, before or after the institution of prosecution may be allowed to compound the offence on payment of such amount as may be fixed by the State Government, by notification in the official Gazette and the State Government may also notify and thereby authorise any officer not below the rank of an Assistant Labour Officer for the purpose of compounding and determination of its amount.

(b) On payment of such amount of compounding, as determined by the authorized officer under clause (a),-

(i) The offender shall not be liable to any prosecution; and

(ii) If any prosecution has already been instituted, the compounding shall amount to acquittal of the offender."

मध्यप्रदेश श्रम न्यायालय (संशोधन) अधिनियम, 2022

(दिनांक 23 जनवरी 2023, को राज्यपाल की अनुमति प्राप्त हुई, अनुमति ''मध्यप्रदेश राजपत्र (असाधारण)'' में दिनांक 30 जनवरी, 2023 को प्रथम बार प्रकाशित की गई)

मध्यप्रदेश श्रम कल्याण निधि अधिनियम, 1982 एवं मध्यप्रदेश स्लेट पेंसिल कर्मकार कल्याण निधि अधिनियम, 1982 को और संशोधित करने हेतु अधिनियम।

भारत गणराज्य के तिहत्तरवें वर्ष में मध्यप्रदेश विधान–मंडल द्वारा निम्नलिखित रूप में यह अधिनियमित हो :–

भाग–एक

प्रारंभिक

1. (1) इस अधिनियम का संक्षिप्त नाम मध्यप्रदेश श्रम विधि (संशोधन) अधिनियम 2022 है।

(2) यह मध्यप्रदेश राजपत्र में इसके प्रकाशन की तारीख से प्रवृत्त होगा।

भाग–दो

मध्यप्रदेश श्रम कल्याण निधि अधिनियम, 1982 का संशोधन

2. मध्यप्रदेश श्रम कल्याण निधि अधिनियम, 1982 (क्रमांक 36 सन् 1983) की धारा 31 में उपधारा (2) के पश्चात्, निम्नलिखित नई उपधारा जोड़ी जाए, आर्थात् :–

''3 (क) इस अधिनियम के अधीन किसी अपराध के लिए अभिकथित किसी व्यक्ति को, अभियोजन संस्थित किये जाने के पूर्व अथवा उसके पश्चात् ऐसी राशि के भुगतान पर, जैसी कि राज्य सरकार, राजपत्र में अधिसूचना द्वारा नियत करे, अपराध का प्रशमन करने के लिए अनुज्ञात किया जा सकेगा और किसी सहायक श्रम अधिकारी से अनिम्न श्रेणी के अधिकारी को प्रशमन करने और उसकी राशि अवधारित करने के प्रयोजन हेतु राज्य सरकारी अधिसूचित और प्राधिकृत भी कर सकेगी।

(ख) इस अधिनियम के अधीन शोध्य तथा देय अभिदाय की राशि, यदि कोई हो, के भुगतान पर, और प्रशमन की ऐसी राशि, जैसी कि खण्ड (क) के उपबंधों के अधीन प्राधिकृत अधिकारी द्वारा अवधारित की जाये, भुगतान पर,–

(एक) अपराधी किसी अभियोजन का दायी नहीं होगा, और

(दो) यदि कोई अभियोजन पहले ही संस्थित किया जा चुका हैं, तो प्रशमन का परिणाम अपराधी की दोषमुक्ति होगा''।

भाग–तीन

मध्यप्रदेश स्लेट पेंसिल कर्मकार कल्याण निधि अधिनियम, 1982 का संशोधन

3. मध्यप्रदेश स्लेट पेंसिल कर्मकार कल्याण निधि अधिनियम, 1982 (क्रमांक 13 सन् 1983) की धारा 19 को उसकी उपधारा (1) के रूप में क्रमांकित की जाए, और इस प्रकार क्रमांकित उपधारा के पश्चात् निम्नलिखित नई उपधारा जोड़ी जाए, अर्थात्:–

''2(क) इस अधिनियम के अधीन किसी अपराध के लिए अभिकथित किसी व्यक्ति को, अभियोजन संस्थित किये जाने के पूर्व अथवा उसके पश्चात् ऐसी राशि के भुगतान पर, जैसी कि राज्य सरकार, राजपत्र में अधिसूचना द्वारा नियम करे, अपराध का प्रशमन करने के लिए अनुज्ञात किया जा सकेगा और किसी सहायक श्रम अधिकारी से अनिम्न श्रेणी के अधिकारी को प्रशमन करने और उसकी राशि अवधारित करने के प्रयोजन हेतु राज्य सरकारी अधिसूचित और प्राधिकृत भी कर सकेगी।

(ख) प्रशमन की ऐसी राशि, जैसी कि खण्ड (क) के अधीन प्राधिकृत अधिकारी द्वारा अवधारित की जाये, भुगतान पर,–

(एक) अपराधी किसी अभियोजन का दायी नहीं होगा, और

(दो) यदि कोई अभियोजन पहले ही संस्थित किया जा चुका है, तो प्रशमन का परिणाम अपराधी की दोषमुक्ति होगा।

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NOTIFICATION DATED 16.05.2023 REGARDING AMENDMENT IN MADHYA PRADESH RULES AND ORDERS (CRIMINAL)

In exercise of the powers conferred by Article 227 of the Constitution of India read with section 477 of the Code of Criminal Procedure, 1973 (2 of 1974), the High Court of Madhya Pradesh, hereby, makes the following amendment in the Madhya Pradesh Rules and Orders (Criminal), namely :-

AMENDMENT

In the said Rules and Orders, in chapter IV, for Rule 87, the following rule shall be substituted, namely:-

"87. Statement of a witness/prosecutrix under section 164:

(1) Any statement other than a confession shall be recorded as provided under sub-section (5) of section 164 of the Code of Criminal Procedure.

(2) Where the statement is of the prosecutrix, it shall be recorded under subsection (5A) of section 164 of the Code of Criminal Procedure, preferably by a lady judicial magistrate.

(3) For the purpose of sub-rule (2), where the prosecutrix is produced before the Magistrate after a lapse of more than twenty-four hours from the registration of the First Information Report, the Magistrate shall secure a copy of the report from the investigating officer giving reasons for the delay, as recorded in the case diary.

(4) The Court shall forthwith secure from the investigating officer, a copy of the Medico Legal Certificate pertaining to the prosecutrix.

(5) The original statement as recorded under sub-rule (2) along with documents mentioned in sub-rule (3) and (4), shall be placed in a cover, sealed and forwarded to the Court of inquiry or trial under sub-section (6) of section 164 of the Code of Criminal Procedure, maintaining proof of dispatch and receipt by the courts concerned.

(6) The Court recording the statement, shall not retain a copy of any of the documents referred to in sub-rule (2), (3) and (4).

(7) A copy of the statement recorded under sub-rule (2) supra shall be given to the investigating officer with a specific direction recorded in the record of proceedings and acknowledged by the investigating officer with his signature in the margin, that the same shall not be disclosed to anyone.

(8) The accused shall have a right to a copy of the statement recorded under sub-rule (2), only at the stage under section 207 or 208 of the Code of Criminal Procedure."

RAMKUMAR CHOUBEY, Registrar General

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 477 के साथ पठित भारत के संविधान के अनुच्छेद 227 द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, मध्यप्रदेश उच्च न्यायालय, एतद् द्वारा, मध्यप्रदेश नियम तथा आदेश (आपराधिक) में निम्नलिखित संशोधन करता है, अर्थात्:–

संशोधन

उक्त नियम तथा आदेश में, अध्याय चार में, नियम 87 के स्थान पर निम्नलिखित नियम स्थापित किया जाए, अर्थातः–

''87. धारा 164 के अधीन साक्षी/अभियोक्त्री का कथनः–

(1) संस्वीकृति से भिन्न कोई भी कथन, दण्ड प्रक्रिया संहिता की धारा 164 की उप–धारा (5) के अधीन उपबंधित किए गए अनुसार अभिलिखित किया जाएगा।

(2) जहां कथन अभियोक्त्री का है, वहां वह दण्ड प्रक्रिया संहिता की धारा 164 की उप–धारा (5क) के अधीन विशेषतः महिला न्यायिक दण्डाधिकारी द्वारा अभिलिखित किया जाएगा।

(3) उप–नियम (2) के प्रयोजन के लिए, जहां अभियोक्त्री को प्रथम सूचना प्रतिवेदन दर्ज किए जाने के चौबीस घंटे से अधिक का समय समाप्त होने के पश्चात् दण्डाधिकारी के समक्ष पेश किया जाता है, वहां दण्डाधिकारी, अन्वेषक अधिकारी से विलंब के कारणों को उल्लिखित करने वाले प्रतिवेदन की एक प्रति प्राप्त करेगा, जैसा कि केस डायरी में अभिलिखित है।

(4) न्यायालय, अन्वेषक अधिकारी से तत्काल अभियोक्त्री से संबंधित चिकित्सा विधिक प्रमाण–पत्र की एक प्रति प्राप्त करेगा।

(5) उन–नियम (3) और (4) में उल्लिखित दस्तावेजों के साथ उप–नियम (2) के अधीन तथा अभिलिखित मूल कथन को एक आवरण में बंधकर सील–बंद किया जाएगा और प्रेषण तथा संबंधित न्यायालय द्वारा प्राप्ति का प्रमाण संधारित करते हुए, दण्ड प्रक्रिया संहिता की धारा 164 की उप–धारा (6) के अधीन जांच या विचारण करने वाले न्यायालय को अग्रेषित किया जाएगा।

(6) कथन अभिलिखित करने वाला न्यायालय उप–नियम (2), (3) और (4) में निर्दिष्ट किन्हीं दस्तावेजों की प्रति अपने पास नहीं रखेगा।

(7) उपरोक्त उप–नियम (2) के अधीन अभिलिखित कथन की एक प्रति, अन्वेषक अधिकारी को कार्यवाहियों के अभिलेख में यह विनिर्दिष्ट निर्देश अभिलिखित करते हुए प्रदत्त की जाएगी और अन्वेषक अधिकारी द्वारा हाशिए में अपने हस्ताक्षर सहित इसकी अभिस्वीकृति दी जाएगी, कि इसे किसी के सामने प्रकट नहीं किया जाएगा।

(8) अभियुक्त को केवल दंड प्रक्रिया संहिता की धारा 207 या 208 के अधीन प्रक्रम पर ही, उप–नियम (2) के अधीन अभिलिखित कथन की प्रति प्राप्त करने का अधिकार होगा।''

रामकुमार चौबे, रजिस्ट्रार जनरल

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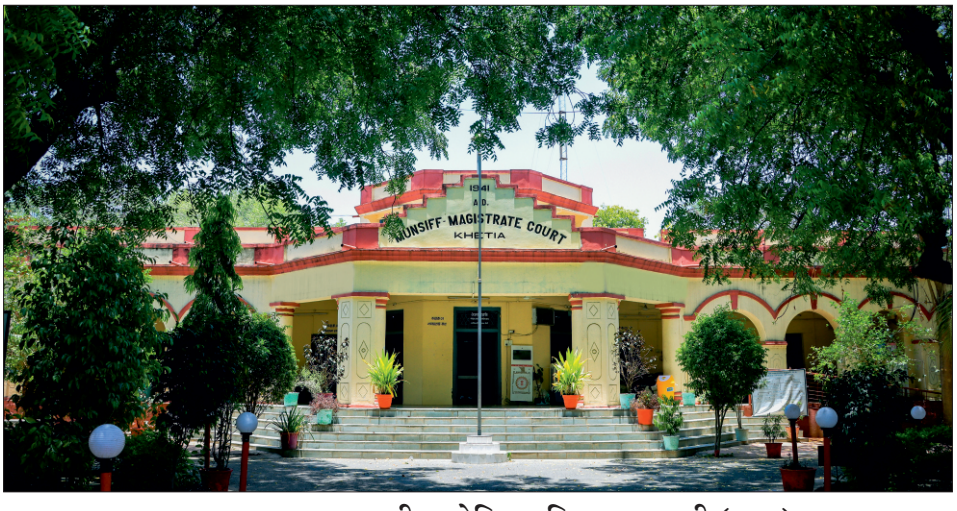
जिला एवं सत्र न्यायालय, बड़वानी (म.प्र.)



न्यायालय भवन, तहसील खेतिया, जिला बड़वानी (म.प्र.)

न्यायालय भवन, तहसील सेंधवा, जिला बड़वानी (म.प्र.)

मध्यप्रदेश उच्च न्यायालय, जबलपुर

मध्यप्रदेश राज्य न्यायिक अकादमी

ब्योहारबाग, जबलपुर (म.प्र.) - 482 007

Website : www.mpsja.mphc.gov.in, E-mail : mpjotri@gmail.com, dirmpsja@mpgov.in, Ph. : 0761-2628679