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संपादकीय

अनासक्त भाव

ग्रीष्मावकाश पश्चात न्यायिक अधिकारीगण अपने अपने स्थानों पर व्यवस्थित रूप से स्थापित हो जाएंगे। स्वाभाविक प्रक्रिया है व मनुष्य का व्यवहार भी उतना ही सामान्य होता है। स्थान परिवर्तन नौकरी का आवश्यक अंग है। कुछ के इच्छित स्थान पर तो कुछ के इच्छा के विपरीत भी स्थानांतरण हुए होंगे नया वेतनमान मिला या न मिला होगा, पदोन्नति हुई या नहीं हुई होगी। लेकिन मनुष्य स्वभाव अनुसार ही स्वाभाविक औसत स्तर की प्रक्रिया की अभिव्यक्ति हर एक ने की होगी। केवल अपवाद ही ऐसे होंगे जो ऐसी प्रक्रियाओं से मुक्त रहे होंगे। व्यक्त–अव्यक्त रूप से प्रतिक्रिया होती तो है तथा होना भी उतना भी स्वाभाविक है। ऐसा लगता है कि हमारी प्रतिरोधी शक्ति, अविचलन शक्ति या तो क्षीण है या कि न्यून है।

अप्रेल मई का मौसम था। गर्मी अपनी चरम सीमा पर थी। जबलपुर जैसे शहर में भी सतत् रूप से 45 डिग्री तापमान होना सामान्य बात हो गई है। बेमौसम गुलाब, फूल रहा था। 'जोति' कार्यालय में आने जाने का जो एक छोटा सा मार्ग है उसकी दोनों ओर क्यारियां है। उसमें कहीं–कहीं गुलाब के फूल थे। एकदम छोटे लेकिन पूर्ण विकसित। चेरी के आकार के पुष्प। लेकिन उनका रंग बिलकुल सुर्ख था। पूर्ण चमक थी तथा भरी गर्मी को वे पूर्ण शक्ति से सहन कर रहे थे। कार्यालय में रोज आते जाते मैं उन्हें देखता था। समय के साथ वे मिटते थे तो समय के साथ खिलते थे। खिलने से लेकर मिटने के बीच कहीं कोई गतिरोध नहीं, कोई चिंता नहीं, कोई विवाद नहीं। संपूर्ण शक्ति से वे आते थे व जाने तक उतनी ही ताजगी रहती थी। विपरीत स्थिति में भी वे जीने की कला समझते थे, जीने का महत्व समझते थे। अपने छोटे से कृतित्व व व्यक्तित्व के होते हुए भी आने जाने वाले को प्रसन्न करते थे लेकिन स्वयं भयंकर गर्मी को भी यूं ही पचा जाते थे। मुझे बार–बार ऐसा लगता रहा है कि कितनी जीवटता धैर्य, मनोबल, आत्मविश्वास, अवदान रहा होगा कि हर विपरीत स्थिति में भी वह अपने चरित्र को अपनी पहचान को, अनोखेपन, अस्मिता, आत्मता खुसुसियत, मौलिकता एवं आत्मा को खो नहीं पाया है। उसका मौन संवाद मुझे हर समय चुनौती भरा आह्वान था कि, देखो मेरे से जीने की कला सीखो। उत्साहित बने रहो, दिलेरी समझो, बहादुर बनो, वीरचर्या को अपनाओ।

दोस्तो, हम इन सब बातों को तथा इसे कथित आदर्श यूटोपिअन (पलटोनिकट्रूथ) मानते उपेक्षित कर सकते हैं तथा हम अपनी बात पर दृढ़ एवं स्थिर रहकर स्वयं को कुंठित भी रख सकते हैं व उसमें संतोष भी मिल सकता है। सहजभाव से यह लगता होगा कि हमारे साथ अन्याय हुआ है। उसका परिमार्जन करने हेतु सतत् प्रयत्न करना

एक बात है लेकिन कुंठाग्रस्त होकर जीना दूसरी बात है। हमें अपना चरित्र बदलना होगा। हमने हमारा स्वभाव, व्यवहार, हमारी अस्मिता को धारदार बनाना होगा। ऐसा प्रतीत होने लगा है कि यह सब कुंठा मन में इसलिए है कि हम सुविधाभोगी बनते जा रहे हैं व एक दूसरे की तुलना सुविधाओं की उपलब्धि के आधार पर कर रहे हैं। हम अपने मूलभूत उद्देश्य कर्म से दूर होते जा रहे हैं। स्वामी विवेकानंद युवा पीढ़ी को चुनौती देते कहते हैं व चेतावनी भी देते हैं कि नृसिहों ! उठो, इस भ्रम में मत रहो कि तुम भेड़ हो। श्रमहीन, संकल्पहीन, आरामतलबी की जिंदगी ईश्वर प्रदत्त मृत्यु से भी बुरी है। दैनिक भास्कर में एक बार 'जीवन दर्शन' में कुछ अंश पढ़ने को मिले अच्छे लगे। चिंतन बड़ा आसान लेकिन आदर्शवादी था इस कारण स्वाभाविक है कि व्यवहार में उतारना कष्ट साध्य एवं लगभग असंभव हो सकता है। वह चिंतन ऐसा था। अथर्ववेद में कहा गया कि "आरोहणमाक्रमणं जीवतो जीवतोयनम्"। उन्नत होना तथा आगे बढ़ना प्रत्येक जीवन का लक्षण है। **मति** तथा **गति** से विकसित होना प्राणिमात्र का नैसर्गिक अधिकार है। महाभारत में मति और गति का स्पष्टीकरण किया है कि उद्योग, संयम, दक्षता, सावधानी, धैर्य, स्मृति तथा सोच–विचार कर कार्य प्रारंभ करना एवं शेष में दृढ़ प्रतिज्ञ होकर आगे ही आगे बढ़ना है। यही उन्नति का मूल है। अब समय आ गया है कि हम पुनः विचार करें एवं निर्धारित करें कि यह जीवन चार दिन का नहीं है कि खाओ पीओ और मौज करो। उद्यमी तो होना ही पड़ेगा। न्यायिक अधिकारी होने के नाते हम श्रमहीन समाज से जुड़ नहीं सकते हैं अपितु कर्मयोगी होना होगा। किसी सीमा तक सन्यासी (साधक) वृत्ति जागृत करना होगी। सन्यासी वृत्ति का एक उदाहरण स्वामी सत्य सांई बाबा के दो वाक्यों में मिलता है। वे इस प्रकार है। Not through wealth can immortality be won, it can be won only through renunciation. Give up, do not grasp in clenched fists. Relearse, do not bind and get bound.

समय के साथ आयु के साथ अब हमें कुछ न कुछ किसी न किसी सीमा तक त्यागना ही चाहिए। वास्तव में ऐसा करने से चित्त शुद्धि होगी, स्थिर चित्तता से उदात्तता उद्वेग–हीनता प्रशांतता व गांभीर्य प्राप्त होगा। स्थित प्रज्ञता की ओर एक चरण अग्रसर कर पाएंगे।

पुरुषोत्तम विष्णु नामजोशी

WINNING DOES NOT START AROUND YOU IT BEGINS INSIDE YOU.

YOUR FUTURE BEGINS WITH WHATEVER IS IN YOUR HANDS TODAY.

SOMEONE IS ALWAYS OBSERVING YOU WHO IS CAPABLE OF GREATLY BLESSING YOU.

कर्म प्रधान बनो

दिनांक 22 मार्च 1999 से 29 मार्च 1999 तक पांचवा सत्र व्यवहार न्यायाधीश वर्ग 2 जो कि 1994 के नियुक्त न्यायिक अधिकारीगण हैं का संचालित किया गया। जिसमें माननीय मुख्य न्यायाधिपति एवं माननीय प्रशासनिक न्यायाधिपति गण ने क्रमशः उदघाटन एवं समापन उद्‌बोधन करके न्यायिक अधिकरीगणों को दीक्षित किया।

दिनांक 23 मार्च 1999 को उद्‌घाटन सत्र में माननीय मुख्य न्यायाधिपति श्रीमान ए. के. माथुर महोदय ने अपराधिक प्रकरणों में न्यायालयों द्वारा किए जाने वाले मॉनीटरिंग के विषय में उदबोधन करते हुए कहा कि न्यायिक दंडाधिकारीगणों को समय–समय पर परिपत्रों के माध्यम से बताया गया है कि दंड प्रक्रिया संहिता के अंतर्गत आने वाले प्रतिवेदन जो आरक्षी केंद्रों से आते हैं उन्हें सम्हाल कर रखे जावें एवं आरोप पत्र प्रस्तुत होने पर संबंधित फाईलों में प्रविष्ट किए जावें। आरोपी को गिरफतारी पश्चात पुलिस अभिरक्षा में पुलिस रिमांड हेतु प्रस्तुत किए जाने पर यह भी देखा जाना होता है कि घटना किस तारीख को कितने बजे की है तथा आरक्षी केंद्र व घटना स्थल की दूरी एवं वहां तक आने जाने के साधनों पर भी विचार होना चाहिए ताकि पुलिस रिमांड देते समय उपर्युक्त तथ्यों के आधार से भी विचार हो सकेगा कि कहीं ऐसा तो नहीं कि किसी गलत व्यक्ति को उलझाया जा रहा है। वर्तमान क्रिया कलापों की चर्चा करते हुए माननीय मुख्य न्यायाधिपति महोदय ने यह भी कहा कि आजकल सहज संभव है कि वास्तविक अभियुक्त को बचाने हेतु तथा किसी अन्य व्यक्ति को झूठा फंसाने हेतु प्रथम सूचना रिपोर्ट लिखने में देरी करें अथवा कथित देहाती नलिश तैयार कर के प्रथम सूचना रिपोर्ट तैयार की जा सकती है। इस सबका परिणाम समाज पर विपरीत रूप से पड़ता है। वास्तविक अभियुक्त बच जाता है व अन्य व्यक्ति फंस जाता है।

माननीय मुख्य न्यायाधिपति महोदय श्रीमान ए.के. माथुर साहेब ने यह भी व्यक्त किया कि अनुसंधान के स्तर पर ही मॉनिटरिंग ठीक से होता रहेगा तो पुलिस को उचित मार्गदर्शन भी मिलता रहेगा एवं नियंत्रण भी बना रहेगा। (कृपया मॉनीटरिंग के संबंध में ***यूनियन ऑफ इंडिया वि. सुशील कुमार मोदी (1988) एस.सी.सी. 661*** का दृष्टांत जो इसी पत्रिका में दिया है को पढ़ें) माननीय महोदय ने यह भी कहा कि मॉनीटरिंग करते वक्त ऐसा न हो कि आप स्वयं ही अनुसंधान अधिकारी बन जाओ। वास्तव में मॉनिटरिंग केवल ऐसा हो कि अनुसंधान सही मार्ग पर चल सके एवं इस विषय पर न्यायिक अधिकारी स्वयं भी विधिक प्रक्रिया का ज्ञान एवं अनुभव बढ़ा सकें। धारा 156 (3) 157, 158 एवं 159 दंड प्रक्रिया संहिता की ओर भी विशेष रूप से ध्यान आकृष्ट किया गया था।

शासकीय संपत्तियों का दुर्विनियोजन एवं न्यायभंग की ओर ध्यान आकृष्ट करते हुए कहा कि न्यायिक अधिकारीगणों का यह कर्त्तव्य है कि वे देखें कि उन्हें सौंपे गये दायित्वों का निर्वाह निष्ठापूर्वक कर्मठता से हो अन्यथा वे व्यक्तिगत रूप से भी जिम्मेदार होंगे। (उच्च न्यायालय ने जो परिपत्र निर्गमित किया है वह एवं माननीय न्यायाधिपति श्रीमान आर.बी. दीक्षित (तत्कालीन जिला न्यायधीश) का लेख भी अप्रैल 1999 के 'जोति' में पुनः प्रकाशित किया है।

इसी सत्र में माननीय प्रशासनिक न्यायाधिपति एवं अध्यक्ष न्यायिक अधिकारी प्रशिक्षण संस्थान श्रीमान डी.पी.एस. चौहान महोदय ने दिनांक 26 मार्च 1999 को मार्गदर्शनप्रद विचार व्यक्त किए तथा कहा कि प्रशिक्षण का मुख्य उद्देश्य भविष्य हेतु अधिक सक्षमता से तैयारी करना है। लक्ष्य ऊंचे होने चाहिए तथा लक्ष्य प्राप्ति मात्र स्वप्न न रहकर वास्तविकता में परिणित होने हेतु कठोर परिश्रम भी आवश्यक है व कर्म के प्रति निष्ठा भी होना चाहिए? वकीलों के आय के न्यून श्रोत एवं जनसंख्या बढ़ने के साथ वकीलों की संख्या व न्यायिक अधिकारीगणों की संख्या में विषम अनुपात अनावश्यक रूप से टकराव का कारण बनता है। वकील वर्ग से उचित दूरी बना कर रखने, न्यायालय कक्ष में काम के अतिरिक्त अनावश्यक रूप से बात न करने की सलाह देते हुए यह भी कहा कि हर एक से यथोचित दूरी बनाएं रखी जाना चाहिए।

दिनांक 20 अप्रैल 1999 के छठे एवं अंतिम सत्र में माननीय मुख्य न्यायाधिपति श्रीमान ए.के. माथुर महोदय ने कार्य निराकरण के संबंध में आनेवाली दिक्कतें एवं उसके उपचार संबंधी विषय पर न्यायिक अधिकारीगणों की समस्याओं के संबंध में स्वयं को विचारों से अवगत किया तथा कहा कि समय पर न्यायालय में कार्य प्रारंभ करना पूर्ण समय तक दक्षता व कर्मठता से कार्य करना होगा जिससे सकारात्मक परिणाम प्राप्त हो सकेंगे।

दिनांक 26-3-99 को पंचम सत्र की समाप्ति के अवसर पर एवं दिनांक 24-4-99 को अंतिम सत्र के समाप्ति अवसर में माननीय प्रशासनिक न्यायाधिपति एवं अध्यक्ष न्यायिक अधिकारी प्रशिक्षण संस्थान समिति श्रीमान डी.पी. एस. चौहान महोदय ने न्यायिक अधिकारीगणों द्वारा पालन की जाने वाली आचार संहिता के संबंध में बोध वाक्यों से उत्साह एवं विश्वास का आधार न्यायिक अधिकारीगणों में संचारित करने हेतु प्रयत्न किया। माननीय महोदय ने कहा कि जैसा सोच होगा, वैसा चिंतन होगा वैसे ही व्यक्ति की वृत्ति होगी। अतः विचारों में तथा आचरण में शुद्धता व स्वात्विकता का गुण होना आवश्यक है। "न्यायिक कुल" का महत्व प्रदर्शित करते हुए यह बात व्यक्त की कि न्यायिक कुल का लक्ष्य जनता की सेवा करना है अतः हमारी प्रवृत्ति इसी दिशा में गतिशील होना चाहिए। ऐसा करने हेतु पद की प्रतिष्ठा व मर्यादा का ध्यान रखा जाना है। प्राग् ऐतिहासिक काल से न्यायालय का अस्तित्व रहा है। जहां व्यक्तियों का समूह है वहां विवाद है व जहां विवाद है वहां उनका निराकरण करने वाला व्यक्ति है। विधि की जानकारी होने की बात करते हुए माननीय महोदय ने यह

भी कहा विधि के नये नये क्षेत्रों का विस्तार हो रहा है। अतः उस संबंध में विभिन्न प्रकार की जानकारी एकत्र करते रहना होगी, नए विचारों को सृजित करना होगा ताकि आद्यतन ज्ञान के साथ आगे बढ़ सकेंगे।

न्यायिक अधिकारीगणों के स्वास्थ्य के प्रति चिंता दर्शाते हुए प्रशासनिक न्यायाधिपति महोदय ने एक महत्वपूर्ण व व्यवहारिक बात कही कि सुबह जल्दी उठना चाहिए व प्रातः विधि से निवृत्त हो जाना चाहिए जिससे उनके पास पर्याप्त समय रहेगा व इस कारण से अतिरिक्त समय की उपलब्धि सुगम हो जाएगी। जिससे यह शिकायत नहीं रहती है कि न्यायिक अधिकारीगणों को शासकीय व निजी कार्य करने हेतु समय नहीं प्राप्त होता है स्वास्थ्य के प्रति उदासीन रहने की प्रवृत्ति अध्ययन के पीछे उदासीनता की प्रवृत्ति घातक होने की बात कहते हुए माननीय श्रीमान चौहान साहेब ने कहा कि स्वास्थ्य का अच्छा रहना हर दृष्टि से कर्म के हर क्षेत्र में आवश्यक हो गया है अच्छा स्वास्थ्य बनाए रखने का एक उपचार आपने यह भी बताया कि दूसरों की आलोचना करने से बचें। जिस क्षेत्र में कार्य कर रहे हैं उस क्षेत्र की आलोचना, दूसरों से, परायों से करने से बचें। तथा सुनने से बचें। अपने मन को संयम से रखें जो तथा जितना मिला है उसमें संतोष मानते हुए विश्वास रखना होगा कि भविष्य में उचित रूप से और भी प्राप्त होगा।

न्यायदान की बात को व्यक्त करते हुए न्यायाधिपति महोदय श्रीमान चौहान साहेब ने यह भी कहा कि बाह्य लोगों से विश्वास अर्जित करना होता है अतः आपका कार्य भी स्वयं में आकर्षित करने वाला हो, दूसरों को सकारात्मक प्रभाव डालने वाला हो। वर्तमान परिस्थितियों में न्यायपालिका का महत्व बताते हुए माननीय प्रशासनिक न्यायाधिपति महोदय श्रीमान डी.पी.एस. चौहान साहेब ने कहा कि आम जनता अब न्यायपालिका की ओर आस लगाए बैठी है कि यहां वास्तविक अर्थों में न्यायालय हो सकता है। आपका व्यवहार न्यायालय में सभी वर्गों के प्रति शिष्ट एवं सभ्यतापूर्ण होना चाहिए। आदरभाव यदि होगा तो सर्वसामान्य जन आपसे प्रभावित होगा। पक्षकार यह चाहेगा कि न्यायदान तो यहीं होता है तथा आपसे ही न्यायदान की याचना करेगा। माननीय न्यायाधिपति श्रीमान डी.पी एस. चौहान महोदय ने यह भी कहा कि न्यायाधीश को देवता के अंश में देखने का कारण ही यह है कि न्याय निर्णयन में न्यायाधीश अपनी संपूर्ण योग्यता आस्था व क्षमता से शुद्ध आचार विचारों से कार्य करता है व बाध्य स्थितियों से निष्प्रभावित रहता है। रागद्वेष से मुक्त होता है। प्रत्येक न्यायाधीश को इन मापदंडों पर खरा उतरना है। अतः इस सात्विक भावना को, जो जनता के मत में है को पुष्ट किया जाना है। किसी अन्य के प्रति श्रद्धा के रूप में चरण छूने के संबंध में आपने कहा कि यदि आप किसी आदरणीय व्यक्ति के चरण छूते हों तो तब भी छुएं जब सार्वजनिक रूप से वह व्यक्ति दिखे। ऐसा नहीं होता है तो यह अनुभूति होती है कि श्रद्धा मन से उत्पन्न नहीं हुई है स्वार्थवश ऐसा हो रहा है।

आदेशिका प्रारूप

माननीय न्यायाधिपति आर.पी. अवस्थी
(सेवा निवृत्त)

माननीय पूर्व न्यायाधिपति श्रीमान आर.पी. अवस्थी संप्रति अध्यक्ष राज्य प्रशासनिक न्यायाधिकरण जबलपुर ने अपने संस्थान में पूर्व में समय-समय पर दिए मार्गदर्शन के साथ जो प्रारूप आदेशिकाएं तैयार की थीं उन्हें प्रकाशित किया जा रहा है। जिससे अधिक से अधिक एकरूपता पूर्ण राज्य में आ सके आदेशिकाओं के आशय में उचित प्रभाव भी आ सके। आदेशिकाओं का आशय सार्थक हो सके।

प्रस्तावना

अंग्रेजी भाषा के शब्द सेशन जिसका हिन्दी अनुवाद सत्र है, से तात्पर्य यह है, कि जो भी कार्यवाही इस प्रकार के सेशन अथवा सत्र में की जाए वह एक ही अविरलता (Continuity) में दिन प्रतिदिन सुनवाई करके पूर्ण की जा सके। कानून के निर्माताओं ने यह परिकल्पना दंड प्रक्रिया संहिता 1898 को संहिताबद्ध करते समय की थी, कि सत्र प्रकरण जब प्रारंभ होगा, तब उसी एक बैठक में 3 या 4 दिन की निरन्तरता में पूर्ण किया जा सकेगा। इसीलिये अभियुक्त से यह अपेक्षा की जाती थी कि वह सत्र प्रकरण में साक्ष्य के लिखे जाने के पूर्व ही बचाव साक्षियों के नाम और पते सूचित करे और उन साक्षियों को भी अभियोजन साक्ष्य के पूर्ण होने के दूसरे दिन के लिये आहूत किया (बुलाया) जाता था। लेकिन बाद में प्रकरणों के आधिक्य तथा विभिन्न कारणों से ऐसा संभव नहीं हो पाया और वर्ष 1973 की दं.प्र. संहिता में इस प्रकार की व्यवस्था की गई कि सत्र प्रकरण में भी अभियोजन पक्ष की साक्ष्य एवं अभियुक्त के कथन एवं तदुपरांत बचाव साक्ष्य भिन्न भिन्न दिनांकों को लिखी जा सके। फिर भी आदर्श स्थिति यही है, कि अभियोजन पक्ष की साक्ष्य एक ही सत्र में दिन प्रतिदिन लिखी जाकर पूर्ण की जा सके। इसी उद्देश्य की प्राप्ति के लिए आदेश पत्रों के नमूने तैयार किए गए हैं।

बहुधा ऐसा देखा जाता है, कि सत्र प्रकरण उपर्पित हो चुकने के बाद आरक्षी केंद्र से जप्त की गई संबंधित वस्तुएं मालखाने में जमा नहीं होतीं। रासायनिक परीक्षक और सीरम वैज्ञानी के प्रतिवेदन तो प्रकरण की साक्ष्य पूर्ण होने पर भी प्राप्त नहीं होते और कई मर्तबा तो कोई सत्र प्रकरण शासकीय अधिवक्ता द्वारा अतिरिक्त शासकीय अधिवक्ताओं को आवंटित भी नहीं होते।

उपार्पण न्यायालय (Committal Court) से कानून की यह अपेक्षा है, कि उपार्पण न्यायालय इन सभी बिन्दुओं पर ध्यान देकर प्रकरण को उपार्पित करे, जिससे कि

किसी वस्तु या दस्तावेज की कमी के कारण प्रकरण की सुनवाई में व्यवधान उत्पन्न न हो और प्रकरण निरन्तर चल सके। लेकिन उपार्पण न्यायालय द्वारा बहुधा जिस स्थिति में प्रकरण प्रस्तुत होता है, उसी स्थिति में बिना यह देखे कि प्रकरण में सभी दस्तावेज प्रस्तुत हो चुके हैं अथवा नहीं, प्रकरण से संबंधित वस्तुएं मालखाने में जमा हो चुकी हैं अथवा नहीं, प्रकरण सत्र न्यायालय को उपार्पित कर दिए जाते हैं। इसलिए इन बाधाओं को दूर करने के उद्देश्य से ही उपरोक्त आदेश पत्रों के प्रारूप बनाए गए हैं। स्पष्ट ही इन प्रारूपों को दी गई परिस्थितियों में लागू किया जा सकता है। उदाहरणार्थ यदि संबंधित आरक्षी केन्द्र से वस्तुएं मालखाने में जमा कर दी गई हैं, तब प्रथम आदेश पत्र में इस प्रकार का उल्लेख होगा कि संबंधित आरक्षी केन्द्र से जप्तशुदा वस्तुएं मालखाने में जमा हो चुकी हैं और ऐसा उल्लेख नहीं किया जाएगा कि उपरोक्त वस्तुएं जमा नहीं हुई हैं। फिर भी इस परिस्थिति में भी यह लिखना आवश्यक होगा, कि उपरोक्त वस्तुएं मालखाने में जमा हो चुकी हैं, क्योंकि इस उल्लेख से हमारा ध्यान प्रत्येक प्रकरण में इस ओर आकर्षित हो सकेगा, कि हम यह देखें कि उपरोक्त वस्तुएं साक्ष्य के लिखे जाने के पूर्व ही प्राप्त हो जाएं और ऐसी स्थिति निर्मित न हो, कि जब हम साक्ष्य लिखने के लिये प्रस्तुत हों तो यह ज्ञात हो कि आरक्षी केन्द्र से संबंधित वस्तुएं प्राप्त नहीं हुई हैं, इसलिये कम से कम उन वस्तुओं के संबंध में साक्षियों के कथन लिखे जा सकना संभव नहीं है। किन्तु स्थिति यदि यह हो कि शासकीय अधिवक्ता द्वारा अतिरिक्त शासकीय अधिवक्ता को प्रकरण आवंटित किया जा चुका हो, तो क्योंकि उनकी उपस्थिति के उल्लेख मात्र से यह स्वयमेव अभिप्रेत होगा, कि प्रकरण उन्हें शासन की ओर से पैरवी किये जाने के लिए आवंटित किया जा चुका है, इसलिए यह उल्लेख आवश्यक नहीं होगा, कि प्रकरण अतिरिक्त शासकीय अधिवक्ता को आवंटित किया जा चुका है।

प्रस्तावना लिखने का आशय यह है कि आदेश पत्रों के प्रारूप दी गई परिस्थितियों के अनुसार परिवर्तित होंगे और ये प्रारूप हर परिस्थिति में एक ही समान लिखे जाने वाले प्रारूप स्पष्ट ही नहीं हैं।

दिनांक :

अभियोजन पक्ष द्वारा..

अभियुक्त स्वयं उपस्थित है। (अथवा) अभियुक्त अपने अधिवक्ता सहित श्री .... स्वयं उपस्थित है।

सत्र न्यायालय से प्रकरण अंतरित होकर प्राप्त हुआ।

प्रकरण में अभी तक पुलिस द्वारा कथित रूप से जब्त की गई वस्तुएं प्रस्तुत नहीं की गयी हैं। संबंधित थाने के थाना प्रभारी, को पत्र लिखकर सूचित किया जाये कि

वे संबंधित वस्तुएं अविलम्ब इस न्यायालय के मार्फत मालखाने में जमा करायें। उपरोक्त पत्र की एक प्रतिलिपि उपार्पण न्यायालय को भी इस निर्देश के साथ भेजी जाये के प्रकरण को उपार्पित करने के पूर्व उपार्पण न्यायालय अनिवार्य रूप से यह देख लिया करें कि प्रकरण में कथित रूप से जब्त की गई वस्तुएं न्यायालय में प्रस्तुत की जा चुकी हैं अथवा नहीं।

प्रकरण में अभी तक रासायनिक परीक्षण और सीरम विज्ञानी का प्रतिवेदन प्रस्तुत नहीं किया गया है। शासकीय अधिवक्ता से कहा गया कि यदि वे उपरोक्त प्रतिवेदन इस प्रकरण में प्रस्तुत करना चाहते हों तो वे उन्हें प्रस्तुत कराने के लिये आवश्यक कार्यवाही करें। कार्याधिक्य के कारण प्रकरण में दोषारोप निर्धारण से पूर्व तर्क सुने जाने और दोषारोपण निर्धारित किये जाने के लिये समय उपलब्ध नहीं है। इसलिये प्रकरण दिनांक .... (करीब 15 दिन की पेशी) निर्धारित किया गया।

अति. सत्र न्यायाधीश

यदि यह ज्ञात न हो कि प्रकरण में कौन से अतिरिक्त शासकीय अधिवक्ता पैरवी कर रहे हैं और यदि अभियुक्त की ओर से की भी कोई अधिवक्ता पैरवी न कर रहे हों और अभियुक्त ऐसा कहे कि वह उसकी पैरवी करने के लिये अधिवक्ता नियुक्त कर सकने में असमर्थ है तब निम्नानुसार आदेश पत्र लिखा जा सकता है।

दिनांक :

अभियोजन पक्ष की ओर से कोई उपस्थित नहीं।

अभियुक्त स्वयं उपस्थित है।

जब भी कोई शासकीय अधिवक्ता उपस्थित हो तब उसके माध्यम से प्रस्तुतकार यह ज्ञात करे कि इस सत्र प्रकरण का अभियोजन पक्ष की ओर से संचालन करने के लिये कौन से शासकीय अधिवक्ता को प्रभार सौंपा गया है। उपरोक्त जानकारी प्राप्त होने पर उन शासकीय अधिवक्ता को बुलवाया जाये।

अभियुक्त का कथन है कि उसकी ओर से कोई भी अधिवक्ता पैरवी नहीं कर रहे हैं और वह उसकी ओर से अधिवक्ता नियुक्त कर सकने में समर्थ नहीं है। अतएव अकिंचन अभियुक्तों की ओर से पैरवी करने वाले अधिवक्ताओं की सूची सत्र न्यायाधीश के न्यायालय से मंगवाई जाये। (नये विधिक सहायता प्रदान करने संबंधी प्रक्रिया का अब पालन करें।)

(इसके उपरांत वस्तुओं और रासायनिक परीक्षक प्रतिवेदन आदि के संबंध में ऊपर लिखाये अनुसार आदेश पत्र लिखा जा सकता है।)

(और प्रकरण में पेशी 15 दिन के बजाय 10 दिन के बाद की दी जाये।)

दिनांक :

अभियोजन पक्ष द्वारा श्री ....

अभियुक्त स्वयं उपस्थित हैं।

अभियोजन पक्ष की ओर से तृतीय अति. शासकीय अधिवक्ता पैरवी कर रहे हैं और वे उपस्थित हो चुके हैं।

सत्र न्यायालय से संबंधित पंजी प्राप्त हुई। चक्रानुक्रम से जब श्री..................... का क्रम अकिंचन अभियुक्त की पैरवी करने के लिये आता है। भृत्य भेजकर उन्हें बुलवाया गया। वे उपलब्ध हुए तथा उपस्थित हैं। उनका कहना है कि उनका अभियुक्त से कोई हित विरोध नहीं है तथा वे अभियुक्त की प्रतिरक्षा करने के लिये तत्पर हैं।(अब नये विधिक सहायता प्रावधान लागू होंगे।)

(अथवा) वे उपलब्ध नहीं हुए। इसलिये चक्रानुक्रम में श्री .... को न्यायालय का भृत्य भेजकर बुलवाया गया है। वे उपलब्ध हुए और न्यायालय में उपस्थित हैं।

सत्र न्यायाधीश के न्यायालय से प्राप्त पंजी में अंकित किया गया कि श्री .... को सत्र प्रकरण क्र. .... शासन विरूद्ध अभियुक्त (नाम) में अभियुक्त (नाम) की ओर से उनकी प्रतिरक्षा के लिये आज दिनांक............ को इस न्यायालय द्वारा अधिवक्ता नियुक्त किया गया है।

प्रस्तुतकार ने यह प्रतिवेदन दिया कि संबंधित आरक्षी केन्द्र से प्रकरण में कथित रूप से जप्त की गई वस्तुएं प्रस्तुत की जा चुकी हैं। शासकीय अधिवक्ता ने सूचित किया है कि वे संबंधित आरक्षी केन्द्र को और अभियोजन शाखा को रासायनिक परीक्षक के एवं सीरम विज्ञानी के प्रतिवेदन न्यायालय में प्रस्तुत किये जाने हेतु पत्र लिखे चुके हैं अतएव प्रकरण दोषारोप निर्धारण से पूर्व तर्क सुने जाने के लिये तथा यदि दोषारोप आरोपित किये जाने को प्रकरण स्थापित होता हो तो दोषारोप निर्धारित किये जाने के लिये दिनांक :

सत्र न्यायाधीश

दिनांक :

अभियोजन पक्ष द्वारा श्री...

अभियुक्त सहित श्री..

(अथवा) अभियुक्त अभिरक्षा में प्रस्तुत किया गया और उसका प्रतिनिधित्व श्री .... द्वारा किया जा रहा है।

दोषारोप निर्धारण के पूर्व दोनों पक्षों के अधिवक्ताओं के तर्क सुने गये।

अभियोजन पक्ष द्वारा प्रस्तुत किये गये प्रपत्रों का अवलोकन किया गया।

मेरी राय में, अभियोजन पक्ष द्वारा प्रस्तुत किये गये प्रपत्रों के आधार पर, अभियुक्त के विरूद्ध भा.द.वि. की धारा 307 और आयुध अधिनियम की धारा 25 के अंतर्गत दंडनीय अपराध का प्रकरण, प्राथमिक दृष्टि से स्थापित होना प्रतीत होता है। अतएव अभियुक्त के विरूद्ध भा.द.सं. की धारा 307 और आयुध अधिनियम की धारा 25 के अंतर्गत दंडनीय अपराधों के दोषारोप आरोपित किये गये। आरोपित किये गये दोषारोप अभियुक्त को पढ़कर सुनाये और सरल हिन्दी में समझाये गये। अभियुक्त ने दोषारोप अस्वीकार किया और अपने आपको निर्दोष होना बतलाया। अभियुक्त का अभिकथन, अभियुक्त के विरूद्ध आरोपित दोषारोप के प्रपत्र में ही लिखा गया।

शासकीय अधिवक्ता से कहा गया है कि वे अभियोजन पक्ष की ओर से किन किन साक्षियों का किस क्रम में परीक्षण करना चाहते हैं, इसका एक कार्यक्रम अगली तारीख तक न्यायालय में प्रस्तुत करें। शासकीय अधिवक्ता से यह भी कहा गया कि वे यह देखें कि वर्तमान प्रकरण के अभिलेख में सभी आवश्यक प्रलेख प्रस्तुत किये जा चुके हैं। शासकीय अधिवक्ता से यह भी कहा गया कि वे केस डायरी का अवलोकन अच्छी तरह से कर लें और देख लें कि उसमें ऐसे कोई कागजात तो लगे नहीं रह गये हैं जिसका कि प्रकरण में बाद में प्रस्तुत किया जाना आवश्यक प्रतीत हो। (इन प्रलेखों के श्रेणियों में– (1) मर्ग की जांच में लिखे गये कथन नक्शा मौका या जांच के सभी कागजात (2) गुमशुदगी की रिपोर्ट की जांच के संबंध में लिखे गये सभी दस्तावेज जैसे साक्षियों के कथन आदि (3) सान्हें के आधार पर की गई जांच से संबंधित कागजात (4) किसी अन्य विभाग के अधिकारी द्वारा की गई जांच से संबंधित सभी कागजात, आते हैं और उन्हें अर्थात शासकीय अधिवक्ता को यह सूचित कर दिया जाये कि वे केस डायरी को ऊपर लिखायी दृष्टि से देख लें और अगली तारीख तक आवश्यक रूप से वे कागजात न केवल प्रकरण के अभिलेख में प्रस्तुत कर दें बल्कि उनकी प्रतिलिपियां भी अभियुक्त को प्रदान की जायें। इस संबंध में स्वयं न्यायालय द्वारा भी केस डायरी का निरीक्षण किया जाना चाहिये।)

दोषारोप निर्धारण करने के पहले की तारीख और किस तारीख को दोषारोप निर्धारित किये जाने हो उस बीच प्रकरण के अभिलेख को अपने आफिस बाक्स में, प्रस्तुतकार को निर्देशित करके रखवाया जा सकता है और घर में या न्यायालय में भी समय उपलब्ध हो, तब प्रकरण के अभिलेख का अच्छी तरह से अध्ययन कर, यदि दोषारोप निर्धारित किये जा सकने का प्रकरण स्थापित होना प्रतीत हो तो तारीख के पूर्व ही दोषारोप निर्धारित कर दिये जाने चाहिये।

इस प्रक्रिया को अपनाये जाने पर दोषारोप निर्धारण से पूर्व तर्क सुनने के उपरांत दोषारोप निर्धारित किये जाने के लिये तारीख का दिया जाना आवश्यक नहीं होगा। यदि अभियुक्तों की संख्या अधिक हो और ऐसा प्रतीत हो कि कार्याधिक्य के कारण

बीच के समय में दोषारोप का निर्धारण किया जाना कठिन होगा या संभव नहीं होगा तो 15 दिन के बजाय 20 दिन की तारीख भी दी जा सकती है लेकिन यदि अभियुक्त अभिरक्षा में हो तो इस प्रयोजन के लिये अधिक से अधिक 15 दिन की तारीख की पिछली तारीख के बाद की दी जानी चाहिये और इस बीच प्रकरण की स्थिति को देखकर यदि दोषारोप निर्धारित किये जाने का प्रकरण बना हो तो आवश्यक रूप से दोषारोपों का निर्धारण इस तारीख के पहले ही कर लिया जाना चाहिए।

दिनांक :

अभियोजन पक्ष द्वारा श्री...

अभियुक्त सहित श्री...

(यह आदेश पत्र उस स्थिति में लागू होगा जब न्यायालय के पास विचारण कार्यक्रम के विषय ध्यान देने के लिये समय उपलब्ध हो। यदि समय उपलब्ध न हो तो उसके लिये किस प्रकार का आदेश पत्र लिखा जायेगा उसे बाद में उल्लेखित किया जायेगा।)

शासकीय अधिवक्ता ने सूचित किया कि प्रकरण में सभी संबंधित दस्तावेज प्रस्तुत किये जा चुके हैं। अथवा शासकीय अधिवक्ता ने सूची के अनुसार चार दस्तावेज, दं. प्र.सं. की धारा 311 के अंतर्गत प्रस्तुत किये गये आवेदन पत्र के साथ प्रस्तुत किये।

दस्तावेजों की नकलें अभियुक्त के अधिवक्ता को प्रदान की गई उपरोक्त दस्तावेज प्रकरण के युक्तियुक्त निराकरण के लिये आवश्यक होना प्रतीत होते हैं। साथ ही प्रकरण में अभी साक्ष्य का लिखा जाना प्रारंभ नहीं किया गया है। अतएव संबंधित दस्तावेज प्रकरण के अभिलेख में रखे गये और द.प्र.सं. की धारा 311 के अंतर्गत प्रस्तुत किया गया आवेदन पत्र स्वीकार किया गया।

शासकीय अधिवक्ता ने विचारण कार्यक्रम प्रस्तुत किया। अभियुक्त के अधिवक्ता की उपस्थिति में शासकीय अधिवक्ता के साक्ष्य संबंधित विचारण कार्यक्रम पर विचार किया गया। विचारण कार्यक्रम में तीन साक्षी अनावश्यक होना पाये गये या ऐसे पाये गये जिनके विषय में अन्य दो से भी अधिक साक्षियों को बुलाया गया है तथा वे औपचारिक प्रकार के साक्षी हैं। इसलिये उनका नाम विचारण कार्यक्रम से इस शर्त के साथ निरस्त किया गया कि यदि शासकीय अधिवक्ता आवश्यक समझेंगे तो उन्हें बाद में बुलवाया जा सकेगा।

विचारण कार्यक्रम के अनुसार निम्नलिखित दिनांकों को निम्नलिखित साक्षियों का परीक्षण किया जायेगा।

प्रथम दिवस दिनांक

साक्षी क्र. 1,2,3 व 4 (साक्षियों के नाम)

द्वितीय दिवस :

साक्षियों के नाम (साक्षी क्रं–1 नाम) (2) (नाम)

(3) (4) (5)

तृतीय दिवस :

साक्षियों के नाम

(क्रं.–1 नाम) (क्रं.–2 नाम)

(3) (4) (5) (6)

यदि अभियुक्त के अधिवक्ता न्यायालय द्वारा दी जाने वाली तारीख के बजाय कोई लम्बी तारीख चाहते हों तो पहले ऐसा लिखा जाये कि प्रकरण अभियोजन पक्ष की साक्ष्य के लिये दिनांक 2-5-1999 3-5-1999 और दिनांक 4-5-1999 को निर्धारित किया गया। इस स्थिति पर अभियुक्त के अधिवक्ता कहते हैं कि उक्त तिथियों पर न्यायालय में उपस्थित नहीं हो सकेंगे इसलिये अपेक्षाकृत लम्बी तारीख दे दी जाये। कथन स्वीकार किया गया प्रकरण अभियुक्त के अधिवक्ता के आग्रह पर उनकी सुविधा के अनुसार अन्य तिथियों के लिये निर्धारित किया गया।

दोनों स्थितियों में विचारण कार्यक्रम के लिये लिखे जाने वाले आदेश पत्र में ऊपर लिखायें दिनांकों में साक्षियों के नामों के लिये जाने के उपरान्त ऐसा लिखा जाये कि साक्षियों को आह्वान पत्र पांच दिन के अंदर जारी कर दिये जायें। और कार्य पूर्ति की सूचना न्यायालय के पीठासीन अधिकारी को दी जाये। आह्वान पत्रों के साथ संबंधित आरक्षी केन्द्र के प्रभारी को भी एक पत्र भी लिखा जाये कि वे यह देखें कि सत्र प्रकरण के इन साक्षियों पर आह्वान पत्रों को निर्वहन निर्धारित दिनांकों के पर्याप्त पूर्व, आवश्यक रूप से हो जाये। आह्वान पत्रों में टीप भी लिखी जाये कि साक्षियों पर आह्वान पत्रों का निर्वहन बार–बार तब तक करवाया जाये जब तक कि साक्षियों पर आह्वान पत्र निर्वाहित न हो जाये।

शासकीय अभिभाषक, अभियुक्त और अभियुक्त के अधिवक्ता को सूचित किया गया कि अगली तारीखों को दिनांक........................ से लेकर दिनांक .... तक प्रत्येक दिन साक्ष्य ठीक 11.30 बजे दिन से आवश्यक रूप से ली जावेगी। इसलिये अभियुक्त अगली तारीख दिनांक से लेकर दिनांक तक न्यायालय में ठीक 11 बजे दिन उपलब्ध रहे और शासकीय अधिवक्ता तथा अभियुक्त के अधिवक्ता भी यह देखें कि वे ठीक 11 बजे से न्यायालय में अपने आपको उपस्थित रख सकें।

सत्र न्यायाधीश

दिनांक

अभियोजन पक्ष द्वारा शासकीय अधिवक्ता श्री ....

अभियुक्त अनुपस्थित।

अभियुक्त की ओर से एक आवेदन पत्र प्रस्तुत किया गया कि अभियुक्त के अचानक बीमार हो जाने के कारण अभियुक्त आज न्यायालय में उपस्थित हो सकने में असमर्थ है।

अभियोजन पक्ष के साक्षी (1) नाम (2) नाम (3) नाम उपस्थित हैं किन्तु अभियुक्त के अनुपस्थित हो जाने के कारण इन साक्षियों का कथन लिखा जा सकना संभव नहीं है। अतएव इन साक्षियों को उन्मुक्त किया गया।

अभियुक्त द्वारा आवेदन पत्र के साथ कोई चिकित्सकीय प्रमाणपत्र प्रस्तुत नहीं किया गया है। इस संदेह की संभावना निर्मूल नहीं होती कि अभियुक्त जानबूझकर न्यायालय में उपस्थित नहीं हुआ। अतएव अभियुक्त के विरूद्ध आज ही आधे घंटे के अंदर गिरफ्तारी वारण्ट जारी किया जावे और संबंधित थाने कों तुरंत भेजा जाये। (साक्षियों का गवाह भत्ता खर्च दिया हो तो वह मार्जिन में अंकित हो।)

प्रकरण यथानिर्धारित कल दिनांक .... के लिये।

सत्र न्यायाधीश

दिनांक :

अभियोजन पक्ष द्वारा

अभियुक्त उपस्थित नहीं है और उसकी ओर से भी कोई उपस्थित नहीं है। अभियुक्त के लिये भेजा गया गिरफ्तारी वारन्ट इस प्रतिवेदन के साथ अनिर्वाहित प्राप्त हुआ कि अभियुक्त प्रायवेट डिसपेंसरी में भर्ती है उपरोक्त चिकित्सालय का यह प्रमाण–पत्र भी प्राप्त हुआ कि अभियुक्त डायरिया से पीड़ित है।

उपरोक्त बीमारी ऐसी नहीं है कि जिसका उपचार अभियुक्त को जेल में रखते हुए न किया जा सके। अतएव अभियुक्त के विरूद्ध पुनः गिरफ्तारी वारंट जारी किया जाये।

आज अभियोजन पक्ष के साक्षी (1) (2) (3) नाम उपस्थित हैं। उन्हें उन्मुक्त किया गया (खर्च साक्षियों को दिया हो तो मार्जिन में अंकित हो।)

सत्र न्यायाधीश

दिनांक :

अभियोजन पक्ष द्वारा शासकीय अधिवक्ता श्री ....

अभियुक्त की ओर से कोई उपस्थित नहीं।

अभियुक्त अनुपस्थित।

अभियुक्त के लिये भेजा गया गिरफ्तारी वारन्ट इस प्रतिवेदन के साथ वापस प्राप्त हुआ है कि अभियुक्त अभी भी नोबल अस्पताल में भर्ती है आज अभियोजन पक्ष के अमुक अमुक साक्षी उपस्थित हुये। उन्हें उन्मुक्त किया गया । (साक्षियों को खर्च दिया हो तो मार्जिन में अंकित हो।)

अभियुक्त के लिये पुनः गिरफ्तारी वारन्ट जारी किया जाये और संबंधित थाने के थाना प्रभारी को लिखा जाये कि वे यह जांच कर लें कि क्या अभियुक्त वास्तव में गंभीर रूप से बीमार है। यदि अभियुक्त गंभीर रूप से बीमार नहीं हो तो उसकी गिरफ्तारी संबंधित अस्पताल में ही ली जाये। पुलिस अधिकारी यदि उचित समझें तो उस पर पहरा रखा जाये जिससे कि उसके स्वस्थ्य होने के साथ ही उसे न्यायालय में प्रस्तुत किया जा सके। अन्यथा अभियुक्त को गिरफ्तार किया जाकर अगली तारीख को न्यायालय में प्रस्तुत किया जाये। प्रकरण में केवल दो दिन के बाद की तारीख दी जाये।

इसके बाद निश्चित ही अभियुक्त को गिरफ्तार किया जाकर न्यायालय में प्रस्तुत किया जा सकेगा। ऐसे प्रकरणों में जिसमें अभियुक्त साक्ष्य के दिनांक को अनुपस्थित हो जाता है अधिकांश स्थिति में वास्तव में वह बीमार नहीं होता और प्रायवेट चिकित्सकों से प्रमाण पत्र प्राप्त कर बीमारी का आधार बना लेता है। ऐसे प्रकरणों में जब अभियुक्त न्यायालय में प्रस्तुत किया जाये तो उसकी जमानत न ली जाये। उसे जेल में दाखिल किया जाने और निर्देशित किया जाये कि अभियुक्त के स्वास्थ्य का परीक्षण जेल के डाक्टर द्वारा किया जाये।

प्रकरण में प्रतिभूति आवेदन–पत्र निरस्त करते हुए लिखा जाये कि प्रकरण में अभियुक्त की साक्ष्य के दिनांक को उपस्थिति निश्चित करने के लिये अभियुक्त का जेल में रखा जाना आवश्यक है, जिससे कि उसकी समुचित चिकित्सा भी हो सके और वह साक्ष्य के दिनांक को न्यायालय में उपस्थित भी रखा जा सके। इसके बाद प्रकरण में यथा संभव 15 दिन के बाद की तारीख साक्ष्य के लिये लगाई जाये। तात्पर्य यह है कि अभियुक्त के बहाना बनाकर अनुपस्थित हो जाने पर यदि न्यायालय द्वारा लंबी तारीख दी जाती है तो अभियुक्त का प्रयोजन सफल हो जाता और वह बीच की किसी तारीख को उपस्थित होकर एक फर्जी चिकित्सकीय प्रमाण–पत्र प्रस्तुत कर देता है और उसे पुनः न्यायालय में उपस्थित रहने के लिये निर्देशित किया जाता है तथा इस प्रकार वह उसे प्रतिभूति पर रखने की सुविधा का अनुचित लाभ उठाता है। केवल एक या दो दिन की तारीख दिये जाने पर या पहले दिन ही संबंधित प्रायवेट चिकित्सालय भी अभियुक्त से शीघ्र मुक्ति पाने का प्रयत्न करते हैं।

यदि अभियुक्त उपस्थित हो जाये लेकिन अभियुक्त के अधिवक्ता उपस्थित न हों और ऐसा बताया जाये कि अभियुक्त के अधिवक्ता उच्च या अन्य न्यायालय में व्यस्त हैं तो इस प्रकार का आदेश पत्र लिखा जा सकता है:-

दिनांक :

अभियोजन पक्ष द्वारा शासकीय अधिवक्ता श्री ....

अभियुक्त स्वयं उपस्थित।

अभियुक्त का कथन है कि उसके अधिवक्ता अभी अपने निवास स्थान से नहीं आये । (अथवा) उच्च न्यायालय में व्यस्त हैं अथवा अन्य न्यायालय में व्यस्त है।

अभियुक्त के अधिवक्ता की पुकार लगायी गयी अथवा उन्हें बुलवाया गया और 15 मिनट प्रतीक्षा की गयी। यदि अन्य न्यायालय में व्यस्त होना बताया गया हो या अधिवक्ता संघ कक्ष में रहना बतलाया गया हो और यदि अभियुक्त केवल एक हो तो न्यायालय के भृत्य को अभियुक्त के अधिवक्ता को न्यायालय में बुलवाने के लिये संबंधित न्यायालय में अथवा अधिवक्ता संघ के कक्ष में भेजा गया। अभियुक्त के अधिवक्ता उपलब्ध नहीं हुए।

पुकार लगाये जाने के बाद अभियुक्त के अधिवक्ता की 15 मिनट या 30 मिनट की प्रतीक्ष की गयी। उनके उपस्थित न होने पर ही, पिछली तारीख पर उन्हें प्रकरण के प्रारंभ होने के समय की सूचना दे दिये जाने के कारण अभियुक्त की उपस्थिति में अभियोजन पक्ष के साक्षी का परीक्षण किया जाना प्रारंभ किया गया।

अभियोजन पक्ष के चार साक्षियों का मुख्य परीक्षण किया गया। अभियुक्त को उन्हें प्रति परीक्षित कर सकने का अवसर प्रदान किया गया।

यदि दो साक्षियों के मुख्य परीक्षण लिखे जाने के बाद अभियुक्त के अधिवक्ता उपस्थित हों तो ऐसा लिखा जा सकता है कि अभियोजन पक्ष के दो साक्षियों को मुख्य परीक्षण लिखे जाने के उपरांत अभियुक्त के अधिवक्ता उपस्थित हुए। उपरोक्त दो साक्षियों को प्रति परीक्षित कर सकने का अवसर अभियुक्त के अधिवक्ता को प्रदान किया गया।

टिप्पणी :

यह प्रक्रिया अपनाये जाने पर भले ही संबंधित अधिवक्ता थोड़ी देर के लिये संबंधित पीठासीन न्यायाधीश के प्रति रुष्ट हों लेकिन भविष्य में वे यह देखने का प्रयत्न करेंगे कि वे संबंधित सत्र न्यायालय में सत्र प्रकरण के प्रसंग में ठीक समय पर उपस्थित होवें। शासकीय अधिवक्तओं में से भी कुछ शासकीय अधिवक्ताओं की आदत न्यायालय में देर से आने की होती है। उन्हें भी निर्देशित किया जा सकता है कि वे ठीक समय पर न्यायालय में उपस्थित होवें। इसके बाद अभियोजन पक्ष के साक्षियों

के परीक्षण और प्रति परीक्षण तथा उन्मुक्त किये जाने के विषय में सामान्य प्रकार से जैसे आदेश पत्र लिखे जाते हैं वैसे आदेश पत्र सभी सत्र न्यायाधीशों को ज्ञात है। इसलिये उनकी पुनरावृत्ति आवश्यक नहीं है। किन्तु जब शासकीय अधिवक्ता अभियोजन पक्ष का प्रकरण पूर्ण करने जाते हों या न्यायालय द्वारा अभियोजन पक्ष को साक्ष्य पूर्ण होना घोषित की जाने वाली हो तब नीचे लिखे अनुसार आदेश पत्र लिखा जा सकता है। आदेश पत्र लिखा जा सकता है।

दिनांक :

अभियोजन पक्ष द्वारा शासकीय अधिवक्ता श्री ....

अभियुक्त अपने अधिवक्ता श्री .... सहित स्वयं उपस्थित हैं। (अथवा) अभियुक्त अभिरक्षा में प्रस्तुत किया गया और उसका प्रतिनिधित्व उसके अधिवक्ता श्री .... द्वारा किया जा रहा है।

जब न्यायालय द्वारा साक्ष्य पूर्ण होना घोषित किया जाना हो:—

दिनांक .... से लेकर आज तक अभियोजन पक्ष को उसके साक्षी प्रस्तुत करने के लिये (इतने संख्या में अवसर दिये जा चुके हैं।) न्यायालय द्वारा उपरोक्त साक्षियों पर निर्वाहित कराये जाने के लिये आदेशिकाएं भी प्रत्येक दिनांक को जारी की गयीं किन्तु उपरोक्त आदेशिकाएं निर्वाहित या अनिर्वाहित न्यायालय में वापस प्राप्त नहीं हुई हैं। इसलिये अभियोजन पक्ष को और अधिक अवसर प्रदान करना न्यायोचित प्रतीत नहीं होता। इसलिये अभियोजन पक्ष का साक्ष्य पूर्ण होना घोषित की गई।

शासकीय अधिवक्ता ने, दं.प्र.सं. की धारा 293 के अंतर्गत रासायनिक परीक्षक ओर सीरम विज्ञानी के प्रतिवेदन निविदत्त (टेन्डर) किये। उपरोक्त प्रतिवेदनों पर क्रमशः प्रदर्श पी .... और प्रदर्श पी .... अंकित किया गया। इन प्रतिवेदनों को द.प्र.सं. की धारा 293 के अंतर्गत साक्ष्य में पढा जावेगा।

टिप्पणी:

रासायनिक परीक्षक और सीरम विज्ञानी के प्रतिवेदन अभियोजन पक्ष की साक्ष्य पूर्ण होने की तारीख के पहले भी कभी भी निविदत्त किये जा सकते हैं। लेकिन साक्ष्य पूर्ण होने के तुरंत पूर्व घोषित किये जाते समय अनिवार्य रूप से उपरोक्त प्रतिवेदनों को शासकीय अधिवक्ता द्वारा निविदत्त किया (अथवा करवा लिया) जाना चाहिये।

टिप्पणी :

किसी भी आपराधिक प्रकरण या व्यवहार बाद में संबंधित साक्षी पर आह्वान पत्र निर्वहित हो और इसके बाद भी वह उपस्थित न हो सके तब संबंधित विषय न्यायालय और उस साक्षी की बीच में केन्द्रित रह जाता है। यदि साक्षी पर आह्वान पत्र निर्वहित

रहते हुए भी वह न्यायालय में उपस्थित न हो तो इस आधार पर अभियोजन पक्ष की साक्ष्य पूर्ण होना घोषित नहीं की जा सकती है। आह्वान पत्र निर्वहित होने पर और साक्षी के उपस्थित न होने पर उसके विरूद्ध उसे न्यायालय में उपस्थित रहने के लिये, बाध्य करने वाली आदेशिका जैसे जमानती वारंट या परिस्थिति के अनुसार गिरफ्तारी वारंट जारी किया जाना चाहिये। साथ ही विविध आपराधिक प्रकरण पंजीबद्ध कर ऐसे साक्षी को कारण बताये जाने के लिये सूचना पत्र न्यायालय द्वारा भेजा जाना चाहिये कि वह कारण बताये के उसे अर्थदण्ड से दंडित क्यों न किया जाये। विविध आपराधिक प्रकरण पंजीबद्ध किये जाने के लिये आदेश पत्र पहले से और पर्याप्त संख्या में टंकित करवा कर रख लिये जाने चाहिये। ऐसे आदेश पत्रों का नमूना सत्र न्यायालयों में उपलब्ध है ताकि यदि आप चाहें तो स्टेन्सिल कटवाकर साइक्लोस्टाइल करवाकर ऐसे आदेश पत्र अपने पास अलग से रख सकते है। जिससे कि प्रस्तुतकार को अथवा आदेशिका लेखक को प्रकरण पंजीबद्ध करने में कोई असुविधा नहीं होगी। यही प्रक्रिया जमानत जप्त किये जाने के संबंध में लिखे जाने वाले आदेश के विषय में भी लागू होती है।

इसके उपरांत प्रकरण अभियुक्त के परीक्षण के लिये निर्धारित किया जाना चाहिये। यदि नई पद्धति से अभियुक्त का परीक्षण किया जाये तो साक्ष्य पूर्ण होना घोषित किया जाने के पर्याप्त पहले ही अभियुक्त के परीक्षण के लिये प्रश्नों का निर्धारण किया जा सकता हैं। यहां यह भी उल्लेख किया जा सकता है कि यदि अभियुक्त के परीक्षण के लिये प्रश्नों का निर्धारण साक्ष्य पूर्ण होना घोषित किया जाने के पर्याप्त पहले ही कर लिया गया हो तब उस स्थिति में अभियुक्त का परीक्षण दं. प्र.सं. की धारा 313 के पहले भाग के अंतर्गत कभी भी किया जा सकता है। साक्ष्य पूर्ण घोषित होने पर अभियुक्त के परीक्षण के लिए अर्थात द.प्र.सं. की धारा 313 के दूसरे भाग के अंतर्गत परीक्षण किये जाने के लिये काफी थोड़े प्रश्न शेष रह जाते हैं, जिनका निर्धारण या तो उसी दिन किया जा सकता है या उसके बाद दूसरे दिन किया जा सकता हैं अभियुक्त के परीक्षण के नये ढंग के विषय में अनेकों बार चर्चा की जा चुकी है। इसलिये उनकी पुनरावृत्ति आवश्यक नहीं है। अभियुक्त के परीक्षण के उपरान्त निम्नलिखित प्रकार से आदेश पत्र लिखा जाना चाहिये।

दिनांक :

अभियोजन पक्ष द्वारा श्री ....

(अथवा) अभियोजन पक्ष की ओर से कोई उपस्थित नहीं।

अभियुक्त स्वयं उपस्थित है।

अथवा अभियुक्त अपने अधिवक्ता श्री .... सहित स्वयं उपस्थित है।

टिप्पणी :

(यहां यह ध्यान देने योग्य है कि अभियुक्त के परीक्षण के समय न्यायालय में अभियुक्त के अधिवक्ता की उपस्थिति अनिवार्य नहीं है। लेकिन अभियुक्त की घबराहट को दूर करने का उसे प्रश्न समझाने में अभियुक्त के अधिवक्ता सहायक हो सकते हैं। इसलिये यदि सरलतापूर्वक और बिना कठिनाई के अभियुक्त के अधिवक्ता उपस्थित हो सकते हों तो उन्हें बुलवा लिया जाना चाहिये। अन्यथा अभियुक्त के अधिवक्ता के उपस्थिति हो सकने में किंचित भी कठिनाई उपस्थित होने पर उनकी अनुपस्थिति में भी अभियुक्त का परीक्षण किया जा सकता है। तथा उपरोक्त कठिनाई के उपस्थित होने पर अभियुक्त का परीक्षण बिना उसके अधिवक्ता की उपस्थिति की बहुत अधिक प्रतीक्षा किये कर लिया जाना चाहिये।)

अभियुक्त का परीक्षण दं.प्र.सं. की धारा 313 के अंतर्गत किया गया।

अभियुक्त को दं.प्र.सं. की धारा 232 के अंतर्गत, दोषमुक्त नहीं किया गया और अभियुक्त से (यदि अभियुक्त के अधिवक्ता उपस्थित हों तो) अभियुक्त के अधिवक्ता के जरिये प्रतिरक्षा कथन लिखाने के लिये कहा गया। अभियुक्त के अधिवक्ता श्री .... ने अभियुक्त की ओर से जो प्रतिरक्षा (बचाव) कथन दिया वह अलग से लिखा गया।

टिप्पणी :

दं.प्र.सं. की धारा 233 के अंतर्गत अभियुक्त का प्रतिरक्षा (बचाव) कथन लिखे जाने और इसी धारा के अंतर्गत इस संबंध में कथन लिखे जाने के लिये कि अभियुक्त उसकी प्रतिरक्षा और प्रतिरक्षा में कोई साक्ष्य प्रस्तुत करना चाहता है अथवा नहीं, इस संबंध में कथन लिखे जाने का एक विशेष प्रारूप होता है जो सत्र न्यायालय में उपलब्ध है। इस प्रारूप को पहले से कई प्रतियों में टंकित करवाकर न्यायालय में साक्ष्य लेखक के पास रख दिया जाना चाहिये। इससे उसी समय प्रारूप बनाये जाने की आवश्यकता नहीं होती और प्रारूप में बहुत थोड़े समय में खानों में भरकर उपरोक्त कथन लिखे जा सकते हैं। तदोपरान्त आदेश पत्र इस प्रकार जारी रखा जाना चाहिये।

अभियुक्त से उसके अधिवक्ता के जरिये पूछा गया कि क्या अभियुक्त उसकी प्रतिरक्षा में लिखित या मौखिक कोई साक्ष्य प्रस्तुत करना चाहता है अभियुक्त अधिवक्ता श्री .... ने अभियुक्त की ओर से यह कथन दिया कि अभियुक्त अपनी प्रतिरक्षा में साक्षी प्रस्तुत करना चाहता है। अभियुक्त की ओर से श्री .... द्वारा दिया गया उपरोक्त कथन भी अलग से लिखा गया।

अभियुक्त को निर्देशित किया गया कि वह जिन भी साक्षियों का परीक्षण उसकी प्रतिरक्षा में करना चाहता है उनके नाम और पते आज ही शाम चार बजे तक न्यायालय

में प्रस्तुत कर दे। उन साक्षियों के लिये आह्वान पत्र आज शाम पांच बजे तक जारी कर दिये जायें। यदि अभियुक्त अपने साक्षियों के नाम और पते प्रस्तुत नहीं करेगा तो उससे यह निष्कर्ष निकाला जायेगा कि वह अपने साक्षियों पर आह्वान पत्र निर्वहन नहीं करना चाहता है। उस स्थिति में अगली तारीख को अपने साक्षी प्रस्तुत करने की पूरी पूरी जिम्मेदारी अभियुक्त की होगी और बचाव साक्षियों के उपस्थित न होने की स्थिति में, और कोई अवसर दिया जा सकना संभव नहीं होगा।

प्रकरण प्रतिरक्षा (बचाव) साक्ष्य के लिये दिनांक ....

सत्र न्यायाधीश

टिप्पणी :

(उपरोक्त प्रकार का आदेश पत्र लिखना और उसकी कार्य पूर्ति भी करना और करवाना स्वयं न्यायाधीश की अच्छी प्रतिष्ठा और छवि के लिये बहुत आवश्यक है।)

दिनांक :

अभियोजन पक्ष द्वारा श्री ....

अभियुक्त सहित श्री ....

प्रतिरक्षा साक्ष्य में तीन साक्षियों का परीक्षण किया गया गया जिन्हें प्रति परीक्षण के उपरांत उन्मुक्त किया गया। प्रकरण तर्क सुने जाने के लिये

दिनांक :

सत्र न्यायाधीश

दिनांक :

अभियोजन पक्ष द्वारा श्री ....

अभियुक्त सहित श्री ....

दोनों पक्षों के अधिवक्ताओं के तर्क सुने गये।

प्रकरण निर्णय के लिये दिनांक ....

सत्र न्यायाधीश

टिप्पणी :

इस संबंध में ध्यान देने योग्य बात यह है कि प्रतिरक्षा साक्ष्य पूर्ण होना घोषित होने के सात दिन के अंदर यदि प्रकरण में निर्णय पारित किया जाना है तो उसे तत्परतापूर्वक पारित किये गये निर्णय की संज्ञा में रखा जाता है। किसी भी स्थिति में निर्णय बचाव साक्ष्य पूर्ण होना घोषित होने के 15 दिन के अंदर घोषित कर दिया जाना चाहिये। ऐसी भी स्थिति बनायी जा सकती है कि जिस दिन तर्क सुने जायें उसी

दिन निर्णय भी पारित कर दिया जाए। ऐसा इस प्रकार हो सकता है कि अभियुक्त के परीक्षण के उपरांत अभियोजन पक्ष का प्रकरण तथा अभियुक्त के बचाव कथन तक का निर्णय का भाग पहले से लिख लिया जाये।

यदि प्रकरण हत्या का हो या घातक चोट पहुंचाने का हो तो यह निष्कर्ष भी दिया जा सकता है कि संबंधित व्यक्ति की मृत्यु हत्यात्मक थी अथवा संबंधित व्यक्ति को घातक या गंभीर चोटें पहुंची थी। इसके उपरान्त ऐसा लिखकर कि अतएव वर्तमान प्रकरण में विचारणीय प्रश्न यह है कि क्या अभियोजन पक्ष हर संदेह से परे यह प्रमाणित कर सका है कि अभियुक्त ने और अभियुक्त ने ही संबंधित व्यक्ति को उपरोक्त चोटें पहुंचायी।

इसके बाद यदि प्रकरण में किंचित भी साक्ष्य उपलब्ध न हो तो प्रकरण में उसी दिन शेष निर्णय लिखा जाकर अभियुक्त को उसी दिन दोषमुक्त किया जा सकता है जिस दिन तर्क सुने गये हों। ऐसा किया जाना न्यायाधीश की कुशलता और तत्परता तो दिखाता ही है इसके अतिरिक्त ऐसा करना उसकी छवि और प्रतिष्ठा के लिये भी लाभदायक और सुरक्षित रहता है।

धारा 293 दं.प्र.सं. के अंतर्गत निविदत्त दस्तावेजों के प्रदर्शांकन में भी किसी साक्षी द्वारा उन दस्तावेजों का प्रमाणित किया जाना न तो लिखा जा सकता है और न लिखा जाना चाहिये। प्रस्तुतकार को निर्देशित कर प्रदर्शांकन की सील में अंग्रेजी में लिखना हो तो टेन्डर्ड अन्डर सेक्शन 293 सी.आर.पी. लिखा जाना चाहिये अथवा यदि हिन्दी में लिखना हो तो दं.प्र.सं. की धारा 293 के अंतर्गत निविदत्त ऐसा लिखा जाना चाहिये।

जब कोई प्रकरण ऐसा हो जिसमें अभियुक्त के विरूद्ध किंचित भी साक्ष्य उपलब्ध न हो तब अभियुक्त को दंप्रसं. की धारा 232 के अंतर्गत दोषमुक्त किया जा सकता है। यहां यह देखने योग्य है कि यदि अभियुक्त के विरूद्ध प्रकरण में किंचित भी साक्ष्य उपलब्ध हो तो उसे दं.प्र.सं. की धारा 232 के अंतर्गत दोषमुक्त नहीं किया जा सकता। यदि अभियुक्त के विरूद्ध कोई भी साक्ष्य प्रकरण में उपलब्ध न हो तब अभियुक्त का परीक्षण द.प्र.सं. की धारा 313 के अंतर्गत न तो किया जा सकता और न किया जाना चाहिये। दं.प्र.सं. की धारा 232 के अंतर्गत प्रकरण में अभियुक्त को दोषमुक्त किया जा सकता हो तब निम्नानुसार आदेश पत्र लिख जाना चाहिये।

दिनांक :

अभियोजन पक्ष द्वारा शासकीय अधिवक्ता श्री ....

अभियुक्त स्वयं उपस्थित। अभियुक्त अपने अधिवक्ता श्री .... सहित स्वयं उपस्थित है।

अभियुक्त अभिरक्षा में प्रस्तुत किया गया और उसका प्रतिनिधित्व श्री .... कर रहे हैं।

शासकीय अधिवक्ता ने इतने साक्षियों का परीक्षण किया। प्रकरण में साक्ष्य पूर्ण होना घोषित की अथवा शासकीय अधिवक्ता ने अभियोजन पक्ष की ओर से (संख्या) साक्षियों का परीक्षण कराया अथवा आज अभियोजन पक्ष का कोई भी साक्षी उपस्थित नहीं है। शासकीय अधिवक्ता अमुक–अमुक साक्षियों का इस प्रकरण में परीक्षण और कराना चाहते हैं। वर्तमान प्रकरण में इतने (संख्या) साक्षियों का परीक्षण किया जा चुका है। जिन साक्षियों को शासकीय अधिवक्ता परीक्षित कराना चाहते हैं वे नितांत औपचारिक प्रकार के हैं और इसलिये यदि उनका परीक्षण वर्तमान प्रकरण में किया भी जाये तो उनके कथनों का, यदि वे बिलकुल वैसा ही कथन दें जैसी कि अपेक्षा अभियोजन पक्ष उससे करता है और उन्हें यथा तथ्य स्वीकार भी कर लिया जाये तब भी प्रकरण के गुण दोष पर उनके कथनों का कोई प्रभाव नहीं पड़ेगा। इसलिये न्यायालय द्वारा अभियोजन पक्ष की साक्ष्य पूर्ण होना घोषित की गई।

वर्तमान प्रकरण में प्रमुख साक्षी अथवा साक्षियों ने अभियुक्त के विरूद्ध उसके कथन में कोई भी ऐसा तथ्य नहीं बतलाया है जो अभियुक्त के विरूद्ध कोई विपरीत परिस्थिति प्रगट करता हो। अतएव वर्तमान प्रकरण में उपलब्ध साक्ष्य में ऐसी कोई भी परिस्थिति प्रगट नहीं होती जिसके विषय में अभियुक्त से स्पष्टीकरण प्राप्त करना आवश्यक हो। इसलिये अभियुक्त का दं.प्र.सं. की धारा 313 के अंतर्गत परीक्षण नहीं किया गया।

दोनों पक्षों के अधिवक्ताओं के तर्क सुने गये।

क्योंकि अभियुक्त के विरुद्ध वर्तमान प्रकरण में किंचित भी साक्ष्य उपलब्ध नहीं हैं इसलिये अभियुक्त को दं.प्र.सं. की धारा 232 के अंतर्गत दोषमुक्त किया गया। अभियुक्त को, उसे दोषमुक्त किये जाने की सूचना दी गई लेकिन उससे कहा गया कि दोषमुक्ति का औपचारिक आदेश एक घंटे में पारित कर दिया जायेगा। इसलिये जब तक दोषमुक्ति का औपचारिक आदेश पारित न हो जाने तक वह न्यायालय कक्ष के बाहर मौजूद रहे और पुकार के किये जाने पर न्यायालय कक्ष में उपस्थित होवे। प्रकरण एक घंटे के उपरांत, दोषमुक्ति का औपचारिक आदेश पारित करने के लिये मेरे समक्ष पुनः रखा जाये।

सत्र न्यायाधीश

बाद में :

अभियुक्त स्वयं उपस्थित है।

दोषमुक्ति का आदेश पारित किया गया। इस आदेश की एक प्रतिलिपि (निर्णय के प्रकरण में निर्णय की एक प्रतिलिपि) जिला दंडाधिकारी को और, दूसरी प्रतिलिपि

रजिस्ट्रार जनरल, उच्च न्यायालय, जबलपुर को भेजी जाये। तदोपरान्त प्रकरण का अभिलेख नियमानुसार अभिलेखागार में जमा कराया जाये।

अभियुक्त को सिद्ध दोष अपराधी पाये जाने की स्थिति में निम्नलिखित प्रकार का आदेश पत्र लिखा जाना चाहिये।

दिनांक :

अभियोजन पक्ष ....

अभियुक्त ....

निर्णय पारित किया गया।

अभियुक्त को उसके विरूद्ध आरोपित इन धाराओं को दोषारोप से दोषमुक्त किया गया किन्तु इन धाराओं के अंतर्गत सिद्ध दोष अपराधी पाया गया। इसके उपरान्त निर्णय का लिखाया जाना , अभियुक्त को सजा के प्रश्न पर सुनने के लिये, स्थगित किया गया। अभियुक्त को अथवा उसके अभिभावक को अभियुक्त को दी जा सकने वाली सजा के प्रश्न पर सुना गया। तदोपरान्त निर्णय का लिखाया जाना पुनः प्रारंभ किया गया और अभियुक्त को दंडाज्ञा सुनाई गई।

अभियुक्त को दी गई सजा का शक्तिपत्र बनाया जावे तथा निष्कर्ष एवं दंड की प्रतियां भी अलग से निधारित प्रारूप में तैयार की जायें। अभियुक्त को सजा भुगतने के लिये जेल भेजा जावे।

पारित किये गये निर्णय तथा निष्कर्ष एवं दंड की एक प्रति अभियुक्त को आज ही एक घंटे के अंदर प्रदान की जाये। इस आदेश की कार्यपूर्ति की सूचना न्यायालय के पीठासीन अधिकारी की दी जाये। (धारा 428 दं.प्र.सं. का विवरण बनाकर निर्णय के साथ संलग्न किया जावे तथा जेल वारण्ट में भी उस विवरण का उल्लेख हो।)

अभियुक्त की ओर दं.प्र.सं. धारा 389 के अंतर्गत एक आवेदन पत्र प्रस्तुत किया गया जिसके आधार पर आज ही विविध आपराधिक प्रकरण पंजीबद्ध किया जाये। यदि आज ही पंजीबद्ध किये गये विविध आपराधिक प्रकरण में अभियुक्त को जमानत पर छोड़ा जाये या दी गई सजा स्थगित की जाये तो मूल अभिलेख में भी आदेश पत्र में शब्द 'बाद में' लिखकर उसका केवल परिणाम संक्षेप में लिख दिया जाना चाहिये जिससे कि अभिलेख पूर्ण हो जाये।

टिप्पणी:

दोषमुक्ति की स्थिति में निर्णय में जो बातें लिखायी जानी होती हैं वे दं.प्र.सं. की धारा 232 के आदेश पत्र में उस धारा के संदर्भ में लिखी जा चुकी हैं जिसमें से जो बातें लागू न होती हो उन्हें छोड़कर शेष आदेश पत्र लिखा जाना चाहिये।

M.P. HIGH COURT RULES & ORDERS

RULES UNDER SECTION 50 (I) EXCEPT CLAUSES (A) & (i) OF THE GUARDIAN AND WARDS ACT, 1890

(ACT NO. VIII) OF 1890).

MADHYA PRADESH GUARDIANS AND WARDS RULES, 1963

Notification No. 2280-III-1-12-36-F No. 8-3/- dated 6th March. 1963, Published in M.P. Gazette. Part 4 (Ga). dated March 22. 1963, page 347.- In exercise of the powers conferred by sub-section (1) [except clauses (a) and (i)] of section 50 of the Guardians and Wards Act (No. VIII of 1890), and in supersession of all existing rules on the subject, the High Court of Madhya Pradesh has made these rules.

1. In these rules, "the Act" means the Guardians and Wards Act, 1890.
2. An application for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both as required by section 10 of the Act, shall be in Form A prescribed with such variations as the circumstances of each case may require.
3. Where the father of a minor is living, and is not proposed as guardian, the application shall state any facts relied on as showing that he is unfit to act as guardian of the minor or that he consents to the application.
4. Notice of the application as required by section 11 of the Act shall be in Form B prescribed (II-190) and shall be issued and served in the manner prescribed for summons to a defendant.
5. When a guardian is appointed or declared under the Act, he shall be furnished with a certificate of guardianship in Form C prescribed (II-285) and his attention should be drawn to the provisions of sections 26, 27, 28, 29, 32, 33, 35, 36, 39, 44 and 45 of the Act, which contains the following instructions and information:-
   - (a) That he shall not remove the ward from the limits of the Court's jurisdiction (section 26 of the Act).
   - (b) That he should take due care of the properties entrusted to him in the manner stated in section 27.
   - (c) That he is not authorized to make transfers or do any of the acts mentioned in sections 28 and 29 without the permission of the Court.
   - (d) That in the case of a guardian, other than the Collector, his powers are liable to be restricted or extended by order of the Court (section 32).
   - (e) That he can, in the case of necessity, submit any question relating to the management of the property of his ward for the opinion or advice of the Court (section 33).
   - (f) That in cases mentioned in sections 35 and 36, the remedies provided therein are available against him.

(g) That for reasons stated in section 39, he is liable to be removed from his office.

(h) That for reasons given in sections 44 and 45, he is liable to the penalties stated therein.

(i) That he is in general bound by the provisions of the Act, the rules framed or to be framed there under and the order of the Court passed under the Act.

His attention shall also be drawn to any special restrictions on the powers as guardian which may be imposed by the Court at the time of issuing the certificate.

NOTE:-No ministerial officer employed in the Judicial Department shall be appointed or declared as such officer to be guardian of the person or the property of a minor nor shall any such official be appointed or declared as aforesaid in his private capacity, unless he has been appointed by will or other instrument or is by reason of relationship to the minor or other special circumstances unconnected with his official position suited to act as guardian.

6. Every guardian appointed or declared by the Court, except when he is the Collector of the district, shall ordinarily be required to give a bond, with or without a surety or sureties, as the Court may think fit to direct, for a sum not less than the total estimated value of the movable property and three year's profits of the whole estate. Such bonds shall be in Form D prescribed, with such variations, as the circumstances of each case may require.

7. At the time of appointing or declaring a guardian, the Court shall pass orders as to the allowances, if any, to be granted to, and the security to be required from, such guardian.

8. The statement showing the property of a ward, as required by clause (b) of section 34 of the Act shall be in Form E prescribed.

9. (i) Applications with respect to the guardianship of the person or property of a minor and applications under section 31 of the Act for sanction for the sale of the property of a minor, and proceedings taken in connection with the accounts of each year shall be entered in the register of Miscellaneous Judicial Cases.

(ii) For statistical purposes an application for an order of guardianship shall be treated as "disposed of" as soon as a quardian has been appointed and has furnished the requisite security or the application has been rejected or dismissed as the case may be.

(iii) An application under section 31 shall be treated as "disposed of" as soon as the permission for sale etc. has been given or refused.

(iv) Proceedings in connection with annual accounts shall be treated as "disposed of" as soon as the Court after an examination of the accounts by itself or by an officer appointed for the purpose has satisfied itself of the correctness there of or proceedings taken in consequence of such examination have terminated.

10. In ordinary cases, a fly-sheet, and in large cases, a book, in Form F prescribed (II-162) shall be maintained for each estate and all miscellaneous judicial cases in connection with the estate from the appointment of the first guardian till the ward concerned attains majority shall be shown in it.

11. A register of estates of wards in Form G prescribed (II-23) shall also be maintained. As soon as an estate has passed out of the hands of the Court a line in red ink shall be drawn across the entry. When on account of a register having been completely filled another register has to be opened, all pending entries in the old register shall be copied in the new register. The register shall be preserved for 25 years from the date of the last entry therein.

12. In the case of estates of which the annual income is not over. Rs. 500 accounts need not ordinarily be submitted by the guardian, but the Court may at any time call upon the guardian to submit such accounts as thinks necessary. In other cases the Court shall direct the guardian, except when he is the Collector of the district, to submit an account of the income and expenditure of the ward's estate once a year. Account of agricultural estates should be submitted within three months after the close of the agricultural year of the revenue district in which the estate lies, and accounts of trading. money-lending and other estates by the 1st January.

13. Before disposing of an application made by a guardian for any of the purposes referred to in sections 28 and 29 of the Act the Court shall ordinarily cause due notice of such application to be given to such persons. whether relatives of the ward or otherwise connected with him, as may be held by the Court to be affected by such application.

14. The ward, if a male, shall in the absence of sufficient reason to the contrary, be produced on each occasion when the accounts are submitted, and if the submission of annual accounts has been dispensed with, whenever the Court directs. The Court shall, as far as possible,examine his physical, intellectual and moral condition, and ask him whether he has any remarks to make regarding the mangement of his estate and his own treatment and comfort.

15. All statements and accounts produced by the guardian shall be kept with the files of the case concerned and shall be open to inspection, with the permission of the Court by persons legitimately interested in the same. No fees shall be charged for this inspection.

16. When a guardian has been appointed by the Court, he shall be required. except in the case of estates of which the income is not over Rs. 500. to open an account, in his own name, on behalf of the ward at a bank or with a firm to be approved by the Court. Any surplus moneys which may remain over after the current expenses of the estate and the ward's maintenance and education have been paid shall be invested by the guardian in Government Promissory Notes or other securities approved by the Court.

17. In cases in which the ward's estate is under the management of Govern-

ment. District Judge, Collector, or other Government officer, surplus moneys may be invested in Government Promissory Notes which should be deposited in the treasury for safe custody . The income of the estate, requried for current expenditure in connection with the management of the estate and the maintenance and education of the ward, shall be deposited in the treasury.

NOTE:- The deposit money in a private bank in the name of the District Judge or other Government officer as guardian of a wards. estate, is prohibited.

18 (i) in cases in which the District Judge thinks that a complete audit of the account of any of the estates in his charge is necessary he may enertain special clerks or a Local Auditor. The clerks, or Auditor, shall be paid from the estate concerned; each estate being required to contribute in proportion to its gross income. Where there is Official Receiver and he is not the guardian he may be appointed to audit accounts, and in the case of big handed estates he may be asked to go to the spot and check the account by personal inquiry. The remuneration of the Official Receiver will be fixed by the State Government on a reference made to it direct by the district Judge as soon as he has disposed of the Receiver's report. Such detailed audit should not ordinarily be necessary where the annual income is not over Rs. 5,000 and in such cases it will ordinarily be sufficient for the Court to make a rough estimate of income and expenditure and to limit its supervision to enforcing the deposit of the annual surplus by the guardian. If necessary. the Court may, where funds of on estate permit, appoint some local pleader to check accounts and report and in case of large estates, a commission may to issued to an executive officer or pleader to make local enquiries and report. ; detailed accounts from the guardian should not be exacted.

(ii) The court shall certify that it has scrutinized the accounts or has had them audited, as the case may be, and shall record such remarks as may be necessary thereon. The Court shall there after, when duly satisfied with the accounts, countersign the same.

19. Without prejudice and in addition to foreogoing rules, an application of a foreigner to be appointed guardian of the person of an Indian child with leave to remove the child out of India to his own country for the purpose of adopting it in accordance with the law of his country, should not be entertained directly by the Court. Such application should be sponsored by a Social or Child Welfare Agency recognized or licensed by the Government of the Country, in which the foreigner is resident. The application should be accompanied by home study report of the foreigner by such agency containing information to show whether he is fit and suitable person and has the capacity to parent a child coming from a different recial and cultural milieu. The sponsoring foreign agency must also certify that the foreigner seeking to adopt a child is permitted to do so according to

the law of his country. In case the foreginer in not in a position to come to India, the application must be further accompanied by a power of attorney in favour of an officer of the Social or Child Welfare Agency in India which is to process the application.

20. Such an application should be processed in the Court only by a Social or Child Welfare Agency licensed or recognised by the Government of India or the Government of the State in which it is operating. Such agency shall annex a child study report giving all relevant information in regard to the child to assist the Court in coming to a decision whether it will be for the welfare of the child to be given in adoption to the foreigner wishing to adopt it.

21. Except where the child is an orphan, destitute or abandoned child whose biological parents are not known, in all other cases the agency processing such an application should take from the biological parents a document of surrender duly signed by the biological parents and attested by at least two respectable persons. The biological parents should not have surrendered the child before its birth or within a period of three months from the date of birth.

22. No notice under section 11 of the Act shall be issued to the biological parents of the child. so that they shall not have any opportunity of knowing who are the adoptive parents taking the child in adoption. Such notice shall not also be published in a news paper. Notice under section 11 ibid shall however be given to Indian Council of Child welfare or Indian Council for Social Welfare or any of its branches for scrutiny of the application and making its representation to the Court.

23. The proceedings on such application should be held by the Court in camera and as soon as an order is made, the entire proceedings, including the papers and documents should be sealed. The entire procedure should be completed by the Court expeditiously and as far as possible within a period of two months from the date of filing such application.

24. It is desirable that the child given in inter-country adoption should be below the age of 3 years on the date of application In case of any child above the age of 3 years, the wishes of the child should be ascertained by the Court.

25. The order on such application should include a condition that the foreigner, whose application is allowed, shall submit to the Court as also to the Social or Child welfare Agency processing his application, progress reports of the child along with a present photograph quarterly during the first two years and half years for the next three years.

26. The order appointing a foreigner as guardian shall also carry, attached to it, a photograph of the child duly counter signed by an officer of the Court.

27. Copy of the order shall be sent by the Court to the "Ministry of Social Welfare, Government of India as also to the Ministry of Social Welfare of the Government of the State in which it is situate"

FORM "A"

IN THE COURT OF .... COURT FEES ....

In the Matter of the guardianship of..................., son of............ Caste........................ resident of........................... minor ....

(a)	(b)	(c)	(d)
The name sex, religion, date of birht and ordinary residence of the minor.	Where the minor is a female whether she is married, and if so, the name, and age of her husband.	The nature, situation and approximate value of the property, if any, of the minor (For details are schedule on reverse)	The name and residence of the person having the custody or possession of the person of property of the minor.
(e)	**(f)**	**(g)**	**(h)**
What near relation the minor has, and where they reside.	Whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment.	Whether an application has at any time been made to the court or to any other court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what court and with what result.	Whether the application is for the appointment or declaration of a guardian of the person or the minor or of his property or both.
(i)	**(j)**	**(k)**	**(l)**
Where the application is to appoint a guardian, the qualification of the proposed guardian.	Where the application is to declare a person to be a guardian the grounds on which the person claims.	The causes which have led to the making of the application.	Such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

Signature of petitioner or of a person duly authorised by him in this behalf.

The above particulars are true to the knowledge of the person making them, except as to mater stated on information and belief, and as to those matters he believes them to be true.

I, the guardian proposed in the above application, do hereby declare that I am willing to act as such.

....

Signature of the person verifying

Attested by (1) ....

(2) ....

....

Singnature of the proposed guardian.

SCHEDULE TO FORM A

Detail of property belonging to ward	Value	Name of persons in present possession of the property mentioned in column (1)
(1)	(2)	(3)
(1)		(1)
(2)		(2)
(3)		(3)
etc.		etc.

verified and signed by me.

Signature of applicant.

FORM 'B'

Notice under section 11 of Act VIII of 1890

Civil Suit No. of ....19.

In the Court of the ....

At..

In the matter of application of .... easte .... inhabitant of ....Tahsil ....District .... for the (1) .... of a guardian to the (2) ....of son of .... caste .... a minor aged .... years inhabitant of .... tahsil .... district .... To (3) ....

The petitioner above named having applied to be (4) .... the guardian of the (2) .... of the aforesaid minor, the .... day of ....19, has been fixed for the hearing of the application and notice is hereby given that if you desire/anybody desires to oppose that application of tne petitioner aforesaid you/ he should enter appearance in this

Court in person or by a duly authorised Pleader of the Court duly instructed and able to answer all material question relating to the application or he shall be accompanied by some person able to answer all such questions, and you are/he is hereby required to take notice that in default of your/his appearance on the day mentioned above the application will be heard and determined in your/his absence.

Given under my hand and the seal of the Court this .... day of 19

(Seal) Judge.

(1) Appointment or declaration as the case may be

(2) State whether to the person or the property of the minor, or to both

(3) Name of person, father's name and place of residence in case of notice under clause (a) of section 11 "the public" in the case of general notice under clause (b).

(4) Appointed or declared.

FORM 'C'

Order of appointment under section 7, Guardians and Wards Act, 1890

In the Court of the .... Judge ....

At ....

Micellaneous Judicial Case No. .... of 19 ....

Whereas this Court has, under the provisions of section 7 of Act No. VIII of 1890, been pleaded to appointed, declare you to be guardian of the property/ person/ persons and property of... during the period of his minority, to wait, till the .... day of the month of .... 19, subject to the provisions contained in the Act and particularly those provisions contained in sections 32, 39 and 40 of the Act aforesaid: you are hereby authorised to take charge of the property of the minor in trust, to collect, and pay all just debts, claims and liabilities due to or by the estate of minor, to institute or defend suits connected with that estate and generally to do and perform all acts which may be necessary for the due discharge of the trust vested in you, provided [illegible] that you shall not mortgage, or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of your ward, or lease [illegible] property for a term exceeding five years or for any term [illegible] one year beyond the date on which your ward will cease to be [illegible] the express sanction of this Court previously obtained, and that [illegible] regular accounts of your receipts and disbursements [illegible] other documents necessary to establish the correctness.

Given under my hand and the seal of the Court this day of [illegible]

(Seal) Judge.

FORM 'D'

Form of Bond under section 34 of Act VIII of 1890.

Know all men by these presents that I (a)...................... (b) .... of .... of........................... am held and firmly bound to (c) .... the District Judge or his assigns, in the sum of Rs... to be paid to the said (d) .... or to his successors in this office, and we (e) .... son of .... of.......................... and (f) .... son of .... of .... are jointly and severally held and firmly bound to the said (g) .... or his assigns in the sum of Rs. .... to be paid to the said (h) .... or his assigns or to his successors in office of their assigns, for the payment of which said sum of Rs. .... to the faithfully and truly made, I the above bounden (i) .... bind myself and heirs, executors, administrators and representatives, and for the payment of the said, sum of Rs................ we the above Bounden (j) .... and (k).......................... bind ourselves, and each of us jointly, and severally, and one and each of our heirs, executors and administrators, and representatives firmly by these presents signed by ourselves and sealed with our respective seals this .... day of .... 19.

Whereas by an order of the Court of the District Judge of .... made on the .... day of .... under section 7 of the Guardians and Wards Act (VIII of 1890) the above named (1) .... has, subject to his entering into a bond in Rs. .... with (2) .... sureties in the same sum (or sum of Rs. .... as the case may be) been appointed guardian of the property, movable and immovable (3) .... minor, son of and, whereas the said (4) .... has agreed to enter into the above written bond and the said (5) .... and (6) .... have agreed to enter into the above written bond as sureties for the said (7) ....

Now the condition of the above written bond is such that if the said (8) .... do and shall justify and truly account whenever called upon to do so, for what he may received i respect of the property of the said (9) .... and do and shall carefully observe. perform and keep all orders and directions of the said court of the District Judge of .... touching or concerning the estate and effects of the said minor and his property and touching and concerning all such moneys and estate as he the said (10) .... shall receive as suh guardian as aforesaid and in all things conduct himself properly, then the above written bond or obligation shall be void and of no effect, otherwise the same shall remain in full force and virtue.

Signature and sealed by the above

named .... (Seal)

(11) .... (Seal)

in the presence of

.... (Seal)

(a) Name of guardian	(1) Name of guardian
(b) Son or Daughter as the case may be	(2) Number of sureties.
(c) Name of District Judge	(3) Here state name of minor
(d) Name of District Judge	(4) Name of guradian
(e) and (f) Name of sureties.	(5) and (6) Name of sureties
(g) Name of District Judge	(7) Name of guardian
(h) Name of District Judge	(8) Name of guardian
(i) Name of guardian	(9) Name of minor
(j) and (k) Name of sureties.	(10) Name of guardian
	(11) Name of guardian and sureties.

FORM 'E' (1)

Statement under section 34 (6) showing particulars regard to immovable property and movable property belonging to .... minor, taken over by .... appointed as guardian .... under order of the Court dated .... 19.

Immovable property

Serial No.	Land build ing or vacant site	Particulars (a)	How occupied (b)	Apporoximate value (c)	Profit or rent realisable	Period for which realisable
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Movable property

Household goods or other property	Particulars				
	Supposed value (c)	Jewels, gold and silver	Value cash	In whose custody or with whom deposited	Remarks
(8)	(9)	(10)	(11)	(12)	(13)

(a) Details should be given on the tenure on which land is held. the size of buildings and the materials of which they are built should be given.

(b) Here state whether cultivated through servants or relatives or let on rent or cultivated by tenants. If occupied by tenants the nature of the tenancy should be stated. In case of buildings state whether occupied by minor or family or let on rent or hire, etc.

(c) This will assist the court in determining the amount of security to be taken from the guardian.

FORM 'E' (2)

DISTRICT..........................

Statement showing particulars of the debts due to, or by the estate of .... minor, for whose property and person .... has been appointed or declared guardian by order of the Court, dated 19

Debts due to the estate of the minor

Name, parentage and residence of debtor	Amount of debt original by advanced	Date of original advance	Date by which wholly repayable
(1)	(2)	(3)	(4)

Amount of interest or profit realisable	Date on which realisable	Date by which limitation expires	Proof in support of debt (a)
(5)	(6)	(7)	(8)

Debts due by the estate of the minor

Name etc. of creditor	Amount received originally	Date of incurring of this debt	Interest or profit payable
(9)	(10)	(11)	(12)

Date when interest or profits payable	Date fixed for repay ment of the debt	Security given for debt.
(13)	(14)	(15)

(a) whether registered or unregistered bond or deed or book account etc.

FORM 'F'

Particulars of Ward and of Guardian appointed under the Guardians and Wards Act and minutes of subsequent proceedings

WARD

Name ....

Father's name ....

Caste ....

Residence ....

Sex ....

Date of birth ....

GUARDIAN

No. and year of case	Name, father's name and caste	Resi dence	Date of appoint-ment	Amount of security fur-nished	Date fixed for submission of accounts
(1)	(2)	(3)	(4)	(5)	(6)

SUBSEQUENT PROCEEDINGS

No. and year of case	Date of commencement	Abstract of proceedings	Date of Final order
(1)	(2)	(3)	(4)

FORM 'G'

Register of Estates of Wards under the District Judge

No.	Name of ward	Name of guardian	Name of brief description of estate with value	Date on which the estate came under the control of the District Judge	Date on which the estate passed out of the hands of the District Judge	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(6)

Rules under sub-section (1) (a) and (i) of section 50.

[***(Notfn. No. 2709- III-I-12-36-F.No. 8-5-19 March. 1963. Published in M.P. Gazette. dated 3-5-1963. p. 1231***] rules under sub-section (1) (a) and (i) of section 50 of the Guardians and Wards Act (No. VIII of 1890) and in supersession of all existing rules on the subject the High Court of Madhya Pradesh has, with the previous approval of the State Government made these rules.

1. With the annual statements of civil business for the previous year which are required to be submitted by the 15th February each year the District Judges shall submit to the High Court a report of the working of the Guardians and Wards Act, 1890, specially on the management of ward's estates.
2. When it appears to the Court at the time of passing an order of appointment or declaration of a guardian. or at the annual inspection of the ward or otherwise, that orders are required as to the education of the ward. the Court shall pass such orders as appear to suit the case, regard being had to the present position and future prospects of the war's family and to the intellectual capabilities of the ward himself.

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MEMORANDUM NO C/2593/III-6-8/ 85 (MAIN)- II JBP. 16TH APRIL 1999 ADDRESSED BY THE HIGH COURT TO THE PRINCIPAL SECRETARY LAW DEPARTIMENT REGARDING HOLDING OF LOK-ADALAT IN JAILS. AND ENDORSED TO ALL THE DISTRICT JUDGES WITHDRAWING THE EARLIER REGISTRY MEMO NO. B/4674/ III-6- 3/85 (MAIN) DATED 11TH JULY 1995. NOW LOK ADALATS SHOULD NOT BE HELD IN JAILS.

Sub:- Regarding holding, Lok Adalats in the Jail Premises.

On the subject mentioned above I am directed to refer to your department Memo No. D/2229/5060/XXI-B (J) dated 2-2-99 & to inform you that since permanent Benches of Lok Adalats have already been Constituted in all the Districts by the State Legal Service Authority, now it is not desirable to hold Jail Lok Adalat.

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NOTIFICATIONS AND CIRCULARS

D.O.NO. C/2592/III- 1-5/57 CH. 19 JBP. 16TH APRIL 1999 ISSUED BY HIGH COURT OF M.P. TO ALL THE DISTRICT JUDGES.

As directed. on the subject mentioned above, I am to inform you that all such civil suits or Appeals pending for the duration of 5 to 10 years in the courts of Additional District Judges at the head quarter, all those Civil Suits and Appeals and other misalliance matters shall be taken up by you in your court and shall be disposed of by you as far as possible.

Please send the list of all such old Civil matters pending in the courts of Additional District Judges at the head quarters along with the list of all such old cases transferred to your court.

Also direct all the Additional Sessions Judges working at the outlying stations of your District to dispose of all civil matters pending for more then 5 years in their courts. expeditiously on priority basis.

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TIT-BITS

1. MEDICAL ETHICS AND RIGHT TO PRIVACY AND HEALTHY LIFE AND CONFLICTING FUNDAMENTAL RIGHTS OF TWO PARTIES:-
(1998) 8 SCC 296
MR 'X' Vs. HOSPITAL 'Z'

Duty to maintain secrecy exception. Disclosure for protecting an identifiable person against health risk. Consequent to test of blood, for transfusing to another, testee found to be HIV (+). Doctor conducting the test, disclosing the testee's HIV (+) status to testee's fiancee. Such disclousre although resulting in calling off of the marriage, held permissible. Hence, a corresponding right to confidentiality, even if vested in the testee, held, was not enforceable against the doctor. Such disclosure was not even violative of testee's right to privacy nor was violative of his right to marriage as the right to marry during continuance of communicable veneral disease or impotency has to be treated as merely a "suspended right" Hippocratic oath not enforceable. Ss. 20-A and 33 (m) of Medical Council Act, 1956 considered.

Conflict between fundamental rights of two parties. Right to privacy of one and right to healthy life of the other. Question was which one should prevail. In such a case only that right which would advance public morality or public interest would be enforceable. Right to privacy was held not absolute. All systems postulate healthy body and moral ethics. Person suffering from VD or HIV (+) will not have an enforceable right to marry till cured. It would remain a ' suspended right' Jurisprudence regarding ' Right' discussed.

Right to healthy life is inherent in Article 21 of the Constitution. This right would justify breach of confidentiality or right to privacy of another person. Doctor or institution responsible for the disclosure would be acting in public interest in protection of rights and freedom of others.

Right to government service cannot be denied to person suffering from AIDS.

"Right" defined as under:

"Right" is an interest recognised and protected by moral or legal rules. It is an interest the violation of which would be a legal wrong. Respect for such interest would be a legal duty. This is how Salmond has defined "right" In order, therefore, that an interest becomes the subject of a legal right, it has to have not merely legal protection but also legal recognition. The elements of a "legal right" are that the "right" is vested in a person and is available against a person who is under a corresponding obligation and duty to respect that right and has to act or forbear from acting in a manner so as to prevent the violation of the right. If, therefore, there is a legal right vested in a person. the latter can seek its protection against a person who is bound by a corresponding duty not to violate that right.

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2. **DISMISSAL IN DEFAULT : GROUNDS FOR RESTORATION:-**
(1998) 8 SCC 324
RAMBHAU Vs. SHANTABAI AND OTHERS

During pendency of Writ Petition before High Court some order, arising out of same writ petition, passed by Supreme Court. Effect of.

This appeal has been filed against an order dated 29-6-1992 passed by learned Single Judge of the Bombay High Court rejecting the application for restoration of the writ petition dismissed for default filed on behalf of the appellent.

Heard learned counsel for the parties. It appears that some order had been passed by this Court which could not be communicated to the counsel and in the meantime the aforesaid writ petition was taken up for hearing and dismissed for default. In the order rejecting the prayer for restoration, learned Judge has said that absence of intimation from the counsel was not sufficient ground for restoration of the writ petition. In view of the fact that an order had been passed by this Court arising from the said writ petition, we are of the opinion that the learned Judge should have restored the writ petition. Accordingly. the appeal is allowed. The order dated 29.6.1992 is set aside. The writ petition is restored to its original file. We request the High Court to dispose of the same at an early date.

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3. **CONFLICITING VERSIONS OF STUDENT AND THAT OF SELECTION COMMITTEE:-**
(1998) 8 SCC 333
ADMISSION COMMITTEE, C.I.I. 1995 Vs. ANAND KUMAR

We are unhappy to note that the High Court has Chosen to believe the version of the student against the Members of the Selection Committee. It was a case of word against word and in the absence of any malafide or any other supporting material,one should have thought that the Court would have preferred to accept the version of the Selection Committee. Moreover, calling upon the Selection Committee to answer and justify each and every selection made, in the absence of any malafides is to cause impossible burden upon it. We therefore set aside the judgment of the High Court but so far as the respondent is concerned, since three years have passed by since the admission to the course of his choice, we are not inclined to disturb him at this distance of time.

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4. **I.P.C. SECTIONS 304 PT. II OR 302:-**
(1998) 8 SCC 355
HARI SHANKAR Vs. STATE OF RAJASTHAN

Appellant throwing a burning stove on the deceased resulting in his death due to burn injuries. It was held that it cannot be said that it was merely a rash and negligent act on the part of the appellant. He can be attributed with knowledge that his act was likely to cause death. He was held liable to be convicted under S. 304 pt. II and not under S. 302.

Only question that we have to consider in this appeal is what offence can be said to have been committed by the appellant on the basis of the facts found by the High Court. It has been held that while the appellant, deceased Bheem Singh and one Shah Megan were taking tea in the tea-club of the Air Force, 32 Wing (MT Section) an exchange of words took place between the appellant and deceased on account of the demand made by the appellant for returning Rs. 50,000 which he had advanced to the deceased. The appellant became angry and picked up the burning kerosene wick-stove and threw it on the deceased. Kerosene from the stove spilled over the clothes of the deceased and as the burning wicks came in contact with his clothes they caught fire. The deceased ultimately died as a result of the burns received by him.

What was submitted by the learned counsel for the appellant was that the appellant had enemity with deceased. He had no intention to kill the deceased as by killing him he could not have recovered the amount of Rs. 50,000 which he had advanced to the deceased. He further submitted that the quarrel between the two took place all of a sudden and in the heat of the moment the appellant had picked the stove and had thrown it towards the deceased. He, therefore, submitted that it was merely a rash and negligent act on the part of the appellant. We cannot agree with the submission of the learned counsel. Since the appellant had thrown a burning stove on the deceased. he would have known that his act was likely to cause burns resulting in death. In view of the facts and circumstances of the case, he can be said to have committed an offence under Section 304 Part II IPC.

We therefore. allow this appeal partly, alter the conviction of the appellant from under Section 302 to Section 304 part II IPC and reduce the sentence of imprisonment for life to rigorous imprisonment for five years.

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5. CONTRACT, ACT, SECTIONS 126, 128 AND 141:-
(1998) 8 SCC 433
STATE BANK OF INDIA Vs. MADRAS BOLTS & NUTS (P) LTD.

Looking to the importance of the judgment, the whole Order is reproduced for forther quidance:-

ORDER

1. The appellant-State Bank of India had filed this suit against M/s Madras Bolts & Nuts (P) Ltd. and its three Directors,defendants 2 to 4, of which the 2nd defendant is the Managing Director. The Suit was for recovery of a sum of Rs 2,47,797. 18 with future interest as set out therein under a cash credit (Mundy Type) Account and Rs. 22,133,40 under an overdraft against bills account. The three Directors of the first defendant Company had given personal guarantees and the 1st defendant Company had executed promissory notes as collateral security for repayment of the amounts due and payable by the first defendant Company under these accounts. Defendants 1 and 2 did not contest the suit. The only contestants were Defendants 3 and 4.

2. Defendants 3and 4 had resigned as Directors of the Company w.e.f. 12-8-1966. At the hearing of the suit, it was conceded on behalf of the Bank that Defendants 3 and 4 would be liable only in respect of the liabilites of the 1st defendant Company as of 12-8-1966. Learned advocate of the Bank also pressed the claim of the Bank against them only under the cash credit (Mundy Type) Account and on the amounts due and payable in this account as of 12-8-1966. On the basis of this concession, the learned single Judge passed a decree against Defendants 1 and 2, as prayed. He passed a decree against Defendants 3 and 4 for a sum of Rs. 1,86,889.97 with simple interest at 8.25 % per annum from 12-8-1966 up to date without any rest and with future interest at 6% per annum from this date to the date of realisation.He also made an order for costs as set out therein. He also said that after the filing of the suit, a sum of Rs. 95,000 was realised by the plaintiff-Bank by selling the securities. Whatever amount had been realised, should go in partial satisfaction of the decree.

3. An appeal was filed against this judgment and decree by Defendants 3 and 4 before the Division Bench of the High Court. Defendants 3 and 4 contended that they would be entitled to the credit of certain payments received by the Bank from the Company after 12-8-1966. The other contention was that since they were required to discharge the liabilities of the Company as of 12-8-1966, they would be entitled to the benefit of the securities held by the Bank to cover the credit facilites granted by the Bank to the Company. Both the contentions were upheld by the Division Bench of the High Court. Hence the Bank has filed this appeal.

4. In respect of the first contention, the learned Single Judge has examined the nature of the credit entries in the account after 12.8.1966 and has held that the subsequent credit entries after 12.8.1966 amounting to Rs. 91,877.80 were out of the bills deposited against drawings by cheques for purchasing raw materials, and these credit entries are appropriated towards the liabilities so incurred. Since the plaintiff-Bank has specifically appropriated these sums towards liabilities subsequently incurred, Defendants 3 and 4 cannot get the benefit of these amounts subsequently paid to the Bank. We agree with this reasoning of the learned Single Judge.

5. The only other question which remains is in respect of the securities in the form of raw material, plant and machinery of the Company held by the plaintiff-Bank to secure the amounts advanced by the Bank to the Company. Obviously, these securities cover not merely the claim of the Bank against the Company up to 12-8-1966, but they also cover the claim of the Bank against the Company in respect of the liabilities arising after 12.8.1966 also. whether they be in the form of interest or in any other form. Since the securities cover the entire liability of the Company, these cannot be availed of by the original Defendants 3 and 4 only in respect of the liability of the Company up to 12-8-1966. It is also necessary to note that the securities have been subsequently sold and have realised only a

sum of Rs. 95,000. Looking to the claim which has been decreed against the Company, it is clear that the liablility of the Company which covers the entire period is much larger than the liability of Defendants 3 and 4 and the difference is in excess of Rs. 95,000. The finding of the Division Bench that the value of the goods available as security at the time when Defendants 3 and 4 resigned as Directors of the Company, should be taken into account while determining the liability of Defendants 3 and 4, is erroneous. Mr E.C. Agarwala, learned counsel for Defendants 3 and 4 has placed strong reliance on Section 141 of the Indian Contract Act, 1872. Section 141, however, envisages a case where the liability of the surety is coextensive with the liability of the principal debtor. It provides that such a surety would be entitled to the benefit of every security which the creditor had against the principal debtor at the time when the contract of suretyship was entered into. Such is not the case here. Moreover, the interpretation put on section 141 by the Division Bench, in our view, is not correct.

6. In the premises, the judgment and decree of the Division Bench is set aside. Since the judgment and decree of the learned Single Judge has proceeded on the concession granted by the appellant-Bank that they would hold Defendants 3 and 4 liable only in respect of the liabilities of the Company as existing on 12.3.1966, we are not examining the merit of that finding given by the learned single Judge. Hence, the judgment and decree of the learned Single Judge will stand.

6. SERVICE LAW : MISCONDUCT : WILFUL ABSENCE:-
(1998) SCC 222
STATE OF PANJAB Vs. BAKSHISH SINGH

Respondent filed a civil suit against his dismissal from service which was ordered on the ground of unauthorised absence. The trial court decreed the suit by holding that once absence from duty was regularised by grant of leave without pay, the absence could not be treated as misconduct. The trial court also took note of the fact that the respondent's statement that he was not given an opportunity of personal hearing and that his signatures were obtained under duress in the departmental proceedings, was not controverted by the appellant-State. The appellate court affirmed the findings of the trial court that once absence had been regularised by grant of leave, the charge against the respondent did not survive but still it proceeded to consider whether his misconduct of absence was grave enough to warrant extreme penalty of dismissal. The appellate court expressed an opinion that lesser penalty was warranted in this case and therefore it remanded the case back to the punishing authority for passing a fresh order. The appellant-State filed second appeal in the High Court which was dismissed summarily and then the appellant-State brought the matter before the Supreme Court which noticed that the order of lower appellate court was inconsistent in as much as it upheld the findings of the trial court that no charge survived after regularisation of respondent's absence, yet it remitted the case to the punishing authority for

fresh consideration of penalty. The Supreme Court noted that the High Court also did not pay attention to remove this irregularity.

The appellant-State inter alia contended before the Supreme Court that this Court could not cure inconsistency because the respondent had not filed any cross appeal. The Supreme Court however removed inconsistency by invoking Article 142 of the Constitution and by referring to Order 41, Rule 33 and Section 107 (1) (a) of the Code of Civil Procedure, 1908.

HELD:

It is not possible to accept the contention that if the Supreme Court intervenes in the matter even in exercise of its power under Article 142 of the Constitution, the same would be without jurisdiction. The Court cannot ignore substantive rights of a litigant while dealing with a cause pending before it and can invoke its power under Article 142. The power cannot however be used to supplant substantive law applicable to a case. Aritcle 142 even with the width of its amplitude. cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and there. achieve something indirectly which cannot be achieved directly.

Supre. Court Bar Assn. vs. Union of India, (1998) 4 SCC 409 : AIR 1998 SC 18 elied on

Order 41, ule 33 CPC gives very wide power to the appellate court to do complete justice between the parties and enables it to pass such decree or order as ought to have been passed or as the nature of the case may require notiwithstanding that the party in whose favour the power is sought to be exercised has not filed any appeal or cross-objections. The discretion, however, has to be exercised with care and caution and that too in rare cases where there have been inconsistent findings and an order or decree has been passed which is wholly uncalled for in the circumstances of the case.The appellant court cannot in the garb of exercising power under this Rule. enlarge the scope of the appeal. Whether this power should or should not be exercised depends upon nature and facts of each case. (Paras & and 9)

If trial court can dispose of a case finally, the appellate court can also by virtue of Section 107 (1) (a) CPC, determine a case finally.

R.S. Lala Praduman Kumar vs. Virendra Goyal, (1969) 1 SCC 714 : AIR 1969 SC 13'9, relied on

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7. JURISDICTION OF CRIMINAL COURTS : SECTION 178 READ WITH SECTION 408 OF THE CR. P.C.:-
(1998) 8 SCC 319
HARBANS LAL Vs. STATE OF HARYANA

A criminal proceeding has been initiated against the appellant pursuant to the complaint filed by the Deputy Collector of Customs and Central Excise, Chandigarh. The appellant approached the Punjab and Haryana High Court for getting the same quashed. As his contention that the Court at Ambala has no jurisdiction to try the criminal case filed against him was not accepted by

the High Court and his application came to be dismissed, the appellant has filed this appeal.

The contention of the appellant is that the alleged offence as stated in the complaint took place somewhere between Rohtak and Delhi and therefore the Court of Special Judicial Magistrate, Ambala, can have no jurisdiction to try that offence. Having gone through the complaint, we find that the main allegation against the appellant and the other accused is that in pursuance of the conspiracy between them, gold was transported from Pakistan to a place near Bahadurgarh in Haryana. It is further stated therein that the goods had passed through Amritsar, Rohtak and then to Bahadurgarh. Prima facie, it appears that the goods had passed through Ambala also. Therefore, the Ambala Court will have jurisdiction to try the offence as carrying of smuggled goods is also an offence. The High Court was, therefore, right in dismissing the criminal miscellaneous application filed by the appellant.

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8. CR. P.C. SECTION 439 : BAIL:-
(1998) 8 SCC 368
MANJOOR KHAN Vs. STATE OF BIHAR

Right of appellant to file application. Since the appellant has a right under the Code of Criminal Procedure to pay for bail as and when he intends to, the High Court could not have debarred him from exercising his such right for one year. Of course, whether such prayer would be entertainned or not, it is for the High Court to decide but it cannot prevent an accused from seeking his release on bail. We, therefore, quash the impugned order to the above extent.

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9. HINDU MARRIAGE ACT, 1955 SECTION 13 AND FRAUD:-
(1998) 8 SCC 375
SANJAY SINGH Vs. GARIMA SINGH

Collusion decree for divorce. Suit for divorce allegedly filed by husband in the name of wife (respondent) hurriedly decreed ex-parte. Substantive suit filed by wife for declaration that the ex parte decree was null and void as she had never filed any divorce suit. High Court finding that in hot haste a decree for divorce was almost snatched from the court which amounted to fraud on the court and that the appellant-husband had got the decree by getting an impostor to file the suit. Accordingly, ex-parte decree set aside and suit remanded for fresh trial. The High Court held that once the conclusion was reached that the ex parte decree was required to be set aside even on the assumption that the real plaintiff had also colluded with the defendant for snatching a decree of divorce, no further finding about the alleged impersonation of the wife by somebody else was tendered necessary.

The High Court in para 8 held that in the result, the order setting aside the ex-parte decree as passed by the learned Single Judge is affirmed subject to the limited modification that the finding about the suit having been filed by an imposter is vacated and the said question is kept open.

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10. I.P.C.SECTIONS 304 PT. I AND 302:-
(1998) 8 SCC 404
STATE OF RAJASTHAN Vs. SATYANARAYAN

Accused giving kinfe blow to the deceased resulting in his death. Injury sufficient in the ordinary course of nature to cause death but evidence showing that the blow was aimed at another person but it landed on the stomach of the deceased. Accused having no dispute with the deceased. Held, in the circumstances of the case, the accused is liable to be convicted under S. 304/ pt.I and not under S. 302..7 years RT was awarded.

B. CRIMINAL TRIAL:- BLOOD STAINS, ABSENCE OF:-

Merely because no blood was found near the house of the respondent, it cannot be said that no incident took place there. The fact that Kesar Lal had received a knife blow near his house was admitted by the accused though according to him the knife was with PW 2 Satyanarayan and not with him. As the trial court has pointed out, the place was a public road and there was a lot of traffic on that road. That could have been the reason why no blood was found when the spot panchnama was made after a few hours. Moreover, the evidence discloses that the intestines of Kesar Lal had come out and that could have blocked the flow of much blood. Some blood was absorbed by the clothes. Therefore, the circumstances that not sufficient blood was noticed when the spot panchnama was made should not have been utilised by the High Court for holding that the prosecution version was not correct and that the defence version was more probable.

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11. I.P.C. SECTIONS 302/34:-
(1998) 8 SCC 497
SANKAR NAGAMALLESWARA RAO Vs. STATE OF A.P.

Evidence of eyewitnesses and two dying declarations recorded by I.O. and Judicial Magistrate. The dying declarations establishing that the appellants were responsible for causing death. Medical report shows that the injuries were sufficient in the ordinary course of nature to cause death. The injuries were serious though not on vital parts. Conviction under Section 302/34 upheld.

B. CRIMINAL TRIAL:- Witnesses. Part is an witnesses. The witnesses were not related to the deceased but their services were hired by the deceased for cultivating his land and they were with the deceased when the accident took place. Such witnesses cannot be said to be part is on witnesses.

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12. LANDLORD AND TENANT : CHANGE OF USER:
(1998) 8 SCC 425
MOTIRAM Vs. CHAMANLAL

Premises let out for residential purposes. Use of such premises for running power looms. weaving machines, etc., held violation of S. 108 (o) of T.P. Act. Hence. landlord is entitled to recover possession. Even otherwise, it was

held that High Court erred in reversing the eviction decree on the ground that no damage was caused to the premises. The said change of user did affect the residential utility of the premises.

Paragraph 3 of the judgment is reproduced:-

It is admitted case that the ground floor of the premises in dispute is not being used for the purpose for which it was let out to the tenant. It is not disputed that the premises was taken on rent by the tenant for residential purposes, but later on he converted it for commercial purpose. The tenant has on the face of it violated the provisions of Section 108 (o) of the Transfer of Property Act, which specifically says "but he must not use, or permit another use, the property for a purpose other than that for which it was leased". The landlord is, therefore, entitled to recover the possession from the tenant on the plain language of Section 108 (o) read with Section 13 (1) (a) of the Bombay Rent Act, 1947. Even otherwise we are not impressed by the argument that no damage was caused to the premises. Converting a residential premises into a sort of mini-textile factory is surely going to affect the residential utility of the premises. In this view of the matter we are not inclined to agree with the reasoning and the conclusions reached by the High Court. We set aside the High Court judgment and restore that of trial court as upheld by the appellate court and direct the eviction of the tenant from the premises in dispute.

Section 13 (1) (a) of the Bombay Rent Control Act, 1947 says that, "the tenant has committed, any act contrary to the provisions of clause (o) of Section 108 of the T.P. Act, 1982.

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13. EXECUTION OF WILL : COMPETENCE TO EXECUTE:-
(1998) 8 SCC 465
DAGANI RAMDAS Vs. P. DAVEED AND OTHERS

This appeal by special leave arises from the judgment of the Andhra Pradesh High Court, made on 8.9.1996 in SA No. 873 of 1985. The appellant-defendant set up title to the property on the basis of a Will executed by Dagani Vankamma. She had already settled the property by a settlement deed dated 24-8-1965. Admittedly, she constructed a building on the land belonging to the Government. At the time of settlement, she was the owner of the superstructure of the building having a possessory title to the land belonging to the Goverment. In 1972, patta was granted by the Government in respect of the site. Therefore, the possessory right had by Vankatamma stood ripened into full title by grant of patta by the Government. The question arises; whether such a settlement deed is valid in law? Though the trial court dismissed the suit, on appeal, it was decreed by the Subordinate Judge and in the second appeal the High Court, in our view quite rightly, upheld the finding that the respondent had possessory title and title to the superstructure. So she was entitled to settle the property under the settlement deed dated 24-8-1964 subject to the defect in the title of the land on which the building was constructed. Thereby, she was not entitled to execute any will in favour of the appellant since she no longer remained to be the owner. The courts below.

therefore, have rightly negatived the right of the appellant. We do not find any substantial question of law warranting interference

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14. STATUTE LAW : RULES AMENDMENT TO:-
(1998) 8 SCC 469
K. KUPPUSAMY Vs. STATE OF T.N.

Retrospectivity unless expressly or by necessary implication found to be retrospective, held, amendment to statutory rules would have prospective effect. Further held that subordinate legislation- Administrative instructions/ Circulars/ Orders cannot override statutory rules.

Paragraphs 3 and 4 are reproduced:-

The short point on which these appeals must succeed is that the Tribunal fell into an error in taking the view that since the Government had indicated its intention to amend the relevant rules, its action in proceeding on the assumption of such amendment could not be said to be irrational or arbitrary and, therefore, the consequential orders passed have to be upheld. We are afraid this line of approach cannot be countenanced. The relevant rules, it is admitted, were framed under the proviso to Article 309 of the Constitution. They are statutory rules. Statutory rules cannot be over ridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules. does not mean that the rule stood obliterated. Till the rule is amended, the rule applies. Even today the amendment has not been effected. As and when it is effected ordinarily it would be prospective in nature unless expressly or by necessary implication found to be retrospective. The Tribunal was, therefore, wrong in ignoring the rule.

For the above reasons, we set aside the order of the Tribunal and remit the matter to the Tribunal for disposal in accordance with law and in the light of what we have said above. The appeals will stand allowed accordingly with no order as to costs.

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15. T.A.D.A. SECTION 5 AND ARMS ACT SECTION 25:-
(1998) 8 SCC 525
JASBIR SINGH Vs. STATE OF PUNJAB

Identity of pistol and cartridges seized and that which were produced before court thus not established by prosecution. Conviction set aside.

Paragraph 3 of the judgment is reproduced:-

What is contended by the learned counsel for the appellant is that the prosecution evidence itself shows that the pistol and the cartridges alleged to have been recovered from the appellant did not have any number or some distinctive mark on them and after their seizure by the police they were not sealed. Thus the identity of the weapon and the cartridges seized and the weapon and cartridges produced before the Court was not established by the prosecution Having gone through the evidence, we find that the contention

raised on behalf of the appellant is correct, and therefore, deserves to be accepted. The pistol and the cartridges. did not have any mark or any number on them and after seizing the same the police had not thought it fit to wrap them and apply a seal over them. No explanation in that behalf was given by the prosecution witnesses. This aspect was not considered by the trial court. As the identity of the incriminating articles has not been established by the prosecution, we allow this appeal, set aside the conviction of the appellant both under section 5 of the TADA Act and Section 25 of the Arms Act and acquit him of all the charges levelled against him.

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16. N.D.P.S. ACT, 1985 SECTIONS 21, 23, 28 AND 50:-
(1998) 8 SCC 534
NAMDI FRANCIS Vs. UNION OF INDIA AND ANOTHER CONNECTED CASE

Conditions for search of persons under Section 50 are not applicable to search of an article not in actual possession of the offender. Bringing of such article from the place it was lying to the place of the actual search would not change the legal position that the article was not being carried on the person of the accused. Hence, in the instant case, non-compliance with S. 50, held, not fatal to the offender's prosecution under Ss. 21, 23 and 28. Search of handbag or the like which person is carrying, held, amounts to search of his person attracting S. 50.

The petitioner's luggage, while he was leaving India for Lagos, was searched at the airport at Delhi but no incriminating meterial was found in the handbags he was carrying. He had, however, booked one bag which had already been checked in and was loaded in the aircraft by which he was supposed to travel. That bag was called to the place of the said search and on examination it was found that one of the many cartons kept in that bag, contained a material which was suspected to be heroin. That material was seized and after usual tests, the petitioner was prosecuted and convicted under Section 21,23 and 28 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short' the Act'). The petitioner contended that the omission on the part of the prosecution to inform the peitioner of his right under Section 50 of the Act to opt for being examined by a Gazetted Officer of any department or the nearest Magistrate, vitiated the prosecution. Dismissing the SLP and allowing withdrawal of the writ petition, the Supreme Court.

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17. NEGOTIABLES INSTRUMENTS ACT SECTION 138 : COMPLAINT UNDER DELAY OR LACHES:-
(1998) 8 SCC 453
R.S. TRADERS Vs. RITA KHANNA

Paragraphs 4 and 5 are reproduced :-

The appellants supplied certain material and payment therefore in the sum of Rs. 10,000 was received by them in the form of a cheque dated

6-6-1991, drawn by the first respondent upon the Canara Bank, Amritsar. The cheque was dishonoured with the remark "funds insufficient" on 7-6-1991. It was re-presented on 8-6-1991, 21-6-1991, and 3-12-1991, and dishonoured for the same reason. On 16-12-1991, the appellant served upon the first respondent a notice under the provisions of Section 138 of the Negotiable Instruments Act, 1881 and instituted a complaint. Upon hearing the evidence of a clerk of the Canara Bank and the appellants, the trial court issued an order summoning the first respondent. The first respondent thereupon instituted the aforementioned petition in the High Court. It was argued on her behalf before the High Court that the appellants had not been diligent in invoking the provisions of Section 138. The High Court accepted the contention and observed that a creditor was expected to invoke these provisions immediately if he intended to avail of this penal remedy. The High Court, accordingly, quashed the complaint against the first respondent.

As aforestated, the cheque was first presented on 6.6.1991. It was represented thrice in June 1991 and thereafter on 3.12.1991. On all these occasions it was dishonoured for want of funds. The complaint under Section 138 was filed on 16.12.1991. We do not see any undue delay that would debar the successful invocation of the provisions of Section 138 by the appellants. We may observe that there have been no successive prosecutions or convictions on the strength of one dishonoured cheque which would appear to have been a consideration which weiged with the High Court.

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18. MOTOR VEHICLES ACT, 1939 SECTIONS 110-B AND 110-CC (1998) 8 SCC 421
DR. K.R. TANDON (MRS) Vs. OM PRAKASH

Paragraphs from 1 to 3 of the judgment are reproduced:-

1. These three appeals are by the claimants who received injuries in a motor accident. There was a head-on collision between the offending car owned and driven by the first respondent and insured with the second respondent with the car in which the injured persons were travelling. That car was owned by Dr (Mrs) K.R. Tandon- one of the occupants, the person who suffered the most, as compared to others, both in terms of injuries as also pecuniary loss. When the matter was put to issue before the Motor Accidents Claims Tribunal diversifying the claims under various heads, the Tribunal awarded a sum of Rs. 1,60,907.36 to Dr. (Mrs) Tandon, a sum of Rs. 26,741 to her injured husband and their two minor injured children and a sum of Rs 720 to the injured maid servant who was in the employment with the Tandons.The High Court, on appeals by the respondents, reduced the award in respect of Mrs Tandon to Rs. 50,157.36; that of her husband and minor children to Rs. 4500 but maintained the award in respect of the maidservant
2. The negligence of the first respondent and the liability of the second respondent as the insurer are beyond dispute at the present juncture. The only arena is to figure out what should be the correct compensation award-

able to the claimants. For the purpose, we have carefully gone through the judgment under appeal. Though we may not like to differ with much of the reasoning of the High Court towards causing alteration in the sums awarded by the Tribunal, still we gather an impression that the High Court has taken too rigid and strict a view in reducing the compensation. In particular, we take into account the reduction caused in the sum awarded to Dr (Mrs) Tandon. Under the head "non-pecuniary loss" , the High Court has overlooked the fact that the extent of injuries sustained by her on her ribs, spine and the hip joint, and the treatment she had to undergo in order to be up and mobile, would have definitely caused loss of enjoyment of life henceforth, besides pain and suffering. She could never have been the same after treatment. This account alone deserved a portion of the award made by the Tribunal to be sustained. And as it is, in such matters, enough of guesswork comes to play a vital part and decision-making ultimately ends up in the rule of thumb. Adopting those yardsticks, we should think that Dr (Mrs) Tandon should have been awarded a sum of Rs. 1 lakh in all, in the totality of circumstances. Likewise, we should have thought that the husband of Mrs Tandon and their two minor children should have got a cumulative award of Rs. 10,000/- towards the injuries they had suffered and the maidservant too should have got a sum of Rs. 1200 as compensation for the injuries suffered by her. We, accordingly, modify the three awards in the manner above-indicated.

3. The Tribunal had awarded interest at the rate of 6% per annum from the date of the award but the High Court chose to curb it to 3% per annum. In the first place, we do not appreciate the reasoning of the High Court to reduce the rate of interest. We also see no justification by the courts below of not having awarded interest, whatever be its rate, from the date of the application. The way inflation has galloped in the past two decades and the value of the rupee eroded, we see no justification why interest at the rate of 12% per annum was not awardable in the instant matter. We, therefore, order that the interest on the sums modifyingly awarded by us, shall be payable from the date of the application itself and at the rate of 12% per annum. Payments which might have been made by the respondents, be adjusted. The Tribunal is required to work this out so that the correct figure is availble to the parties for determining their rights and liabilities. The parties may approach the Tribunal for fixing the figure payable and the sum so ascertained after making adijustments, shall be paid over to the claimants within three months of the determination.

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19. PREVENTION OF FOOD ADULTERATION ACT:- SECTION 16 (1)(a) :- (1998) 8 SCC 521
STATE OF HARYANA Vs. PAWAN KUMAR

Sale of adulterated red chilly powder. Sample of chilly powder found to be unfit for human consumption. Minimum substantive sentence for the offence being six months. High Court erred in reducing the sentence to the

period already undergone which was less than a month. Sentence enhanced to six months' RI. Paragraphs 2 and 3 of the judgment are reproduced:

2. For exposing for sale adulterated red chilli (lal mirch) powder the respondent, was convicted under Section 16 (1) (a) of the Prevention of food Adulteration Act, 1954 and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 1000/- by a Magistrate. As the appeal preferred by him was dismissed by an Additional Sessions Judge, the respondent filed a revision petition in the High Court, While upholding the conviction, the High Court reduced the substantive sentence imposed upon the respondent to the period already undergone while maintaining the sentence of fine and imprisonment in default of payment there of. The above order of the High Court is under challenge at the instance of the State of Haryana on the ground of sentence.

3. Having regard to the fact that report of the Public Analyst, which was accepted by all the three courts below, that the sample of chilli powder was found to be unfit for human consumption, the High Court erred in reducing the substantive sentence to the period already undergone (which is less than a monts) as the minimum substantive sentence to be imposed under the Act for the above offence is six months. However, considering the fact that since the offence was committed, more than 16 years have elapsed, we feel that the minimum sentence prescribed under the Act will meet the ends of justice. We, therefore, set aside the impugned order of the High Court only so far as it reduced the substantive sentence of the respondent to the period already undergone and direct that he shall suffer rigorous imprisonment for six months. The trial court will now take appropriate steps to apprehend the respondent and remand him to jail to serve out the sentence. The appeal is, thus, allowed.

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20. RENT CONTROL AND EVICTION : EVICTION SUIT:-
(1998) 8 SCC 466
BALDEV SINGH Vs. PUNJAB NATIONAL BANK

Paragraphs 3,4, and 5 of the judgment are reproduced:-

3. Respondent 2, Santokh Singh has filed a suit in the Court of Senior Sub-Judge, Jullundhur for a declaration that the sale deed allegedly executed by Defendant 1, Baldev Singh, in favour of Defendant 2, Harbhajan Kaur, acting as power of attorney of the plaintiff is null and void and consequently the lease deed dated 10-2-1993 is null and void and not binding on the plaintiff. There are certain other consequential reliefs also. The question of title may, therefore, arise for determination in that suit.

4. The present special leave petition has been filed by Baldev Singh against the order dated 1-6-1995 in Civil Revision No. 2174 of 1995 whereby the High Court dismissed the revision from the order of the Additional Rent Controller dated 6-4-1995 allowing the application of Santokh Singh for being impleaded as a party under order 1 Rule 10 CPC. The learned

counsel for the appellant herein contends that the question of title cannot be gone into in the proceedings before the Rent Controller and the Rent Controller was in error in allowing the application and the High Court too was in error in summarily rejecting his revision. The situation which emerges is that if Santokh Singh cannot be impleaded in the rent proceedings, wherein he would certainly raise the contention in regard to his title to the property, he would be without a remedy and the rent would be collected by Baldev Singh and thereafter he may have to take further proceedings against Baldev Singh, thus, multiplying the litigation.Therefore, the appropriate course would appear to be that rent suit should await the decision of the civil court on the question of title but in the meantime the tenant, i.e., the Panjab National Bank should go on depositing the rent/mesne profits in the Rent Control Court and the question of payment of the amount would be a matter that may be decided by the appropriate court at the appropriate point of time. The parties would be at liberty to move the civil court for an early hearing.

5. In the meantime, the Rent Controller may, at such intervals deemed appropriate, invest the rent in fixed deposits so that it may yield interest. The proceedings before the Rent Controller will remain stayed till the suit is disposed of. The present proceedings will stand disposed of accordingly.

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21. C.P.C. ORDER 33 RULE 5 (D) AND CAUSE OF ACTION:-
(1998) 8 SCC 522
KAMU ALIAS KAMALA AMMAL Vs. M. MANIKANDAN

Permission to sue as an indigent person cannot be granted without going into the question whether there was any cause of action shown in the plaint.

Paragraphs 2 to 5 of the judgment are reproduced:-

2. The only question is whether permission to sue as an indigent person can be granted without going into the question whether there is any cause of action shown in the plaint. In the impugned order, the High Court has said as under:-

> "At the outest, I agree with the objection raised by Mr. Varadarajan, learned counsel appearing for the first respondent, since we need not consider the cause of action or merits of the plaint. It is settled law that when application for permission to sue is in forma pauperis the court has to consider the applicant's indigence only. Any other objection or merits of the case have to be considered only at the time of the trial and not at this stage..."

Thereafter, the High Court proceeded to conclude as under :

> "In the light of the abovesaid factual findings and in view of the position of law as seen from Order 33 CPC, I do not find any substance in the argument of the learned counsel for the petitioners. It is always open to them to raise those objections at the appropriate time. Hence the Civil revision petition fails and the same is dismissed..."

3. A bare perusal of Order 33 Rule 5 CPC would indicate that the settled law on the point is the opposite of what has been treated as the settled law on the point in the impugned order of the High Court. Order 33 Rule 5 CPC insofar as it is material, is as under:

"5. Rejection of application.- The Court Shall reject an application for permission to sue as an indigent person-

(a)-(c)

(d) where his allegations do not show a cause of action, or

4. It is, there are obvious that the application for permission to sue as an indigent person has to be rejected and could not be allowed if the allegations in the plaint do not show a cause of action. That being so, there was no occasion to grant the perimission without deciding this objection and, therefore the question of deferring consideration of the objection based on absence of cause of action could not be deferred for conisderation after grant of the permission. This alone is sufficient to set aside that order.

5. Consequently. the appeal is allowed. The impugned order of the High Court is set aside. Since no useful purpose would be served now in sending the matter back to the High Court, we remit the matter to the trial court for deciding the application for permission to sue as an indigent person in accordance with law with advertence to the above.

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22. MOTOR VEHICLES ACT, 1939, SECTIONS 110-CC AND 110-B:- INTEREST AND QUANTUM OF COMPENSATION:-
(1998) 8 SCC 424
KARNATAKA S.R.T.C. Vs. R. SETHURAM

Paragraphs from 2 to 5 of the judgment are reproduced:-

2. This appeal has been filed on behalf of the Karnataka State Road Transport Corporation challenging the validity of the award given by the Motor Accidents Claims Tribunal-V, Bangalore City in a motor accident case which has been affirmed by the High Court. The High Court has also enhanced the rate of interest over the amount awarded as compensation from 6% to 12% on a cross-objection filed on behalf of Respondent 1 (hereinafter referred to as "the respondent").

3. On 6-12-1982 at about 6.00 p.m., the said respondent along with his wife was going on a scooter in the city of Bangalore when an accident took place with a bus bearing No. MYF 700 belonging to the appellant-Corporation. Because of the aforesaid accident, serious injuries were sustained by the respondent including fractures of bone. It may be mentioned that the said respondent was working as Mechanical Engineer ar Houston, Texas, at U.S.A. on monthly salary of Rs. 15,000 in terms of dollars, it was $ 2000 per month. The respondent claimed in amount of Rs. 31,55,004.04 as Compensation for the injuries suffered by him on account of the accident aforesaid. The Tribunal after consideration of the relevant materials including the evidence adduced on behalf of the parties, awarded an

amount of Rs. 23,32,900 and directed payment of interest at the rate of 6% per annum of the said amount from the date of filing the application.

4. An appeal was filed against the said award on behalf of the appellant-Corporation. The respondent also filed a cross-objection and sought enhancement of the amount of compensation including the rate of interest. The appeal filed on behalf of the Corporation was dismissed but the High Court enhanced the rate of interest from 6% to 12% We have perused the judgment of the Tribunal as well as of the High Court. We are of the opinion that there is no scope for interfering with the total amount which has been assessed to be payable to the respondent as compensation. i.e., Rs 23,32,900. However, so far the enhancement of interest is concerned, we are of the opinion that as this accident took place in 1982 and an amount of Rs. 23,32,900 had been awarded by the Tribunal as compensation for the injuries sustained by the respondent, there was no justification on the part of the High Court to enhance the rate of interest from 6% to 12% Accordingly, that part of the directrion of the High Court is set aside. The respondent shall be entitled only to the interest at the rate of 6% over the amount awarded. This has to be worked out with reference to the amount which has already been paid to the respondent and the balance amount which is payable.

5. The amount awarded to the respondent be paid by the appellant-Corproation as early as possible.

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23. I.P.C. SECTIONS 308/34, 323/34, 324, 325 AND 326:-
(1998) 8 SCC 557
SUNIL KUMAR Vs. N.C.T. DELHI

Attempt to commit culpable homicide not amounting to murder. Whether injury caused to the victim was grievous or simple not decisive. Attempt need not result in hurt.

Paragraphs 2, 3 and 4 of the judgment are reproduced:-

2. The High Court has quashed charge framed against the respondents under Sections 398/34 IPC and has sequelly quashed proceedings against the respondents under Sections 323/34 IPC on the ground that the police could not have investigated the said offence without the permission of a magistrate.

3. The dispute is between the tenants and the landlords of a premises in Delhi. On 27-9-1992, there was a clash between the two sides. Both sides allegedly were injured. The landlords are the accused in the instant case. Sunil Kumar is the victim of the crime, After the matter was reported to the police, his medico-legal examination was conducted by the doctor-in-charge, who after enumerating the injuries opined them to be grievous. Dr. Dabbas, whom we have summoned today to explain the medico-legal report, was the doctor who supervised and endorsed the report. According to him, the injuries have been termed grievous because two of them

were lacerated wounds and one was a haematoma and since the blows were aimed at the head, they had endangered life. The learned Additional Sessions Judge to whom the case was committed had framed charges against the respondents under-Sections 308/34 IPC, the gravemen of the charge being that an attempt to cause culpable homicide not amounting to murder had been made. whether the injury was grievous or simple deserved a back seat in face of the charge under Sections 308/34 IPC. Yet the High Court when approached in its revisional power under Section 439 of the Code of Criminal Procedure quashed the Charge in finding room in the medico-legal report to opine that the injuries were simple. The High Court observed as follows:

> "I have perused the FIR as well as the statement of the witnesses recorded under Section 161 of the Criminal Procedure Code by the police. No person including the complainant has made any allegation in their statements that injuries were inflicted by the petitioners with an intention to cause their death. As already mentioned above, in order to constitute an offence under Section 308, not only it should be proved that the act was committed by the accused but it was committed with the intention or knowledge to commit culpable homicide not amounting to murder and that offence was committed under such circumstances if the accused by that act had caused death he would have been guilty of culpable homicide. Therefore, the most important circumstance in a case under Section 308 would be that an act should have been committed with intention or knowledge to commit culpable homicide not amounting to murder. The injuries sustained by the complainant are not such that could in any manner result in the death of the injured persons. The injuries were caused by a blunt object and it was one-and-a-half -inch lacerated wound in the scalp. The doctor who examined the complainant had opined that there was no evidence of head injuries and it did not even require hospitalisation and he was asked to attend the OPD the next date. The word 'grievous' against the injuries has been written and had not given any opinion about his alleged head injuries. Merely because an injury has been found on the head, it cannot be said that such an injury was caused with the intention or knowledge to commit culpable homicide not amounting to murder. The evidence and circumstances of the case otherwise show that there was no intention or knowledge on the part of the accused to cause such injuries which would have resulted in the death of the complainant as a result of which they would have been quilty of murder or culpable homicide not amounting to murder. The fact that the petitioners have also been injured and a case under Section 324 IPC has been registered against the complainant clearly shows that it was a scuffle between two parties without any intention on either side to cause injuries which might result inthe death of the accused. The material before the Additional Sessions Judge, in my view, was not such which could give rise to grave suspicion against

the petitioners of their having the intention or knowledge to cause such an injury that had the death been caused, they would have been guilty of culpable homicide.

For the foregoing reasons, I am of the considered opinion that the petitioners could not have been charged for an offence punishable under Sections 308/34 IPC"

4. The view taken by the High Court is obviously erroneous because offence punishable under Section 308 IPC postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not. It is the atrempt to commit culpable homicide which is punishable under Section 308 IPC whereas punishment for simple hurts can be meted out under Sections 323 and 324 and for grievous hurts under Sections 325 and 326 IPC. Qualitatively, these offences are different. The High Court was thus not well advised to take the view as afore extracted to bring down the offence to be under Sections 323/34 IPC and then in turn to hold that since that offence was investigated by the police without permission of the magistrate, the proceedings. under that provision be quashed. For the view afore-taken as to the commission of the offence under Sections 308:34 IPC, it is not necessary to dwell on the correctness of the second part of the order relating to quashing of proceedings under Sections 323/34 IPC, Thus, the entire order of the High Court deserves to be and is hereby quashed, restoring the status quo ante of the trial remaining with the Additional Sessions Judge to proceed in accordance with law.

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24. C.P.C. ORDER 22, RULES 3, 4, 4-A AND 5 AND HINDU SUCCESSION ACT, 1956:-
(1998) 8 SCC 543
LEELA BAI (SMT) Vs. RAJARAM

The suit was filed by the minors through father. Death of a minor at. Held, father was incompetent to pursue the matter where mother a class I heir alive.

Paragraphs 2 and 3 of the judgments are reproduced:-

2. A minor's property was sold through his father as guardian. The father in reverse acting again as guardian filed a suit on behalf of the minor against the vendee for return of the property propounding a different nature as to the transaction. The suit was dismissed. An appeal was taken before the lower appellate court. While the appeal was pending, the minor died. The estate of the minor devolved under the Hindu Succession Act, 1956 on his mother. The mother never came forward to get herself impleaded as heir and legal representative of the minor. The father kept pursuing the appeal on behalf of the minor as if nothing had happened. The lower appellate court allowed the appeal. The High Court confirmed the order on subsequent appeal. The short and narrow point now is whether on account of

the death of the minor the appeal remained competent before the lower appellate court.

3. The legal position is clear. The plaintiff in the suit was the minor. He had sued taking aid of his father as next friend. On the death of the minor, the need of the next friend vanished. The next friend could not henceforth act as guardian of the minor. The estate of the minor was decidedly heritable. Under the Hindu Succession Act, 1956, the mother of a Hindu male is a Class I heir. The estate of the minor thus fell in the hands of his mother by succession. His mother had remained silent as to the litigation. It thus logically followed that the appeal before the lower appellate court became incompetent and incapable of being pursued. The power of the Court to go on with the appeal got withdrawn by the supervening event of the death of the minor. We therefore take the view that the judgment and decree passed by the lower appellate court as confirmed by the High Court was not in accordance with law. Both deserve to be set aside. The High Court has erroneously observed that the father was a natural heir. Noticeably, the father nowhere figures as Class I heir under the Hindu Succession Act. He as an heir falls in Class II. His turn comes only when no one is available in Class I. On this understanding of the position, we allow this appeal, set aside the judgment and decree of the High Court as also that of the lower court dismissing the plaintiff's suit but with no order as to costs.

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25. RENT CONTROL AND EVICTION : EVICTION SUIT : BONAFIDE REQUIREMENT OF LANDLORD: SENTENCE- BASED NEED : HOW TO BE CONSIDERED :-
(1998) 8 SCC 504
RAM DULARI Vs. MADANLAL BAJAJ

2. The first apellant is the landlady of the demised premises. Joining with her as the second appellant is her son who is employed at Jabalpur (M.P.) on a transferable job. She, presently, lives with him, The respondent is a tenant in the demised premises situated in a town called Katni. Setting up a plea of bona fide requirement of the premises, the landlady pleaded that it was the last desire of her husband that she live in the house in question and that in order to fulfil that desire she was emotionally bound and wanted to fulfil that wish. The courts below have taken the view that since the house was let out by the first appellant after the death of her husband flouting the aforesaid desire, there was no clement of need to get back the house. On that basis, defence has been built that the personal requirement was not bonafide. The High Court has upheld the defence and that has driven the landlady to this Court.

3. We have heard learned counsel and have also gone through the judgment under appeal. The authenticity of the desire expressed by the husband of the first appellant has not been disputed. The landlady has been non-suited by way of punishment as to why in the first instance did she

defy the wish of her husband and let out the house.Having done so. she cannot claim it back.This, in our view, is an extremely unsatisfactory way of dealing with the matter like the present one. If the landlady had in some situation transgressed that desire, that did not mean that she was ever precluded from projecting that desire at a later stage, and on rethinking, make amends. Denying her the right to live in that house would bring about a great deal of mental stress and sense of guilt on her, having disobeyed her husband and hence her need to have the house for personal requirement was established. Presently, she is stated to be 75 years of age. keeping this factor also in view, we upset the impugned orders of the courts below and order eviction of the respondent granting him a year's period to vacate the premises. It is however made clear that if in the meantime the personal need ceases to survive, then the respondent may continue as before as a tenant but if it does, he is oblged to vacate the premises on or before the expiry of one year subject, of course, to the usual terms of payment of rent etc.

4. The appeal stands allowed accordingly. No costs.

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26. I.P.C. SECTIONS 337, 338 304-A: RASH OR NEGLIGENT ACT:-
(1998) 8 SCC 493
STATE OF KARNATAKA Vs. SATISH

The respondent was driving a truck which turned turtle, resulting in the death of 15 persons and injuries to 18 persons. The trial court and the appellate court held the respondent guilty under Sections 337, 338 and 304-A IPC on the ground that he was driving the truck at a "high speed" . The said courts did not record any finding as to negligent or rash driving by the respondent but relied on the doctrine of res ipsa loquitur. However, the High Court acquitted the respondent of all the offences. Dismissing the State's appeal, the Supreme Court.

It was held that

Merely because the truck was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. None of the witnesses examined by the prosecution could give any indication. even approximately. as to what they meant by "high speed" "High speed" is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statuory exception pleaded in the present case. In the absence of any material on the record no presumption of "rashness" or "negligence" could be drawn by involving the maxim "resipsa loquitur". There being no evidence on record to establish "negligence" or "rashness" in driving the truck on the part of the respondent, it cannot be said that the view taken by the High Court in acquitting the respondent is a perverse view. Hence, the same calls for no interference.

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27. **MOTOR VEHICLES ACT, 1988 SECTION 168 (1):-**
(1998) 8 SCC 359
RAJENDRA Vs. BISHAMBERNATH AND OTHERS

A student of class VIII aged about 15 years meeting with an accident by truck. Quantum of compensation.

The appellant who was then the student of Class VIII and aged about 15 years, met with an accident by a truck. There is no dispute that he suffered serions injuries and one kidney had to be removed. The Motor Accident Claims Tribunal, Dhar, awarded an amount of Rs. 24,000 which was enhanced by the High Court to Rs. 48,000. After hearing counsel for the parties, we are of the opinion that in the facts and circumstances of the present case, the High Court should have awarded an amount of Rs. 1,00,000 (Rs. One lakh) as compensation to the appellant. Accordingly, we allow this appeal and direct that an amount of Rs. 1,00,000 (Rs. one lakh) be paid to the appellant as compensation. The balance amount should be deposited within four weeks before the Motor Accidents Claims Tribunal, Dhar, M.P. in Claim Case No. 44 of 1980. The appellant shall withdraw the said balance amount. No Costs.

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28. **MOTOR VEHICLES ACT, 1939 SECTIONS 110-B AND 110-CC:-**
(1998) 8 SCC 363
RENU BALA KALITA Vs. DHIREN CHAKRAVARTY AND ANOTHER CASE

Motor accident compensation determination of quantum of. Declaration of 1/3 rd of amount by claims Tribunal on account of lumpsum payment, held unjustified.

2. Two persons namely, Hussain Ali and Khagon Chandra Kalita died in a motor accident on 10-12-1986 when the bus in which they were travelling met with an accident. Their widows. Nizita Bibi and Renu Bala Kalita, respectively, filed separate claims for award of compensation before the Motor Accidents Claims Tribunal. The Tribunal determined the amount of Rs. 51,000 as compensation payable to the widow of Hussain Ali and Rs. 1,05,000 as Compensation payable to the widow of khagon Chandra Kalita, However, the Tribunal deducted 1/3rd of the amount of compensation determined in each case on account of lump sum payment.The Claimants perferred appeals to the Guwahati High Court which has affimed the Tribunal's award. Hence. these further appeals special leave.

3. In our opinion, in the facts and circumstances of the case. the amount of compensation determined in each cash was at the figure which did not call for any further deduction thereon for any reason. The deduction of 1/3rd of the amount in each case is not, therefore, justified, The High Court did not correct that error. Accordingly, we correct that error and in addition, we award interest @ 12% p.a. on the amount of compensation from the date of the claim. This modification in the Tribunal's award has to be made in these appeals.

4. Consequently, the appeals are allowed to the extent that the direction

of the Tribunal for deduction of 1/3rd of the amount of compensation dete mined in each case is set aside. The resultl is that the compensation payab to Smt. Nizita Bibi, widow of Hussain Ali is Rs. 51,000 and the compensatic payable to Smt. Renu Bala Kalita and the other heirs of khagon Chandı Kalita is Rs. 1,05,000 without any deduction being made from the amount. I addition, in each of these cases, the claimants would also be paid interest c the amount of compensation @ 12% p.a. from the date of the claim. The Tribu nal would ensure payment of the entire amount in each of these cases throug a nationalised bank. Parties to bear their own costs.

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29. MOTOR VEHICLES ACT, 1988 SECTION 168 (1):-
(1988) 8 SCC 418
K. MURUGESH Vs. M. PALAPPA

Student aged 18 years dying in motor accident in 1989. Driver foun negligent. In Such circumstances the fact that the victim was not, held nc relevant for determining compensation payable to his parents. He was in th prime of his youth and had a lot of expectations from life, held relevant.

Paragraphs 3,4 and 5 are reproduced:-

This appeal has been filed on behalf of the parents of the deceased, wh became victim in an accident on 4-1-1989. Then he was aged 18 years. Th Motor Accidents Claims Tribunal recorded a finding in respect of the negli gence of the driver because of which the death occurred, but only an amoun of Rs. 30,800 along with interest at the rate of 6% p.a. was determined as the compensation payable to the appellants. On appeal being filed on behalf o the appellants, the High Court raised the amount of compensation by anothe Rs. 5000 i.e. to an amount of Rs. 35,800.

It has been rightly urged that in the facts and circumstances of the case, the amount determined as compensation payable to the appellant is inadequate. The victim was in the prime of his youth and had a lot of expectations from life. Merely because of that he was not earning being a student, according to us, is not a relevant consideration for the purpose of determining the compensation payable to the appellant.

Taking all the facts and circumstances into consideration. we direct Respondent 3, New India Assurance Co. Ltd. to pay an amount of Rs. 1,00,000 along with interest at the rate of 6% per annum from the date of filing of the claim petition. If the amount directed by the High Court has already been paid, then the balance about shall be paid within four months from today.

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30. MOTOR VEHICLES ACT, 1988 SECTIONS 166 AND 168/DETERMINATION OF QUANTUM OF COMPENSATION:-
(1998) 8 SCC 551
JAMNABAI Vs. DEEPAK AUTOMIBLES AND OTHERS

The short question is whether the claimants are entitled to enhanced damages as compared to Rs. 33,000 granted by the High Court for the death

f the son of Appellants 1 and 2 and brother of the remaining appellants. The ligh Court has passed the aforesaid award in motor accident claim on the round that the deceased at the age of 20 must be earning about Rs. 200 per ıonth. The contention of the appellants was that he was gainfully employed at ıe relevant time with Shrikrishna Vijay Sawmill, Aurangabad drawing Rs. '00 per month. But even leaving aside that tall claim, in our view, the de- ;eased must be earning more than Rs. 200 per month and, therefore, this is a ;ase for marginal enhancement of the compensation on the aforesaid ground ›y Rs. 17,000 more, thus making the total award of compensation to be Rs. ;0,000. That would also fall in the permissible liability of Respondent 3, Insur- ınce Company.

We, therefore, enhance the total compensation to Rs. 50,000 in all. We are told that the awarded amount of Rs. 33,000 has been paid by the Insurance Company to the appellant. Therefore, Respondent 3, Insurance Company, Shall now pay an additional amount of Rs. 17,000 to the claimants. Respondent 3 shall deposit the aforesaid amount of Rs. 17,000 in the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim No. 11 of 1983 within a period of six weeks from today. The said amount shall be permitted to be withdrawn by the claimants in full and final satisfaction of the claimants in these proceedings, on due verification of the claimants.

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31. PARTNERSHIP ACT : REGISTRATION OF PARTNERSHIP SS. 69 (2) & (3) BAR OF SUIT OR PROCEEDINGS.
(1998) 8 SCC 559
DELHI DEVELOPMENT AUTHORITY Vs. KOCHHAR CONSTRUCTION WORK

Suit includes proceedings under S. 20 of the Arbitration Act. Arbitration proceedings instituted under Section 20 of the Arbitration Act by respondent unregistered firm against appellant DDA. Held. it is void ab initio. This initial defect cannot be cured by subsequent registration of the firm.

NOTE:- The dismissal of a suit when it was sought to be withdrawn on the ground that the plaintiff thereunder was an unregistered firm, does not bar the filing of a fresh suit on the same cause of action after the firm gets its self registered and for doing so no permission is needed.

This appeal raises a short question regarding the interpretation of sections 69 (2) and (3) of the Indian Partnership Act, 1932 read with Section 20 of the Arbitration Act, 1940. The factual matrix in which this question arises may be briefly stated as under :

Respondent 1, an unregistered firm, filed proceedings under Section 20 of the Arbitration Act, 1940 in the High Court of Delhi. the Delhi Development Authority entered a counter and contested the proceedings on various grounds including the ground of limitation. The learned Single Judge allowed the suit and directed the appointment of an arbitrator. Against that order a first appeal was filed before a Division Bench of the High Court by the respondent. That

appeal was dismissed holding that the subsequent registration of the cured the initial defect since that was within the period of limitation. Hence appeal by special leave.

Section 69 (1) provides that no suit to enforce a right arising from a c tract shall be instituted in any court by or on behalf of any person suing a partner in a firm against the firm or any person alleged to be or to have b a partner in the firm unless the firm is registered and the person suing i has been shown in the Register of Firms as a partner in the firm. This s section begins with the words: "No suit... shall be instituted in any court which prima facie bar the institution of the suit by a firm which is unregister Sub-section (2) next provides that no suit to enforce a right arising fron contract shall be instituted in any court by or on behalf of a firm against a third party unless the firm is registered and the persons suing are or ha been shown in the Register of Firms as a partner in the firm. This sub-secti also begins with the words: "No suit... shall be instituted in any court..." wh clearly bar the institution of a suit by a firm which is not registered. The pro sions of sub-sections (1) and (2)have been made applicable to other pr ceedings to enforce a right arising from a contract by virtue of sub-section (3) of Section 69. It would thus seem on a plain reading of Section 69 (2) th a suit instituted in any court by or on behalf of a firm against any third pa shall not be valid unless the firm is registered and the persons suing are have been shown in the Register of Firms as partners of the firm. Plainly, tl institution of the suit itself is barred both by sub-section (1) and sub-section (of Section 69 of the Partnership Act. Section 20 of the Arbitration Act provid that where any persons have entered into an arbitration agreement before tl institution of any suit with respect to the subject-matter of the agreement b fore the institution of any suit with respect to the subject-matter of the agre ment or any part of it, and where a difference has arisen to which the agre ment applies, they or any of them, instead of proceeding under Chapter (Chapter II refers to arbitration without intervention of a court) may apply to court having jurisdiction whithout intervention of a court) may apply to a cou having jurisdiction in the matter to which the agreement relates, that the agree ment be filed in court. Such an application, says sub-section (2) there of, sha be in writing and shall be numbered and registered as a suit, Therefore, a application filed by an unregistered firm under Section 20 would also be treate as a suit and would be hit by Section 69 (2) if the firm filing the application i not registered with the Registrar of Firms. This appears to be the position i law which emerges on a plain reading of Section 69 of the Partnership Act an Section 20 of the Arbitration Act. This is the view which this Court took in th case of ***shreeram finance Corpn. Vs. Yasin khan 1989 (3) scc 476*** (paras 5 and 6). The fact that it is an application to be registered and numbered as a suit would not make any difference for the obvious reason that though sub sections (1) and (2) of Section 69 of the Partnership Act refer to a suit, sub section (3) there of makes those sub-sections applicable even to other pro ceedings which would include an application registered and numbered as a suit under Section 20 of the Arbitration Act". ***(See Jagdish Chandra Gupta v Kajaria Tradeers (India) Ltd.*** **(A.I.R. 1964 SC. 1882).**

Counsel for the respondents, however, invited our attention to two decisions which take a view that subsequent registration of the firm can cure the initial defect provided the registraction is before the period of limitation has run out. Our attention was drawn to ***M.S.A. Subramania Mudaliar v. East Asiatic Co Ltd. AIR 1936 Mad 991 and Atmuri Mahalakshmi v. Jagadeesh Traders*** **AIR 1990 AP 288.** However, the High Court of Patna in ***Laduram Sagarmal v. Jamuna Prasad Chaudhuri*** **AIR 1939 Pat. 239** and the High Court of Madras in ***T. Savariraj Pillai v. R.S.S. Vastrad & Co.*** **AIR 1990 Mad 198** take a contrary view and hold that the suit is incompetent ab initio. We have considered these decisions, but in the light of the plain language of Section 69 of the Partnership Act read with Section 20 of the Arbitration Act and in view of the decision of this Court reported in **Shreeram Finance Corpn. (1989) 3 SCC 476** we are clearly of the opinion that proceedings under Section 20 of the Arbitriation Act were ab initio defective since the firm was not registered and the subesquent registration of the firm cannot cure that defact.

In view of the above, we allow this appeal, set aside the order of the High Court and hold that the proceedings were ab initio defective as they could not have been instituted since the firm in whose name the proceddings were instituted was not registered at the date of the institution of the proceedings. We, however, make no order as to costs.

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32. COURT FEES ACT S.7 (IV) (C) AND (F)
1999 (1) M.P.L.J. 160 ***SURYAKANT RAJA RAM GUPTA Vs. RAJRAM CORN PRODUCTS LTD. AND ANOTHER***
AN ORDER BY HON'BLE SHRI JUSTICE C.K. PRASAD

ORDER

1. Plaintiff, being aggrieved by the order dated 29-11-1995 passed by the Second Additional District Judge, Rajnandgaon in Civil Suit No. 4-A of 1995, whereby the plaintiff has been held to be liable to pay Court fee on the valuation of the suit, i, e, Rs. 20,73,577.55 under section 7 (iv) (c) of the Court Fees Act, has preferred this Civil Revision under section 115 of the Code of Civil Procedure.
2. According to the plaintiff, presently he is the sole proprietor of the Rajaram Maize Products. According to the plaintiff, earlier, the aforesaid firm was a partnership firm and was registered in accordance with the provisions of the Indian Partnership Act and it had five partners which included the plaintiff. According to him dispute arose between the partners and accordingly a meeting of all the partners was held on 26-11-1992 and in the presence of the partners decision was taken to entrust Rajaram Maize Products of the plaintiff exclusively. Case of the plaintiff further is that after the entrustment of the aforesaid firm in his exclusive name he is running the firm and according to the document dated 26-11-1992 all the dues and liabilities have been paid.

3. Plaintiff has further averred that defendant No. 2 Subodh Kumar Gupta is plaintiff's eldest brother and he is the managing director of the defendant No. 1 Rajaram Corn Product Ltd. According to the plaintiff Rajaram Gupta father of the plaintiff and defendant No. 2 is the Chairman of the Company; defendant No. 1. Earlier plaintiff and defendant No. 2 were the partners of Rajaram Maize Products, It is allegation of the plaintiff that defendant, No. 1 i.e. Rajaram Corn Product Ltd. had an open and current account with Rajaram Maize Products. Defendant No. 1 has its units at Chandigarh and Bangalore. Rajaram Maize Products used to supply goods to defendant No. 1 at its both units and payments used to be made by them. Allegation of the plaintiff further is that on 31-3-1992 a sum of Rs. 12,53,865.00 was to be paid by Chandigarh unit of defendant No. 1 to Rajaram Maize Products. Similarly Bangalore unit of defendant No. 1 owed a sum of Rs. 8,27,01.46 to the plaintiff firm. Total sum according to the plaintiff thus, due against defendant No. 1 is Rs. 20,80,880.20 It is the assertion of the plaintiff that after 31-3-1992 defendant No. 1 sent bills for travelling of defendant No. 2 for participating in the meeting of the plaintiff's firm and other travelling bills, and the plaintiff got the amount of travelling bills deposited in the account of defendant No. 1 According to the plaintiff further adjustments were made in the accounts of defendant No. 1 and the plaintiffs firm and ultimately on 31-3-1993 a sum of Rs. 20,80,835.80 is outstanding against the two units of defendant No. 1. Case of the plaintiff further is that accounts officer of defendant No. 2 by his letter dated 30-5-1991 informed that according to the direction of Rajaram Gupta, out of the dues of the plaintiff's firm outstanding with defendant No. 1 a sum of Rs. 18,30,000/- be treated as advance payment for share capital. Plaintiff was further informed by defendant No. 2 that the Company defendant No. 1, has allotted share of the aforesaid amount. It is the allegation of the plaintiff that the plaintiffs firm does not carry on the business of purchase and sale of shares and it has not given any application to defendant No. 1 for purchase of shares. It is the allegation of the plaintiff that allotment of shares, for the amount to be recovered by the plaintiff from defendant No. 1 is illegal and void. Plaintiff has further stated that stand to defendant No. 1 that in view of the allotment of the shares to the plaintiff's firm, defendant No. 1 is not liable to pay the said amount is absolutely illegal. In the aforesaid premises the plaintiff prayed for the relief that defendant No. 1 had no legal right to transfer share of the value of Rs. 18,30,000/- in the account of the plaintiff's firm and the plaintiff is entitled to receive the aforesaid amount from defendant No. 1 Plaintiff further prayed that he is entitled to receive sum of Rs. 2,43,577.55 from defendant No. 1 Besides the aforesaid to relief plaintiff prayed for grant of interest at the rate of 18% per annum. Reliefs sought for by the plaintiff in the plaint deserves to be reproduced. It reads as follows:-

अनुतोषः

वादी निम्नलिखित अनुतोष हेतु प्रार्थना करता है–

अ. यह घोषित किया जाये कि प्रतिवादी क्रमांक 1 (एक) को राजाराम मेझ मैसर्स प्रोडक्टस के खाते में 18,30,000/- (अठारह लाख तीस हजार) रुपये नामें लिखने एवं प्रतिवादी क्रमांक 2 (दो) के निर्देशानुसार उपरोक्त राशि शेयर आवंटन पेटे जमा करने का कोई वैध अधिकार नहीं हैं। वादी उपरोक्त राशि प्रतिवादी क्रमांक 1 (एक) से पाने का पात्र है। तथा प्रदर्शित रूप में उक्त राशि समायोजित करने का अधिकार प्रतिवादी क्रं. 1 को नहीं था।

ब. यह कि वादी के पक्ष में एवं प्रतिवादी क्रमांक 1 (एक) के विरूद्ध 2,43,577 रुपये 55 पैसा (दो लाख तिरालीस हजार पांच सौ सतत्तर रुपये पचपन पैसा) की आज्ञप्ति पारित की जायें।

स. यह कि आज्ञप्ति राशि का वाद प्रस्तुति दिनांक से भुगतान दिनांक तक 18 प्रतिशत की दर से ब्याज दिलाया जाये।

द. यह कि वाद व्यय दिलाया जाये एवं अन्य अनुतोष जो न्यायालय उचित समझे दिलाया जाये।

Section 7 (iv) (c) of the Court Fees Act reads as follows:-

"7. Computation of fees payable in certain suits- The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:-

(iv) in suits:-

(c) For a declaratory decree and consequential relief:-

to obtain a declaratory decree or order, where consequential relief is prayed."

Stand of the plaintiff before the trial Court, was that, he shall be liable to pay Court-fee in accordance with Article 17 (iii) of Schedule II of the Court Fees Act which reads as follows:

"17, Plaint or memorandum of appeal- Thirty rupees in each of the following suits:-

(iii) To obtain a declaratory decree where no consequential relief is prayed."

4. Shri Agrawal, however, appearing on behalf of the plaintiff submits that neither section 7 (iv) (c) of the Court Fees Act nor Article 17 (iii) of Schedule II of the Court Fees Act applies in the facts of the present case, His stand is that the suit falls under section 7 (iv) (f) of the Court Fees Act. Section 7 (iv) (f) of the Court Fees Act reads as follows:

*"7. **Computation of fees payable in certain suits-*** The amount of fe payable under this Act in the suits next hereinafter mentioned shall be con puted as follows:

(iv) in suits:-

(f) For Accounts:

for accounts;

According to the amount at which the relief sought is valued in the plair of memorandum of appeal, with a minimum fee of twenty rupees.

In all such suits the plaintiff shall state the amount at which he values th relief sought"

5. As the matter pertains to payment of Court fee I thought it expedient t hear the Advocate General in the matter. Shir S.L. Saxena, Advocat General appeared on behalf of the State. Shri Jaiswal has appeared o behalf of the non-applicants. It is the stand of the Advocate General tha the reliefs sought for by the plaintiff is for a declaration that allotment o shares in favour of the plaintiff is null and void and consequential relie sought is that the plaintiff is entitled to receive the said amount. Accordin to his submission the relief sought for plainly attracts the provisions o section 7 (iv) (c) of the Court Fees Act.

6. As stated earlier, it is the submission of Shri Agrawal that the relief sough for by the plaintiff is covered under section 7 (iv) (f) of the Act. To drive home his point that in sum and substance the relief sought for by the plaintiff is for accounts and accordingly the provisions of section 7 (iv) (f) of the Court Fees Act is attracted. Shir Agrawal has taken me through the various paragraphs of the plaint. It is his submission that in artistic pleadings should not stand in the way of the Court in looking at the substance of relief asked for. In support of his submission Shri Agrawal has placed reliance on a judgment of the Supreme Court in the case of ***Shamsher Singh vs. Rajinder Prasad and others, AIR 1973 SC 2384*** and my attention has been drawn to the following passage from the paragraph 4 of the judgment which reads as follows:-

> "As regards the main question that arises for decision it appears to us that while the Court Fee payable on a plaint is certainly to be decided on the basis of the allegations and the prayer in the plaint and the question whether the plaintiff's suit will have to fail for failure to ask for consequential relief is of no concern to the court at that stage, the Court in deciding the question of Court-fee should look into the allegations in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for"

There is no difficulty in accepting the submission of Shri Agrawal that to understand the relief asked for, the Court is not precluded from seeing the substance of statement made in the plaint and the relief but in the present

case on facts. I find that the gravemen of the plaintiff's case is that share was allotted to the plaintiff's firm without any request and the decision to allot share be declared illegal and void and the amount refunded to the plaintiff. Thus, the authority relied on by the learned counsel is of no assistance. Yet another decision on which Shri Agrawal placed reliance is the judgment of the Supreme Court in the case of ***Kesharichand Jaisukhalal vs. Shilong Banking Corporation. Ltd. AIR 1965 SC 1711,*** and my attention has been drawn to the said judgment:-

"The next point in issue is whether the proceedings are governed by Art. 85 of the Indian Limitation Act, 1908 and if so whether the suit is barred by limitation. The argument before us proceeded on the footing that an application under section 45 (D) of the Banking Companies Act is governed by the Indian Limitation Act, and we must decide this case on that footing. But we express no opinion one way or the other on the question of applicability of the Indian Limitation Act to an application under section 45 (D) Now, Article 85 of the Indian Limitation Act, 1908 provides that the period of limitation for the balance due on a mutual open and current account, where there have been reciprocal demands between the parties is three years from the close of the year in which the last item admitted or proved is entered in the account, such year to be computed as in the account. It is not disputed that the account between the parties was at all times an open and current one. The dispute is whether it was mutual during the relevant period.

(10) Now, in the leading case of ***Hirada Basappa vs. G. Muddappa, 6 Mad, H.C. 142 at p. 144.*** Holloway, Acting. C.J., observed.

"To be mutual there must be transactions on each side creating independent obligations on the other and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations"

I am of the opinion that this authority is of no assistance for the determination of the question involved in the case. Lastly, Shri Agrawal has placed reliance on a judgment of the Supreme Court in the case ***The Vishnu Pratap Sugar Works (P) Ltd. vs. The Chief Inspector of Stamps, U.P. AIR 1968 SC 102,*** and my attention has been drawn to the following paragraph:

"It is true that for purposes of the Court Fees Act, it is the substance and not the form which has to be considered while deciding which particular provision of the Act applies. It cannot however, be gainsaid that the actual relief prayed for in the plaint was an injunction restraining the State and its authorities to realise from the appellant-company the aforesaid cess and the purchase tax. It is clear from the plaint when read as a whole that though the appellant-company alleged that the Acts were void and that therefore the State of U.P. or its authorities had no power to realise the said tax and the said cess, it

may be that while deciding whether to grant the injunction or not, the court might have to consider the question as to the validity or otherwise of the said Acts. But that must happen in almost every case where an injunction prayed for. If for the mere reason that the Court might have to go into such a question, a prayer for injunction were to be treated as one for a declaratory decree of which the consequential relief is injunction all suits where injunction is prayed for would have to be treated as falling under clause (a) of sub-section (iv) of section 7 and in that view Cl. (b) of sub-section (iv-B) of section 7 would be superfluous. The contention urged by Mr. Bishan Narain, therefore, cannot be accepted."

As stated earlier the plaintiff's relief is founded on the ground that the action of the defendant in allotment of shares is null and void and as a consequence thereof the plaintiff is entitled to a decree for the said amount. Here in the present case specific relief has been sought for i.e. for decree of the amount adjusted towards the shares. In that view of the matter the authority relied on is clearly distinguishable.

7. As pointed out by the learned advocate General plaintiff is required to pay Court fee on the amount which he seeks to recover. In support of the aforesaid submission he has relied on a Division Bench judgment of this Court in the case of ***Badrilal vs. State of M.P. 1963 MPLJ 717,*** wherein it has been held as follows:-

"It is obvious that, in each of the two cases before us, the plaintiff seeks to avoid his liability under a deed executed by himself which but for the suit, would be enforced against him. In this situation, his contention that the claim made from him cannot really be grounded on the deed is not material for valuing the relief claimed by him. We are, therefore, of opinion that the value of the relief of injunction claimed in each case is the amount, the liability for which he seeks to avoid."

8. To impress upon me that the suit filed by the plaintiff is not a suit for accounts, as contended by Shri Agrawal for the plaintiff, the Advocate General as also Shri Jaiswal contend that in a suit for accounts relief for specific amount cannot be prayed as the amount which would be found due is still to be decided. In support of his submission he has placed reliance on a judgment of the Supreme Court in the case of ***M/s Commercial Aviation & Travel Co. vs. Vimla Pannalal, AIR 1988 SC 1636,*** and my attention has been drawn to following paragraph:-

"In a suit for accounts it is almost impossible for the plaintiff to value the relief correctly. So long as the account is not taken, the plaintiff cannot say what amount, if at all, would be found due to him on such accounting, The plaintiff may think that a huge amount would be found due to him, but upon actual accounting it may be found that nothing is due to the plaintiff A suit for accounts is filed with the fond hope that on accounting a substantial amount would be found due to the plain-

tiff But the relief cannot be valued on such hope, surmise or conjecture."

In the present case I have found that the plaintiff has prayed for a decree for the amount which has been adjusted in the plaintiff's account in the form of share, after declaring the said action to be null and void, This Plainly brings the case of the plaintiff under section 7 (iv) (c) of the Court Fees Act, I do not find any error in the order impugned.

9. In the result, I do not find any merit in this civil revision and it is dismissed accordingly with cost. Hearing fee Rs. 1,000/-.

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33. I.P.C. : SECTION 302 : APPRECIATION OF EVIDENCE : MURDER CASE
(1998) 8 SCC 586
KRISHAN KUMAR Vs. STATE OF HARYANA

Accused running away from the spot. It is alleged that the accused murdered his mistress by pouring kerosene and setting her on fire. Two dying declarations recorded, one by the SI and the other by SDM. These dying declarations were believed by the lower Court. The conduct of accused in immediately after the incident running away from the spot negating the defence version that the deceased committed suicide. The defence witness found unreliable. The doctor opined that burn injuries found on the accused were possible while putting somebody on fire by pouring kerosene was accepted. Plea that the accused sustained those injuries while extinguishing fire not accepted.

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34. C.P.C : O. 34 Rr. 7 & 8 :-
(1998) 8 SCC 592
SUDESH VITHAL Vs. SADANANAD SHIVRAO

Suit was for redumption of mortgage. Preliminary decree not prepared in accordance with R. 7. Therefore, as per R. 8 application for final decree could not be moved within the period prescribed under Art. 137 of the Limitation Act. It was held that it is the obligation of the Court to prepare a preliminary decree in accordance with R. 7 and for the lapse on the part of the Court, appellant cannot be penalised on the ground that the application for final decree was barred by Limitation.

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35. REQUISTITONING AND ACQUISITION OF IMMOVABLE PROPERTY ACT. 1952 : SECTIONS 8 (3) AND 7 : COMPENSATION, INTEREST AND SOLATIUM :-
(1998) 8 SCC 593
UNION OF INDIA Vs. SWARAN SINGH

Leave granted. We have heard learned counsel on both sides. The only question is : whether the respondents are entitled to the payment of solatium and interest under the provisions of Requisition and Acquisition of Immovable Property Act, 1952. The controversy is no longer RES INTEGRA. A three-

Judge Bench of this Court in ***Union of India vs. Hari Krishan Khosla, 199: Supp (2) SCC 149*** had considered the entire controversy and had held tha the respondents were not entitled to the payment of interest and solatium. The learned counsel for the respondents sought to place reliance upon a two-Judge Banch decision in ***Rao Narain Singh vs. Union of India, (1993) 3 SCC 60.*** In view of the decision in Hari Krishan Khosla the ratio of Rao Narain Singh case is no longer good in law.

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36. CR. P.C. SECTIONS 313-315:-
(1998) 8 SCC 612
GAJENDRA SINGH VS. STATE OF RAJASTHAN

The accused appeared and wanted to produce the documents on which he relied. The documents were not produced before his evidence was recorded. The accused cannot be denied the opportunity to produce those documents.

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37. EVIDENCE ACT : SECTION 32 : DYING DECLARATION : CORROBORATION WHEN REQUIRED :
(1998) 8 SCC 618
STATE OF MAHARASHTRA Vs. MEHTABI

The dying declarations were recorded by the Head Constable and the doctor and they were found to be genuine and properly recorded. The deceased himself stated that the accused poured kerosene on her body and set her on fire. Finding of the High Court that there was no evidence to prove that the accused was in the house was patently wrong. Medical evidence supported the dying declaration.

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38. C.P.C. : O. 14 R. 2 : QUESTION REGARDING LIMITATION WHEN NOT TO BE DECIDED AS A PRELIMINARY ISSUE : QUESTION OF FACT - QUESTION OF LAW:-
(1998) 8 SCC 623
LUFTHANSA GERMAN AIRLINES Vs. VIJ SALES CORPORATION

The whole judgment is reproduced :-

The defendant is the appellant before this Court. The plaintiff-respondent filed the suit in question claiming an amount of 1,87,769.40 along with interest as damages for nondelivery of the goods to the consignee. The goods in question were carried by the appellant to London.

Apart from other defences which were taken on behalf of the appellant in the suit, a specific defence was taken that the suit itself was barred by limitation. According to the appellant, in the facts and circumstances of the case, Articles 10 and 11 of the Limitation Act, 1963 shall not be attracted, rather, the period of limitation has to be calculated in terms of Article 30 of the Second Schedule of the Carriage by Air Act, 1972.

The learned Judge decided the question of limitation as a preliminary issue and came to the conclusion that the suit was not barred by limitation. This appeal has been filed against the said order.

The learned counsel appearing for the respondent took an objection that the learned Judge should not have decided the question of limitation as a preliminary issue, especially when that question did not arise, merely on the basis of allegations made in the plaint. This Court has pointed out the undesirability of plaint. This Court has pointed out the undesirability of deciding a suit on a preliminary issue. This Court has also insisted that normally all issues should be decided while disposing of the suit. The amendment introduced in Order XIV Rule 2 of the Code of Civil Procedure by the Amendment Act 1976, also provides that not with standing that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2) of Rule 2, pronounce the judgment on all issues, Sub-rule (2) of Rule 2 of Order XIV is an exception where a suit can be disposed of on the question of law only.

After hearing learned counsel for the parties, we are of the opinion that the present case was not one of such suits which should have been disposed of on the preliminary issue. While deciding the question whether the suit was barred by limitation, the High Court had to examine the allegations made in the plaint and the stand taken by the appellant in the written statement. In our view, it shall not be proper for this Court to express any opinion on the finding recorded by the learned Single Judge on the question of limitation. The proper course shall be to direct that the trial of the suit which had been withheld for more than 14 years should proceed. We request the High Court to dispose of the said suit as early as possible. We make it clear that it will be open to the appellant if the suit is decreed in favour of the respondent to raise all the questions including in respect of the finding recorded by the learned Single Judge on the question of limitation before the court of appeal. The appeal is accordingly disposed of. No costs.

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39. SECTIONS 73 AND 45 OF THE EVIDENCE ACT :-
(1998) 8 SCC 613
AMARJIT SINGH Vs. STATE OF U.P.

Specimen writings obtained with the directions of the SDM. SDM neither conducting the enquiry nor was trial fixed before him. The SDM was not examined in the trial. There was no evidence to show that the specimen writing was given by the accused voluntarily. It was held that the specimen signatures were not meant to assist the "court to form its opinion" as envisaged by Section 73. Such lacuna affects the relevancy of the evidence of the expert. Identity of the documents on which expert gave his opinion was also not free from doubt.

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40. CR.P.C. SECTION 438 : GRANT OF ANTICIPATORY BAIL:-
(1998) 8 SCC 617
RAGHUVIR SARAN Vs. STATE OF U.P.

The Courts must give reasons for exercising its jurisdiction. Bail granted by High Court in a dowry death case without assigning any reason set aside.

Paragraph 2 of the judgment is reproduced :-

Heard counsel. We are surprised, not a little, that anticipatory bail has been granted in a matter where dowry death is alleged to have taken place and the investigation is in progress without assigning any reason whatsoever. If the provision in regard to grant of anticipatory bail is invoked at a stage when the investigation is in progress and the court is unaware of the seriousness of the matter, it would hamper the investigation itself. In any case, if the High Court felt inclined to grant anticipatory bail, it should have stated the reasons for exercising that jurisdiction. Otherwise every person against whom a first information report is lodged alleging a serious crime will rush to the High Court or the Sessions Court that the case may be considered and obtain anticipatory bail rendering the provisions of the Criminal Procedure Code in the matter of arrest, etc. redundant. If the High Court is inclined to grant anticipatory bail, it should indicate the reasons why it has exercised power in cases where if the allegations are true, some serious crime could be stated to have been committed. We, therefore, set aside the impugned order of the High Court dated 3-8-1995. We do not think that this is a fit case in which the power for grant of anticipatory bail should be exercised. We think that the High Court should have dismissed the petition and we hereby do so. the appeal will stand disposed of accordingly.

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41. HINDU LAW : WILL : SECTION 63 SUCCESSION ACT:-
(1998) 8 SCC 598
MANGAL SINGH Vs. NATHU SINGH AND OTHERS

Paras 6 to 8 of the judgment are reproduced:-

Curiously, the testator's thumbmark, and the signatures of the two attesting witnesses as well as that of the counsel drafting the will appear in line with one another at the same place from one edge of the page to the other. The endorsement purporting to have been made by the two witnesses that they had seen the testator thumbmark in their presence before they attested the Will, was patently wrong. for the testator had nowhere first thumb marked the Will whereafter the witnesses had attested it. Due to lack of proper execution and without any plausible explanation rendered, we thus get to the considered view that the second Will can also not be relied upon. To this extent, the appellants must succeed.

We thus cast away the second Will from consideration as the governing factor of succession of the estate of Sohan Singh, deceased. His estate would thus go by natural succession.

Parties' counsel, as goes the earlier narration, are in unison that there

were three nephews and two nieces of Sohan Singh; they being his brother, Pir Mal's children, Under the Hindu Succession Act, 1956 all those five would share the estate equally. Thus, the suit of the plaintiff-appellants would stand succeeded to the extent of their two shares out of the five shares of the property in dispute. The judgments and orders of the courts below would thus stand modified to this extent partly decreeing the suit to the extent of 2/5th share in the property in dispute in their favour.

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42. SPECIFIC RELIEF ACT SECTION 10 AND TRANSFER OF PROPERTY ACT SECTION 58:-
1999 (1) VIDHI BHASVAR 46
BHADRI PRASAD VS. SMT. KESHARBAI

Registered sale deed with an agreement to reconvey within six years is a document of out and out sale with a condition of resale. Time is the essence of the contract. It is not a document of mortgage by a conditional sale. It was a registered sale deed with possession and there was an agreement to sale within six years.

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43. CR. P.C. SECTION125 :-
1999 (1) VIDHI BHASVAR 54
ABDUL HAMID VS. SMT. SHABIHA

Daughter not suffering from any physical or mental abnormality is entitled to have maintenance from her father till she attains majority. Thereafter no such claim lies.

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44. C.P.C. SECTION 107 (1) (B) : REMAND FOR RECORDING FURTHER EVIDENCE : VALIDITY:-
(1999) 1 SCC 298
THATCHARA BROTHERS VS. M.K. MARYMOL

Remand for recording further evidence. Validity. Pursuant to an agreement for sale executed by the deceased father of minor children, their mother executing sale deed in respect of a piece of land. Minor children challenging the sale deed for want of court's permission. On the basis of admission by one of the plaintiffs, appearing as PW, and the recital in sale deed, the trial court finding that a small building left by their deceased father was reconstructed with the amount received from the impugned sale and the same was fetching rent. Trial court further finding that the rental so received was the only source of maintenance and education of the minor children. The trial court, therefore, dismissing the suit. High Court upholding these findings and also holding that prior permission of the court was not required. In such circumstances, High Court's order remanding the matter to the trial court to record further evidence to prove that the sale proceeds had been invested in immovable property, held, unsustainable. Evidence Act, 1872, S. 58, Guardians and Wards Act, 1890, Ss. 27 and 29.

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45. SERVICE LAW : CANCELLATION OF APPOINTMENT BEFORE IT BECOMES EFFECTIVE : NATURAL JUSTICE:-
(1999) 1 SCC 422
DR. J. SHASHIDHARA PRASAD VS. GOVERNOR OF KARNATAKA AND OTHERS

The appellant was appointed as Vice-Chancellor with effect from 4.9.1997. The order issued on 20.8.1997 but on 21.8.1997 appointment order was cancelled on the ground that a criminal case was pending against the appellant and therefore, the Chancellor did "not find it desirable to appoint (the appellant) as the Vice-Chancellor". Appellant was subsequently acquitted in the criminal case. The cancellation order, held on facts, was not stigmatory, nor principles of natural justice attracted in this case. The appellant's plea was rejected that he should have been afforded opportunity of hearing before cancellation.

It was further held that there was no necessity for giving opportunity to the appellant before the Chancellor passed order dated 21.8.1997 rescinding his earlier order dated 20.8.1997. The Order dated 21.8.1997 say, "Whereas under the above circumstances, I do not find desirable to appoint (the appellant) as the Vice-Chancellor". This order does not cast any stigma on the appellant because it does not say that the appellant was an undesirable person and that he should not be appointed. The order dated 21.8.1997 means only that in view of the facts stated in this order, it was not desirable on the part of the Chancellor to appoint this particular person, However, if on future any vacancy arises and an occasion arises for the selection pannel to consider different names to the post, nothing prevents that panel from considering the name of the appellant also.

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46. BONAFIDE REQUIRMENT OF LANDLORD : KARNATAKA RENT CONTROL ACT, 1961 SECTION 21 (1) (h) :-
(1999) 1 SCC 439
M.S. ZAHED VS. K. RAGHAVAN

Premises "reasonably and bona fide" required. Requirement must not only be bonafide but also be reasonable. Word 'reasonably'. Significance of. Comparative hardship to be seen. Landlord and tenant residing in the same building. Eviction petition filed by landlord on ground of requirement of additional space. Family of landlord comprising of himself, his wife, two grown-up daughters and two minor children and also widowed mother often staying. Family of tenant comprising himself, his wife,four children unemployed brother and mother. Landlord in possession of a substantial protion of the ground floor and also entire first floor. Tenant in possession of only a hall admeasuring 7'2"x10'10" and a bedroom admeasuring 10'x2"x 5'5" apart from a kitchen and a toilet in the ground floor of the same building. Having regard to size of families of both the parties, accommodation in their possession, their status and economic position, held, though landlord's requirement of additional space was bonafide, but there being no genuine existing need for the same, requirement was not reasonable.

B. REVISIONAL JURISDICTION UNDER RENT CONTROL ACT: SECTION 115 C.P.C. :-

Provisions relating to rent control compared.

It was held that the powers of revision available to the High Court under Section 115 CPC are circumscribed and only errors of jurisdiction if detected from the order sought to be revised can be corrected by the High Court. Even the statutes conferring powers of lower courts or authorities are legal or proper, would enable the High Court to exercise jurisdiction that is wider than the one under Section 115 CPC but not so wide as to enable the High Court to correct mere errors of facts. The legality of the order of the Small Cause Court which would fall for consideration of the High Court would pertain to errors of law that might have been committed by the said Court. But the High Court in exercise of its revisional jurisdiction under Section 50 (1) of the karnataka Rent Control Act can consider the question whether the order of the Court of Small Causes were correct or not in the light of the evidence on record. Though revisional power cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal, but still the nature of the revisional jurisdiction of the High Court under Section 50 of the Act will have to be considered in the light of the express provisions of the statute conferring such power. On the express language of Section 50 (1), therefore, it cannot be said that the High Court had no jurisdiction to go into the question of correctness of findings of fact reached by the Court of Small Causes on relevant evidence.

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47. SERVICE LAW : COMPULSORY RETIREMENT : PUBLIC INTEREST : MODE OF CONSIDERATION:-

(1999) 1 SCC 529

STATE OF GUJARAT VS. SURYAKANT

Compulsory retirement. Public interest, held is the primary consideration. Only honest and efficient persons are to be retained in service while dishonest, corrupt and dead wood, to be dispensed with. Efficiency and honesty to be assessed on the basis of material on record, of which confidential report are an important input. An employee with doubtful integrity cannot be considered as efficient. No tangible material found against respondent except that he was involved in two criminal cases relating to issue of bogus permits and tampering of official records. Pendency of the cases, held in itself was not sufficient in the present case to retire respondent compulsorily though it depends upon nature of offence and circumstances of each case to judge nature of offence and circumstances of each case to judge whether involvement in a criminal case can be a ground for compulsory retirement. Further, held, Review Committee exceeded its jurisdiction in doubting respondent's integrity on the basis of pending criminal cases when there was no indication of doubtful integrity in the confidential reports. Order of compulsory retirement in the present case, held, was passed for a collateral purpose of removing respondent immediately from service and therefore it was punitive and without any

public purpose. Bombay Civil Services Rules, 1959 R. 161. Administrative Law. Administrative action. Colourable exercise of power.

B. CONFIDENTIAL REPORT : ADVERSE REMARKS: PURPOSE OF:-

Communication is to afford an opportunity to employee to improve himself or to explain his conduct.

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48. MOTOR VEHICLES ACT, 1939, SECTION 110-A: NEGLIGENCE:-
1999 (1) VIDHI BHASVAR 36
M.P.S.R.T.C. VS. MAHILA SHANTI DEVI

The negligence of offending bus driver proved by witnesses. Bus driver also not stopped bus after accident but on the contrary got it washed for removing blood stains and he also tried to disturb position of spot. His negligence was proved. Case of negligence was made out.

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49. MOTOR VEHICLES ACT, 1988, SECTION 168:-
1999 (1) VIDHI BHASVAR 17
MOOLCHAND VS. S.S. PARIHAR

Bone injuries resulting in permanent disability. Minimum compensation should be Rs. 50,000/-. In injury case it is very difficult to value in terms of money. No amount of compensation can restore physical frame of the injured. Award in comparable cases has to be resorted to as held in ***Shri Jai Bhagwan Vs. Laxman Singh, 1994 ACJ 1983 (SC).***

Paragraphs 3,4 and 5 of the judgment are reproduced:-

The appellant claimed compensation of Rs. 14,21,940/-. The learned Tribunal, after appereciation of evidence adduced by the parties, held that the accident was caused due to sole negligence of the truck driver. Therefore, under the head of pecuniary damages, awarded Rs. 22,000/- for medical care, Rs. 3,000/- towards expenses incurred in performing journey from Raipur to Bombay, Rs. 2,140/- for engaging one attendant and Rs. 30,000/- for the loss of pay for a period of six months (in all Rs. 57,200/-) Under the head of non-pecuniary damages for the pain and sufferings, which the appellant had suffered, an amount of Rs. 25,000/- was awarded Thus, a total amount of Rs. 82,200/- was awarded with interest @ 18% per annum from the date of application i.e., 3-2-1990 till realisation.

The task of assessment of compensation in injury claim cases is very difficult one, inas-much as, for human sufferings resulting inas-much as, for human sufferings resulting any serious bodily injury cannot from its very nature be valued in terms of money. No amount of compensation can restore the physical frame of the appellant. Therefore while determining the damages, the reasonable compensation with moderation having regard to the award in comparable cases has to be awarded. See ***Jai Bhagwan v. Laxman Singh and others*** (1994 ACJ 983 SC).

In case of ***B.D. Hattangadi v. M/s Pest Control (India) Pvt. Ltd. and oth-***

ers (AIR 1995 SC 755), the Supreme Court has laid down the principles for assessment of compensation in injury claim cases. The damages are awarded in two heads-pecuniary damages and non-pecuniary damages. So far as the award of damages under the head of pecuniary damages under the head of pecuniary damages' is concerned, the Tribunal has rightly awarded the amount of compensation on the evidence adduced, which we are not inclined to enhance. The non-pecuniary damages include : (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, harship, discomfort, disappointment, frustration and mental stress in life; from the very nature the Tribunal or a court is required to fix the amount of compensation in cases of accident, on some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be reviewed with objective standard.

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50. MOTOR VEHICLES ACT, 1988, Ss. 168 (1) AND 171 : FATAL ACCIDENT COMPENSATION PAYABLE TO DEPENDANTS:-
(1998) 8 SCC 633
DONAT LOUIS MACHADO VS. L. RAVINDRA

Deceased aged about 31 years earning Rs. 2,500/- per month as journalist. Compensation was claimed by parents and sister who were dependants on him. The Supreme Court estimated his earnings at the end of his career had he not died, to reach Rs. 7,500/- per month. Taking an average at 50% his future monthly income during the rest of his life could be Rs. 3,750/- per month. On that basis 12 months' earning would have been Rs. 45,000 and adopting a multiplier of 15 his estate would work about Rs. 6,75,000/- But taking a conservative figure of Rs. 6 lakhs, the claimants, who were dependants on him would have got at least 1/3rd of the amount. Hence Rs. 2,00,000/- held was appropriate compensation payable to them. Therefore,compensation of Rs. 1,27,000 awarded by High Court enhanced by 73,000 which would carry interest @ 9% from the date of filing of claim petition till payment.

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51. MOTOR VEHICLES ACT, 1988, S. 168 (1) : NEGLIGENCE- COMPENSATION:-
(1998) 8 SCC 686
BIMLESH VS. H.P.R.T.C.

The deceased was going on a motor cycle uphill. Traffic rules requiring precedence to be given to the traffic moving uphill by the traffic going downhill. Duty of bus driver coming downhill was even greater on a curve. Moreover, the distance to which the motorcycle was pushed back as a result of

impact and the distance at which the motorcyclist fell after the impact with the bus indicating that the bus was being driven at a comparatively high speed while coming downhill even when the bus driver had spotted the traffic moving uphill on a curve. Held on facts, negligence of bus driver as the cause of fatal accident proved. Torts. Negligence. Inference of, from facts.

B. MOTOR VEHICLES ACT, 1988- Ss. 168 (1), 166 AND 171 : FATAL ACCIDENT:-

Deceased aged 37 years and was a man of some means since he owned a motorcycle. Claimants being the widow and four minor children. Tribunal awarding Rs. 42,000 which was too inadequate. Therefore Supreme Court on finding a clear case of negligence awarding a further lump sum amount of Rs. one lakh in all (inclusive of interest).

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52. MOTOR VEHICLES ACT, 1988, SS. 168 (1), 166 AND 171 : COMPENSATION QUANTUM OF:-
(1998) 8 SCC 688
R. SULOCHANA VS. ULLGANNAL

Fatal accident claim. Deceased an unmarried man aged about 21 years age. Sole claimant being the mother aged about 45 years.

Paragraphs 2, 3 and 4 of the judgment are reproduced:-

The short question is in regard to the quantum of compensation. The accident took place on 6-6-1979 which caused the death of a young unmarried man aged about 21 years. The mother of the deceased aged about 45 years was the sole claimant before the Tribunal.

The claim for compensation was laid on the averment that the deceased was working as a Mechanic and was earning about Rs. 600/- per month. The Tribunal took the view that he would be retaining about Rs. 100/- for pocket expenses and contributing the remaining Rs. 500/- to the family. The Tribunal, however, proceeded on the premises that out of the said contribution the contribution of the mother could be worked out at Rs. 100/- per month. Employing 15 year' multiplier factor, the Tribunal determined the compensation at Rs. 18,000/- and awarded the same with 6% interest. We are afraid that the Tribunal took a very conservative approach.

We have no reason to doubt the statement that the deceased was employed and was earning about Rs. 600/- per month. If the family comprised of the deceased and his mother we think that a large part of the income would be spent on the maintenance of the family. True it is that the mother, who was aged about 45 years would not have received the same benefit from the son's earning for more than five years because in the meantime the boy would have married. We are, therefore, of the opinion that keeping these factors in mind, it would be appropriate to award a sum of Rs. 30,000 by way of compensation with interest as directed under the impugned order. The appeal will stand allowed accordingly with no order as to costs.

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53. MOTOR VEHICLES ACT, 1939, Ss. 95 (2) (b) & 110-A: INSURER'S LIABILITY IN RESPECT OF THIRD PARTY RISK:-

(1999) 1 SCC 552

NATIONAL INSURANCE CO. LTD. VS. NATHILAL

Brief facts of the case are following:-

Respondents 1 and 2 filed a claim petition under Section 110-A of the Motor Vehicles Act, 1939 claiming damages in a sum of Rs. 6,50,00 for the death of their son, Akhilesh kumar, aged about 22 years. The deceased Akhilesh kumar was travelleng in a jeep bearing No. RST-1286 along with three other adults and two children from Jaipur to Sawai Madhopur when the accident took place on 4-5-1998/5-5-1998 at about 1.15 a.m. Before the Motor Accident Claims Tribunal (for short "the Tribunal") the appellant took a stand that its liability was restricted to a sum of Rs. 15,000 under the Policy. The said stand of the appellant was not accepted by the Tribunal and by its award dated 27-2-1993, it held that the liability of appellant was unlimited and awarded a compensation in a sum of Rs. 2,44,000 with interest at the rate of 12% per annum.

6. A perusal of the Insurance Policy, which has been exhibited through the witness examined on behalf of the Insurance Company, clearly shows that the Policy was in respect of seven passengers and one driver. The premium under Part B of the Schedule of Premium paid as against the seven passengers at Rs. 12 per passenger was shown as Rs. 84 and an additional sum of Rs. 8 for the driver. In addition to this, a premium of Rs. 180 was paid towards liability to public risk. As against unlimited liability column, no premium was paid as is evident from the Policy. The mere fact that the column against unlimited liability was not filled, will not automatically lead to the inference that the liability was unlimited in the absence of any special premium paid towards that claim.

7. This Court in ***National Insurance Co. Ltd. V. Jugal Kishore*** while considering a similar case, held as follows: (SCC pp. 629-30, para 6)

> "6. We have accordingly perused the photostat copy of the policy to ascertain whether risk for any amount higher than the amount of Rs. 20,000 contemplated by clause (b) aforesaid was covered. Our attention was invited by learned counsel for the respondents to the circumstance that at the right-hand corner on the top of p. 1 of the policy the words 'Commercial Vehicle Comprehensive' were printed. On this basis and on the basis that the premium paid was higher than the premium of an 'act only' policy it was urged by the learned counsel for the respondents that the liability of the appellant was unlimited and not confined to Rs. 20,000 only. We find it difficult to accept this submission. Even though it is not permissible to use a vehicle unless it is covered at least under an 'act only' policy it is not obligatory for the owner of a vehicle to get it comprehensively insured. In case, however, it is got comprehensively insured insured a higher premium than for an 'act only' policy is payable depending on the estimated

value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss of damage suffered up to the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf. Comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of the liability with regard to third-party risk becomes unlimited or higher than the statutory liability fixed under sub-section (2) of Section 95 of the Act. For this purpose a spsecific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf. Likewise, if risk of any other nature, for instance, with regard to the driver or passengers etc. in excess of statutory liability, if any, is sought to be covered it has to ***be clearly specified in the policy and separate premium paid therefor".*** (emphasis supplied)

8. In the light of the above ratio laid down by this Court and in view of the fact that no extra premium was paid towards unlimited liability as is clear from the Policy produced before the Tribunal, the judgment and order of the Tribunal affirmed by the High Court cannot be sustained and are, accordingly, set aside. The liability of the Insurance Company is limited to Rs. 15,000. The award of the Tribunal will accordingly stand modified insofar as the liablility of the appellant- Insurance Company is concerned.

9. This Court by an order dated 24-10-1994, while granting interim stay, directed the appellant-Insurance Company to deposit the entire award money in the Tribunal. It further permitted the claimant to withdraw a sum of Rs. 50,000 out of such deposit. The balance amount was directed to be invested in a long-term deposit in a scheduled bank. The appellant-Insurance Company is permitted to withdraw the amount in deposit with accrued interest in view of its success in this appeal. The amount paid to the claimant, pursuant to the order of this Court, shall not be recovered from the claimant but the appellant can recover that amount from the owner of the vehicle.

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54. MOTOR VEHICLES ACT, 1988- S. 151 : INSURANCE POLICY NON-PRODUCTION OF:-
(1998) 8 SCC 698
MANIKRAM VS. BALUKHAN

This Court had by an order dated 21-7-1995 directed the New India Assurance Company Limited, Bombay, to produce a copy of Policy No. 44392 in respect of the 1975 model Tourist Bus No. UPO 2545, which it was stated, was valid up to 1-10-1995. Even though more than six months have expired neither has the policy been produced nor has any responsible officer of the Bombay office filed an affidavit explaining why the policy has not been pro-

duced. In such circumstances it would be legitimate for the Court to raise an adverse inference.

However, we find that the appellate court disposed of the appeal on the limited ground of inordinate delay. The reason for the delay was sought to be explained by the appellant by poiniting out that the appellant was desperately trying to secure a copy of the Insurance Policy but had not been successful and hence the delay had taken place. It was important for the appellant to produce the copy if it was available as it had a significant bearing on the question of meeting the requirement of payment of compensation amount to the injured person. We think that having regard to the facts and circumstances of this case, the High Court ought not to have taken a strict view of the matter because the delay was not deliberate and there was nothing on the record to show that the appellant had acquiesced in the matter. Instead we find that the appellant was making efforts to secure a copy of the Insurance Policy which would indicate that he was keen to prosecute the matter. In the circumstances, we allow this appeal, set aside the order of the High Court and direct that the appeal be admitted and be heard on merits. There will be no order as to costs. The matter deserves to be expedited.

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55. MOTOR VEHICLES ACT, 1939, S. 95 (1) (b) (I) & PROVISO (II) (AS AMENDED IN 1969) LIABILITY OF INSURER OF GOODS VEHICLE (1999) 1 SCC 403
MALLAWWA (SMT) VS. ORIENTAL INSURANCE CO. LTD.

Whether passenger was carried for hire or reward within the meaning of proviso (ii). The context was explained by the Supreme Court only a vehicle which is used for a systematic carrying of passengers, held, can be said to be a vehicle in which passengers are carried for hire or reward. Hence, persons travelling in goods vehicles, whether owners of the goods or passengers on payment of fare or gratuitous passengers, who died in accident met with by such goods vehicle, held not covered by proviso (ii). Therefore, the insurer of the goods vehicle is not liable to pay compensation for their death. **Pushpabai Purushottam Udeshi case** (1977) 2 SCC 745, arising under the 1939 Act as corresponding Section 147 of 1988 Act has been substantially altered the Moter vehicles Act, 1988, on 147.

The instant appeals were referred by a two-Judge Bench to a three-Judge Bench, inter alia, for reconsidering the case of ***Pushpabai Purshottam Udeshi case,*** (1977) 2 SCC 745. The question was whether the insurer of the goods vehicles was liable to pay compensation in case of death of persons travelling in such a vehicle. In some of the appeals the deceased were owners of goods and as such were carried in the goods vehicles. In some appeals the deceased were travelling in goods vehicles as passengers on payment of fare, In one case, the deceased was a gratuitous passenger. Since the cases related to the period between 1971 and 1985, the Supreme Court considered Section 95 of the Motor Vehicles Act, 1939 as amended by Act 56 of 1969 and answering the said question in the negative.

It was further held that

The legislature after providing generally in Section (95 (1) (b) in wide terms so as to include "any person" and every motor "vehicle" within its sweep, carved out a certain exception by adding a proviso to that clause. By proviso (ii), it restricted the generality of the main provision by confining the requirement to cases where "the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment". In the first instance, the vehicle had to be a vehicle of that class in which passengers were carried. If that was not the intention of the legislature, it would not have used the phraseology "the vehicle is a vehicle in which passengers are carried" and would have simply provided that "except where passengers are carried for hire or reward.........". So also the compulsory coverage was not intended for all passengers. Thus, the confinement of the operation of the main provision was in respect of vehicles and also passengers. And that was consistent with the English law on which Section 95 was based. (Paras 7 and 8)

Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (p) Ltd. (1977) 2 SCC 745 : AIR 1977 SC 1735, affirmed

Halsbury's Laws of England; Bingham's Motor Claims Cases, referred to

Section 95 was amended by Act 56 of 1959. Clause (b) was substituted by a new clause. The proviso remained as it was. The object of the legislature in making that amendment was to cover the risk in respect of passengers of public service vehicles. The legislature, therefore, made a special provision in clause (b) (ii), leaving the rest of sub-section (1) including the proviso as it was. This shows that the legislature did not want to make any change in the position of law except to provide specifically for covering risk to passengers of public service vehicles. Though apparently it looked as if the legislature by introducing two sub-clauses in clause (b) had tried to make a distinction between passengers and non-passengers, that was not really so. Though the proviso appeared after clause (b) (ii), it really remained a proviso to the earlier clause (b) which after the amendment became clause (b) (i). Neither the object of introducing sub-clause (ii) in clause (b) nor the language of the proviso indicate that the proviso was to act as a proviso to sub-clause (ii) also. Even earlier, the passengers of a public service vehicle were required to be covered compulsorily as they answered the description of passengers carried for hire or reward. The only effect of making a special provision for pasengers of a public service vehicle was that proviso (ii) thereafter remained applicable to vehicles other than public service vehicles.

Keeping in mind the classification of vehicles by the Act, the requirement of registration with particulars including the class to which it belonged, requirement of obtaining a permit for using the vehicle for different purposes and compulsory coverage of insurance risk, it would not be proper to consider a goods vehicle as a passenger vehicle on the basis of a single use or use on some stray occasions as a vehicle for carrying passengers for hire or reward.

For the purpose of construing a provision like proviso (ii) to Section 95 (1) (b), the correct test to determine whether a passenger was carried for hire or reward, would be whether there has been a systematic carrying of passengers. Only if the vehicle is so used then that vehicle can be said to be a vehicle in which passengers are carried for hire or reward. (Para 10)

New India Assurance Co. Ltd. v. Kanchan Bewa, 1994 ACJ 138 (Ori), approved

Pushpabai Purshottom Udeshi v. Ranjit ginning & Pressing Co. (P) Ltd. (1977) 2 SCC 745 : AIR 1977 SC 1735, affirmed

Chamber's English Dictionary, Black's Law Dictionary, 5th Edn., referred to.

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56. CR. P.C. SECTION 482 : FRAMING OF CHARGE : CONSIDERATION BY THE COURT :-
(1998) 8 SCC 630
STATE OF M.P. Vs. HARSH GUPTA

It was held that the only question to be considered was whether the complaint and its accompaniments disclosed or all of the offences alleged against the respondent.

Paragraphs 2,3 and 4 of the judgments are reproduced:-

On a complaint lodged by the Divisional Forest Officer, Morena under Sections 5-C 12, 12-A and 16 of the Madhya Pradesh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 and Sections 26 and 42 read with Section 41 of the Indian Forest Act, 1927 (hereinafter referred to as "the Act"), the respondent was summoned by a Judicial Magistrate to stand trial. Assailing his prosecution he moved an application under Section 482 of the Code of Criminal Procedure which was allowed by a Single Judge of the High Court. Hence this appeal at the instance of the State of Madhya Pradesh.

It is rather surprising that at a stage when the only question to be considered was whether the complaint and its accompaniments disclosed any or all of the offences alleged against the respondent, the learned Judge not only went into a detailed discussion about his defence but recorded a conclusive finding that he was not guilty of the offences alleged against him. More surprising is that the learned Judge ignored the provisions of Section 69 of the Act which expressly raises a statutory presumption against a person arraigned that the forest produce recovered from him was a property of the Government, until the contrary is proved; and needless to say, the question of proof of the contrary can be answered after evidence is led.

For the foregoing discussion, we allow this appeal, set aside the impugned judgment and direct the Magistrate to proceed with the case in accordance with law, without in any way being influenced by any of the observations made by the High Court in the impugned order.

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57. **CIVIL SERVICE PENSION RULES 1976 M.P. R. 42 (1) (A) AND R. 42 (2) VOLANTARY RETIREMENT :**
1999 (1) JLJ 169 (D.B.)
NARAYAN PRASAD Vs. HON'BLE DISTRICT AND SESSIONS JUDGE, RATLAM

Application for voluntary retirement fulfilling all requirements though not in prescribed form No. 28, it is acceptable even if it is not in proper proforma. Substance is to be preferred. In an application for voluntary retirement no reason need be given. It may be given after completion of 20 years of service. However, no acceptance of the appointing authority is required. Relationsship of master and servant seizes after completion of notice period.

Indra Prakash vs. State of M.P. 1985 JLJ 504 was relied on.

Government servant voluntarily electing for retirement is submitted an application therefore cannot subsequently withdraw it except with specific approval of appointing authority. In the present case the withdrawal was refused with valid reasons. Therefore, it cannot be questioned. ***Balaram Gupta vs. Union of India, AIR 1987 SC 2354*** was distinguished, on facts.

Powers of Judicial review under Art. 226 of the Constitution of India are limited and are meant to ensure that the individual receives fair treatment. They cannot be exercised as appellate powers. Procedural correctness can be examined. ***Haryana Urban Development Authority Vs. Recchira Ceramics, (1996) 6 SCC 584*** followed.

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58. **CIVIL SERVANT : OPPORTUNITY TO CROSS EXAMINE THE WITNESSES: ATTENDANCE REGISTER OF A GOVERNMENT DEPARTMENT AND MEDICAL REPORT OF A GOVERNMENT HOSPITAL, COVERED BY SECTIONS 35 AND 114 (E) OF EVIDENCE ACT :-**
1999 (1) JLJ 209 (D.B.)
BALARAM VERMA Vs. UNION OF INDIA AND OTHERS

Attendance Register of a Government department and medical report of the Government hospital may be presumed to be correct. It is the outcome of the regular office business. Presumption can be attached to the document if not rebutted. If an opportunity to cross-examine the witnesses is not given to the delinquent officer the reports of such witnesses cannot be relied on. Under Section 3 of the Evidence Act presumption is not by itself an evidence. It only makes a prima facie case for party in whose favour it exists. Strict law of evidence is also not applicable. The decision Should be based on material of some probative value. Reports of high officials. It would be difficult to maintain discipline if cross-examination is insisted upon.

The disciplinary authority infer one fact from the existence of another proof or admitted fact. Principles of natural justice require opportunity of adducing all evidence. Evidence of opponent should be taken in his presence. Opportunity of cross-examination should be given. The material for which

explanation is not ask should not be relied upon. **AIR 1957 SC 882, *Union of India Vs. T.R. Varma*** followed.

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59. WORDS AND PHRASES:-
1999 (1) JLJ 223
RAMESH CHANDRA Vs. STATE OF M.P.

Judge : Judge has to exercise a discretion informed by traditions, methodised by analogy, disciplined by system etc.

In paragraph 6 of the judgment reference of 'Cardazo' has been given which runs as under:-

> "The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight errant roaming at will in suit of his own ideal of beauty or of goodness. He is to draw his inspiration, from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life. Wide enough in all conscience is the field of discretion that remains.'

Practice: Civil: Discretion:-

The 'discretion' has to be used always with a circumspective approach of the facts and circumstances of each and every case, but however that is to be consistent with traditions, methodized analogy and disciplined system. That should be also consistent with consecrated principles. It should look reasonably in approach.

Criminal Trial : Sentence :- Sentence which has been used in Sections 389 and 397 of the Code means substantive sentence as well as sentence of fine. The power of suspending of sentence includes suspending of fine also.

NOTE:- Please refer to Section 424 of the Cr. P.C. with reference to suspension of sentence of fine also. Section 424 Cr.P.C. deals with suspension of execution of sentence of imprisonment and Section 389 deals with suspension of sentence and release of the appellant on bail when the appeal is pending. Please also refer to article in Vol. II, Part III (June 1996) 'JOTI JOURNAL' page 9 " Suspension of sentence, powers of trial Court".

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60. CR. P.C. SECTION 154 : DELAY IN : LODGING F.I.R.:-
1999 (1) JLJ 228
BRINDAWAN SINGH Vs. STATE

Delay in lodging F.I.R. was fully explained and cognet reasons were given for the delay. Delay has no adverse consequence when the offence is rape. ***AIR 1955 SC 2472 Karnel Singh vs. State of M.P.and AIR 1996 SC 1993 State of Punjab vs. Gurumith Singh*** relied on.

I.P.C. Sections 376 and 366 :- Sexual Offence :- Prosecutrix cannot put on par with accomplice. Her statement duly corroborated by other witnesses,

sufficient for conviction. State of Punjab vs. Gurumith Singh, 1996 (Cr.) 316 and AIR 1996 SC 1993 relied on.

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61. I.P.C. SECTION 306 READ WITH SECTION 107:-
1999 (1) JLJ 232
NARENDRA SINGH Vs. STATE OF M.P.

The prosecution has to prove commission of suicide by a person, and further prosecution has to prove that accused abetted, the commission of suiside. In accorance to Section 107 ingredients have to be proved against accused.

Evidence Act, S. 113A & I.P.C.S. 498A:- presumption under S. 113A of the Act can be drawn only when marriage is proved within 7 years and cruelty as defined under section 498-A of the Code is also proved.

NOTE:- Please refer to Vo1. V Part I (Feb. 1999) page 11 'JOTI JOURNAL' Interpretation of Section 113A Offences regarding an unmarried womanstaying with a man. Cr. A. No. 448/98 Balaram Vs. State of M.P. decided on 8.12.1998 (D.B.) by the M.P. High Court.

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62. SECTION 151 CPC : STATUS QUO ANTE:-
1999 (1) M.P.L.J. 283
KAILASH CHANDRA Vs. RUKAM SINGH YADAV

Dispossession inspite of injunction order whether it is in force. Order directing restoration of possession restoring status quo ante prevailing prior to grant of interim injunction. Inherent injunction to make the order.

During pendency of civil suit, the Court came to prima facie conclusion that plaintiff was in possession of accommodation and granted ad-interim injunction restraining defendants from dispossessing plaintiff from disputed premises and directed status quo till disposal of suit. Thereafter defendants forcibly dispossessed the plaintiff from the room in clear defiance of the interim injunction granted in favour of plaintiff. On application made by the plaintiff under section 151 of the Code of Civil Procedure the Court granted an order of mandatory injunction directing the defendants to handover the possession of room restoring the status quo ante prevailing prior to the grant of interim injunction. The order was challenged by the defendant in revision.

NOTE : Please refer to ***1980 MPWN Note 196, Munnalal Vs. Jagadish Prasad*** which was relied on.

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63. CR.P.C. SECTION 182 (2) : JURISDICTION OF COURT TO TRY CASES UNDER SECTIONS 494 AND 495 Cr.P.C. :
1999 (1) M.P.L.J. 286
URBHAY KUMAR Vs. SMT. HEMA BAI

Wife has the option of choosing the place of trial. First wife residing at the very place where she was earlier residing at the time when offence commit-

ted. Court at the place where complainant wife was residing has jurisidiction to entertain the complaint.

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64. CIVIL PRACTICE : DISPOSAL OF APPEAL PRIOR TO THE DATE OF HEARING IN THE ABSENCE OF THE PARTY :
1999 (1) M.P.L.J. 295
MAMATA Vs. STATE OF M.P.

Statutory appeal fixed for hearing on 7-4-1998 at 4 p.m. dismissed by Secretary, Higher Education/Appellate Authority on 6-4-1998 on the basis of draft order prepared by officer on Special Duty, Higher Education. The petitioner was served with copy of appellate order on 7-4-1998 when she appeared order held to be in flagrant violation of law and in utter disregard to basic principles of law and natural justice. Secretary and officer on special duty (Khusiram and Smt. Mukti Roy) were sadled with exemplary costs of Rs. 10,000/- each.

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65. C.P.C. O. 32 R. 3 AND O. 22 R. 4 & M.P. ACCOMMODATION CONTROL ACT SECTION 12(1) (e) AND (f) & CPC O. 14 RR. 1 AND 5 : EVICTION SUIT :
1999 (1) M.P.L.J. 307
PURUSHOTTAM DAS Vs. ANIL KUMAR AND OTHERS

Ex parte decree - Decree set aside by firts appellate Court on ground that steps as required to be taken for appointment of guardian of minor defendant in palce of deceased defendant were not taken. Facts on record showing that trial Court had taken appropriate steps for impleading of minor defendant under guardian of her brother and provided full opportunity to file written statement and prosecute her defence which was the same as put in by deceased defendant. It was not possible or permissible for her to take a defence contrary to the defence which had already been put in by the deceased defendat. In any case status of minor defendant was only that of the joint tenant. No case of prejudice made out. Finding of lower appellate Court was therefore manifestly erroneous in law. ***AIR 1969 Mysore 8, AIR 1932 All 293*** and ***Harish Tandon Vs. Additional District Magistrate Allahabad, AIR 1995*** SC 676 referred.

Framing of additional issue and correction of clerical errors in recording of issues. Eviction decree. Defendants very well knew the claim of the palintiff and fact that they had sought eviction decree on both grounds envisged under section 12 (1) (e) and (f) of M.P. Accommodation Control Act, 1961. Defendants had cross-examined witnesses produced by plaintiffs but failed to lead evidence in support of their defence in spite of full opportunity. In the circumstances, they could not be deemed to have been prejudiced in any manner in their defence by framing of additional issue and correction of clerical mistakes in recording issues.

NOTE : Judicial Officers are requested to kindly read the provision of O. 22 R. 4 (2) of the CPC which runs as under :

"Any person so made a party may make any defence appropriate to his character as legal representative of deceased defendant."

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66. CPC : O.5.R. 20, O. 9 R. 13 : SUBSTITUTED SERVICE:-
1999 (1) M.P.L.J. 329
SATISH CONSTRUCTION COMPANY, BHILAI Vs. ALLAHABAD BANK, DURG

Service will be deemed to be valid if the order preceding service is in accordance with law. Absence of recording satisfaction that there were reasons to believe that defendant was keeping out of the way for the purpose of avoiding service or for other reasons summons could not be served in the ordinary way. The Court is required to record its satisfaction that for any reason the summons could not be served in the ordinary way.

It was held that the proceedings did not show that the Court ever ordered affixure of copy of the summons at some conspicuous place in the Court-house. The records of Civil Suit did not show that the summons sent for publication in the newspaper was ever affixed in some conspicuous place in the Court-house. The trial Court committed breach of the mandatory provision of O.5 Rule 20 in directing publication of the notice. Firstly. because it did not record its satisfaction and secondly because it did not order affixure of the copy of summons in conspicuous place in the Court house. The appeal deserves to be allowed. The trial Court directed to restore the suit to its original number.

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67. HINDU ADOPTIONS AND MAINTENANCE ACT, SECTION 80:-
1999 (1) M.P. L.J. 332
REETA Vs. SHELENDRA

Maintenance payable to wife of salaried husband. Maintenance amount must determined on the basis of carry home salary of husband arrived at after deducting legally permissible deductions. So far as the insurance premiums are concerned, unless it is group insurance or it is insurance under some different policy where every employee is required to subscribe to such insurance, it can be said that the insurance amount or deduction under the said head is mandatory deduction.

In considering the claim for maintenance as made by the wife of a salaried husband, if legal deductions are to be made, then the employee would not be entitled to that part so long as the said part is not paid to him. Provident fund amount is a statutory deduction and a person has no right to receive it back unless the employer authorises the employee to receive it. As the employee has no control over such amount the said deductions would be justifiable. The deductions relating to income tax or professional tax are mandatory. One cannot avoid the liability, if he earns beyond the exempted income. From the said amount there would be no refund nor the employer would have any control over it. In case of such employee only legally permissible deductions

are to be deducted and any other amount which is deductible from salary because of voluntary acts of the employee cannot be deducted.

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68. MOTOR VEHICLES ACT, 1988, SECTION 166 : LIMITATION:-
1999 (1) M.P.L.J. 340
SHAJI VARGHESE Vs. UJJWAL MAJUMADAR AND OTHERS

Accident on 1.9.1990 resulting in injuries to the claimant, Claim petition filed on 15.9.1991 with application for condonation of delay. Dismissal of petition for condonation of delay and petition for compensation by Tribunal on 23.12.1994 as barred by limitation. Since petition for claim by appellant was pending on and after 14.11.1994 when Motor Vehicles (Amendment) Act, 1994 came into force deleting section 166 (3) providing limitation, order dismissing Claim petition as being barred unsustainable. Claim petition dierected to be considered on merits and to be proceeded with in accordance with law. 1997 (1) MPLJ (SC) 195= (1996) 4 SCC 652 relied.

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69. LIMITATION ACT, ARITCLE 115 AND Cr. P.C. SECTION 5: APPEAL BY ONE ACCUSED IN TIME AND APPEAL BY ANOTHER ACCUSED TIME BARRED, DELAY MAY BE CONDONED:-
1999 (1) M.P.L.J. 342
SOHANLAL Vs. STATE OF M.P.

Appeal by one of the two accused filed within time and admitted. Appeal by other accused delayed by 13 days for reasons as mentioned. Condonation of delay. The fact that against the same judgment, a Co-accused had filed an appeal and the said appeal was within time and the same had been admitted, the delay on the part of the other co-accused, in all fairness, deserved to be condoned as the law is not for rigid technicalities but is for administration of justice. Delay condoned. Appeal directed to be treated as competent one.

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70. CRIMINAL TRIAL : APPRECIATION OF EVIDENCE:-
1999 (1) M.P.L.J. 354
DEVI SINGH Vs. STATE OF M.P.

Evidence of witness if otherwise reliable can never be discarded on account of minor discrepancies.

CR. P.C. SECTION 174 (1) : INQUEST REPORT :-

For the purpose of holding the inquest it is neither necessary nor obligatory on the part of the investing officer to investigate into or ascertain who were the persons responsible for the death. The inquest report is not the statement of any person wherein all the names of the persons accused are to be mentioned. ***JT 1998 (2) 496, George and others vs. State of kerala and others,*** relied on.

I.P.C. SECTION 149 :- COMMON OBJECT:-

It was proved beyond doubt that all the eight accused persons had come

together in a tractor to the house of deceased. It was also established that out of these 8 accused persons 3 were armed with fire arms. whereas the remaining 5 were armed with farsa, lathi and lohangi. All of them had gone into action with their respective weapons the moment their tractor was obstructed by the villager the deceased by jumping out of the tractor tried to run away. After he was shot dead the other accused persons had also caused injuries to others. All the eight accused persons thereafter fled away together from the place of occurrence. All the above facts, taken together, established beyond doubt that the common object of the unlawful assembly was to commit murder of deceased and to cause injuries to one and all who may come in the way. Therefore, All the eight accused persons, who had been proved to be the members of the said unlawful assembly were liable with the aid of section 149 of the Indian Penal Code, for the commission of murder of deceased.

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71. HINDU MARRIAGE ACT, SECTIONS 14 AND 15
1999 (1) M.P.L.J. 365
ARCHANAN Vs. YOGENDAR

Appeal against decree of divorce filed within limitation pending. Section 14 operates in a prohibitory from in the circumstances mentioned therein. Unless the appeal is dismissed it would not be lawful for either to marry again. Application for restraining the respondent from performing second marriage during pendency of the appeal. In view of the legal position no necessity to pass any separate order.

NOTE : Please refer to **O. 39 Rr. 1** and **O. 2 CPC, the AIR Manual 5th Edition, Vo1. 6 Page 761 Note No. 28 Injunction. AIR 1988 Cal 98 (103) (DB), AIR 1919 All 11 (12) AIR 1970 Raj. 83, 1989 MPWN (1) 35, (1989) 2 DMC 171 (173) M.P.**

Please also refer to **Section 151 CPC Vo1. 5, the AIR Manual 5th Edition Note No. 26 Hindu Marriage Act, AIR 1976 Delhi 246.**

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72. M.P. ACCOMMODATION CONTROL ACT, SECTION 23-C: GRANT TO LEAVE, DEFEND GUIDE LINE:-
1999 (1) M.P.L.J. 366
SATISH SHYAM SONI Vs. NIRMAL PRAKASH

While granting or rejecting leave under Section 23-C of the M.P. Accommodation Control Act, the Rent Controlling authority is required to see whether the allegations made by the defendant, if are accepted, would lead to non-suiting the plaintiff and if yes, then in such a case, leave must be granted. If the material allegations made by the plaintiff are denied or the very requirement for which the application has been filed is denied by the tenant, then the Rent Controlling Authority is bound to grant leave to defend. If the allegations made by the landlord are uncontroversible, then alone leave can be refused. If the Court comes to the conclusion that the grounds on which leave is sought are forged, concocted, manufactured or moon shine then also the Rent Control-

ling Authority can refuse leave and may proceed to grant an order in favour of the landlord. In a case where the defence raised by the tanant in his petition for grant of leave to defend appears to be reasonable, then grant of leave is a rule. Where the Rent Controlling Authority in a cursory manner had rejected the leave petition and committed jurisdictional error, the order refusing leave to defend set aside. Application for grant of leave allowed.

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73. M.P. LAND REVENUE CODE, SECTION 165 (6):-
1999 (1) M.P.L.J. 379
YASHWANT RAJ SINGH Vs. BOARD OF REVENUE

The aboriginal Tribe "Gond" at Entry 15 of the notification, "Raj Gond" also covered. It does not alter their lineage.

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74. M.P. ACCOMMODATION CONTROL ACT, SECTIONS 20 AND 13 (1) :-
1999 (1) M.P.L.J. 388
RANU Vs. RAI BAHADUR BHOOTHNATH

The pre-condition of application to section 13 (1) of the M.P. Accommodation Control Act is that a suit must be on any of the grounds referred to in section 12 of the Act. If a suit is not under the provisions of section 12 of the Act, the provisions of Section 13 will not be applicable. Where the plaintiffs came with the specific case that provisions of section 12 of the M.P. Accommodation Control Act were not applicable and the suit was under section 20 of the Act, then the Court below was not justified in observing that the suit could be treated to be a suit under section 12 (1) (a) of the Act. The legal position is clear that a tenant in a suit under section 20 of the Act is not obliged to comply with the provisions of section 13 (1) of the Act.

O. 41 R. 33 CPC : APPLICATION OF :-

Order made against defendants/tenants in suit for eviction to deposit rent failing which defence would stand struck of. Revision by one of the defendants/tenants assailing the Order maintainable applying principle underlying Order 41 Rule 33.

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75. I.P.C. SECTIONS 302 AND 34 :-
1999 (1) M.P.L.J. 391
STATE OF M.P. Vs. RAMMI

The requirement of criminal case of proof "beyond reasonable doubt" to support conviction which is not mean proof beyond all possible doubt. The doubt which is required to be removed is of a reasonable man and not every kind of doubt based on surmises or guess.

Brutal murder committed in broad day light in a running S.T. bus in presence of driver, conductor and passengers. Trial Court in acquitting the three accused disbelieved eye witness account given by conductor and driver of bus on ground of omission and imprisonments in their statements. Version

given by them about manner of incident was natural and consistent They had no enimity or grudge against accused so as to falsely implicate them F.I.R. was also lodged within half an hour of incident- Evidence of discovery and recovery of blood stained weapons and clothes could not be discarded only because witness to the seizure was maternal uncle of deceased Illogical and abused reasoning given by trial court in acquitting accused Judgment of acquittal set aside Accused convicted under section 302/34, Indian Penal Code and sentenced to life imprisonment. **AIR 1976 SC 76, Ref. (1998) 3 SCC 561, (1988) 4 SCC 302, AIR 1934 PC 227, Rel.**

The criminal jurisprudence as has developed on the basis of British model, is that the offence alleged is required to be proved "beyond all reasonable doubt". What is to be noted is that the doubt which is required to be removed is of a reasonable man and not every king of doubt based on surmise or guess. "Reasonable doubt" therefore, does not mean a vague, speculative or whimsical doubt or uncertainty, nor a merely possible doubt of the truth of the fact to be proved. It also does not mean proof to a mathematical certainty nor proof beyond the possibility of a mistake. The requirement in criminal case of proof "beyond reasonable doubt" to support conviction, therefore, does not mean proof beyond all possible doubts. A trial Judge in assessing and appreciating the evidence of witnesses appearing before him to prove a crime, cannot overlook the common human conduct and the realities of the life known to him by his experience of the society. Unfortunately, in the criminal justice delivery system, the victim has a minimum role to play and can assist the Court in reaching the truth only through the agency of the State i.e. the prosecution. The trial Judge, therefore, has to give due allowance to minor lapses and omissions of the prosecution agency. He should assess the intrinsic worth of the evidence, oral and documentary, produced before him. No fool proof and perfect system in law courts can be evolved because of the human limitations, but the job of the Judge is to search from mass of falsity, the truth hidden in the evidence before him. This difficult job, to a great extent, can be successfully accomplished by him if he looks to the substance of the evidence brought before him and is not way-laid or influenced by forensic art. It is a matter of common experience in criminal trials that a truthful witness is many times subjected to such a scathing and gruelling cross-examination that he is made to look less confident and shaky.

NOTE : Please refer to ***AIR 1978 SC 1091, Indrajit Singh Vs. State.*** Proof beyond doubt not necessary what is necessary is explained.

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76. I.P.C. SECTIONS 415, 420 AND 24: CHEATING INGREDIENTS OF DISHONEST INTENTION:-

(1998) 8 SCC 745

DR. SHARMA'S NURSING HOME Vs. DELHI ADMN.

Complainant got his brother admitted in a Nursing Home on assurance given by the Authorities that Air-conditioned rooms were available in the said

Nursing Home. However, the room provided found to be non air-conditioned though was charged for such room. Held offence of cheating not made out.

Paragraphs of the judgment from 1 to 4 are reproduced for the convenience of the Judicial Officers:-

Shri P. Shankar, Respondent 2 herein, (hereinafter referred to as "the complainant") filed a complaint in the Court of the Metropolitan Magistrate, New Delhi, alleging commission of offences under Sections 420, 336 and 338 of the Indian Penal Code by the there appellants and one Dr. S.C. Madan. The allegation made in the complaint is that the complainant's brother was to undergo a minor operation and for that purpose, he (the complainant) was looking for a good nursing home with adequate surgical facilities. He came across an advertisement of Appellant 1, of which Appellant 2 is a Director, wherein it was mentioned that it had all modern facilities and that all its rooms were air conditioned. He, therefore approached Appellant 2, who also confirmed that besides other facilities, air-conditioned rooms were available. Impressed by his statements, the complainant got his brother admitted for the necessary operation, but found, to his utter surprise, that the room that was provided to him was not air-conditioned, even though he was charged for such a room. The other allegations in the complaint are that Dr. Madan did not perform the operation properly and that adequate post operational facilities were not made available to the complainant's brother. The learned Magistrate dismissed the complaint on a finding that no offence under Section 420 IPC was made out and the complaint so far as it related to the other offences was barred by limitation under Secion 468 Cr.P.C. Aggrieved by such dismissal, the complainant moved the Court of Session in revision. At the time of hearing of the revision petition, the complainant withdrew his grievances against Dr. Madan and confined his complainant against the nursing home authorities. The Additional Sessions Judge who heard the revision. allowed the same with the following findings:

"If air-conditioned room was in fact available, but could not be given for some defect then of course it would amount to a breach of contract but since *the evidence has come that none of the rooms were air-conditioned in the said Nursing Home nor were provided to the petitioner, therefore, this concealment of the fact would amount to deception falling in the definition of cheating as defined under Section 415 IPC"*

Aginst the above order of the Additional Sessions Judge, the appellants moved the High Court, which upheld the order of the learned Additional Sessions Judge, but limited the enquiry into the offence under Section 420 IPC. The above order of the High Court is under challenge in this appeal.

We have Carefully gone through the complaint, the documents annexed thereto and the deposition of the complainant, On a perusal there of, we are unable to hold that a prima facie case under Section 420 IPC had been made out. From the judgments of the Additional Sessions Judge and the High Court, We find that both the learned courts have rested their findings on deception only and did not go into the question whether the complaint and its accompa-

ments disclosed the other essential ingredient of the offence under Section 420 IPC. namely. dishonest inducement. "Dishonesty" has been defined in Section 24 IPC to mean deliberate intention to cause wrongful gain or wrongful loss; and when with such intention, deception is practised and delivery of property is induced then the offence under Section 420 IPC can be said to have been committed. Judged in that context, we find that there are no materials from which it can be said even prima facie that the appellant "dishonestly induced" the complainant to part with his money.

We, therefore, allow this appeal and set aside the impugned order of the Additional Sessions Judge and the High Court and restore the order of the learned Magistrate dismissing the complaint.

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77. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 : Ss. 3 (1) (X) AND 18 : ANTICIPATORY BAIL:- 1999 (1) JLJ 84

SURESH KUMAR VS. STATE OF M.P.

On considering the submissions of the learned counsel and perusing the orders of this Court in cases of ***Kalyan Singh vs. State of M.P.*** and ***Bablu Vs. State of M.P.*** it is not disputed that the bar created to grant anticipatory bail for under the S.C. & S.T. Act u/s 18 of the said Act shall not apply when no prima-facie material is available on the case diary to raise suspicion of commission of any offence under the Act is found out against the accused applicant. ***In Ramdayal and others Vs. State of M.P. (1991 JLJ 468)*** this Court has also held that, "a particular person has committed an offence or is an accused under the Act or if the has been so described by the police as an accused, the Court would not without examining the merits of the accusation dismiss his application filed u/s 438 Cr. P.C. Where there is no material to reasonably raise a suspicion of commission of the offence it cannot be said that there is an accusation within the meaning of Sec. 18 of the Act and maintainability of application u/s 438 Cr. P.C. Cannot be challenged."

In view of the above, on considering the allegations made against the applicant and the evidence availble on the case diary. without commenting on the merits of the case at this stage, I do not find material for prima facie suspecting the applicant of having committed an offence under the Act. As such, the ban imposed by Section 18 of the Act does not come into play and the applicant, under the facts and the circumstances of the case deserves the benefit of anticipatory bail u/s 438 Cr. P.C.

CASES REFERRED:-

1- ***Kalyan Singh vs. State of M.P., 1995 (2) MPWN 9,***

2- ***Babu vs. State of M.P. 1996 (2) MPWN 98*** and

3- ***Ram Dayal vs. State of M.P. 1991 JLJ 468*** were relied on.

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78. RIGHT OF APPEAL BY PERSON AGGRIEVED : LETTERS PATENT (M.P.) CL. 10 PERSON AGGRIEVED MEANING OF :-

1999 (1) JLJ 96

CHANDINI BAI (SMT.) Vs. SMT. GULABKALI

Question is whether a person who is not a party before the learned single Judge can maintain a Letters Patent Appeal or not. In Some what identical situation, Kerala High Court has held that a person may not be a party to the decree or order but he may with leave prefer an appeal from such decree or order if he is either bound by the order or decree or is aggrieved by it or is prejudicially affected by it. In that case the court may decide in its discretion whether in such a case, leave is to be granted or not. Therefore, their Lordships observed that no hard and fast rule can be laid down in the matter as each case depends on its own facts. However, it was observed that one test in granting leave is whether he could properly have been made a party to the original proceeding in that case. However, in that case, certain observations were made against an IAS officer who was not a party. As a result, the disciplinary proceedings were started against him and he was placed under suspension. Therefore, he filed Letters Patent Appeal under Section 5 of the Kerala High Court Act. 1958. Their Lordships found that he could maintain the appeal. In this connection, their Lordships referred to an earlier decision of Chancery Division in the case of Sidebotham (1880) 14 Ch D 458 as under:-

"But the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something"

Similar passage from Corpus Juris Secundum has also been quoted wherein it has been observed:-

"Broadly speaking, a party or person is aggrieved by a decision when, and only when it operates directly and injuriously upon his personal, pecuniary or property rights"

"In legal acceptation a party or person is aggrieved by a judgment, decree, or order. so as to be entitled to appeal... whenever it operates prejudicially and directly upon his property pecuniary rights or interests, or upon his personal rights and only when it has such effect".

In Light of this observation made in the Corps Juris Secundum and in the case of Sidebotham, we would examine whether the present judgment of the learned single judge prejudicially affects the right of the appellant or not.

In the present case the appellant is elected as Councellor of the Nagar Panchayat and she is interested to see that a person who is to be elected to the office of the President should be duly elected and should have confidence of the majority. In the democracy, the rule of law is supreme, therefore, a person who has majority with him alone can be entrusted the right to govern.

In the present case, we are satisfied that the appellant has the legitimate right to ventilate her grievance that the petitioner/respondent has no right in law to continue as a President as he has lost confidence of the majority of voters. Therefore, the expression 'person aggrieved' has to be given an extended meaning and specially in the present context, we are of the opinion that the appellant is a person aggrieved as she being a Councellor of the Nagar Panchayat has a right to be governed by a person who proves the majority in the house. Thus, in our view, the appellant is an aggrieved person and was accordingly overrule the objection of the respondent/petitioner and permit the appellant to prosecute this appeal though she was not party in the writ petition before the learned single Judge.

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79. M.P. ACCOMMODATION CONTROL ACT SECTION 12 (1) (C) : NUISANCE: MEANING OF:-
1999 (1) JLJ 115
BARJIBAI VS. HIRALAL

The case of nuisence complained of inherent in nature of tenancy created. Such acts and activities do not come under expression 'nuisance' as used under.

The defendants are carrying on the business of hotel since 40 to 45 years before the institution of suit on 27-7-1976. It has been further established on fact that the plaintiff's son who is having his office in the adjoining accommodation has joined the profession of law in the year 1978. In the opinion of the Court emission of smoke from oven is inherent and the use of oven is essential for running the hotel business.

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80. MOTOR VEHICLES ACT, 1939 SECTIONS 96 (2) (b) (i) & (ii), 42 AND RULE 111 (2) (i) :-
1999 (1) JLJ 159
NATIONAL INSURANCE CO. Vs. UMADEVI AND OTHERS

Driver carrying passengers without the knowledge of insured owner. Insurer cannot escape liability. **1994 JLJ 320, 1995 ACJ 796, 1986 ACJ 500 and JT 1996 (6) SC 32** relied on.

Insurer relying conditions under has to prove the breach there of by the insured. Insurer not proving absence of vaild driving licence even insurance policy not proved. Insurer has no defence under the Act. **1985 ACJ 397 (SC) and 1987 JLJ 662 (SC)** followed.

MOTOR VEHICLES ACT, 1939 SECTIONS 103 A AND 96 (2) :-

Insured's name appearing as registered owner in registration on date of accident. Transfer cannot be presumed even if transferee admits the transfer. Insured is not absolved. **1993 ACJ 839,1991 (1) MPWN 1** and **1994 JLJ 197** relied on.

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81. CR. P.C. SECTIONS 319, 190 AND 191:-
1998 (II) MPWN 226
NARMADA PRASAD PANDEY Vs. STATE OF M.P.

Provision under S. 319 is a self contained provision independent of sections 190 and 191. Word 'evidence' used under means evidence on record. Evidence against a person available may be called to face trial.

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82. PREVENTION OF CORRUPTION ACT 1947 SECTIONS 5 (1) (e), 5 (2) 13 (1) (e) AND 13 (2) AND Cr. P.C. SECTIONS 227 & 228:-
1998 (II) MPWN 217
DAMODARDEO Vs. STATE OF M.P.

Charge for holding disproportionate property explanation and documents of accused should be considered at the time of framing of charge.

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83. SICK TEXTILE UNDERTAKINGS (NATIONALISATION) ACT, 1974 SECTION 5:-
1998 (2) V.B. 252 (SC)
M.P. ELECTRICITY BOARD Vs. NATIONAL TEXTILE CORPORATION

Dues of electricity charges relating to prior to appointed day to be satisfied by previous owner. It is his liability. Corporation is not liable to pay such dues.

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84. I.P.C. SECTIONS 375 AND 376:-
1998 (II) MPWN 200
DHAMESHWAR KUMAR Vs. STATE OF M.P.

Intercourse with promise to marry does not amount to rape. Such conduct is socially condemnable and morally reprehensible.

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85. MOTOR VEHICLES ACT, 1988 SECTIONS 2 (9) AND 149 (2) (a) (II) :- BREACH OF POLICY:-
1998 (II) MPWN 204
NEW INDIA ASSURANCE CO. Vs. SMT. SANGEETA

Driver of heavy bus having driving licence for heavy vehicle but not badge driving bus for long time. Insurer cannot take any advantage.

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86. MOTOR VEHICLES ACT, 1988 SECTION 147 : COMPENSATION:-
1998 (2) T.A.C. 648 (ALL H.C.)
NATIONAL INSURANCE CO. LTD. Vs. DEEPA PANT

Motor Insurance. Liability of Insurance Company to pay compensation. Deceased an insured person while travelling in insured vehicle died. Tribunal awarded compensation for the death of insured payable by the Insurer. Whether view taken by the Tribunal suffers from any illegality. No. Finding of Tribunal upheld.

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87. MOTOR VEHICLES ACT, 1988 SECTION 166 : BURDEN OF PROOF:-
1998 (2) T.A.C. 661 (RAJ H.C.)
INDRA SHARMA Vs. CHAIRMAN, R.S.E.B., JAIPUR

Claim petition for compensation. Procedure. plea of mechanical defect within the personal knowledge of driver not raised. Whether Claims Tribunal was justified in not framing an issue regarding mechanical defect held yes. Plea within the personal knowledge of driver and owner should be specifically pleaded.

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88. MOTOR VEHICLES ACT, 1988 SECTION 166 : CONTRIBUTORY NEGLIGENCE:-
1998 (20) T.A.C. 783 (M.P. H.C.)
M.P.S.R.T.C. RATLAM Vs. SALINA ROZ ALEXANDER

Collision between Bus and Luna resulting into death of two persons on spot. Factum of accident proved from evidence of witnesses and doctor who conducted autopsy. Tribunal apportioned liability on driver of Luna to the extent of 40% and 60% on Bus driver. Whether Tribunal was wrong in apportioning the liability. yes. Both drivers equally contributed for the accident. Liability for the accident assessed to the extent of 50% each.

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89. MOTOR VEHICLES ACT, 1988 SECTION 166 : DEPENDANTS :-
1998 (2) T.A.C. 868 (KANT. H.C.)
NATIONAL INSURANCE CO. LTD. Vs. SAROJINI

Married sisters. Death of an unmarried girl aged 21 years. Original claim preferred by mother. Mother died during the pendency of claim petition. Two married sisters of deceased substituted in place of mother. Tribunal awarded Rs. 1,02,400/- as compensation. Whether award of Tribunal under the head of loss of dependency to the married sisters is justifiable. No. Amout of compensation of Rs. 1,02,400/- reduced to Rs. 6,400/- with a direction that amount of Rs. 25,000/- received towards no fault liability shall not be refundable.

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90. MOTOR VEHICLES ACT, 1988 SECTION 166 : APPRECIATION OF EVIDENCE:-
1998 (2) T.A.C. 759 (DEL. H.C.)
CENTRAL INDUSTRIAL SECURITY FORCE Vs. SHIELA DINA NATH

Motor Accident Claim. Interested witness. Testimony of such witness. Scooterist died as a result of rash and negligent driving of truck driver. Appellants failing to show any material contradiction in the testimony of RW 4. Testimony cogent and trustworthy. Whether Simply because he possessed an account in Bank where deceased was working, he can be labelled as an interested witness. No. He cannot be disbelieved.

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91. MOTOR VEHICLES ACT, 1988 SECTION 166 (3) AND LIMITATION ACT SECTION 5 : LIMITATION:-
1998 (2) T.A.C. 650 (BOM, HC)
SHYAM Vs. IQUBAL AHAMAD ALAM KHAN

Condonation of delay. Accident took place on 15th June, 1989 whereas claim petition filed on 7th July, 1990 beyond the period of twelve months along with application for condonation of delay. Tribunal rejected application on ground of bar of jurisdiction, petition and application for condonation of delay pending before Tribunal on 14th November, 1994 when Amending Act 54 of 1994 came into effect. Whether advantage of the Amending Act could be extended to such petition also. Yes. Bar of limitation will not be applicable to the pending claim petition. Order refusing to condone delay set aside.

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92. MOTOR VEHICLES ACT, 1988 SECTION 168 AND SCHEDULE : COMPENSATION:
1998 (II) MPWN 213
PAPPI Vs. KAMAL SINGH

Deceased 35 years of age. Multiplier is 16. Widow alone is entitled to receive consortium of Rs. 5,000. Estate loss to be assessed at Rs. 2,500/- only. No amount of loss of love and affection permissible.

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93. MOTOR VEHICLES ACT, 1988 SECTION 171 : AMOUNT OF INTEREST ON COMPENSATION:-
1998 (II) MPWN 203
SUNITA VS. ROOP CHAND

Award of interest on compensation amount should be from the date of application filed before Tribunal.

Claimant causing delay in producing witnesses not entitled to interest for the period of delay so caused.

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94. M.P. ACCOMMODATION CONTROL ACT : EXEMPTION UNDER SECTION 3 (2) OF THE ACT :
JT 1999 (3) SCC 200
BETIBAI & ORS. VS. NATHURAM & ORS.

(Note: Please refer to 'Joti Journal' Vol. V Part II April, 1999 issue at page 105)

Different views were reported. Now the latest view is reported. The Judgment is reported at verbatim.

M.P. ACCOMMODATION CONTROL ACT, 1961

Section 3 (2), 12 - Applicability - Property belonging to trust - Exemption notification - Plea raised that it was bad as held in Mangal Lal's case. Held that Mangal Lal's case [JT 1998 (6) SC 491] is distinguishable. Notifi-

cation dated 9-9-89 by which exemption to trust and wakf properties from operation of the Act, was upheld even in.

Babulal was the tenant of a shop belonging to a temple managed by Phool Maliyan Samaj Mandir Trust. Bhopal (the 'Trust', for short), whose tenancy was determined by notice dated 14-9-1991 under Section 106 of the Transfer of Property Act. Inspite of the tenancy having been determined,Babulal did not vacate the premises. Consequently, the respondents, who were the Trustees of the Trust, instituted a civil suit in the court of Civil Judge, Bhopal, against Babulal for his eviction, It was pleaded that since the property in question belonged to the religious and Charitable Trust, it was exempted from the operation of the M.P. Accommodation Control Act, 1961, (the 'Act, for short) as provided by Section 3 (2) thereof.

The suit was contested by Babulal, who filed a written statement denying the plaint allegations and pleaded that the suit was able to be dismissed as it was not based on any of the grounds specifiedin Section 12 of the Act.

The suit was decreed on 8.12.1997, against which an appeal was filed, but before it could be disposed of by the Addl. District Judge, Bhopal, the original tenant died and was substituted by the present appellants as his heirs and legal representatives. The appeal was ultimately dismissed on 28th September, 1998. The second appeal filed in the High Court was dismissed on 17.12.1998. The trial court as also the lower appellate court and the High Court held that on account of Notification issued on 7.9.1989, the properties belonging to religious and charitable trusts were exempted from the operation of the Act and consequently it was not incumbent upon the respondent & landlords to have filed the suit for eviction of tenant on the grounds set out under Section 12 of the Act and that they could file the suit for eviction straight away after terminating the tenancy under Section 106 of the Transfer of Property Act.

Learned counsel for the appellants has contended that the Notification dated 7th September, 1989 has already been held to be bad by the Madhya Pradesh High Court In ***Chintamani Mahender Agarwal v. State of Madhya Pradesh 1994 MPLJ 597.*** He also contended that this Court in ***Mangilal v. Shri Chuturbhuja Mandir*** JT 1998 (6) SC 491 has also held the Notification to be bad. it is, in these circumstances, contended that the suit of the respondents was liable to be dismissed and the appellants cannot be evicted from the premises in question, except by invoking any of the grounds set out in Section 12 of the Act. The pleas raised by the counsel for the appellants, in our opinion, have no substance.

The decision rendered by the Madhya Pradesh High Court in Chintamani's case (supra) was challenged in an appeal filed in this Court by the state of Madhya Pradesh which was disposed of by a Bench of which one of us (Saghir Ahmad, J.) was a member and the Notification dated 9th September, to public charitable trusts and Wakf were exempted, was upheld. It was, in that Judgment held, inter alia, as under:-

"The State of Madhya Pradesh in exercise of the powers under sub-section 2 of Section 3 of the M.P. Accommodation Control Act, 1961 (the Act), exempted all buildings owned by the Madhya Pradesh Wakf Board (Board) from the operation of the Act. The Notification dated September 7, 1989 granting exemption to the Board under the above-mentioned provision of the Act was challenged before the High Court. The High Court quashed the Notification on the short ground that there was no material before the State Government to reach the satisfaction that it was necessary to issue the impugned Notification.

Learned counsel for the State of M.P. has Invited our attention to the letter dated March 26, 1976, by the then Prime Minister of India addressed to the Chief Minister of the State of M.P., suggesting, for the reasons given in the said letter, to grant exemption of the provisions of the Act to the properties owned by the Wakf. Thereafter, the State of M.P. madé enquiries from various other States in this respect. On receipt of the replies, the matter was considered and thereafter, the exemption Notification was issued. We are satisfied that there was sufficient material before the State Government for issuing the impugned Notification. We, therefore, set aside the impugned judgment of the High Court. We seek support from the judgment of this Court in ***S.Kandaswamy Chettiar v. State of Tamil Nadu and Anr.*** (1985 (1) SCC 290)." Im10

The decision of this Court in Mangilal's case (supra), upon which reliance has been placed is distinguishable as the only question pleaded in that case was that since the Notification dated 7th September, 1989 has been held to be bad by the High Court in respect of Wakf properties only. the trust properties would continue to be exempted from the operation of the Act. This plea was not accepted and it was held that the Notification dated 9th September, 1989 was a composite Notification which applied not only to the Wakf properties but also to other charitable trust properties, and since this Notification has been held to be bad in respect of the Wakf properties, it would be bad for all other properties, including trust properties, which were sought to be exempted from the operation of the Act. The validity of the Notification was not questioned in that decision. Moreover, it was not brought to the notice of Their Lordships, who decided that case, that against the decision of the Madhya Pradesh High Court in Chintamani's case (supra). Civil Appeal No. 9909 of 1995 (arising from S.L.P. (Civil) No. 4360 of 1994) was filed in this Court. which was decided on October 19, 1995 and the decision of the Madhya Pradesh High Court was reversed with a categorical finding that the Notification issued by the Madhya Pradesh Govt. exempting the Wakf and Trusts properties from the operation of the Act was valid.

It may be mentioned that similar Notifications issued in other States, by which Wakf and Trust properties were exempted, have already been upheld by this Court. As for example, the Notification issued by the State Govt. of Tamil Nadu exempting Wakf and Trust properties, was upheld by this Court in ***S. Kandaswamy Chettiar v.State of Tamil Nadu & Anr.*** 1985 (1) SCC 290. Even this decision was not brought to the notice of the learned Judges who disposed of Mangilal's case.

In view of the above, the appeal has no merit and is dismissed but without any order as to costs.

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95. PRACTICE AND PROCEDURE : STRIKE BY ADVOCATES:-
(1998) 8 SCC 624
K. JOHN KOSHY Vs. DR. TARAKESHWAR PRASAD SHAW

We do not propose to express any opinion in regard to the merits of the case nor do we desire to dwell on events preceding the making of the order dated 13.3.1995. We also do not desire to say anything on the question whether circumstances did or did not exist for making the order of 13.3.1995. It is an admitted fact that since the members of the Calcutta Bar were on strike, the counsel for both sides were absent and hence the Court passed the order after hearing the respondent. If the matter was urgent and the respondent who was present in person insisted on being heard and orders being passed on his application as his career was at stake, could the Court refuse to take up his application for hearing and refuse to pass an appropriate order on merits? The answer must obviously be in the negative because to do so would tantamount to the Court becoming privy to the strike. The court is under an obligation to hear and decide cases brought before if and cannot shirk that obligation on the ground that the advocates are on strike. Therefore, the Division Bench was fully justified in proceeding to hear the respondent and in passing orders on merits. We must also mention that at the relevant point of time, the interim order passed by this Court in the ***Common Cause, a Registered Society Vs. Union of India, (1994) 5 SCC 557*** pending in this Court against lawyers proceeding on strike was in force where under the Bar Associations were precluded from dismembering any member of the Bar who appeared in court despite the strike call. Under the circumstances the fear of being debarred from membership also did not exist. We are, therefore, of the opinion that despite the same if counsel did not appear, they are only to balme. The Court in the circumstances did the right thing to proceed to hear the case.

NOTE : Please refer to ***(1999) 1 SCC 37 Mahavir Prasad Vs. Jacks Aviation Private Ltd.*** published in '**JOTI JOURNAL**' April, 1999. (Vol. V Part 2)

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96. I.P.C. SECTIONS 376 AND 366 : RAPE OF A MINOR GIRL : CONSIDERATION OF SENTENCE:-
(1998) & SCC 629
JARNAIL SINGH Vs. STATE OF PUNJAB

Paragraphs 1 and 2 of the judgment are reproduced:-

Leave granted on the limited question of the mode of sentence.

The finding recorded by the courts below is that offence under Section 376 IPC was made out solely on the ground that the prosecutrix was below 16 years of age (found to be around 15 years of age) even though she was a willing party to go with the appellant and have sex with him. The appellant, on the other hand, was found to be of 17 years of age. Evidently, the appellant

and the prosecutrix, in the flush of youth, have committed an act which is a crime in so far as the appellant is concerned. Since it was a one-time act and not a continuous course of conduct, we, having regard to this aspect as also the young age of the appellant, reduce his sentence of imprisonment to the period already undergone under both counts, i.e., under Section 376 and 366 IPC, but add a fine of Rs. 12,000 to the count under Section 376 while sustaining the fine of Rs. 500 imposed under Section 366 together with the default clause. In case there is default in payment of the fine now added, then he shall undergo further imprisonment equivalent to the unexpired portion of his sentence as imposed by the High Court. The fine of Rs. 12,000 if paid or recovered, shall be paid over to Sarabjit kaur, the prosecutrix, as compensation. The Court of Session is to oversee compliance.

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97. I.P.C. SECTION 376 AND EVIDENCE ACT Ss. 45 AND 8 III (I) : MEDICAL EVIDENCE VALUE OF MEDICAL REPORT IN RAPE CASE:-
(1998) 8 SCC 635
RANJIT HAZARIKA Vs. STATE OF ASSAM

Non-repture of hymen or absence of injury on victim's private parts. Held, does not belie her testimony as she nowhere stated that she bled per vagina and her statement remained virtually unchallenged in cross-examination. To constitute rape penetration, however slight is sufficient. Prosecutrix subjected to sexual intercourse in a standing posture indicating absence of any injury on her private parts. Opinion of doctor that no rape was committed cannot throw out an otherwise cogent and trustowrthy evidence of the prosecutrix, Besides such opinion was based on "no reasons". On facts, corroboration of testimony of prosecutrix by medical evidence was not essential. In any case, her evidence was amply corroborated by her mother and father whom she immediately informed about the occurrence.

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98. ARBITRATION ACT: Ss. 14, 29, 30 & 37 : MISCONDUCT, QUESTION OF LIMITATION NOT RAISED BEFORE ARBITRATOR- EFFECT OF- INTEREST:-
(1998) 8 SCC 651
SECRETARY, IRRIGATION AND POWER DEPARTMENT, GOVT. OF ORISSA VS. NIRANJAN SWAIN

When a question of limitation was not raised before the arbitrator, arbitrator is not required to go into that question.

Paragraphs 2 and 3 of the judgment are reproduced:-

The learned counsel for the appellant raised three contentions: (i) that the claim was time-barred; (ii) the Arbitrator could not have awarded interest; and (iii) that the award was based on no evidence. On the first and the last questions, we see no merit for the simple reason that the question of limitation was not raised before the Arbitrator and the Arbitrator was not required to go into it. On the question of non-production of documents, we can only say that the

documents were in the power, possession and custody of the appellants and they should have produced the said documents and even if the documents were not produced despite the respondent being called upon to do so and having given an undertaking in that behalf, we fail to see how it can be contended that the Arbitrator was not entitled to proceed because at best, the Arbitrator can raise an adverse inference if necessary and proceed to finalise the award. So that contention has no substance. On the question of interest, our attention was drawn to the decision of this Court in the ***State of Orissa vs. Niranjan Swain, (1989) 4 SCC 269.*** The Arbitrator has not awarded interest separately but it is a lump-sum award. We must, therefore, follow the procedure that was followed in the aforesaid case of reducing the award by the amount of interest claimed. So what remains is the principal amount only. We so direct. Therefore, the award will be reduced by Rs. 4,08,934, the claim of interest prior to reference.

In the result, this appeal succeeds partially, in that, out of the amount of Rs. 8,08,769.69 awarded by the Arbitrator inclusive of interest, the amount of interest, i.e. Rs. 4,08,934 shall be deducted and there will be a decree for the balance money together with interest from the date of the award till payment or realisation. Except for this modification in the award, nothing further requires to be done. There will be a decree accordingly with no order as to costs.

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99. CONTRACT ACT, S. 128: BANK GUARANTEE: CO-EXTENSIVE LIABILTY:-
(1998) 8 SCC 653
UNITED BANK OF INDIA Vs. BENGAL BEHAR CONSTRUCTION CO.

Encashment of Bank Guarantee procedure and effect. The letter of guarantee stipulating that on failure of principal debtor to abide by the contract, guarantor will be liable to pay the amount due from the principal debtor and that any action settled or stated between the Bank and principal debtor or admitted by principal debtor shall be accepted by the guarantors as conclusive evidence. Decree passed on admission against principal debtor under Or. 12 R. 6 CPC. It was held that in view of the stipulation in the letter of guarantee once the decree on admission is passed against the principal debtor, the guarantors would become liable to satisfy the decree jointly and severally.

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100. N.D.P.S. ACT: Ss. 42 (1), (2), 50, 52 AND 57 : SEARCH AND SEIZURE:-
(1998) 8 SCC 655
MOHINDER KUMAR Vs. STATE, PANAJI, GOA

On evening of 20.1.1990 PW 4 ASI Umesh Gaokar, while on patrolling duty in a jeep reached Anjuna Outpost at Village Vagator. After Parking his jeep, he and the police party accompanying him except one Head Constable alighted from the vehicle and reached the house at small village Vagator. He noticed two persons sitting in the varandah of that house and as soon as they saw him and the police party they hurriedly entered the house. This aroused

the suspicion of the Sub-Inspector whereupon he and the police party went to the house and directed the two accused persons to stay where they were and asked the Head Constable to alert the others and to arrange for panchas. On the arrival of panchas he and his companions entered the house and questioned the accused persons. He saw a white plastic bag lying by the side of the accused Mohinder. On search he found that the bag contained two polythene packets of Charas-like substance. Both the packets were weighed and samples weighing 50 gm. were taken therefrom and sealed. The person of the accused was searched and two pieces of charas from the right pocket of his pants were recovered weighing about 10 gm and samples therefrom were also taken. At the instance of the said accused-Marc, an Italian National, further recovery was effected from the adjoining room where a shoulder bag was found containing charas weighing about 1.65 kg. From that also samples were taken and were sent to public analyst for examination.

In the instant case, the facts show that he accidentally reached the house while on patrolling duty and had it not been for the conduct of the accused persons in trying to run into the house on seeing the police party he would perhaps not have had occasion to enter the house and effect search. But when the conduct of the accused persons raised a suspicion he went there and effected the search, seizure and arrest. It was, therefore, not on any prior information but he purely accidentally stumbled upon the offending articles and not being the empowered person, on coming to know about the accused persons being in custody of the offending articles, he sent for the panchas and on their arrival drew up the panchnama. In the circumstances, from the stage he had reason to believe that the accused persons were in custody of narcotic drugs and sent for panchas, he was under an obligation to proceed further in the matter in accordance with the provisions of the Act. Under Section 42 (1) proviso, if the search is carried out between sunset and sunrise, he must record the grounds on his belief. Admittedly, he did not record the grounds of his belief at any stage of the investigation subsequent to his realising that the accused persons were in possession of charas. He also did not forward a copy of the grounds to his superior officer, as required by Section 42 (2) of the Act because he had not made any record under the proviso to Section 42 (1). He also did not adhere to the provisions of Section 50 of the Act in that he did not inform the person to be searched that if he would like to be taken to a Gazetted Officer or a Magistrate, a requirement which has been held to be mandatory. ***In Balbir Singh case, (1994) 3 SCC 299 : 1994 SCC (Cri) 634,*** it has been further stated that the provisions of Sections 52 and 57 of the Act, which deal with the steps to be taken by the officer after making arrest or seizure are mandatory in character. In that view of the matter, the learned counsel for the State was not able to show for want of material on record, that the mandatory requirements pointed out above been adhered to. The accuse is, therefore, entitled to be acquitted.

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101. CONSTITUTION OF INDIA : ART. 226 : MONITORING OF CASES:- (1998) 8 SCC 661
UNION OF INDIA Vs. SUSHIL KUMAR MODI AND OTHERS

In the present case since the process of minitoring had already ended with the filing of the charge-sheet, and, therefore, there was no occasion for any of the officers of the CBI to approach,the High Court in respect of a matter which was being dealt with by the Special Court or for the High Court to take any action thereon. The entire order of the High Court having been made in this situation, the whole of it had to be set aside.

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102. C.P.C: OR, 22 Rr. 5 AND 2 :- A SUIT FOR PARTITION:- (1998) 8 SCC 701
MST. DEU AND OTHERS VS. LAXMI NARAYAN AND OTHERS

Smt. Phulla, the wife of Chunni Lal filed a suit for partition. During the pendency of the suit she died and Laxmi Narayan, Respondent No. 1 filed an application in substitution claiming to be a legal heir. On the basis of registered deed of adoption dated 24.7.1967 the suit was filed in the year 1955. Smt. Phulla, was second wife of Chunnil Lal who had 3 sons from his first wife namely, BhagChand, Harchand and Ramacharan. Bhagchand died in the year 1960. So far as the other two sons Harchand and RamCharan are concered, who shall be deemed to be the stepsons of Smt. Phulla, they were impleaded as defendants in a suit aforesaid. They contested the claim of the respondent to be substituted in place of Smt. Phulla. According to them, after the death of Smt. Phulla they shall be the heirs and legal representatives of Smt. Phulla as well. The trial Court rejected the prayer for substitution made on behalf of the respondent. Against that a revision was filed before the High Court on behalf of the respondent. The High Court was of the opinion that on the basis of the deed of adoption the respondent can claim substitution in place of Smt. Phulla. Against that order the present appeal has been filed.

Once rhe respondent filed application for substitution and produce a registered deed of adoption, the trial court should have substituted him in place of Smt. Phulla on being satisfied that the conditions of Section 16 of the Hindu Adoptions and Maintenance Act, 1956 had been complied with. Section 16 of the Act reads as follows:

> "16. Presumption as to registered documents relating to adoption- Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."

In view of Section 16 aforesaid whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the persons mentioned therein, the court shall presume that the adoption has been made in compliance with the

provisions of the said Act unless and until it is disproved. According to us, it was not open to the defendants of the said suit for partition to collaterally challenge the said registered deed of partition. In view of Section 16 of the aforesaid Act it was open to them to disprove such deed of adoption but for that they had to take independent proceeding. the High Court was fully justified in directing that the respondent be substituted in place of Smt. Phulla on the basis of the registered deed of adoption produced before the court.

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103. HINDU ADOPTIONS AND MAINTENANCE ACT : Ss. 16 AND 12 :-
(1998) 8 SCC 683
LAL MAN Vs. DY. DIRECTOR OF CONSOLIDATION AND OTHERS

Where the deed of adoption was found to be invalid on account of such rebuttal of the statutory presumption under Section 16, the right, title and interest of the child concerned in the properties of his natural father, would be deemed to survive and not to have been extinguished.

Paragraph 2 of the judgment is reproduced:-

Learned counsel appearing on behalf of the appellant urged thet once the conditions prescribed by Section 16 of the Hindu Adoptions and Maintenance Act, 1956 in respect of execution and registration of a deed of adoption had been complied with it is to be presumed that the adoption had been made in accordance with the provisions of the said Act unless and until it was disproved. In view of Section 16, a presumption has to be drawn by the Court. But such presumption can always be rebutted on the basis of evidence adduced before the court concerned. As already pointed out, the Deputy Director and the High Court have have examined the validity of the deed of adoption in the light of the evidence adduced on behalf of the parties and have come to the conclusion that in fact there was no valid adoption of the appellant by Udit. This Court. while exercising jurisdiction Under Article 136 of the Constitution of India, should be reluctant to interfere with such findings recorded on the basis of the evidence adduced on behalf of the parties. Accordingly, the appeal fails and it is dismissed. There shall be no order as to costs.

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104. PRACTICE AND PROCEDURE CIVIL : LOCUS STANDI OF PLAINTIFF TO FILE SUIT:-
(1998) 8 SCC 707
BACHAN SINGH Vs. WARYAM KAUR (SMT)

This appeal has been filed on behalf of the plaintiff. One Phula owned some agricultural land and a house. He executed a registered deed of gift on 14-2-1928 in respect of half of his agricultural land and his residential house in favour of Waryam kaur, the respondent who was his sister's daughter. In the deed of gift, it was recited that after the donee's death, the property in question would revert to the heirs of the donor and the donee shall not be entitled to alienate the property. Phula died in the year 1933. The respondent has re-

mained in possession of the properties throughout. The appellants filed the suit in question in May 1973 claiming to be the tenth-degree collaterals of the donor, for mandatory injunction restraining the respondent from alienating the property of which she was in possession on the basis of the deed of gift aforesaid. The said suit was dismissed by the trial court. However, on appeal being filed by the appellants, the suit was decreed. The High Court has dismissed the said suit pointing out that from the pedigree table shown by the appellants themselves, Puran Singh and Jivan who were eightdegree collaterals and Tulsi who was fifth-degree collateral were alive whereas the appellants were tenthdegree collaterals. As such, they had no locus standi at that stage to file the suit in question.

During the hearing of this appeal, it transpired that the aforesaid Puran Singh,Jivan and Tulsi have not even been impleaded as parties to the suit. According to us, the High Court was justified in dismissing the suit filed on behalf of the appellants for the reasons mentioned aforesaid. Accordingly, the appeal fails and is dismissed. There shall be no order as to costs.

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105. CONSTITUTION OF INDIA : ARTS. 226 AND 227:-
(1998) 8 SCC 714
SUBHASH CHANDRA CHOUBEY Vs. STATE OF BIHAR

In limine dismissal/Speaking order is necessary. Dismissal of a petition in limine by a non-speaking order when writ Petition raising some arguable points deprecated.

Para 4 of the judgment is reproduced:-

After hearing learned counsel for the parties and examining the record we are of the opinion that the writ petition filed by the appellants did raise some arguable points and the High Court fell in error in dismissing the same in limine. No reasons have been advanced by the High Court in support of its conclusions while dismissing the writ petition. The absence of reason has deprived this Court of knowing the circumstance which weiged with the High Court to dismiss the writ petition at the threshold. It was an unsatisfactory method of disposal of the writ petition. Necessity to give reasons which disclose proper appreciation of the problem posed before the court needs no emphasising. Apart from informing the aggrieved party to the proceedings of the reasons, which it may be able to demonstrate in the higher forum as erroneous or irrelevant, it also enables the higher forum to test the correctness of those reasons when the same are put in issue before the higher forum. Under these circumstances, the order of the High Court cannot be sustained. We, accordingly, allow this appeal and set aside the order of the High Court dated 20.4.1992 and remand the writ peition to the High Court for fresh disposal on merits.

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106. CONSTITUTION OF INDIA. 12 AND 226: "STATE" MEANING OF : WHETHER MODERN FOOD INDUSTRIES (INDIA) LTD. IS "STATE":- (1998) 8 SCC 719

RAM CHANDRA SHARMA Vs. MODERN FOOD INDUSTRIES

Paragraphs 1 to 3 the judgment are reproduced:-

The appellant at the relevant time was working with the respondent-Company as a skilled worker. He filed a writ petition under Art. 226 of the Constitution of India before the Delhi High Court challenging his supersession for the post of Fitter Grade I by persons allegedly junior to him. The High Court dismissed the writ petition in limine on the short ground that the respondent-Company, namely M/s. Modern Food Industries (India) Ltd. was not a State or an Authority within the meaning of Article 12 of the Constitution of India and as such no writ petition was competent.

Learned counsel for the respondent-Company concedes that so far as the respondent-Company is concerned it has been held to be a State under Article 12 of the Constitution of India by the Gujarat High Court in ***Modern Food Industries (India) Ltd. Vs.M.D. Juvekar, (1988) 1 Guj Lr 481 : (1988) 1 Guj LH 232.***

We, therefore, allow the appeal, set aside the order of the High Court and send the case back to the High Court for rehearing, on merits. The respondents will be at liberty to raise all points regarding maintainability of the writ petition as well as on merits.

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107. M.P. LAND REVENUE CODE, 1959, S. 257 (V) AND CPC, S. 9 : BAR OF JURISDICTION OF THE COURT:- (1998) 8 SCC 751

BENI MADHAV SINGH VS. RAM NARESH

The provision is not applicable to a suit between two contenders to the title of land, not in any way affecting the scheme of consolidation.

The only substantial question of law raised before the High Court was whether the suit of the plaintiff-respondent was barred on account of Section 257 (v) of the Madhya Pradesh Land Revenue Code, 1959. It has been held by the High Court on the basis of the text and precedent that a suit to challenge the scheme of consolidation of holdings was barred, but not one of possession ans injunction claimed on the basis of the title between two parties. It has been taken that a civil court certainly has jurisdiction to determine a question of title to land without causing any dent to the consolidation scheme. We have gone through the provision in question and the reasoning of the High Court. It seems to us that the view taken by it is unexceptionable. Instantly was a suit between two contenders to the title of the land, not in any

way affecting the scheme of consolidation. On this premise we dismiss the appeal. affirming the judgment and order of the High Court. No costs.

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108. ADMINISTRATIVE LAW : SUBORDINATE LEGISLATION RULES:-
(1998) 8 SCC 753
STATE OF ORISSA Vs. MAMTARANI SAHOO

Statutory rules vis-a-vis administrative instructions. Administrative instructions, held on facts, covered the field on which statutory rules were silent. Administrative instructions, therefore, were upheld. Administrative instruction could not be invalidated on the ground that relevant statute provided for framing statutory rules on the topics covered by the said instructions, though it was preferable to incorporate suitable provisions in existing rules.

Paragraph 11 of the judgment is reproduced:-

In the case of ***Sant Ram Sharma vs. State of Rajasthan, AIR 1967 SC 1910: (1968) 2 LLJ 830*** this Court has held that till the statutory rules are framed, the Government can issue administrative instructions regarding principles to be followed in promotions of the officers concerned to the selection grade posts. It is true that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. In the present case, the Rules provided, inter alia, for constitution of a State Selection Board. They are silent on the question of appointment of District Selection Boards and the procedure for inviting applications and selecting candidates by the District Selection Boards. Since the Rules are silent in this regard administrative instructions have been issued confined to these aspects on which the Rules are silent. Undoubtedly, it would have been far better, had the Government amended the existing Rules to provide for these matters; but that is no ground for preventing District Selection Boards from functioning when there are administrative instructions which supplement these Rules. It has been strenuously urged before us that unless statutory rules are framed in respect of District selection Boards, no regular appointments can be made by the District Selection Boards. We do not find any merit in this contention looking to the cact that there are administrative instructions which supplement the existing Rules. In fact, the High Court had itself held that Rules 5 (8), 6 (9) and 8 which authorise the Management Committee of the school to make ad hoc appointment for a period of six months with the approval of the Inspector of Schools, continue to operate. We do not see on what basis such a selective operation of rules can be considered. The Rules have not been abrogated and they continue to govern the recruitment and conditions of service of teachers.

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109. BAIL. 1999 (1) M.P.L.J. PAGE. 233 *KALACHND PATEL Vs STATE OF M.P.* AN ORDER BY HON BLE SHRI JUSTICE R.S. GARG.

ORDER

1. It appears that the applicants apprehending their arrest by Police, Kunkuri (Raigarh) approached this Court under section 438, Criminal Procedure Code. This Court being satisfied granted a protective order under section 438, Criminal Procedure Code for a period of one month and directed that the applicants shall surrender and apply for regular bail which shall be decided on its own merits. It appears that the applicants thereafter surrendered before the Court trying the case of the co-accused but the learned Judge refused to consider their case observing that neither they were accused before him in some trial nor a supplementary challan was filed against them. These applicants again approached this Court in M.Cr.C. No. 2229/97. This Court extended the earlier period for one month and again directed that the applicants may obtain a regular bail from the regular Court. The applicants again appeared before the said Court and moved an application within the period fixed by this Court. The learned Magistrate rejected that application observing that as they were not accused before him in any case nor a challan/supplementary challan was filed against the present accused, therefore, it was not possible for him to consider the prayer for regular bail.

2. It appears that the learned Judicial Magistrate First Class has not cared to apply his mind to the facts of the case. Anticipating arrest, when a person/ applicants approach to his Court for grant of anticipatory bail, the Court considering such application has to consider it differently. In one case it may grant bail that in the event of arrest he be immediately released and, in another case the period of bail may be fixed for a limited period and in that limited period, he has to apply to the said Court/Competent Court for grant of a regular bail. In the first eventuality, ordinarily there would be no problem because it is not for a limited period and the accused is entitled to furnish bail to the satisfaction of the officer arresting him. The accused can also appear on intimation before the Court and furnish regular bail. In case of second type, where the bail is for limited period and the higher Court directs that the accused within the period of protective order shall apply for regular bail, then it simply means that the applicant/accused is required to move an application under section 439, Criminal Procedure Code, before the said Court. Though the accused is not in custody nor can be taken in custody because of the protective order issued by the High Court under section 438, Criminal Procedure Code but the moment he appears in the said Court and moves an application under section 439, Criminal Procedure Code, then the Court would take him in custody for the purposes of such application and such custody would be deemed to be proper custody for an application under section 439, Criminal Procedure Code. If the Court is satisfied that the case is fit for granting regular bail to such applicant/accused, then it would so direct and on submission

of personal and bail bond the accused would be let off, but in case where the Court does not consider it to be a fit case for grant of an order under section 439, Criminal Procedure Code then while rejecting the application, it cannot take the accused in actual physical custody if the protective order remains in force on that date. To clarify it further, though the Court has taken the accused in custody for the purpose of Section 439, Criminal Procedure Code but while rejecting his application for grant of regular bail, he cannot be taken in actual physical custody because the order passed under section 438, Criminal Procedure Code protects him and directs the police and the said Court that he should not be taken in custody or if taken in custody such man would immediately be released.

3. The present appears to be a case of second type where the High Court bail for a limited period and directed the accused to move an application for regular bail, Once such a direction is issued by the High Court that within that period, he shall apply for regular bail. The Court otherwise having jurisdiction cannot say that because the matter is not pending before the Court or because challan/supplementary challan has not been filed against such accused, the application for grant of regular bail would not be considered.The learned Judge has failed to appreciate that while making such observations, he was perilously bordering contempt of the lawful authority of this Court. Once the High Court orders that the application of the accused filed under section 438, Criminal Procedure Code is allowed and a protective order is granted in his favour for a limited period and such accused is required to move for regular bail, then the Court subordinate to the High Court is duty bound to consider the said application on merits of the matter. It appears that the learned Judicial Magistrate First Class lost sight of the fact that the High Court in its first order clearly directed the learned Magistrate that the application of the present applicant shall be decided on its own merits. I consider present to be a fit case for setting aside the order passed by the Court below. The Magistrate is directed to consider the application of the present applicants a fresh on merits of the matter also taking into consideration that the learned public prosecutor has made clear and unequivocal statement in the Court that a challan/supplementary challan shall be filed against the present applicant. The learned Magistrate, while considering the application shall not be swayed away by his impressions nor should be influenced by the fact that two of his orders have been set aside by this Court. He being subordinate to the High Court should not forget that, when the High Court issues a direction then even if such direction is not palatable to the said Judge, is required to be observed by the said Judge.

4. The order passed by the Court below is set aside. The applicants are given liberty to move an application under section 439. Criminal Procedure Code before the said Court where the co-accused are facing trial. The learned Judge. after receiving the application, shall decide the same treating that the police has registered a case against the present appli-

cants and either they have filed a challan against the applicants or are likely to file challan against the applicants. The earlier interim orders granted be this Court are extended upto 30-6-1998. The petition is finally disposed of.

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110. COGNIZANCE, OF OFFENCES Ss. 156, 190, 200- 202 Cr. P.C. CR. R. NO 1530/1998 JABALPUR *SMT. MANORAMA PATEL AND OTHERS VS. SUBHASH SONI* DECIDED BY HON'BLE JUSTICE SHRI S.P. KHARE ON 07-4.1999 (YET UNREPORTED) THE ORDER IS REPORTED AT VERBATIM

(1) This is a revision by the accused persons against the order by which their application for dismissal of the complaint has been rejected.

(2) on 10.1.1995 respondent subhash Soni filed a complaint before the Judicial Magistrate First Class, Jabalpur. He sent this complaint to the police under Section 156 (3) of the code of Criminal Procedure, 1973 (hereinafter to be referred to as the code) for investigation. On receipt of the police report he took congnizance of the offences under Sections 323, and 506 Part I I.P.C. and issued process against the petitioners.

(3) The contention of the petitioners is that the cognizance of the offences has been taken on the basis of complaint under Section 190 (1) (a) of the code and therefore it was necessary for the Magistrate to examine the complainant and his witnesses on oath as required by Section 200 of the Code and then alone summons could be issued for the attendance of the accused if there was sufficient ground for proceeding against them. It is further argued that the Magistrate had no jurisdiction to issue the process against the accused without following the procedure laid down in Sections 200, 202 and 204 of the Code.

(4) On the other hand it has been pointed out that the complaint was sent for investigation to the police under Section 156 (3) of the Code at the pre-cognizance stage and on receipt of the police report the cognizance has been taken under Section 190 (1) (b) of the Code and therefore it was not necessary to follow the procedure prescribed for complaint case.

(5) After hearing the learned counsel for both the sides this Court is of the opinion that there is no legal infirmity in the impugned order. Section 190 (1) (a) of the Code provides that the Magistrate may take cognizance of any offence upon receiving a complaint of facts which constitute such offence. This does not mean that once a complaint is filed, the Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of an offence. The word 'may' cannot be construed as 'must' A complaint disclosing a cognizable offence may well justify a Magistrate in sending the complaint, under Section 156 (3) of the Code, to the Police for investigation. That would be the pre-congizance stage. There is no reason why the time of the Magistrate should be wasted when the duty to investigate the cases involving cognizable offences is primarily with

the police. The report submitted by the police consequent upon the investigation under Section 156 (3) of the code would be treated as 'police report' for purposes of taking congizance under Section 190 (1) (b) of the code. Even if the police report under Section 173 (2) of the code states that no offence appears to have been committed the Magistrate disagreeing with the conclusion of the police may issue process to the accused if in his opinion there is sufficient ground for proceeding on the basis of the material available before him. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a congnizable offence, on receipt of a complaint, without police investigation and if he does so he would be required to follow the procedure laid down in Sections 200 to 204 of the Code.

(6) In ***H.S. Bains Vs. State AIR 1980 S.C. 1883*** the Supreme Court has held that the Magistrate instead of taking congnizance of the offence may order an investigation under Section 156 (3). The police will then investigate and submit a report under Section 173 (2). On receiving the police report the Magistrate may take cognizance of the offence under Section 190 (1) (b) and straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. A Magistrate who on receipt of complaint, orders investigation under Section 156 (3) and receives a police report under Section 173 (2), may thereafter, do one of the three things; (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of offence under Section 190 (1) (b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under Section 190 (1) (a) on the the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative he may hold or direct an enquiry under Section 202 if he thinks fit. Thereafter, he may dismiss the complaint or issue process, as the case may be.

(7) The decision of the Supreme Court referred above has recently been relied upon by this Court in ***Shyamlal Vs. Lavkush 1999 MPLJ 260*** while dealing with a case where the complaint was dismissed under Section 203 without following the procedure prescribed under Sections 200 and 202 of the Code

(8) In ***India Carat Private Limited Vs. State of Karnataka*** AIR 1989 S.C. 885 also the Supreme court has expressed the same view, It has been observed that even if the appellant had preferred a complaint before the learned Magistrate and the Magistrate had ordered investigation under Section 156 (3) the police would have had to submit a report under Section 173 (2). If the police officer after making an investigation, sends a report that no case was made out against the accused, the Magistrate could ignore the conclusion drawn by the police and take cognizance of a

case under Section 190 (1) (b) and issue process or in the alternative, he can take cognizance of the original complaint and examine the complainant and his witness and thereafter issue process to the accused, if he is of the opinion that the case should be proceeded with.

(9) Again in ***Madhu Bala vs. Suresh Kumar*** AIR **1997 S.C.** 3104 it has been reiterated that when a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same under Section 190 (1) (a) of the Code and proceed with the same in accordance with the provisions of chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate police station under section 156 (3) for investigation.Once such a direction is given under sub-section (3) of section 156 the police is required to investigate into that complaint under subsection (1) thereof and on completion of investigation to submit a "police report" in accordance with section 173 (2) on which a Magistrate may take cognizance under section 190 (1) (b). The complaint, as soon as an order under section 156 (3) is passed thereon, transforms itself into a report given in writing within the meaning of section 154 of the code which is known as the first information report (FIR). When an order for investigation under section 156 (3) of the code is to be made the proper direction to the police would be " to register a case at the police station treating the complaint as first information report and investigate into the same".

(10) In view of the foregoing discussion of the legal position on the question of law which been raised in this revision petition the Magistrate has followed the correct procedure in taking cognizance of the offences on the basis of police report under section 190 (1) (b) of the code and issuing process to the accused having found sufficient ground to proceed against them. Having done so it was not necessary to take recourse to the other option of reverting back to the complaint and take cognizance under section 190 (1) (a) after following the procedure under sections 200 to 204 of the code. This revision petition is, therefore, dismissed. The point which has been raised and answered in this revision petition is of day-to-day occurrence and therefore a copy of this order be circulated to all the Judges and Magistrates in the State.

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ELEVATIONS

Hon'ble Shri Justice Abhay Kumar Gohil, Hon'ble Shri Justice R.B. Dixit, Hon'ble Shri Justice N.G. Karambelkar and Hon'ble Shri Justice S.S. Saraf have been appointed as Judges of the M.P. High Court. They were administered the Oath of office of Additional Judges, M.P. High Court on 26th April, 1999. The Institute felicitate the Hon'ble Judges.

मध्यप्रदेश अधिनियम

क्रमांक 17 सन् 1999

दण्ड प्रक्रिया संहिता (मध्यप्रदेश संशोधन) अधिनियम, 1999.

(दिनांक 21 मई, 1999 को राष्ट्रपति की अनुमति प्राप्त हुई; अनुमति "मध्यप्रदेश राजपत्र (असाधारण)" में दिनांक 28 मई, 1999 को प्रथमबार प्रकाशित की गई)

मध्यप्रदेश राज्य को लागू हुए रूप में दण्ड प्रक्रिया संहिता, 1973 को और संशोधित करने हेतु अधिनियम

भारत गणराज्य के पचासवें वर्ष में मध्यप्रदेश विधान–मण्डल द्वारा निम्नलिखित रूप में यह अधिनियमित हो :–

संक्षिप्त नाम

1. इस अधिनियम का संक्षिप्त नाम दंड प्रक्रिया संहिता (मध्यप्रदेश संशोधन) अधिनियम, 1999 है.

मध्यप्रदेश राज्य को लागू हुए रूप में केन्द्रीय अधिनियम, 1974 का सं. 2 का संशोधन

2. मध्यप्रदेश राज्य को लागू हुए रूप में दण्ड पक्रिया संहिता, 1973 (1974 का सं. 2) (जो इसमें इसक पश्चात् मूल अधिनियम के नाम से निर्दिष्ट है) को इसमें इसके पश्चात् उपबंधित रीति में संशोधित किया जाए।

धारा 320 का संशोधन

3. मूल अधिनियम की धारा 320 की उपधारा (2) के नीचे दी गई सारणी में,–

(एक) प्रथम, द्वितीय तथा तृतीय स्तंभ में, धारा 324 तथा उससे संबंधित प्रविष्टियों के पूर्व निम्नलिखित धाराएं तथा उससे संबंधित प्रविष्टियां अंतः स्थापित की जाएं, अर्थात्:–

1	2	3
बल्वा	147	वह व्यक्ति, जिसके विरूद्ध अपराध कारित करते समय बल या हिंसा का प्रयोग किया गया है : परन्तु अभियुक्त ऐसे अन्य अपराध के लिए आरोपित नहीं किया गया है, जो शमनीय नहीं है,
घातक आयुध से सज्जित होकर बल्वा करता	148	वह व्यक्ति, जिसके विरूद्ध अपराध कारित करते समय बल या हिंसा का प्रयोग किया गया है : परन्तु अभियुक्त ऐसे अन्य अपराध के लिए आरोपित नहीं किया गया है, जो शमनीय नहीं है,

अश्लील कार्य या अश्लील शब्दों का प्रयोग	294	वह व्यक्ति, जिसके विरूद्ध अश्लील कार्य किए गए थे या अश्लील शब्दों का प्रयोग किया गया था,

(दो) प्रथम, द्वितीय तथा तृतीय स्तंभ में, धारा 506 तथा उससे संबंधित प्रविष्टियां के पश्चात निम्नलिखित धारा तथा उससे संबंधित प्रविष्टियां अंतःस्थापित की जाएं, अर्थात्

1	2	3
आपराधिक अभित्रास, यदि धमकी, मृत्यु या घोर उपहति इत्यादि कारित करने की हो,	धारा 506 का भाग–दो	वह व्यक्ति, जिसके विरूद्ध आपराधिक अभित्रास का अपराध किया गया था,"

विधेयक एवं अधिनियम

क्या आप जानते हैं कि विधेयक (बिल) एवं अधिनियम (ॲक्ट) में क्या अंतर है। कृपया भारतीय संविधान के अनुच्छेद 196 एवं तत्पश्चात के अनुच्छेद एवं विशेषकर अनुच्छेद 200 एवं 246 को एवं सातवीं अनुसूचि को पढ़ें। यदि राज्य सरकार केन्द्रीय अधिनियमं में संशोधन कर अपने राज्य में विशेष प्रावधान करना चाहती है तो उसे विधेयक प्रस्तुत करना होगा जो विधानसभा से पारित होगा। राष्ट्रपति की स्वीकृति मिलेगी तब जाकर वह अधिनियम बनेगा। जब तक अधिनियम नहीं बनता तब तक विधेयक राज्य शासन की एक इच्छा भर है विधि नहीं। विस्तार से पढ़े तो विषय और भी स्पष्ट होगा।

- संपादक

सूचना

माननीय मुख्य न्यायाधिपति महोदय ने इस बात की अनुमति दी है कि जोति जनरल पत्रिका जो न्यायिक अधिकारीगणों को वितरित होती है वह वे अपने पास ही रख सकेंगे। अतः हर कोई अपने-अपने सेट्स (खंड) पूर्ण कर लें। संबंधितों को तथा जिला न्यायाधीशगणों को पृथक से लिखा गया है।

OPINIONS AND VIEWS EXPRESSED IN THE MAGAZINE ARE OF THE WRITERS OF THE ARTICLES AND NOT-BINDING ON THE INSTITUTION AND FOR JUDICIAL PROCEEDING.