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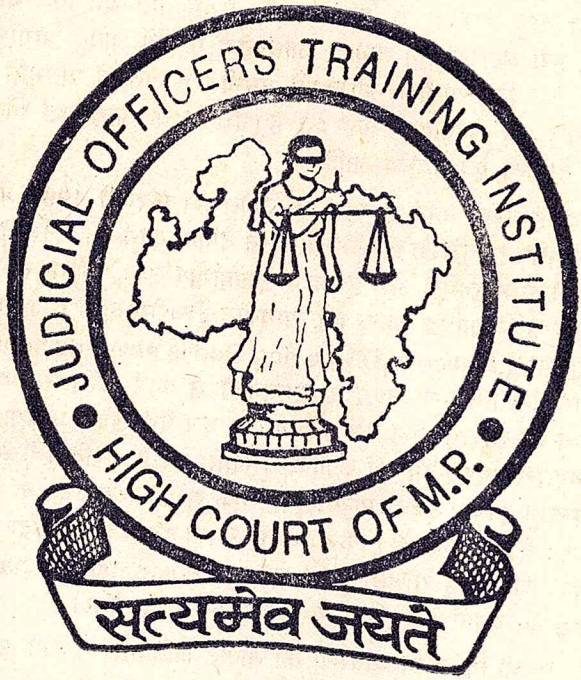

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संपादकीय

प्रबल आत्म विश्वास

उच्च न्यायालय अभिभाषक संघ इंदौर के एक कार्यक्रम में जो दि. 10-4-2000 को संपन्न हुआ में दो बातें प्रखरता से सामने आई। प्रथम बात यह कि **न्यायदान एक ईश्वरीय कार्य है,** इस व्यवस्था की **ताकत, अधिकारों** में नहीं अपितु लोगों के **विश्वास** में है। दूसरी बात यह कि **न्यायिक अधिकारी भयभीत हैं** अतः वे प्रतिभूति प्रकरणों में जमानत के आवेदन पत्र अस्वीकार कर देते हैं। चिंतन के अन्य कई विषय थे जैसे अधिवक्ताओं का दायित्व एवं कर्तव्य आदि।

न्यायदान एक ईश्वरीय कार्य है यह एक उक्ति है। **फरवरी 1997 के ज्योति** के संपादकीय में **पृष्ठ तीन** पर लिखा है कि "न्यायदान दैविक कार्य है। सर्वशक्तिमान ईश्वर की सत्ता का यह एक महत्वपूर्ण अंश है वह हमें अहोभाव तथा अनुग्रह से प्राप्त हुआ है उसे हमें ईमानदारी से निष्पादित करना है। न्यायदान ईश्वरीय कार्य है व ईश्वर कभी भी बेईमान नहीं होता है। (Justice is Divine and God is never dishonest)। सबसे अहम् बात ये होगी कि हम पूर्ण निष्ठा व ईमानदारी से कार्य करें। न्यायदान का कार्य पन्सारी की दुकान पर सामान तोल कर पुड़िया बांध कर पैसे लेकर पुड़िया देने का नहीं है यह बात तो बहुत साधारण सी एवं स्थापित सिद्धांत की है। लेकिन पन्सारी का कार्य भी क्षमता एवं योग्यता का है। अच्छा माल लाना, साफ सुथरा रखना दर के हिसाब से पैसे जोड़ना लेना देना ये सब कला है। फिर हम तो अपनी इच्छा से न्यायदान क्षेत्र में आए हैं। अचानक नहीं। यदि कोई सोचता है कि वह by choice नहीं by chance आया है तो उस chance का बनाएं रखने हेतु भी प्रयत्न करना ही होगा।

दूसरी बात यह भी कि न्याय व्यवस्था की ताकत अधिकारों में नहीं अपितु लोगों के विश्वास में है। ताकत अर्थात Strenght अधिकार अर्थात Power विश्वास याने Faith. हम अक्सर भूल जाते हैं कि विधि द्वारा हमें यदि अधिकारों से वेष्टित किया है तो हमने उसे ही Strenght मान लिया है। उसी के वशीभूत होकर। हम जब कार्य करते हैं तो गलत मार्ग आक्रमित कर रहे होते हैं। वास्तव में विश्वास का अर्जन किया जाना है। हम–आपकी न्यायिक अधिकारी के पद पर नियुक्ति हो जाने पर आपकी नियुक्ति को कोई चुनौती नहीं दी जा रही है। आप तो न्यायिक अधिकारी है ही। प्रश्न ये है कि आप उस पद को विभूषित कर रहे हो या उस पदीय हैसियत के कारण हम आप स्वयं को गौरवान्वित अनुभव कर रहे हैं। उत्तर विदुर नीति में उपलब्ध है।

सुव्याहता नि धाराणं फलतः परिचिन्त्ययः।
अध्यवस्यति कार्येषु चिरं यश सि निष्ठति।।

अर्थात जो व्यक्ति धीर–गंभीर विद्वान व्यक्तियों के अभिव्यक्त विद्वतापूर्ण विचार वचनों पर गंभीरतापूर्वक चिन्तन करता है व कार्यरूप में परिवर्तित व परिणित करता है वह अनंत काल तक यश का भागी बना रहता है। अतः हम सरकारी नौकरी करते है

या कि संविधानिक पदाधिकारी (constitutional functionaries) के रूप मे कार्य करते हैं यह बात स्वयं को पूछना है। यदि सरकारी नौकरी है तो मान, मर्यादा, सम्मान आदि की अपेक्षा नहीं रखना चाहिए। दस नियमों (Ten Commandments) में से एक नियम यह भी है कि Demand no respect better command it. मान, मर्यादा सम्मान की अपेक्षा मत करो अपितु अपने काबू में रखों। किसी को काबू में तभी रखा जा सकता है जब हम ऐसा करने की कूवत, योग्यता (anbility, worthy, telant, strenght, power, vitality) रखते है और यही कूवत तो विश्वास है। ऐसा विश्वास किसका आपका अपना नहीं अपितु लोगों का न्याय पालिका के प्रति। ऐसा विश्वास हम तभी निर्मित कर पाएंगे जब हमारे में कूवत हो। कूवत हो याने संपूर्ण समर्पण। यदि संपूर्ण समर्पण है तो निश्चित ही हमारे द्वारा निष्पादित कार्य के प्रति लोगों को विश्वास जागृत होगा। Faith and Zeal are wings of success. Soar in the sky of justice.

एक अन्य मुद्दा जो इसी कार्यक्रम में उपस्थित्त हुआ वह न्यायिक अधिकारी गणों का भयभीत रहना। यह मुद्दा सार्वजनिक रूप से उठा लेकिन वास्तव में यह विषय हमारे अपने न्यायिक परिवार का मात्र था। हम भयभीत है तो यह न्यायदान का विषम बिंदु है नकारात्मक बिंदु है। दूसरों के न्याय्य अधिकार को हम इसलिए अस्वीकार कर रहे हैं क्योंकि हम भयभीत हैं। हम भयभीत हैं इसलिए हम वैसा नहीं करेंगे जैसा विधि द्वारा अपेक्षित है तो फिर न्यायदान कहां रहा? हम तो केवल नौकरी पेशा व्यक्ति मात्र रह गए व फिर भी हम समाज से वह सब अपेक्षा करते हैं जो कि न्यायाधीश के प्रति समाज की एक छवि रहती है। **जनवरी 1999 के 'ज्योति'** में 'बच के चलो' विषय पर संपादकीय में इसी बात की अभिव्यक्ति की गई है। क्या हम मुखौटेधारी न्यायाधीश बनेंगे? यदि यही प्रवृत्ति सभी में कायम हो गई तो दूर की बात तो छोड़िए हम अपने उपर ही अजमा लेंगे तो पता लगेगा कि हमारा न्याय्य अधिकार हमें इसलिए नहीं मिला कि दाता भयभीत था। तब क्या होगा। मित्रों भयभीत होने का कोई कारण दृष्टिगोचर नहीं हुआ है। यदि पुरूषार्थ से इस सेवाक्षेत्र में आए हैं तो पुरूषार्थ को जागृत रखें। किसी का आदर, मान, सम्मान करना एक बात है तो अनादर करना दूसरी बात। लेकिन भयाक्रांत होकर सफलता अर्जित नहीं होती न स्वतंत्रता को अक्षुण्य रखा जा सकता है अर्थात जो भयभीत हुआ वह दूसरे के हाथ का खिलौना हो गया व तब दूसरा ब्लेक मेलिंग करेगा। इसलिए जो भी कार्य हम करेंगे ठोक बजाकर, सोच समझकर न्यायिक योग्यता, सक्षमता, निष्ठा व ईमानदारी से करेंगे तो भयभीत होने का कोई कारण नहीं हो सकता। फिर सद्भावनापूर्ण रूप से हुई भूल के लिए भय क्या व क्यों? Fear always springs from **ignorance.** A man who is afraid will do any thing. As fear is a close companion to falsehood, so truth follows fearlessness. Feasless minds climb soonest up to crowns. दोस्तों, योग्यात एवं आत्म विश्वास प्रबल बनाएं रखो। इस पत्रिका का मैनेजमेन्ट स्तम्भ अवश्य देखें।

पुरुषोत्तम विष्णु नामजोशी

REVIEW

ARBITRATION & CONCILIATION ACT, 1996

CHANGING SCENARIO

AN OVERVEIW WITH EMPHASIS ON THE ARBITRAL TRIBUNAL'S COMPETENCE TO RULE ON ITS OWN JURISDICTION

By **DILIP DESHMUKH**
District Judge, Bilaspur

In India the law relating to domestic and international arbitration was so long governed by the Arbitration Act 1940 and the Arbitration (Protocol and Convention) Act 1937 as also the Foreign Awards (Recognition and Enforcement) Act 1961. These three enactments have, however, been repealed by the Arbitration and Conciliation Act 1966. Modelled after the Conciliation Rules adopted in 1980 and Model Law on International Commercial Arbitration adopted in 1985 by the united Nations Commission on International Trade Law (UNCITRAL), the Act of 1996 provides a spectrum covering both domestic and international, commercial arbitration as also a mechanism for conciliation.

The United nations Commission on international Trade Law (UNCITRAL) adopted in 1985 the model law on international Commercial arbitration. The general assembly of the united nations recommended that all countries give due consideration to the said model law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice. The UNCITRAL also adopted in 1980 a set of conciliation rules. The general assembly of the united nations recommended use of these rules in cases where the disputes arise in the context of international commercial relations and the parties seek amicable settlement of their disputes by recourse to conciliation. An important feature of the said UNCITRAL model law and Rules is that they have harmonised concepts on arbitration and conciliation of different legal systems of the world and thus contain provisions which are designed for universal application.

The enactment of the Arbitration and Concilation Act 1996 is a major step in the ongoing process of globalisation and economic liberalisation in India, it would encourage businessmen from foreign countries to enter into contract in India, as they would be assured of a mode of resolution of disputes, which is similar to their own.

With the enactment of the Arbitration & Concilation Act 1996 an attempt has been made to unity the adjudicatory process on commercial contracts in, India with the rest of the would. The UNCITRAL (United Nation's commission on International Trade Law) Model law on which the Arbitration & Concilation Act is based constitutes the third major contribution of the United Nations to the development of a fair and efficient process of resolving disputes in international commercial transactions, the first being the convention on the recognition and enforcement of foreign arbitral awards and the second being the UNCITRAL Arbitration Rules.

The Arbitration & Conciliation Act 1996 has made a number of much needed changes in the Arbitration law. Which had perhaps become necessary especially to minimise judicial interference at all stages-prearbitration. on going arbitration and post award. The statement of object and reasons given in the Arbitration and conciliation Bill 1995 stated that the main objectives of the bill among others were:-

(i) To comprehensively cover international commercial arbitration and conciliation as also domestic arbitration and conciliation.

(ii) to make provision for an arbitral procedure which is fair efficient and capable of meeting the needs of the specific arbitration.

(iii) to provide that the arbitral tribunal gives reasons for the arbitral award.

(iv) to ensure that the arbitral tribunal remains within the limits of its jurisdiction and

(v) to minimise the superisory role of courts in the arbitral process.

Under sec. 33 of the Arbitration Act of 1940 a party could have the effect of award or agreement determined by the Court whereas under the Arbitration & Conciliation Act 1996 the arbitral tribunal alone has the power to rule on its jurisdiction and to continue with the arbitral proceeding and proceed to make an arbitral award. It is only after an arbitral award is made that it could be subjected to scrutiny by the court u/s. 34, This is a deliberate departure in the Arbitration & Conciliation Act 1996 in preventing courts intervention before the making of the award.

An arbitral tribunal must therefore decide on the Question of its jurisdiction on a plea raised during the submission of the statement of defence. An arbitrator derives jurisdiction from the agreement between the parties and can not therefore traverse beyond the reference made and if he does so he acts without jurisdiction. An arbitral award must therefore confirm both in substance and in form to the submission. The assumption of jurisdiction not possessed by the arbitrator renders the award invalid to the extent it is beyond the arbitrator's jurisdiction.

Russell in his book on Arbitration has stated that the arbitator should satisfy himself that the submission is wide enough to cover the dispute with which he is to deal. In this connection he should go beyond a formal examination to make sure that he has authority to decide the dispute put before him.

Under sec. 33 of the Arbitration Act 1940 on an application for determining the existence or validity of an arbitration agreement the court was empowered to decide the question on affidavits. This judicial process was time consuming and hampered the arbitral process. Therefore the supervisory powers u/s 33 of the Arbitration Act of 1940 have been taken away and the arbitrator has been given the power to rule on its jurisdiction and to continue with the arbitral proceeding and make an arbitral award. The court has only after an arbitral award is made, power u/s 34 (2) To set aside the award if it deals with a dispute not contemplated by or not falling within the terms of the sumbission to arbitration or it contains decisions on matters beyond the scope of the submission to arbitration There could be a situa-

tion in which the arbitral award gives decision on matters not submitted to arbitration thus traversing beyond the scope of the matters submitted. Where such part of the arbitral award can be separated only such part alone may be set aside by the court. Where the two parts are so inseparably intermixed the whole arbitral award may be set aside by the court u/s 34 (3) (iv) Arbitration & Conciliation Act, 1996.

The role of courts has been drastically reduced in Arbitral proceedings. Now if legal proceedings are commenced on matters covered by the arbitration clause, the court, instead of making a detailed investigation in to the matter (as it used to do under the Act of 1940) shall refer the parties to arbitration. A party cannot now approach the courts for removal of an arbitrator or for stay of proceedings before him, except on very limited grounds. The grounds for setting aside an arbitral award have been reduced considerably and have been specified minutely, without an omnibus ground as" on is otherwise invalid" as contained in section 30 of the arbitration Act of 1940. An award is now by itself a decree and therefore if it is not challenged then a party need not go to the court for formally making it a Rule of the court and to get a decree drawn. It can be enforced directly through execution proceeding thus saving on time. These changes would lessen the burden on the courts and would lead to settlement of dispute without resorting to cumbersome court proceedings.

The Arbitration & Conciliation Act of 1996 will thus hopefully reduce the time within which arbitrations are conducted in India, while at the same time make it more open and transparent. The arbitral tribunal has been given wider power under this Act than before and now they can rule on their own jurisdiction; determine challenges to their appointment, rule on the validity or existence of an arbitration agreement, order interim measures, determine rules of procedure according to which the arbitral proceedings shall be conducted, appoint experts to assist them and conciliate between the parties to settle the disputes between them outside arbitration. The arbitral tribunal will now have to state reasons in support of the arbitral award. unless otherwise agreed upon by the parties or if the award is based on a settlement arrived at during arbitration.

The concept of conciliation which has been introduced for the first time in India would lead to more disputes being settled amicably without the need of even approaching the arbitrators. A welcome change in the Act of 1996 is to give power even to the arbitral tribunal to settle the disputes between the parties by conciliation.

The Arbitration & Conciliation Act 1996 also provides that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal. It also provides that for purposes of enforcement of foreign awards made in a country to which one of the two international conventions relating to foreign arbitral awards to which India is a party applies, will be treated as a foreign award.

धारा 34 एवं 149 के अंतर्गत आरोप निर्मित करना

पुरूषोत्तम विष्णु नामजोशी

पिछले कुछ वर्षों में प्रशिक्षण वर्गों में आरोप निर्मित करने के सम्बन्ध में चिंतन होता रहा है। यह अनुभव हुआ है कि अधिकांश न्यायिक अधिकारी चाहे वे आपस में अग्रज हों या अनुज ने, दंड प्रक्रिया संहिता के पाठ 17 "चार्ज" को गंभीरतापूर्वक मनन करके नहीं पढ़ा है, विशेषकर सम्बन्धित धाराओं के अंतर्गत दिए उदाहरणों को नहीं पढ़ा है। कुछ एक ने पढ़ा अवश्य है लेकिन रमा नहीं होगा। जो विषय वस्तु पढ़ी जाती है उसे हमेशा के लिए मस्तिष्क पटल पर अंकित करना कठिन होता है अतः समयाभाव के कारण एक वक्त ऐसा आता है कि हम विश्वास के साथ अंदाज से भी कार्य कर लेते हैं।

" हमारे अंदाज़ के अंदाज़ की यह नज़ाकत है,
कि अंदाज़ के जंगल में हकीकत नदारत है।"

हमारे अंदाज़ औसतन गलत ही निकलते हैं फिर भी हम समय समय पर दैनिक उपयोग में आने वाली प्रक्रिया को पुस्तकों के माध्यम से दोहराते रहेंगे तो किसी सीमा तक विशुद्धता, यथार्थता आ सकेगी। यही स्थिति धारा 141 से 146 भा.द.वि. की भी है। धारा 147–148 के साथ 149 का प्रयोग करते वक्त उक्त धाराएं बिचारी उपेक्षित रह जाती है, जिनके कारण धारा 147–148 का निर्माण हुआ है। अतः जहां आधार गया वहाँ शेष भवन निराधार हो गया तो सभी कुछ उल्टा पुल्टा (Summer-sault, up side down) हो जाता है। इस मलबे, कचरे में (debris) एक ही बहुमूल्य चीज़ मिलने की संभावना शेष रहती है कि इस उलटे पुलटे के बाद भी अभियुक्त को कोई पूर्वाग्रह हुआ है क्या? हम मान बैठते हैं नहीं हुआ है व प्रकरण को "निपटा" दिया जाता है व नैसर्गिक रूप से यह भी विचार मन में आता है कि यदि हुआ होगा तो "ऊपरवाला" समझे। हमारे यहाँ तो एक प्रकरण गया....SSS। स्वाभाविक ही है। प्रक्रिया को तंतो तंत, ज्यों का त्यों पालन करना निश्चित ही कठिन है, जैसे संभवतः प्रत्येक विधि का पालन करके ही कोई व्यक्ति जीवनयापन करने का निर्धारण कर ले तो संभवतः अगली साँस वह ले लेगा तो वह भी विधि विरूद्ध होगा।

धारा 141 भा.द.वि. अवैध समूह को परिभाषित करती है। धारा 142 उसका विस्तार भी करती है। धारा 143 में दंड की व्यवस्था है। धारा 144 घातक आयुध से सज्जित होकर विधि विरूद्ध जमाव में सम्मिलित होने के संबंध में है तो धारा 145 किसी विधि विरूद्ध जमाव, यह जानते हुए कि उसके बिखर जाने का समादेश दे दिया गया है, में सम्मिलित होने या उसमें बने रहने से है। धारा 146 अत्यन्त महत्वपूर्ण है उसे तथा उस विषय पर समग्र रूप से अध्ययन आवश्यक है जिससे धारा 147–148 को समझा जा सकेगा।

धारा 146 इस प्रकार है:– **बलवा करना** :- जब कभी विधि विरूद्ध जमाव द्वारा या उसके किसी सदस्य द्वारा ऐसे जमाव के सामान्य उद्देश्य को अग्रसर करने में **बल** या **हिंसा** का प्रयोग किया जाता है, तब ऐसे जमाव का हर सदस्य बलवा करने का दोषी होगा।

उक्त धारा में शब्द बल एवं हिंसा का प्रयोग हुआ है। दोनों शब्द महत्वपूर्ण हैं व उनका अध्ययन भी आवश्यक है। बल शब्द को धारा 349 भा.द.वि. में परिभाषित किया है तो अपराधिक बल शब्द को धारा 350 भा.द.वि. में परिभाषित किया है। जहाँ तक हिंसा शब्द का प्रश्न है यह शब्द परिभाषित नहीं है। **लॉ ऑफ क्राइम्स लेखक रतनलाल धीरजलाल** में धारा 146–147 की कामेंट्री (टीका) में से कुछ वाक्य नीचे अनुसार प्रस्तुत कर रहा हूं।

2. 'FORCE OR VIOLENCE .... USED BY AN UNLAWFUL ASSEMBLY, OR ANY MEMBER THEREOF':- As to the meaning of 'force' see S. 349. The words 'force' and 'violence' in this section connote different and distinct concepts. 'Force' is narrowed down by the definition under S. 350 to persons while the word 'violence' is comprehensive and is used to include violence to property and other inanimate objects. ***Lakshmiammal vs. Samiappa (1968) AIR Mad 310 : (1968) Cr LJ 1084; Ibrahim Kutty P.K. 1985 Cri LJ (NOC) 104 (Ker).***

It is not necessary that the force or violence should be directed against any particular person or object. ***Ghani Khan (1918) 21 OC 134: 19 CrLJ 828 : (1918) AIR (O) 171.*** The use of any force, even though it be of the slightest possible character, by any one of an assembly once established as unlawful, constitutes rioting. ***Koura Khan (1868) PR No 34 of 1868; Ramdeen Doobay (1876) 26 WR (Cr) 6; Chandrapal Singh (1968) Cr LJ 1342.***

3. VIOLENCE:- This word is not restricted to force used against persons only but it extends also to force used against inanimate objects. ***Samarudai (1912) 40 Cal 367; Rasul (1888) PR No 4 of 1889; Mir Bayyan Khan (1934) 36 Cr LJ 933: (1935) AIR (Pesh) 65; Sundar Singh (1955) ALJ 293 (FB): (1955) Cr LJ 671.*** Thus if an unlawful assembly came together for the purpose of pulling down a man's house, and proceeded to carry out the object, they could be said to have used violence. Similarly, where the accused struck at the door of the complainant who fled away to save himself from being beaten, it was held that they had used violence. ***Venkatasubbaier (1922) 44 MLJ 407: 17 LW 535 : 24 Cr LJ 356 : (1923) AIR (M) 603.*** Pulling down a toddy shop and cutting and destroying spatches of toddy trees are enough to show that violence was used. ***Marimuthu Naidu (1923) 17 LW 577: 25 Cr LJ 139: (1923) AIR (M) 603.*** Applying lighted match to a hayrick or burning a cattle-shed amounts to using violence. ***Sankarapandia Thevar (1933) MWN 1138.*** Looting of a cutchery

(office), demolishing a privy and erecting a fence on the land of the other party are also acts of violence. ***Kali Das Mukherji (1946) 48 Cr LJ 351.***

कक्षाओं में एक प्रश्न यह पूछा जाता रहा है कि घर में बलवा होता है क्या? सीधा सा उत्तर है परिवार के सदस्य पांच या पांच से अधिक हैं तो किसके घर में बलवा नहीं हुआ है? हाँ, अपराध के रूप में बलवा होता है या नहीं इसके लिए हमें धारा 141 का तृतीयतः वाला भाग पढ़ना होगा जिसमें रिष्टि कारित करना अथवा अपराधिक अतिचार करना या अन्य अपराध करने का संदर्भ है। अपराधिक अतिचार के प्रावधान धारा 441 से 462 के अंतर्गत हैं तो रिष्टि धारा 425 से 440 तक। इस प्रकार धारा 147 के अपराध के संबंध में न जाने कितने प्रावधान हमें देखना होंगे तब सारभूत रूप से हम उक्त धारा को समझ सकेंगे।

दूसरा मुद्दा जो कक्षाओं में पूछा जाता है कि धारा 148 के अंतर्गत आरोप लगाने हेतु घातक आयुध जिससे मृत्यु होना संभाव्य हो शब्द प्रयोग किया है तो कौन सा आयुध घातक है, कौन सा नहीं यह कैसे निर्धारित होगा? प्रश्न यह है कि आयुध का प्रयोग किस पर किया है। डंडा हर्क्यूलिस या दारासिंह पर प्रयोग किया जा रहा है या नवजात शिशु या बालक या औसत व्यक्ति पर? घातक हथियार क्या है यह **रतनलाल धीरजलाल** की पुस्तक की धारा 148 में दी टिप्पणी से बताया जा रहा है:–

'DEADLY WEAPON':- Such as fire-arms, swords, etc. The test for determination of deadly weapon is not the purpose for which it is carried but the nature of the weapon which, if used as a weapon, is likely to cause death. ***Lakshmiammal Vs. Samiappa (1968) AIR Mad 310 : (1968) Cr LJ 1084.*** It is not necessary that any such weapon is actually used in the rioting. It would suffice if it was merely displayed. **Sohanlal 1982 Cri LJ 654 (MP).** The question whether or not a club (lathi) is a deadly weapon is a question of fact to be determined on the special circumstances of each case. **Nathu (1892) 15 All 19.** A lathi is itself is not a deadly weapon, unless and untill it is used on the head or on some vital part of a person. **Parma Singh (1911) 12 Cr LJ 103: Ratan Lal (1933) 8 luck 570; Raja Ram (1938) 40 Cr LJ 14: (1938) AIR (O) 256.** Stout (male) bamboos are deadly weapons, **Krishna Chetti (1883) 1 Weir 70; Nardeen 1977 Cr LR (Raj) 447,** while hollow, thin ones have not been held to be so. Where the evidence in the case attributed the possession of weapons like sticks (lathis), chains and belts to the appellants, none of which was intrinsically a deadly weapon, and the evidence also failed to specify that any of the appellants had used his weapon of offence in such a way as was likely to cause the death of the two victims, it was held that even assuming that the appellants had formed an unlawful assembly while they were armed with the above-mentioned weapons with a common object of murdering either of the chosen victims, and in the prosecution of that common object had committed rioting, they would be guilty only of the offence punishable under S. 147

and not under S. 148. ***Sohanlal 1982 Cri LJ 654 (MP). But see Jugal Kishore Singh 1978 Raj Cr C 88 : 1978 Cr LR (Raj) 121.*** When out of nine rioters only three carried deadly weapons like bows and arrows, only those three could be convicted u/s 148 I.P.C. **Barendre 1978 Cr LJ NOC 90 (Gau).**

अतः चार्ज लगाते समय गुण–दोष पर चिंतन न करके यह देखा जाना चाहिए कि इस आयुध से सामान्य स्थिति क्या होगी। अतः सामान्य रूप से कोई भी आयुध होने पर धारा 148 के अंतर्गत आयुध धारक अभियुक्त के विरूद्ध धारा 148 के अंतर्गत आरोप लगाया तो जा सकता है जिसे निर्णय के समय धारा 147 में भी लघुकृत किया जा सकता है लेकिन धारा 147 के अंतर्गत आरोप लगाकर धारा 148 में महत्तम नहीं किया जा सकता है।

चार्ज लगाने की पूर्व तैयारीः- चार्ज लगाने के पूर्व में हमें प्रकरण देखकर तैयारी करना चाहिये। तैयारी कैसी करना चाहिए इस संबंध में पूर्व में "ज्योति" में बताया है। निर्णय लिखते समय व क्रियाशील भाग लिखते समय भी एक से अधिक अभियुक्त हो तो अंतिम एवं प्रथम चरण कैसा लिखा जाना चाहिए यह भी बताया है। देखें **ज्योति खंड तीन भाग पॉच अक्टोबर 1997 पृष्ठ 13 "निर्णय लेखन, आरोपों का सुगम विवरण"** आप 1999 का सर्वोच्च न्यायालय का राजीव गांधी हत्याकांड की अभियुक्त नलिनी विरूद्ध राज्य का दृष्टांत भी देख सकते हैं जिसमें भी ऐसे ही चार्ज बनाकर दर्शाये गए हैं। उपेक्षा के दृष्टिकोण से इन्हें देखने के बजाय कृतित्व के रूप में ग्रहण करे तो व्यक्तित्व ऊँचा होगा।

चार्ज की तैयारी करते समय हमें प्रकरण के आधार से बिन्दुओं का निर्माण कर लेना चाहिए एवं उन बिंदुओं का निर्माण किया हुआ प्रलेख प्रकरण के कव्हर के अंदर के हिस्से में पिन–अप कर के रख देना चाहिए जिससे साक्ष्य लिपिबद्ध करते समय, निर्णय लिखते समय भी उपयोग में लिया जा सकेगा जिससे परिश्रम कम लगेगा एवं दक्षता ज्यादा प्राप्त होगी। अतः इस लेख के साथ आक्टोबर 1997 का लेख भी अवश्य पढ़ें।

प्रशिक्षण काल में मैंने जो विवरण बनाकर न्यायिक अधिकारियों को चार्ज लगाने हेतु दिया था उसमें कालम नं. 11 को और जोड़कर धारा 34 भा.द.वि. के लिए भी चार्ज लगाने का बता रहा हूँ, जो पृथक से यहीं पर प्रकाशित कर रहा हूँ। आरोपों को उदाहरण के रूप में प्रारूप बनाकर बता रहा हूँ वे अपने आप में परिपूर्ण हो नहीं सकते है व शंकास्पद (क्वेश्चनेबल) भी होंगे। लेकिन प्रयास यह है कि विषय–वस्तु को समग्र रूप से समझने हेतु उपयोगी हो तथा जैसा कि उपर बताया गया है कि अभियुक्त को विपरीत रूप से पूर्वाग्रह युक्त न हो। इतना ही प्रयास मात्र है। किसी प्रकरण के आधार के चार्ज निर्मित करते समय कौन से बिंदु स्थायी रूप से बनाकर रखे जाना चाहिए वह भी दर्शित किया है।

निम्न तथ्यों के अधार से आरोप निर्धारित करना है

(1) अपराधिक प्रकरण क्रः– 1/2000 शासन वि. रामलाल

(2) आरक्षी केन्द्र :– कोतवाली

(3) घटनास्थल :– नेहरू उद्यान न्यायनगर आरक्षी केन्द्र से दो किलोमीटर परीधि में।

(4) घटना दिनांकः– 01–01–2000

(5) घटना समयः– संध्या 6 बजे

(6) रिपोर्ट समयः– संध्या 7 बजे

(7) आहतः– आनंदी बाई

(8) अभियुक्तः– ए.बी.सी.डी.ई

(9) कृत्यः–

आरोपी क्र.	नाम	आयुध	आहत को उपहति
1	ए.	लाठी	पीठ पर
2	बी	चाकू	हाथ पर
3	सी	लकड़ी	पीठ पर
4	डी }	लात }	मुंह पर
5.	ई }	घूंसे }	पेट–पीठ पर

10. आरोपों की रचना कैसे होगी?

1. ए– धारा 148, 323, विकल्प में 323/149 एवं 324/149
2. बी– धारा 148, 324 एवं धारा 323/149
3. सी– धारा 148, 323 विकल्प में 323/149 एवं 324/149
4. डी– } धारा 147, 323 विकल्प में 323/149 एवं 324/149
5. ई– }

11. यदि उपरोक्त उदाहरण में ई अभियुक्त नहीं है तो आरोपों की रचना कैसे होगी? (प्रकरण क्र. 02/2000 हेतु)

1. ए 323 विकल्प में 323/34 एवं 324/34
2. बी 324 एवं विकल्प में 323/34
3. सी – आरोपी –ए– अनुसार
4. डी– आरोपी–ए–अनुसार

आरोपी डी-ई हेतु

अपराधिक प्रकरण क्रमांक 1/2000

आरोप

(कृपया धारा 211–12–13 एवं धारा 240–248 द.प्र.सं. देखें)

मैं स.दा.सत्य, न्यायिक दंडाधिकारी प्रथमश्रेणी, न्याय नगर, तुम .....
..... पुत्र .....
पर नीचे अनुसार आरोप लगाता हूँ कि ;

तुमने दिन 1 माह जनवरी 2000 को या उसके लगभग स्थान नेहरू उद्यान, न्याय नगर जो आरक्षी केन्द्र कोतवाली से दो किलोमीटर परिधि में है, में:–

प्रथमतः तुम एक अवैध समूह के सदस्य थे जिसका सामान्य उद्देश्य आनंदीबाई को स्वेच्छया उपहति कारित करने का था और इस प्रकार तुमने बलवा (दंगा) कारित किया एवं वह अपराध किया जो धारा 147 भा.द.वि. के अंतर्गत दंडनीय अपराध है।

द्वितीयतः उसी समय, स्थान व दिनांक को तुमने आनंदीबाई को स्वेच्छया उपहति कारित की जो धारा 323 भा.द.वि. के अंतर्गत दंडनीय है।

विकल्प में

उसी समय, स्थान व दिनांक को तुम अभियुक्त ए/बी/सी/डी तथा ई जो एक विधि विरूद्ध समूह के सदस्य थे जिसका सामान्य उद्देश्य आनंदीबाई को उपहति कारित करने का था, उक्त उद्देश्य को अग्रसर कारित करने में **ए, सी, डी, ई** ने आनंदीबाई को स्वेच्छया उपहति कारित की तथा तुम यह जानते थे कि उक्त कृत्य अवैध समूह के सामान्य उद्देश्य को अग्रसर कारित करने में किया जाना संभव था एवं परिणामस्वरूप तुमने वह अपराध कारित किया जो धारा 323/149 भा.द.वि. के अंतर्गत दंडनीय है।

तृतीयतः उसी समय, स्थान व दिनांक को तुम अभियुक्त ए/बी/सी/डी तथा ई एक विधि विरूद्ध समूह के सदस्य थे जिसका सामान्य उद्देश्य आनंदी बाई को स्वेच्छया उपहति कारित करने का था एवं उक्त उद्देश्य को अग्रसर कारित करने में अभियुक्त **बी** ने स्वेच्छया चाकू से आनंदी बाई को उपहति कारित की और तब तुम यह जानते थे कि उक्त कार्य अवैध समूह के सामान्य उद्देश्य को अग्रसर कारित करने में किया जायेगा ऐसा संभाव्य है और इस प्रकार तुमने वह अपराध कारित किया जो धारा 324/149 भा.द.वि. के अंतर्गत दंडनीय है। तथा इस न्यायालय के सज्ञान के अंतर्गत है एवं मैं निर्देशित करता हूं कि तुम पर आरोपित दोषारोप पर विचारण किया जावे।

दिनांक

हस्ताक्षर

(नाम)

पदनाम की सील

आरोपी बी हेतु

अपराधिक प्रकरण क्रमांक 1/2000

आरोप

कृपया धारा 211–12–13 एवं धारा 240–246 (1) देखें)

मैं स.दा.सत्य, न्यायिक दंडाधिकारी प्रथम श्रेणी, न्याय नगर, तुम .....
..... पुत्र .....
पर नीचे अनुसार आरोप लगाता हूँ कि;

तुमने दिनांक 1 माह जनवरी 2000 को या उसके लगभग स्थान नेहरू उद्यान न्यायनगर जो आरक्षी केन्द्र कोतवाली से दो किलोमीटर परिधि में है, में ;

प्रथमतः तुम एक अवैध समूह के सदस्य थे जिसका सामान्य उद्देश्य आनंदीबाई को स्वेच्छया उपहति कारित करने का था और तब तुम आयुध चाकू लिए हुए थे जिसके उपयोग से मृत्यु कारित होना संभाव्य था, से सज्जित रहे और इस प्रकार धारा 148 भा.द.वि. का अपराध कारित किया।

द्वितीयतः उसी, समय, स्थान व दिनांक को तुमने आनंदी बाई को स्वेच्छया चाकू से जो कि एक काटने का आयुध है, से उपहति कारित की और इस प्रकार वह अपराध कारित किया जो धारा 324 भा.द.वि. के अंतर्गत दंडनीय है।

तृतीयतः उसी समय, स्थान व दिनांक को तुम अभियुक्त ए/बी/सी/डी/ई एक विधि विरुद्ध समूह के सदस्य थे जिनका सामान्य उद्देश्य आनंदीबाई को स्वेच्छया उपहति कारित करने का था तथा उक्त उद्देश्य को अग्रसर कांतिर करने में ए, सी, डी और ई ने आनंदीबाई को स्वेच्छया उपहति कारित की और तब तुम यह जानते थे कि उक्त कार्य अवैध समूह के सामान्य उद्देश्य को अग्रसर कारित करने में किया जावेगा, ऐसा संभाव्य है। इस प्रकार तुमने वह अपराध कारित किया जो धारा 323/149 भा.द.वि. के अंतर्गत दंडनीय है। तथा इस न्यायालय के संज्ञान के अंतर्गत है तथा मैं निर्देशित करता हूं कि तुम पर आरोपित दोषारोप पर विचारण किया जावे।

दिनांक

हस्ताक्षर

(नाम)

पदनाम की सील

आरोप

(कृपया धारा 211–12–13 एवं धारा 240–246 (1) देखें)

मैं स.दा. सत्य, न्यायिक दंडाधिकारी प्रथम श्रेणी, न्याय नगर, तुम .....
..... पुत्र.....
पर नीचे अनुसार आरोप लगाता हूँ कि;

तुमने दिनांक 1 माह जनवरी 2000 को या उसके लगभग स्थान नेहरू उद्यान न्यायनगर जो आरक्षी केन्द्र कोतवाली से दो किलोमीटर परिधि में है, में ;

प्रथमतः तुम एक अवैध समूह के सदस्य थे जिसका सामान्य उद्देश्य आनंदी बाई को स्वेच्छया उपहति कारित करने का था और तब तुम आयुध लकड़ी लिए हुए थे जिसके उपयोग से मृत्यु कारित होना संभाव्य था, से सज्जित रहे और इस प्रकार धारा 148 भा.द.वि. का अपराध कारित किया।

द्वितीयतः उसी समय, स्थान व दिनांक का तुमने स्वेच्छया आनंदीबाई को उपहति कारित की और इस प्रकार तुमने वह अपराध कारित किया जो धारा 323 भा.द.वि. के अंतर्गत दंडनीय है।

विकल्प में

उसी समय, स्थान व दिनांक को तुम अभियुक्त ए/बी/सी/डी/ई एक विधि विरूद्ध समूह के सदस्य थे जिसका सामान्य उद्देश्य आनंदीबाई को स्वेच्छया उपहति कारित करने का था और उक्त उद्देश्य को अग्रसर कारित करने में ए सी डी और ई ने आनंदीबाई को स्वेच्छया उपहति कारित की और तब तुम यह जानते थे कि उक्त कृत्य अवैध समूह के सामान्य उद्देश्य को अग्रसर कारित करने में किया जावेगा, ऐसा संभाव्य है एवं परिणामतः तुमने वह अपराध कारित किया जो धारा 323/149 भा.द.वि. के अंतर्गत दंडनीय है।

तृतीयतः उसी समय, स्थान व दिनांक को तुम अभियुक्त ए/बी/सी/डी तथा ई एक विधि विरूद्ध समूह के सदस्य थे जिसका सामान्य उद्देश्य आनंदीबाई को स्वेच्छया उपहति कारित करने का था एवं उक्त उद्देश्य को अग्रसर कारित करने में अभियुक्त बी ने स्वेच्छया चाकू से जो काटने का आयुध है आनन्दीबाई को उपहति कारित की ओर तब तुम यह जानते थे कि उक्त कार्य अवैध समूह के सामान्य उद्देश्य को अग्रसर करने में किया जायेगा ऐसा संभाव्य है और इस प्रकार तुमने वह अपराध कारित किया जो धारा

324/149 भा.द.वि. के अंतर्गत दंडनीय है। तथा इस न्यायालय के सज्ञान के अंतर्गत है तथा मैं निर्देशित करता हूँ कि तुम पर आरोपित दोषारोप पर विचारण किया जावे।

हस्ताक्षर

दिनांक

(नाम)

पदनाम की सील

आरोपी ए-सी-डी हेतु

अपराधिक प्रकरण क्रमांक 2/2000

आरोप

(कृपया धारा 211–12–13 एवं धारा 240–248) (1) दं.प्र.सं. देखें)

मैं स.दा. सत्य, न्यायिक दंडाधिकारी प्रथम श्रेणी, न्याय नगर, तुम .... पुत्र ..... पर नीचे अनुसार आरोप लगाता हूँ कि;

तुमने दिन 1 माह जनवरी सन् 2000 को या उसके लगभग स्थान नेहरू उद्यान, न्याय नगर जो आरक्षी केन्द्र कोतवाली से दो किलोमीटर परिधि में है, में:–

प्रथमतः तुम अभियुक्त ने आनंदीबाई को स्वेच्छया उपहति कारित की एवं वह अपराध कारित किया जो धारा 323 भा.द.वि. के अंतर्गत दंडनीय है।

"विकल्प में"

उसी समय, स्थान व दिनांक को तुमने सह–अभियुक्त ए/बी/सी/डी ने समान आशय आनंदीबाई को स्वेच्छया उपहति कारित करने का निर्मित किया तथा अभियुक्त ए,सी तथा डी ने आनंदीबाई को स्वेच्छया उपहति कारित की एवं तब तुम यह जानते थे कि उक्त कृत्य समान आशय को किया जाना सभाव्य था एवं परिणामस्वरूप तुमने वह अपराध कारित किया जो धारा 323/34 भा.द.वि. के अंतर्गत दंडनीय है।

द्वितीयतः उसी समय, स्थान व दिनांक को तुमने सह अभियुक्त ए/बी/सी/डी के साथ समान आशय आनंदीबाई को स्वेच्छया उपहति कारित करने का किया एवं उक्त कृत्य को अग्रसर करने में अभियुक्त बी ने चाकू से जो कि काटने का आयुध है, से आनंदीबाई को स्वेच्छया उपहति कारित की और तब तुम यह जानते थे कि उक्त कृत्य समान आशय को अग्रसर कारित करने में किया जायेगा और इस प्रकार तुमने वह अपराध किया जो धारा 324/34 भा.द.वि. के अंतर्गत दंडनीय है।

तथा इस न्यायालय के सज्ञान के अंतर्गत है एवं मैं निर्देशित करता हूँ कि तुम पर आरोपित दोषारोप पर विचार किया जावे।

हस्ताक्षर

(नाम)

पदनाम की सील

दिनांक

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आरोपी बी हेतु **अपराधिक प्रकरण क्रमांक 2/2000**

आरोप

कृपया धारा 211–12–13 एवं 240–246(1) दं.प्र.सं. देखें)

मैं स.दा. सत्य, न्यायिक दंडाधिकारी प्रथम श्रेणी, न्याय नगर, तुम .... पुत्र ..... पर नीचे अनुसार आरोप लगाता हूँ कि

तुमने दिन 1 माह जनवरी सन् 2000 को या उसके लगभग स्थान नेहरू उद्यान न्याय नगर जो आरक्षी केन्द्र कोतवाली से दो किलोमीटर की परिधि में हैं, में:–

प्रथमतः तुमने महिला आनंदीबाई को चाकू से जो कि काटने का आयुध है, स्वेच्छया उपहति कारित की एवं धारा 324 भा.द.वि. का अपराध कारित किया।

द्वितीयतः उसी समय, स्थान व दिनांक को तुमने सह–अभियुक्त ए/बी/सी/डी के साथ समान आशय आनंदीबाई को स्वेच्छया उपहति कारित करने का किया और उक्त आशय को अग्रसर कारित करने में अभियुक्त ए.सी. तथा डी ने आनंदी बाई को स्वेच्छया उपहति कारित की और तब तुम यह जानते थे कि उक्त कृत्य समान आशय को अग्रसर कारित करने में किया जायेगा और इस प्रकार तुमने वह अपराध कारित किया जो धारा 323/34 भा.द.वि. के अंतर्गत दंडनीय है।

तथा इस न्यायालय के सज्ञान के अंतर्गत है एवं मैं निर्देशित करता हूँ कि तुम पर आरोपित दोषारोप पर विचार किया जावे।

हस्ताक्षर

(नाम)

पदनाम की सील

दिनांक

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मिथक तोड़ना है

मित्रो! युवा अथवा वृद्धावस्था में जो न्यायिक अधिकारी है वे भी बचपन में बच्च ही थे। हर एक के माता पिता न बड़ों ने कहानियाँ सुनाई होगी। Myths and legends (मिथक, काल्पनिक तथा दंतकथाएं) का समय गया। वास्तविकताओं से संघर्ष हो रहा है। न वो राजा है न रानी, न शेर है न भयंकर राक्षस, यद्यपि टी.वी. पर हॉरर शो अवश्य है लेकिन हम आपके कल्पनाओं के परे नहीं। अब हम कल्पनाओं के रूप में जीवन मिथक एवं दंतकथाओं के आधार से नहीं जी सकते। लेकिन हम अभी जी रहे हैं। राजा रानी की कहानियों में नहीं अपितु वादी–प्रतिवादी, परिवादी अभियुक्त एवं अपीलार्थी उत्तरवादी की कहानी सुनते सुनते विधि शब्दों के जंगल में खो जाते हैं तथा भटक भी जाते हैं। विधि शब्दों के जंगल में शब्दों के भीतर नहीं झांकते उसके मौन को नहीं सुनते न सन्नाटे को अनुभव करते हैं। कल्पनाओं के मनमोहक सपनों में खो जाते हैं माता, बच्चों का डॉक्टर एवं नवजात शिशु के बीच शब्दों का कोई आदान प्रदान नहीं क्योंकि बालक को बोलना नहीं आ रहा है फिर भी उनमें एक दूसरे के बीच तादात्म्य स्थापित है, एक दूसरे को समझ रहे हैं, जान रहे हैं व अनुभूति के आधार से इलाज हो रहा है लालन पालन हो रहा है। दो गूंगों के मध्य भी यही स्थिति है। लेकिन हमारा मिथक आज भी यथा स्थिति अपनी जगह पर है।

पूर्व में भी कई अवसरों पर यह लिखा जा चुका है कि हम आप न तो पढ़ते लिखते हैं न श्रवण करते हैं न इन सब बातों की चाहत है। विपरीत इसके यह मान बैठे हैं कि हमें सब मालूम है। जैसे तैसे जब एल.एल.बी. की परीक्षा पास की, नौकरी मिल गई तो साहब बन गए। हमारा आधार केवल वही रहा जो एल.–एल. बी. में हमने पढ़ा (?) था। उस आधार को पाये को, नींव को कभी मजबूत नहीं किया। मंजिल दर मंजिल प्रमोशन की पदोन्नति की मंजिले चढ़ाते जा रहे हैं। ऐसे में किसी का मकान तो किसी के मकान का कोई हिस्सा धराशाही हो रहा है और फिर शिकायत ये कि हमारे मकान को किसी की नजर लगी है, हमारी सफलता सहन नहीं हो रही है। अभी दो दिन पूर्व ही विवाह सभारंभ में जाने का काम पड़ा। बड़ी व्यवस्थित व्यवस्था थी। अपार आगंतुकों के होते हुए भी भगदड़ नहीं थी क्योंकि प्रीतिभोज का कार्यक्रम पत्रिका में लिखे समयानुसार प्रारंभ हो गया। ऐसे ही फुरसत के क्षणों में एक माननीय महोदय से नमस्कार का आदान प्रदान हुआ। विचारों की अभिव्यक्ति हुई व मुझे एक स्वीट डिश माननीय महोदय ने परोसी। ऐसी अच्छी लगी कि वह मिष्ठान आपको भी परोस रहा हूं। श्रीमान जी कह रहे

थे कि नामजोशी, ट्रेनिंग को क्या हो गया है कि कुछ न्यायिक अधिकारी कुछ भी समझते नहीं है व अंदाज से कार्य कर रहे हैं। मैंने मन में कहा कि संभवता आप जिनके विषय में कह रहे हैं वे साहब होंगे न्यायिक अधिकारी नहीं। साहब बनने का सपना एवं न्यायिक अधिकारी की जमीनी स्थिति (कर्तव्य) के बीच शेख चिल्ली आ गया और कुम्हार के स्वप्नीय मटकों के सहारे लखपति बनने के सपने टूट–फूट गए। इसी विषय पर पूर्व अंक में भी लिखा था। श्रीमान महोदय कह रहे थे कि धारा 304 बी, भा.द.वि. में न्यायिक अधिकारी चार चार वर्ष की सजा से दंडित कर रहे हैं तथा लिख रहे हैं कि कठोर दंड की आवश्यकता है। मन ही मन में कहा कि क्या फरक पड़ जाता है धारा 397 या 304 बी में न्यूनतम सात साल की सजा दो या कि चार साल की। सरकार तो दो ही साल में छोड़ देती है।

एक और किस्सा (जी हां वास्तविक) था। घोषणा व स्थायी निषेधाज्ञा के दावे में प्रतिवादी को केवल सबब बताने हेतु साधारण सूचना पत्र (संभवतः आ. 5 नियम 3 का) व निर्गमित हुआ न कि आ. 5 नियम 1 एवं 5 का। दावे की, अस्थायी निषेधाज्ञा के आवेदन पत्र की नकलें, विलेखों की सूची एवं नकलें तक भेजना ज्ञात नहीं होता था। प्रतिवादी निर्वाहित हुआ लेकिन नहीं आया। दावा एक पक्षीय रूप से डिक्री भी हो गया। 50 वर्ष से वांदी का अधिपत्य होना वादी का कहना मात्र था। जिसे न्यायालय ने विरोधी अधिपत्य भी मान लिया। अर्थात विरोधी अधिपत्य के संबंध में अभिकथन व प्रमाण की न्यूनतम आवश्यकता क्या है यह भी ज्ञात नहीं। भूलें होना स्वाभाविक है, अस्वाभाविक निश्चित ही नहीं। पर ऐसी भूलों का कोई पश्चाताप नहीं परिमार्जन नहीं विपरीत इसके उनसे बातें करें तो वे ऐसा करने का औचित्य सिद्ध करने में लगे हैं। **ज्योति 2000 (1) पृष्ठ 33 पर "अभिकथनों के आधार से दावे का पारित करना"** लेख एवं **पृष्ठ 37** पर ***(1999) 8 एस.सी.सी. 396 बलराज वि सुनील*** का दृष्टांत प्रकाशित हुआ है। उसी प्रकार **ज्योति 2000 (1) पृष्ठ 20** पर **"एक पक्षीय प्रकरणों में विचारणीय बिंदु"** लेख प्रकाशित हुआ है, उसके माध्यम से भी मिथक को तोड़ने का प्रयत्न किया गया है। जिन जिन माननीय महोदय से चर्चा होती रही है वे हर बार मेरे कार्य का समालोचन करते रहे हैं व ये भी पूछते रहे हैं कि **क्या यह पत्रिका न्यायिक अधिकारी गणों के लिए भी है?** मैं उन्हें कोई उत्तर नहीं दे पाता हूं व ये भी नहीं कह पाता हूं कि ये पत्रिका स्वानतः सुखाय मात्र है। मैं स्वयं पर ही दृष्टिपात कर लेता हूं व शर्मिन्दगी अनुभव करता हूं।

दोस्तों। एक सुभाषित है वह इस प्रकार है।

'सत्य तपो जपो ज्ञानं सर्वा विधाः कला अपि।
नरस्य निष्पलाः संति यस्य शीलं न विद्यते।।

अर्थात सत्य तप जप ज्ञान कला एवं विधा निष्फल है यदि हमारे में शील नहीं है। हमारा चरित्र व हमारा शील हमें मार्गदर्शित करता है। चरित्र का अर्थ मात्र अनुसरण करना है। उसमें बोध बुद्धि एवं सोच समझ व ध्यान स्वयं का नहीं है अतः थोपा हुआ है। शील का अर्थ अंतःकरण की पहचान है। स्वयं के केंद्र में झांकना है। शील अंतःकरण में ऊगेगा तो चरित्र उपर से थोपा जाना है। बगीचे में पौधों पर कागजी फूल व प्रकृति जन्य फूलों की पहचान तो तितली के बैठने से ही हो जाएगी। तप का अर्थ ओशो तपिश या ऊर्जा के रूप में वर्णित करते हैं तो जप का अर्थ अपने भीतर अनुग्रह के भाव उठने से किया है। हम कुछ करे कुछ पाने के लिए तो उसमें न सत्य है न तपिश है न अनुग्रह है अपितु एक लोभ है स्वयं सुखी जीवन जीने का, बदले में कुछ भी न देने का। लेकिन जब स्थिति विपरीत है तो हमारी वह उपलब्धि होगी, अनुभूति की अभिव्यक्ति होगी। हम आप चरित्र व शील को केवल संकुचित अर्थ में लेने में हमारी भूल है। इस संस्था की अपनी सीमा है। संस्था के माध्यम से बोध कराया जा सकता है अनुकरण करने की प्रेरणा मिल सकती है तथा बुद्धि, सोच, समझ को जागृत करने हेतु प्रेरित किया जा सकता है लेकिन पठन पाठन श्रवण तो हर एक को अपना अपना ही करना है तब ही हम अपने आप को अंतःकरण से जोड़ सकेंगे, शील समर्पण तो अपने मन में उत्पन्न करना होगा। ज्ञान का अर्थ ही स्वयं को जानना, आत्म साक्षात्कार करना होगा।

मित्रो! हमें अभी भी समय है जागने का, निर्धार करने का व इस भावना को मन में उत्पन्न करने का कि हम जो करते हैं, जैसा करते हैं वह प्रतिबिंब दर्शनीय हो ऐसा न हो कि हम अपना प्रतिबिंब देखते ही भयभीत हो जावे। यदि प्रतिबिंब से अविर्भूति उत्पन्न हो तो सोने में सुहागा होगा। इसके लिए हमें परम श्रेष्ठता (excellence) चाहिए।

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QUALITY MEANS CONFORMANCE TO REQUIREMENT NOT ONLY ELEGANCE IT IS SEARCH FOR EXCELLENCE. IT IS NOT AN ACCIDENT BUT INTELLIGENT EFFORT AND WILL TO PRODUCE SUPERIOR THING.

Ubi non est manifesta injustitia judices habentur pro bonisviris et judicatum pro veritate. Where there is no manifest injustice the judges are to be regarded as honest men, and their judgment as truth.

विनम्र निवेदन

कुछ तो असर हुआ !

प्रिय बन्धु

पिछले पांच साल से संस्था की पत्रिका प्रकाशित हो रही है उसका कुछ असर दिखने लगा है। अब इस संस्था के पास छपने हेतु विभिन्न विषयों पर लेख आ रहे हैं। कुछ लेख ऐसे हैं जिसमें काट–छांट है, सतही चिंतन है तो विषय वस्तु से सम्बन्धित गहरा चिंतन नहीं है। भाषा के सम्बन्ध में केवल यह कहना पर्याप्त है कि प्रकाशन के अनुरूप नहीं है। बोलचाल की ढर्रे वाली भाषा नहीं होना चाहिए। कुछ सामग्री ऐसी है कि कोई शोध प्रबन्ध अथवा प्रमेय (थीसिस) हो। ऐसे प्रबन्ध न्यायिक अधिकारीगणों के लिए किंचित ही रोचक हो सकते हैं एवं पत्रिका का आकार भी इतना बड़ा नहीं है कि उसे सम्मिलित किया जा सके। कुछ लेखों में केवल अपना ही तत्वज्ञान है जो विधि सिद्धांतों के साथ संपुष्ट नहीं है।

अतः प्रकाशन के लिए लेख भेजने से पूर्व कृपया स्वयं यह देख लें कि जो कुछ भी लिखा है वह न्यायिक अधिकारीगणों के लिए मार्गदर्शन किस सीमा तक कर सकेगा।

किसी गांव में परदेशी व्यक्ति आता है वह गांव वाले को किसी स्थान का पता पूछता है तो यह बताना तो पर्याप्त नहीं है कि पहले ऐसे जाओ फिर दायें मुड़ो, फिर बाएं घूमो, फिर ढलान आएगी, फिर तिगड्डा आयेगा फिर वहां जाकर पूछना कि फलांजी कहा रहते हैं। यदि ऐसा मार्गदर्शन परदेशी को दिया तो उसका गांव वाले को पूछना न पूछना एक जैसा ही है।

अतः आपसे पुनः नम्र निवेदन है कि सामग्री पठनीय प्रकाशन योग्य हो तथा पत्रिका के आकार को भी अवश्य ध्यान रखें। वर्तमान में जितनी सामग्री प्रकाशित हो रही है उसके लिए पत्रिका के 132 पृष्ठ कम पड़ रहे हैं व अधिकांश सामग्री को अगले अंक के लिए रोककर रखना पड़ता है। इस बात का भी विशेष ध्याना रखना होता है कि न्याय दृष्टांतों को प्रकाशन अधिक संख्या में हो क्योंकि अधिकांश स्थानों पर पुस्तकों का अभाव खलता है, खटकता है।

फिर भी प्रसन्नता का विषय है कि लेख लिखने की प्रेरणा तो मिली लेखों को और अधिक सारवान, सारभूत बनाने हेतु अतिरिक्त रूप से पठन, पाठन व अध्ययन लाभकारी सिद्ध हो सकता है।

WAKE UP TO THE CALL

How can one prevent lethargy and bring efficiency

Shardul Sharma watched with envy as his colleague worked relentlessly giving brilliant performance even after a hectic schedule. But he didn't realise that there are many factors which govern the productivity of an individual.

The most common problem faced by managers in this competitive environment is losing interest in the job. As a result deadlines are not met and targets remain unachieved. Employees tend to slow down and lose focus.

Prof Elton Mayo, of Harward University, during the famous Hawthorne investigations observed : "Productivity is not only a technical phenomenon. It is a social phenomenon. It is the workers' attitude towards their work, their work-mates and supervisors that governs their productivity". A passive attiude, thus, results in a negative impact on the performance of the company. Controlling this problem at the right time is essential to attain corporate excellance.

EARLY DETECTION

The first step-and the most difficult one-is identification of the problem But lower productivity alone is not enough to indicate the existence of passivity as the reasons for reduced productivity may be many. As Ajay Tejpal, Senior Executive- HR. NIIT Limited says, "One reason may be that the efforts of the employees are not being channelised in the right direction." The employee may be efficient but not effective, and thus not showing results. In such a situation, how can the problem be identified? Says Manish Kumar, Management Support Executive, Omron, "we can identify lethargy if the idle-time increases." But sometimes the idle time may increase due to increased efficiency.

The important thing to remember is that every employee has a performance curve. No one can consistently deliver results, or retain the same levels of motivation. This fact further compounds the situation. Is the lethargy part of the natural curve or is it becoming a chronic malaise?

Douglas McGregor, management guru, has suggested 'Self-evaluation' as the best method of appraisal in his famousTheory Y of management. This may be applied to identify lethargy. "Though self-evaluation can help, it is not always possible" opines Tejpal. The HR department can guide people and encourage them to evaluate their own performance.

Kumar agrees, "I find confidential interviews and questionnaire conducted by the HR department very helpful". He adds that "If the results and

findings are kept confidential, employee disclosure is true and helpful." This may be a solution.

REASONS FOR PASSIVITY?

According to McGregor, traditional managers believed that by nature people dislike work, are not ambitious and tend to shun responsibility. Thus, in order to get the work done, people need to be pushed, by applying the carrot and stick policy. He named this traditional approach to management as Theory X. However, he feels that this approach is not correct and in his theory, named Theory Y, propounded that normally, "People want to work and work is as natural as play or rest." The theory adds that every human being wants self development."

Tejpal agrees and adds : "When the process of self development stops, lethargy takes over"

Passivity is infectious. Looking at a colleague who takes his work lightly and still enjoys similar benefits leads to depression. Serious workers feel that it is futile to work hard. This situation has to be avoided and good performance should be rewarded. But this is not all. There may be another problem cropping up, once the achievements are noticed and performance is recognised, sometimes top performers also tend to relax, especially if there is no threat to their position.

WHAT SHOULD BE DONE?

The role played by immediate superiors help change the overall scenario of the organisation. Effective leadership can make the difference. A good leader is one who is able to draw out the best performance from his subordinate. He can infuse new energy and recharge an employee. He never loses sight of the organisation's vision and keeps his team on the right track. He constantly reminds his team about their past achievements and highlights their positive points.

The right approach is to keep the team motivated. According to Frederick Herzeberg. in his book "Work and the Nature of Man", employees cannot always be kept motivated by satisfying their, what he cailed 'animal needs' is through increased salary, better working conditions or favourable company policy. Even things like high incentives, reduction in working hours, or increased worker participation do not work for long.

In order to keep them motivated, Herzeberg had said that it is important to satisfy 'Human needs' or the need for employee's self-development which can also be effective in this case.

This can be done if there exists a scope to take initiative and be creative. The job should be made more challenging by restructuring, enriching and making it meaningful.

The best results can thus be achieved by synchronising the organisational goals with self-development needs of an individual. A right opportunity to do a challenging task is the way to keep him on his toes. Tejpal feels : "The solution may lie in a combination of performance-based rewards (which should be moderate and achievable), enrichment of job contents and job redesign." The employees should also be encouraged to compete with each other. Healthy competition creates synergies. People take it as a challenge and perform at their best leading to increased organisational productivity. Passivity is a symptom found not only in the people but sometimes it is the organisation which also become victim of this. A 'take it easy' attitude gets developed and if not checked, pollutes the organisational culture, leading to stagnation.

Lethargy is thus, a very serious problem and timely action is the key.

Courtesy : Nitin Mathur and HT careers Plus Enhance, dtd. 06-4-2000

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GOALS AHOY!

Learn to identify your goals and set about achieving them

Going through life without facing moments of truth is like piloting a **rudderless** ship. If ending up wherever the wind and currents take you is preferable to accepting responsibility for plotting your own course, you're not ready for the Highperformance process. High-performance people are those who have definite intentions about life and how they want to live it. They weren't necessarily born that way, but somewhere along the line they decided to take charge of their lives.

Most folks are scared that they must bear responsibility for the wisdom or folly of their decisions. In our moment of truth, each one of us must call upon our life experience and accumulated knowledge as well as our best instincts to make decisions, In not turning around and looking squarely into the potential positive and negative consequences of their decisions, some people feel that they can avoid responsibility for the outcome.

Unfortunately for them, there's no way to avoid responsibility, regardless of the outcome. **The axiom, "Not to decide is to decide",** is so common it's almost a **cliche** Nevertheless, for many people, it's somehow emotionally less threatening to passively allow the future to take its course without making any effort to set the stage for it.

One reason that personal problems or the problems of an entire organisation go unresolved is because problem-resolution requires effort. Exerting effort. of course, is never as comfortable as **coasting.** If a problem is of any appreciable size, effort will always be required to resolve it. The only problems that require no effort to resolve are problems not worth worrying about.

WHAT AM I DOING?

There has to be some reason for all the hard work you do. We never do anything without any reasons. If it seems **that way at times,** its because were in such an **ingrained** pattern that we're functioning in a **trance.** How many times has someone **startled** you awake by asking, "What are you doing?" Whatever it was that you were doing, you were doing it in a trance.

Ultimately there was a reason. And so it is with everything we do.

WHAT DOES IT COST?

Talk about mitigating factors. If defining desired rewards is important to motivation, then evaluating potential costs also helps to avoid demotivation.**There is a line that needs to be drawn that establishes when the desired reward is no longer desirable because the cost is too high.**

Cost evaluation is often improperly used as an excuse for not boldly trying something new. While it's irresponsible to set goals without considering the negative implications, it's just as irresponsible to misrepresent the potential liabilities of positive action.

AM I WILLING TO PAY THE PRICE?

There will always be a price to pay for a worthwhile goal. Achieving our desired rewards, personal, social or professional, will cost us something, Time, effort and the opportunity to be doing something else are all things that we potentially give up in pursuing our goals.

WHEN IS THE BEST TIME TO START PAYING THE PRICE?

Now, Stop and think about it, If you've decided that you're willing to pay the price to achieve your desired rewards, then what could possibly make delay worthwhile? The future is nothing more than a series of **'nows'** approaching you, all in a row. Sure, if you miss the present now, there will be another one right behind it, But what's the point of letting any of them go by without enriching them with positive, progressive action?

By the time you reach the end of this sentence. someone, somewhere will have taken a positive and progressive action. It happens because each positive. Progressive action propels you closer to achieving your desired rewards, seizing the first available moment makes sense. Our parents and grandparents used to say, "Never leave until tomorrow what can be done today". British author and flamboyant personality Quentin Crisp said, **"Don't take too long to decide. You can become what you don't want to be."**

TYPES OF GOALS

When setting out to identify what it is you truly want, it's crucial to understand what type of goal you're dealing with. There are three types of goals :

- **Financial Goals**

  Financial goals are most often what people consider first. There's nothing wrong in that. Financial resources seem to represent a sort of universal language. British author and playwright someerset Maugham, said, "Money is like a sixth sense. Without it you can not fully appreciate the other five".

- **Lifestyles goals**

  The lifestyle goal deals with how you want to live. It's one thing to have financial resources. It's something altogether different to decide what exactly you're going to do with your money.

- **Personal Growth goals**

  The questions of where to live and how. to live pale in comparison to the question, "What should I live for? This's an issue of personal growth.

- Goal-setting and problem-solving are so similar that they are often **scarcely** distinguishable. Your first goal must be the solution of whatever is weighing you down. **Cutting your future loose from anchors of the past is essential to goal** attainment. Goals should also be a commitment to solve problems of the past that continue to contaminate the present.

Courtesy : Size of the Day. Joico publishing House and Indian Express. Head stall 24-3-2000.

Ahoy	: हो !	Trance	: भाव समाधि, स्तब्ध
axiam	: कथन	Startled	: प्रवर्तित किया, संकेत दिया,
Rudderless	: बिन पतवार	Potential liabilities	: अंतर निहित, संभाव्य
Cliche	: ठप्पा, छाप, पिष्टोक्ति	Propels	: प्रेरणा देना, ढंक देना
Coasting	: तटानुगमन	Scarcely	: नहीं के बराबर अंतर किया जा सकना
Ingrain	: गहरा–पक्का		

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RACE AHEAD

INTRODUCTION

We as Public Servants are fortunate enough to fall under the protective umbrella of Art. 311 of the Constitution. So, Few of us ever have to face a situation where our careers are in jeopardy. Nevertheless, the discomforting fact remains that more Judicial Officers have been taken to task for in-action or in efficiency in last few years, than ever before. That apart, a Judge is not expected merely to safeguard his career, he is also expected to strive for excellence, in order to become in ideal Judge. These

situations combined to create scenario where there is growing pressure to perform and proove ourselves. How does one tackle this pressure? The simple answer is, by becoming thoroughly competitive. The following are various ways in which one can acquire this competitive edge.

INTROSPECTION

Do a self-check and find out your weak and strong points. A SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis will help you to get a clearer picture. Then you will be able to judge where you stand.

Once you identify your strong points which will be your USPs (Unique Selling Propositions). Armed with these you can identify your **niche** in the job market. Sharpen these USPs and get rewarded in the professional world.

In other words, follow the doctrine, "If I have ten hours to cut a tree, I will spend eight hours in sharpening my axe." Understand one thing, you can not please every person every time. In short. "People suffer from same disease as products. They try to be all things to all people."

Says **Al Ries and Jack Trout,** in their bestseller **'Positioning :**The Battle For Your Mind'. Ask yourself to define in one word, the people you know. You will come out with answers like, X is a sweet person, Y is very shrewd and Z is a **cerebral** man. People **label others based on certain characteristics.**

The above statements can also be called as **positioning statements of these people** Similarly, People around you also have a positioning word for you.

PRIORITIES

Decide your priorities. What you like the most about your job? Why?

This will help you in deciding what exactly you want from life, and accordingly you can work towards it. Apart from this, another probable questions could be How can you get job satisfaction in the current job, and what will be the right time to switch over to a new job?

BLOW YOUR OWN TRUMPET

Talk positively about yourself. People always like to associate with winners and confident people. Project yourself as an important person. True, that you cannot build a reputation without performance.

However, performance alone cannot build reputation. Helping others in achieving their goals can actually pave your way to the top.

USE IMAGINATION

As **Aristotle said, "Imagination is more powerful than knowledge".** Always have a vivid picture in your mind of what you want to achieve in life. As they say, to overcome fear, pretend that you are not **scared.** In fact, a simple doctrine that our psychology influences our physiology can be re-

versed to achieve desired results. This is because of the mind-body connection. If you want to be happy then, start by feeling so and behaving as such.

You should imagine a clear picture of the future, as you want it to be, Add dimensions to this picture in terms all the senses like colour, teste, smell. and sound.

Power of beliefs can work wonders for you. Take the case of a body elephant which is initially tied with iron chains. It tries to escape and then gives up. Later on, it is tied with ordinary ropes. But the elephant does not try, because it believes that it cannot break the rope. This is what beliefs can do to us.

NLP or **Neuro- Linguistic Programming** is precisely based on this principle. Transactional Analysis (TA) also touches upon this foundation.

SCRIPT YOUR FUTURE

It is all there in the attitude, and this is amply manifested by **Thomas Watson** of IBM when he said, **"The way to succeed is to double your failure rate."**

To get into this right frame of mind, one should maintain a diary of one's immediate, medium and lifetime goals.

Remember to read and update this diary often. Also, maintain an album of the things you desire to own, **like a Rolls Royce,** a farmhouse or may be a fancy make-up kit. By going through the album regularly, you help your mind to get a proper direction.

BE YOUR OWN FRIEND

When one of our friends do not do well in an exam, we console him by saying that he can do better next time, and if not the end of the world, But in our own case, our typical reactions are, "I should have studied more, I am good for nothing. People don't like me."

In other words, we are overcritical about ourselves. As psychotherapist Dr. Rani Raote once wrote, "It is interesting to imagine how our lives would be transformed if we started behaving towards ourselves as we would towards a close friend who confess in us about these very issues." In other words, try to use the principle of **empathy** in a reverse way.

USE BIORHYTHMS

The **theory of biorhythms** is credited to Dr. William Fliess, a German physician who found that the human lives revolved around three internal cycles. viz: Physical, emotional and intellectual.

Each cycle has its peak time and low time. These cycles decide our 'good' and 'bad' days. However, these three cycles rarely coincide. So our moods are the combined effect of different stages of these cycles.

Biorhythms can effectively tell you when you will be at your best and your worst, enabling you to plan your activities accordingly. In fact, in Japanese industries where efficiency is highly valued, biorhythms are used to ensure high level of productivity. Identify these cycle patterns and act accordingly.

LIST TASKS

Jot down six most important things to do today. Attend to one task at a time. Next day, delete the taske already done, and add more tasks to the list to bring the total number of tasks to six. According to **Pareto principle** 80 per cent of revenue comes from 20 per cent of the products. **Similarly in life, a major part of the result is due to 20 per cent of what we do.** Thus, the important task is to identify this '20 per cent' of the activities and prioritise them.

Courtesy:

(1) Vibhav Gangan, and Head start Indian Express Dt. 24-3-2000

(2) Introduction by Shri C.V. Sirpurkar A.R. (J) MP-High Court JBP.

Turbulence	: अशांत, अव्यवस्थित	Empathy	: सहानुभूति, परानुभूति
Niche	: स्थान	Biorhythms	: आवर्तित प्रणाली
Scar	: दाग, धब्बे	Jot down	: नोट करो
Blow your own trumpet	: अपना गुणगान खुद गाओ।		

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A QUESTION OF IMAGES

CRIBBING ABOUT THE BOSS MAY NOT ALWAYS HELP - PROMOTING HIS IMAGE MIGHT

Management guru Peter Drucker believes that the surest way to move up is to make sure your boss gets promoted. Sounds far-fetched and even Ludicrous? But it's true. When you consciously project your boss in a good form, not only do you develop a solid working relationship with your boss but also benefit in a more subtle payoff.

IMPLICIT MATTERS

Most organisations follow an implicit (or unwritten) set of rules. One such rule is to be proactive in your relationship with your boss : to size up the situation at hand and quickly take responsibility without having to be told.

The following are some characteristics of a proactive employee:

- Doesn't wait for the boss to make every move.

- Seeks information and the help needed to do the job.
- Gives the boss feedback, asks questions.
- Initiates action without having to be supervised.

SPEAK NO EVIL

How you handle your boss is quite revealing. especially in the first few months of the job. Management is quick to spot employees who show an ability to define and fulfil their own and their boss's mutual expectation in their working relationship, as opposed to those who only grumble about their bosses.

Clearly, by learning to manage your boss well, even though his position may lack sufficient power, you can attract the attention of bigger bosses and thus open the way for a lateral move into the action-packed arena.

YES BOSS!

In most corporate structures, employees learn-sometimes the hard way that no matter how incompetent, lazy or disorganised their boss may be, they are entitled to deference, respect and obedience, simply because of the rank. This is another implic it corporate rule that complaining about your boss to his boss can constitute corporate harakiri. The more hierarchical the structure of your company, the more you're expected to work with your immediate boss, to carry out his orders and be a team player.

Even if you're stuck with an incompetent boss in a highly structured company, don't despair! It may come as a surprise to you that, as an employee, you still can wield a great deal of power.

MAKE YOUR BOSS A CHAMP

Employees can undermine their bosses' authority through nonverbal means-that is, by not paying attention when the boss is talking, by not meeting deadlines for reports, by engaging in idle conversation when they need to be working, by "forgetting" to pass on vital information, or by not sharing expertise.

Eventually, however, these tactics are unsuccessful and will finally catch up with their perpetrators. They demonstrate behaviour that is unprofessional and demeaning to both you and your boss.

There are better ways your can "manage upward" and exercise your power in a positive manner. **Be careful not to abuse any personal power you might have.**

At the same time, never underestimate your power-no matter how junior your position or recent your tenure. Using the power you have to help your boss and the organisation indicates to the boss that the employee values teamwork. Review the "power inventory" and ask yourself the following questions.

- What kind of power do I possess?
- Could I use it more effectively?
- What kind of power do I need that I don't have?
- Can I ask may boss to help me get it?

Ultimately the key to using your power is to do the best job you can in your present position. Employees who make no secret of their disdain or boredom with their boss, believing their destiny lies in the boardroom, will be left in the dust by more dedicated colleagues who the boss feels is more reliable and eager.

Courtesy : Kapil Malhotra and H.T. Careers plus enhance New Delhi. April 27, 2000

Cribbing Rattle	: बड़बडाना	Despair	: निराशा
Ludicrous	: हास्यास्पद	Harakiri	: आत्महत्या (जापानी शब्द)
Subtle	: कुशाग्र	Wield	: चलाना, काम में लाना
Implicit	: अस्पष्ट, अव्यक्त, अप्रत्यक्ष	Disdain	: अवज्ञा, तिरस्कार
Proactive	: सक्रिय, साहसी	Boredom	: ऊब
Grumble	: बड़बडाना	Board Room	: बैठक कक्ष, जहां बैठक होती हैं
		Perpetrator	: अपराध कर्मी

WORK AT IT

Almost everyone I know has some goal or dream they want to achieve in life. But simply wanting is no good. You've got to work at it.

Whatever your dream may be, break it down into achievable steps. Next, fix a deadline against each step. Now, go for it. Be flexible, though. If you don't make it the first time, give it another try.

Life is too short. Don't waste your days in dreams alone. Balance it with work.

MAKE A COMMITMENT

Dreaming, visualising, working, at it very good. But unless you make a commitment to the task, you will find a hard time finishing it. Other "more important" things will encroach on your task and very soon it will be pushed back.

Make a commitment to your dream. Take steps to turn it into reality. Commit yourself to each step and each deadline.

Begin the task. The moment you do you've set in motion a chain of events to turn your dream into a reality.

REAL GROWTH

Are you growing? What a silly question, you might think. Of course, you are. But, pause for a moment and think. I don't mean your physical age.

Are you growing mentally- learning new things, thinking up new ideas, dreaming new dreams? Are you going in your place of work, in your marriage, in your family? Growing means the desire and ability to learn and accept new things. It is very much possible for a man to advance in age and not "grow".

Are you growing?

VISUALIZE

It is so important to visualize your goals and dreams. If your dream of being a writer, for instance, you've got to "see" yourself having written and published a book.

Stephen R. Covey, in his best-selling book The Seven Habits of Highly Effective People puts it beautifully.

"One of the main things his (Dr Charles Garfiled's) research showed was that almost all of the world-class athletes and other peak performers are visualizers. They see it. they feel it, they experience it before they actually do it. They begin with the end in mind."

Courtesy: Rejendra Pillai Better yourself books, New Delhi

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SMILE

A smile costs nothing but gives much It takes but a moment, but the memory of it usually lasts forever.

None are so rich that can get along without, it.

And none are so poor but that can be made rich by it

It enriches those who receive Without making poor those who give it creates sunshine in the home, Fasters good will in business And is the best antidose for trouble And yet it cannot be begged, borrowed or stolen for it is of no value. Unless it is freely given away.

- ANON

TIT-BITS

1. S. 163 A AND S. 166 M.V.A. JUST COMPENSATION- METHOD OF CALCULATION EXPLAINED
2000 (1) M.P.H.T. 657 (D.B.)
MOHAR SINGH Vs. SHRI TRILOKCHAN AND OTHERS

1. This appeal, which arises out of the proceedings initiated by the claimants- appellants under Section 166 of the Motor Vehicles Act, is directed against the order passed by the Motor Accident Claims Tribunal. Whereunder the present appellants have been found entitled to a total amount of Rs. 1,89,200/- with 12% per annum interest from the date of filing of the application towards compensation in respect of the death of their son, Tehsildar Singh. aged 20 years in the motor accident which took place on 12th of January, 1996.

2. The Tribunal has found that the deceased, son of the claimants who had read only upto 5th class, was having income of Rs. 1800/- per month. It may be noticed that the father of the deceased, the present appellant No. 1, was aged 45 years at the time of the accident while the mother of the deceased, the present appellant No. 2, was aged about 40 years. The deceased was the youngest son having four elder brothers.

3. While assessing the amount of compensation the Tribunal had taken into account the age of the claimants-dependants and taking the guidelines envisaged under Section 163-A of the Motor Vehicles Act read with the schedule had proceeded to apply the multiplier of 13 as applicable to the persons falling in the age-group of 45 to 50. The extent of yearly dependency was determined to be Rs. 14,400/- excluding 1/3rd of the total yearly income of the deceased which was taken to have been spent by the deceased upon himself.

4. The learned counsel for the appellants has strenuously urged that the method adopted by the Tribunal for assessing the quantum of compensation is wholly unwarranted as the schedule read with Section 163-A of the Motor Vehicles Act has to be applied with reference to the age of the deceased and not the dependants.

5. **The principle regarding application of multiplier doctrine involves calculation of annual pecuniary loss upon an annual basis and to arrive at the total award by multiplying the figure assessed as the amount of annual "dependency" by the "number of years purchase" i.e. the number of years the benefit is expected to last taking into consideration the imponderable factors in fixing either the multiplier or the multiplicand.**

6. It may be noticed that the multiplier in an individual case has to depend on the particular circumstances of the case because one has to

take into account the probable duration of the life of the deceased, duration of the life of the dependants who might prematurely die and other factors resulting in either creating a situation where the dependant no longer remains a dependant or there is acceleration of interest in the estate, possibility of increased earnings on the one hand as well as displacement or unemployment on the other. All these possibilities and chances are taken into account while fixing a basic sum of annual dependency and multiplying it by an appropriate multiplier.

7. Further, it may be noticed that for the purposes of calculating the just compensation, the annual dependency of the dependants has to be determined in terms of the annual loss due to the abrupt termination of life. The suitable multiplier has to be determined by taking into consideration the number of years of the dependency of various dependants as well as the number of years by which the life of the deceased was cut short and the various imponderable factors such as his early natural death or his becoming incapable of supporting the dependants due to illness or other natural handicap or calamities, the age of the dependants and their developing, their independent sources of income etc., excluding however, the amount of insurance policies of the deceased to which the dependants may become entitled on accounts of its maturity on account of the death. It must be emphasized however, that the method of multiplying the amount of annual loss to the dependants with the number of years by which the life has been cut short without anything else cannot be sustained.

8. In our considered opinion it would be safe to proceed to assess the compensation by adopting the method of multiplier making a judicious use of the appropriate number of the years of purchase. The multiplier is to be chosen having regard to the peculiar facts of each case. If it is found that the deceased prematurely died at a very young age and if it is further revealed that the longevity in his family was more then it would be safe to take a higher multiplier with a view to arrive at a figure of total compensation.

9. **The choice of multiplier has, however, to be made by the Court using its own experience and having due regard to the peculiar facts of each case because the ultimate goal is not to adhere to any rigid formula but to award a compensation which is just. The age of the deceased person cannot be taken to be either a conclusive or a paramount factor in the determination of the compensation except in those cases where the remaining years of the life expectancy are less than the multiplier which is sought to be applied.**

10. **As the determination of the question of compensation depends on several imponderables and there is always a likelihood of there**

being a margin of error, if the assessment made by the Tribunal is not considered to be unreasonable it will not be proper to interfere in the same.

11. Since it is the just compensation which is required to be awarded no method of calculation of compensation would be justified if it does not result in awarding the amount which is not 'just' looking to the peculiar facts of each case.

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2. **I.P.C., SECTION 376 : CONVICTION AND SENTENCE: AGE OF THE ACCUSED AT THE TIME OF OFFENCE 15 YEARS: QUANTUM OF PUNISHMENT:-**
2000 (1) M.P.H.T. 60 (NOC)
MANGAL SINGH Vs. STATE OF M.P.

Prosecutrix aged about 16-17 years at the time of incident. Appellant/ accused was aged about 15 years only at the time of incident. Prosecutrix and the appellant/accused got married after the incident and living together. 2 children were also born out of the said wed lock. The appellant/ accused has remained in jail for 24 days. Further jail sentence will ruin their life. The conviction though maintained and the appellant/accused setenced to period alerady undergone by him. ***Jarnail Singh Vs. State of Punjab, (1998) 8 SCC 629*** was followed.

The Judgment of **Jarnail Singh** was published in **'Joti Journal' Vol. V Part III (June 1999)** issue at page 245. Para 2 of the judgment is reproduced below for clear understanding:-

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 insofar as the appellant is concerned. Since is 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 Sections 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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3. **S. 437 (6) CR. P.C. STATUTORY RIGHT OF THE ACCUSED TO BE RELEASED ON BAIL- DUTY OF THE COURT EXPLAINED.**
2000 (1) MPH.T 661
RAMKUMAR Vs. STATE OF M.P.

Brief facts leading to the filing of this petition lie in a narrow compass; a criminal case for the offences under Sections 420, 120-B, 467 and 468 of the Indian Penal Code was registered against the petitioner and other co-accused persons. Undisputedly, the petitioner was arrested on 9-3-1998, and after the charge-sheet having been filed in the Court of the Additional Chief Judicial Magistrate, charges were framed on 15-2-1999, and on 27-2-1999 the evidence in the case, for the first time, was recorded. Thereafter other dates in the case were fixed by the learned Magistrate, but somehow the trial could not be concluded till date. Meanwhile, much after completion of period of 60 days from 27-2-99, the petitioner filed an application under Section 437 (6) of the Code of Criminal Procedure in the trial Court praying therein that as he was in custody during the whole of such period and the trial had not concluded, hence, he be released on bail. The learned trial Magistrate rejected the said application on 7-9-1999.

The petitioner being aggrieved by the order dated 7-9-99 passed by the learned trial Magistrate preferred a revision petition No. 31/99 in the Court of Session. The learned Fourth Additional Sessions Judge, Gwalior, by his order dated 19-11-99, dismissed the revision petition. Now, the petitioner Ram Kumar @ Raj Kumar Rathore, invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C., has challenged the aforesaid impugned orders passed by the learned trial Magistrate and the learned 4th Additional Sessions Judge, Gwalior.

I have heard the learned counsel on both the sides at length. So far as the factual aspects of the case concerning the dates of arrest of the petitioner and the starting of the prosecution evidence in the trial Court as well as other further dates are concerned, there is absolutely no dispute. The only point that crops up for decision in this case is, whether in view of the factual circumstances prevailing in the case the petitioner gets a right to be released on bail. Thus a very short legal point in regard to the interpretation of the provisions of Section 437 (6) of the Code of Criminal Procedure falls to be pondered over. For the sake of convenience it would be worthwhile to refer to the said provision hereunder:-

"437. When bail may be taken in case of non-bailable offence:-

(1) *** *** *** ***

(2) *** *** *** ***

(3) *** *** *** ***

(4) *** *** *** ***

(5) *** *** *** ***

(6) If in any case triable by Magistrate the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, **unless for reasons to be recorded in writing, the Magistrate otherwise directs.**

(7) *** *** *** ***

Looking to the provision referred to above it is but clear that it is mandatory in nature, and the mandate is that if the Magistrate is trying a case in which the accused has been charged for a non-bailable offence and the trial has not concluded within a period of sixty days from the first date of recording the evidence in the case and that the accused had remained in custody during the whole of such period of sixty days, then he becomes entitled to be released on bail, provided of course, the Magistrate does not reject the same recording in writing his reasons therefor. Circumscribing the undisputed factual circumstances in the ambit of the provisions of Section 437 (6) of the Code of Criminal Procedure it is apparent that they hold the field and apply here from all four corners. In rejecting the bail application of the petitioner the learned trial Magistrate and the learned Fourth Additional Sessions Judge, Gwalior, have no doubt given their reasonings as required under the above provisions of the Code of Criminal Procedure but they are simply to the effect that if the petitioner were to be released then it is doubtful that he would be attending the Court on each and every date fixed by the Magistrate. These reasonings indicating the apprehension of the learned courts below, **by no stretch of imagination, could be termed as judicious, and therefore, they are not of such a nature as to thwart and wash off the mandatory character of the provisions of Section 437 (6) of the Code of Criminal Procedure. I am of the considered view that the statutory right given to the accused by the above provisions cannot be taken away in such a fashion. Since the petitioner had althrough remained in custody during the said period of more than sixty days from the first date fixed for recording the evidence, he would be deemed to have been clothed with the right to be released on bail. The rejection of his application under Section 437 (6) of the Code of Criminal Procedure by the learned trial Magistrate and later the dismissal of his revision petition by the learned Fourth Additional Sessions Judge, Gwalior, was nothing but the abuse of the process of Court and had given rise to the miscarriage of justice.**

Consequently, in view of the aforesaid discussion, this petition is allowed and the impugned orders passed by both the Courts below are set aside.

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4. AMENDMENT IN PLEADINGS WHEN NOTICE TO THE DEFENDANT (WHO IS (EX PARTE) IS REQUIRED:-
(A judgment by Hon'ble Shri Justice Fakhruddin)
2000 (1) M.P.L.J. 407
MAHESH SINGH Vs. SEVARAM

This judgment being of impartant nature and of day to day use, therefore, the whole judgment is reproduced here with same notes also.

JUDGMENT

1. The appellants have preferred this appeal against the judgment and decree dated 8th March. 1997, passed by Shri A.K. Jain. Third Additional Judge to the Court of District Judge. Bhind, in Civil Appeal No. 31A/1996. arising out of the judgment and decree dated 26-11-1990, passed by Civil Judge Class-1, Mehgaon, district Bhind, in Civil Suit No. 31A of 1986.

2. Briefly narrated the facts are that the respondents-plaintiffs 1 to 4 filed the suit for declaration of Bhumiswami rights and delivery of possession and also for cancellation of sale-deed dated 20-7-1974, in respect of the disputed lands. It was contended that the sale-deed was executed by one of the plaintiffs named Sewaram in favour of Hukumsingh. It was contended that the Sewaram was in jail and the document was got executed by adopting the procedure under section 38 of Indian Registration Act. The document was sent to the Sub-Registrar, Gwalior who held an enquiry on 1-8-1974 and thereafter sent it to the office of Sub-Registrar. Mehgaon where the document was registered on 28-8-1974.

3. The suit was filed on 20-2-1986, by the plaintiffs 1 to 4 as mentioned above. The notices were issued. The order-sheet dated 13-8-1986 of the trial Court shows that one Mr. Vijay Kumar Datre. Advocate had filed the Vakalatnama on 26-6-1986, on behalf of defendants 1, 2 and 3 but the same was placed before the Court on 13-8-1986. Time was granted to the defendants counsel to file reply. On 10-11-1986. defendants counsel Shri Datre pleaded no instructions and the Court proceeded ex parte. The matter remained pending. **It was on 24-11-1990 that the application for amendment was filed by the plaintiffs and the cause of action was changed from 28-8-1984 to 28-8-1974. The Court allowed the application without notice to the other side. The judgment was delivered on 26-11-1990.**

4. Shri A.K. Shrivastava, learned counsel for the appellants contended that in this case, service was not proper, and the court below was not justified in proceeding ex parte. It was contended that in this case, the counsel pleaded no instructions and therefore notices ought to have been issued. Reliance was placed on ***AIR 1993 SC 1182, Tahil Ram***

Issardas Sadarangani and others vs. Ramchand Issardas Sadarangani and another and (1998) 2 SCC 206. Malkiat Singh and another vs. Joginder Singh and others. In Tahil Ram's case (supra) AIR 1993 SC 1182, the Apex Court held as under:-

> "It is not disputed in the present case that on March 15, 1974 when Mr. Adhia. Advocate withdrew from the case, the petitioners were not present in Court. There is nothing on the record to show as to whether the petitioners had the notice of the hearing of the case on that day. We are of the view. when Mr. Adia withdrew from the case, the interests of justice required that a fresh notice for actual date hearing should have been sent to the parties. In any case, in the facts and circumstances of this case we feel that the party in person was not at fault and as such should not be made to suffer."

In ***Malkiat Singh's case (supra) reported in (1998) 2 SCC 206,*** the appellants counsel pleaded no instructions on 18-11-1991 and the *ex parte* decree passed on 8-2-1992, without issuing any notice to the appellants who were not present when their counsel pleaded 'no insturctions'. The appellants came to know about *ex parte* decree on 6-6-1992 and within four days thereafter they filed an application for setting aside ex parte decree. The Apex Court held that the appellants are neither careless nor negligent in defending the suit and therefore, they cannot be said to be at fault, and the ex parte order and decree in the circumstances, are liable to be set aside.(Note : Please refer to ***1996 JLJ. 436=AIR 1996 M.P. 243 Benibai Vs. Smt. Champabai***)

5. Shri Shrivastava, learned counsel for the appellants submitted that the lower Appellate Court in para 15 of the judgment relying on the Division Bench decision of this Court reported in ***1977 MPLJ page 562. Nagar Palika Nigam, Gwalior Vs. Motilal Munnalal,*** held that the appellant did not apply under Order 9 Rule 13 C.P.C. for setting aside ex parte judgment and decree before the trial Court. and filed the appeal. It is held that the appellant can challenge the ex parte judgment and decree only on merits in that situation and it cannot be set aside on the ground that there was sufficient cause for his non-appearance before the trial Court. Learned counsel for the appellants contended that **this judgment of the Division Bench is set aside by Hon'ble the Supreme Court in *Civil Appeal No. 719/78, Motilal vs. Nagar Palika Nigam, decided on 23rd March, 1978.*** The Apex Court while setting aside the judgment observed as under:

> "We are of the opinion that it is in the interest of justice to set aside the order dated 31-3-1977 passed by the Madhya Pradesh High Court (Gwalior Bench) in **First Appeal 26 of 1976** and to remand the suit for a fresh trial to the trial Court. The trial Court shall give liberty to the respondent to file the written statement and there-

upon. The suit shall be disposed of in accordance with law. Both parties shall be at liberty to adduce evidence. No order as to costs."

6. Counsel for the appellants contended that in this case the cause of action. which was shown in the plaint was for 28-8-1984. but thereafter the amendment application was filed and cause of action was shown to be of 28-8-1974, by amendment in para 17 of the plaint. It is submitted that the earlier date of sale-deed was shown as 28-8-1984 and date of dispossession was shown as 28-8-1984, but subsequently by amendment, date of sale-deed has been shown as 28-8-1974 and the date of dispossession has also been shown as 28-8-1974. Counsel for the appellants submits that the trial Court without looking to the fact that there was change about cause of action, allowed the amendment, which materially effected Counsel contended that in any case, notice ought to have been issued before allowing the amendment. Reliance was placed on ***1946 NLJ 81- AIR 1946 (33) Nagpur 60, Ganesh Prasad Ramprasad vs. Damayanti w/o Ganesh Prasad,*** in which it is held that where the defendant is absent, no amendment would be allowed without fresh notice to him. It is further contended that when the amendment is allowed in this nature. the Court ought to have considered the section 3 of the Limitation Act, which says that:

> "Subject to the provisions contained in section 4 to 25 inclusive. every suit instituted. appeal preferred and application made after the period of limitation prescribed there fore by the first schedule, shall be dismissed. although limitation has not been set up as a defence."

Reliance has been placed on ***AIR 1935 Privy Council 85, Maqbul Ahmad and others vs. Onkar Pratap Narain Singh and others,*** Clause (e) limitation is peremptory and should be given effect to even though not referred to in pleadings. Reliance has also been placed on ***1947 NLJ 274- AIR (35) 1948 Nag. 41 Altaf Khan and another vs. Kurbankhan and others.*** headnote-B. The Act lays a duty upon Courts to act suo motu in all cases where the suit is instituted beyond the statutory period and the fact that the parties may have though differently or may not have noticed the point does not make the slightest difference. Reliance is further placed on ***1962 MPLJ 575= AIR 1962 MP 301. Central India Chemicals Private Ltd. Sehore vs. Union of India, Railways*** especially para 14, in which it is observed that:

> "Thus, in the suit limitation under Art. 30 has not been expressly pleaded. Still it does not help the plaintiff. One has, in this respect to distinguish between a case where limitation is an arguable point and has therefore to be pleaded and one where it is patent and noncontroversial on the proved facts. Here, for example the two crucial dates are on the plaint itself and do not admit of the least

doubt or controversy. Thus, under section 3 of the Limitation Act, the Court has to dismiss it whether or not limitation has been set up as a defence." (Note : Please also refer to ***1996 JLJ 143 Mukesh Vs. Smt. Meenakshi***)

7. On the foregoing submissions made. Counsel for the appellants submitted that first substantial question of law framed by this Court on 16-4-1998 be answered in favour of the appellants and the ex parte decree be set aside as the same is not sustainable in law and has been passed without notice.

8. Shri Arun Mishra, learned counsel for the respondents, on the other hand, contended that the Court below did not commit any illegality and he supported the judgment and decree.

9. Having considered the rival contentions advanced by the parties and having gone through the record, it is borne out from the record that though the counsel pleaded no instructions on 10-11-1986, but the notices were not issued to the parties.In view of the decisions reported in ***AIR 1993 SC 1182 Tahil Ram Issardas Sadarangani and others vs. Ramchand Issardas Sadarangani and another*** and ***(1998) 2 SCC 206, Malkiat Singh vs. Joginder Singh*** and in view of the facts and circumstances of the case discussed elaborately in earlier paras especially that of 3 to 6, in the opinion of this Court, the appellants deserve opportunity to contest the suit. on merits in the ends of justice. **It is specifically so as the respondents/plaintiffs filed the application on 24-11-1990 changing cause of action from 28-8-1984 to 28-8-1974, which was allowed without notice to the other side.** It is pertinent to mention here that where defendant is absent, no amendment should be allowed as has been done in this case. in view of the decision reported in ***1946 NLJ 81 = AIR (33) 1946 Nagpur 60, Ganesh Prasad Ram Prasad Vs. Damayanti w/o Ganesh Prasad,*** the Court ought to have issued notice. before allowing amendment. In view of the discussion aforesaid, the first substantial question of law is answered in favour of the appellants and the ex parte judgment and decree passed are set aside.

10. The second substantial question of law is regarding the suit being barred by limitation. The contention is that cause of action as per amended plaint is 28-8-1974 and the suit has been filed on 20-2-1986, which according to the appellants ought to have been filed within three years from the date of the sale-deed. Counsel for the respondents. on the other hand. contended that Article 59 would not be applicable and it is Article 65, which would be applicable.

11. In the opinion of this Court, since the ex parte judgment and decree have been set aside on that count, it will be just and proper to leave the question of limitation open to be decided by the trial Court.

12. In view of what has been stated above, the appeal is allowed. The ex parte judgment and decree passed by the Court below are set aside. The appellants/defendants are given opportunity to file written statements and take such grounds which are available to them in law including that of limitation. Copy of the amended plaint shall be supplied to the appellants by the respondents-plaintiffs. The trial Court shall decide the suit on its own merits in accordance with law, without being influenced by any of the observations made by the Lower Appellate Court or this Court.

Note : In paragraph 6 of the judgment a case has been cited, i.e. ***Ganesh Vs. Damayanti, AIR 1946 (33) Nag 60= 1946 NLJ 81.*** Judicial officers are requested to kindly go through that ruling also. That relates to Christian marriage and some other important points. The extracts relating to the principle laid down in relation to amendment is reproduced here for ready reference.

EXTRACT FROM AIR. 1946 NAG. PAGE 60 (F.B) *GANESH PRASAD Vs. DAMAYANTI BAI*

This is a petition under S. 17, Special Marriage Act, (Act 3 (III) of 1872), as amended, for a declaration that the marriage of the petitioner with the respondent is null because at the date of the marriage the petitioner was under 21 years of age, being only 19 years and to months, and the consent of his guardian, his mother Mt. Basantibai, was not obtained. It is proved by the marriage certificate (Ex. P-4) that the two were married under the Act on 5th July 1912. The petitioner gave his age as 23 in his declaration. This was accepted by the Marriage Registrar and so the marriage was performed. The petitioner states that he was ignorant about his age as well as about the requirements of the law but that he later discovered that he was only 19 at the time. Notices were issued to the respondent, but she did not appear and so the proceedings in the lower Court were *ex parte*. The learned District Judge accepted the petitioner's evidence regarding his age, also the fact, which is obvious from the marriage certificate, that the consent of the guardian was not obtained. He did not decide whether the Court had any discretion in such circumstances to make the declaration because he was of opinion that this was in any event a fit and proper case for exercising the discretion should one be vested in him. The ground given for this was that in the opinion of the learned District Judge the petitioner was forced into marrying the respondent. The usual declaration was accordingly given and the matter has now been placed before us for confirmation. We were not satisfied with the petitioner's conduct and felt that we ought to hear the other side. One reason for this was that the petitioner had grounded his petition on the plea of minority. Not only did he raise no further plea but went out of his way in paragraph 6 to state that:

"The respondent has been guilty of acts entitling the petitioner to a decree for dissolution of marriage but as the proceedings therefore presuppose the existence of a valid marriage, the petitioner is not including in this suil either the averments or the prayer for a relief of dissolution but will do so in the event of this petition failing"

Having given this express undertaking in his petition he went back on it and made scandalons averments against his wife behind her back the moment he entered the box. He stated there that after this marriage he learnt that he had married a Christian girl and said it in such a way as to leave one with the impression that he had been deceived on this score. He also said that he did not cohabit with her after the marriage though he had done so once or twice before. He also said that his wife had immoral relations with two men whom he named and said that she confessed that she was living on her immoral earnings and that in spite of his protest she insisted on her right to continue to do so. All this was in examination-in-chief and not, as his learned counsel stated, in extenuation of his client's conduct, in answers to questions put to him by the Judge. In answer to the Judge's questions he underlined his statements about his wife's immorality and said that he was forced into marrying her by the two persons who, according to him, were her paramours because he "used to visit her about twice a week before the marriage." He also said that his wife was an Indian Christian at the time of her marriage and said... "I cannot, say that the respondent is a prostitute." All the same he hinted that she was still having immoral relations with other men.

Now it is evident that none of this should have been allowed in the absence of the other side. it is immaterial whether the respondent was noticed or not. According to her, she did not receive or know of the notice and all knowledge of the proceedings was deliberately kept from her. That has not been proved. We have only her statement before us at the moment. But, in our opinion, it does not matter whether her story is true or not because proceedings of this kind are of a very special nature. No one can demand a divorce as of right, not yet a declaration for nullity. Marriage is an institution with which the State is vitally concerned. It is not a mere matter of contract. It is true the State does not recognise the sacramental aspect with which many faiths endow it, but it realises that marriage confers a status and recognises that the consequences which flow from marriage, partienlarly after consumunation, are so serious and far-reaching, especially with regard to the children of the marriage, that any breaking up of the marriage tie cannot be left to the choice of the individual. The Court always has a discretion, except for one matter, and this is recognised by S. 17 of the Act with which we are dealing. It states that "such marriages may be declared null or dissolved". The excepted matter relates to what we may call bigamous marriages. This is dealt with in S. 15 and there the Act itself

makes such marriages viod and thus takes away all discretion from the Courts. It was argued that "may" has the force of "shall" and a number of authorities relating to other Acts was cited to us. We need not inquire into them. None of them relates to marriage; not do they relate to a construction of this Act. Under the English law, and under the Indian Divorce Act, the matter is discretionary. The present Act is founded on those laws though there are material deviations. The section commences with the words- "The Indian Divorce Act shall apply to all marriages contracted under this Act". Accordingly it is material to apply the principles which obtain there in this case also. Moreover, the section reads:

"Any such marriage may be declared null or dis. solved in the manner therein provided" (that is, provided in the Indian Divorce Act) "and for the causes mentioned therein, or on the ground that it contravenes some one or more of the conditions precribed in Class (1), (2), (3) or (4) of Section" of this Act."

It will be seen that the one word "may" governs all that follows, Now it is admitted that in a case of dissolution on the ground, for instance, of desertion or adultery, the Court has a discretion. Therefore, it is conceded that "may" has the force of "may" so far as these matters are concerned. But as the same word governs the whole clause, it is difficult to see how it can be construed to mean "may" in respect of some of the matters and "shall" as regards the rest. It is true the discretion would be exercised almost as a matter of course in certain cases, as, for example, in the case of an incestuous marriage, but that would be because of the facts, not because there was no discretion. We have no doubt the Court has a discretion in all cases covered by S. 17. The fact that it must be exercised judicialy does not alter the general position which, in our opinion, is fundamental. That being the case, we consider it improper that a party who has given an undertaking not to raise issues of immorality should be permitted to go back on it in the absence of the other side and base his case on matters which he has agreed not to touch. That apart. Even if this had been an ordinary civil case resting on a plaint, no relief could have been given on averments essential to the claim which were not included in the plaint unless amendment were allowed; and it is patent that no amendment would be allowed without fresh notices to the other side. **Parties are entitled to assume that matters will be litigated on the strength of the averments contained in the petition or plaint and that fresh statements of fact material to the issue will not be introduced without, affording the other side an opportunity of meeting and if need contesting the new facts.**

In paragraph 5 of the judgment another citation is being referred. i.e. ***Nagarpalika Nigam, Gwalior Vs. Motilal, 1977 MPLJ= AIR 1977 M.P. 182*** which has been overruled by the Supreme Court in Civil Appeal No. 719/78, decided on 23rd March, 1978. It appears that this judgment is not

reported either in Supreme Court cases or A.I.R. Therefore, the extract of that judgment is reproduced here for ready reference:

Copy of the Order of the Supreme Court dated 23-3-1978 in ***Civil Appeal No. 719/78 Motilal Vs. Nagar Palika Nigam.*** In which the Supreme Court aside the judgment in 1977 M.P.L.J. 562= AIR 1977 M.P. 182;

We are of the opinion that it is in the interest of justice to set aside the order dated 31-3-1977 passed by the Madhya Pradesh High Court (Gwalior Bench) in First Appeal 26 of 1976 and remand the suit for a fresh trial to the trial court. The trial Court shall give liberty to the respondent to file the written statement and thereupon, the suit shall be disposed of in accordance with law. Both parties shall be at liberty to adduce evidence. No order as to costs.

Courtesy : Shri Akhil Shrivastava, Advocate, Gwalior.

I had also written an article in the **'JOTI JOURNAL' Vol. VI Part I, February 2000 at page 20** (एक पक्षीय प्रकरणों में विचरणीय बिन्दु) which may again be looked into.

NOTE: Please refer to the **AIR Manual, 5th Edition, part 5 at page 500 Note No. 9** which is reproduced here for ready reference:-

9. Opportunity must be given to the other side to be heard before passing order.

(1) Where an application for amendment is made, an opportunity must be given to the other side of being heard. An order for amendment without giving such opportunity is not valid **(1971) 12 Guj LR 850 (882) (DB)** AIR 1983 NOC 201 (Mad)** 1981 BLJR 703 (708) (Pat).**

(See 1986 Har Rent R 451. (When application for amending the decree ex parte was made, the Court would not allow the amendment without giving any opportunity of hearing to the other side even if the amendment was not prejudicial to the interest of the opposite party)]

(2) Where the order granting amendment is made in the presence of the opposite side it cannot be challenged subsequently in revision against another order. **AIR 1973 Pat 441 (442)**

(3) Where the defendants had opposed an application for interlocutory relief made by the plaintiff even at the stage when writ of summons had not been served on them, the allowing of the application for amendment of plaint, even though it was prior to the issue of writ of summons, without notice to the defendants was improper. **AIR 1984 NOC 9 (Cal).**

Please refer to the AIR Commentaries on the Code of Civil Procedure, 1977 edition Vol. 3 at page 168, Note No. 14-A which is reproduced here for ready reference:-

14-A : NOTICE OF AMENDMENT:- Where a pleading is amended,

notice of amended plaint must be served on the defendant. **AIR 1969 Pat 228 (232).**

If a relief sought by way of amendment can be granted on the averments in plaint, no notice is necessary to the other party. If, however, the relief sought by way of amendment could not have been granted on the averments of the original plaint, notice must be given to the other party before amending the plaint. **(1975) 41 Cut Lt 697 (712) (DB).**

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5. **WORKMEN'S COMPENSATION ACT, 1923, Ss. 4 AND 4-A : COMPENSATION:-**
2000 (1) T.A.C. 6 (SC)
KERALA STATE ELECTRICITY BOARD Vs. VASALA K.

Effect of amendments of Ss. 4 and 4-A with effect from 15th September, 1995. Amendment enhancing amount of compensation and rate of interest. Relevant date for determination of compensation. Whether amended provisions would be attracted to cases resulting from accident caused during the course of employment prior to 15th September, 1995. No. **Date of accident is material and not date of adjudication.** Accident took place long time back during the course of employment as per law prior to amendment made in 1995. Pettiness of amounts involved. Long time elapsed. Interference declined with the impugned orders in exercise of jurisdiction under Art. 136 of the Constitution.

●

6. **TRANSFER OF PROPERTY ACT, SECTIONS 53-A, 54 AND 55 : AGREEMENT TO SELL AND REGISTERED SALE DEED:-**
2000 RN 30 (HC)
RAMLAL Vs. MANGAL SINGH

Agreement to sell:receipt of possession and payment of consideration not proved, intended vendeed cannot protect alleged possession. Subsequent purchaser without notice has right to possession. Sale deed undated, unregistered and without recitals of handing over possession do not give any title.

Registered sale deed containing recital of handing over possession to vendee by co-owners/sellers. Another agreement to sell containing no such recital cannot be given any weight.

●

7. **SAMAJ KE KAMJOR VARGON KE ..... ADHINIYAM, 1981 (M.P.) Ss. 8 AND 10 : APPEAL UNDER SECTION 8:-**
1999 (II) MPWN 154
PRAYAG PRASAD DUBEY Vs. SMT. KAUSHALYABAI

Appeal Court is required to consider all points urged and decide them. Advocate not available to any party. Duty of Courts becomes extra heavy.

●

8. **MOTOR VEHICLES ACT, 1988, S. 140:-**
2000 (1) MPWN 21
GAWRA BAI (SMT) Vs. SURENDRA SINGH

Claimant sustaining compound comminuted fracture of wrist. Medical opinion of 37% disability. Claimant entitled to interim compensation of no fault liability.

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9. **MOTOR VEHICLES ACT, 1988 SECTION 147: LIABILITY OF INSURER:-**
2000 (1) MPWN 47 (SC)
NEW INDIA ASSURANCE CO. Vs. SHRI SATPAL SINGH

Liability of insurer not excluded in respect of the gratuitous passengers in a vehicle of any class. There is no upper limit of liability in new Act.

●

10. **MOTOR VEHICLES ACT, 1988, SECTION 168: COMPENSATION FOR LOSS AND NOT FOR FEELINGS :-**
2000 (1) MPWN 39
KRISHAN KUMAR BASIN Vs. NARAIN SINGH

Award of amount of compensation is not based on injured feelings of claimants based on financial loss real and probable.

●

11. **MOTOR VEHICLES ACT, 1988, SECTION 168: COMPENSATION GUESSWORK**
2000 (I) MPWN 9
PAPPU Vs. OM PRAKASH

Fixation of compensation amount requires some guess work, some hypothetical consideration and some amount of sympathy.

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12. **MOTOR VEHICLES ACT, 1939:- SECTIONS 92A, 95 AND 103: COMMENCEMENT OF INSURANCE POLICY:-**
2000 (1) TAC 3 (SC)= (1999) 7 SCC 575
NEW INDIA ASSURANCE CO. LTD. Vs. SMT. SITA BAI

Commencement of insurance policy at 2100 hours on 16th April, 1987, whereas accident occurred on 1000 hours on 16th April, 1987, Commencement of risk. Insurance policy would be operative from the time it was bought and not from the previous night. Tribunal and High Court were wrong in burdening the insurer under S. 92-A to pay compensation. Order against Insurance Company set aside.

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13. **FOREST ACT, 1927: S. 52 (3) : CONFISCATION ORDER:-**
2000 (1) MPWN 3
STATE OF M.P. Vs. DISTRICT AND SESSIONS JUDGE

Confiscation order cannot be interfered with by Chief Judicial Magistrate or by Sessions Judge by ad-interim order.

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14. ESSENTIAL COMMODITIES ACT, 1955: Ss. 3 AND 7:-
2000 (1) MPWN 32
HOTILAL Vs. STATE OF M.P.

Order not made under S. 3, not punishable under S. 7

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15. CO.-OPERATIVE SOCIETIES ACT, 1960 (M.P.), S. 64 AND 82 AND C.P.C., S. 9 : JURISDICTION OF CIVIL COURT
2000 RN 23 (HC)
MANJU RAMTAKE (SMT.) Vs. SMT. MANDA VAIDYA

Dispute not falling within this provision cannot be referred to the Registrar. It is to be tried by ordinary Civil Courts. Civil Courts exercise general jurisdiction. Exclusion of such jurisdiction cannot be readily inferred. Society selling a plot to 'A' Again Selling the same plot to 'B' Dispsute is not under S. 64. Jurisdiction of Civil Court not barred.

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16. ACCOMMODATION CONTROL ACT, Ss. 12 (1) (e) (f), 11-A AND 23-A AND C.P.C., O. 7 R. 11: EITHER FORUM FOR LANDLORD
2000 (1) MPWN 11
SHIV PRASAD Vs. RAJENDRA RAO

Landlord of special category may file a suit for eviction under S. 12 (1) (e) or (f) or may invoke jurisdiction of Rent Controlling Authority under S. 23-A for the purpose. Option to plaintiff also given to file application to another forum for the purpose of eviction. Civil suit is maintainable.

●

17. CIVIL SERVICES: DEPARTMENTAL ENQUIRY:-
2000 RN 9 (HC)
M.P. STATE COOP. MARKETING FEDERATION Vs. COMMISSIONER AND REGISTRAR CO-OPERATIVE SOCIETIES

Departmental enquiry should be conducted by impartial authority having no bias. Any kind of bias pecuniary or otherwise will disqualify person conducting enquiry.

●

18. CIVIL SERVICES (PENSION) RULES, 1976 (M.P.) R. 47 (7) AND (8) :- FAMILY PENSION:-
2000 (1) MPWN 22
SITA RAI Vs. REGIONAL PROVIDENT FUND COMMISSIONER

Family pension can be paid to one member only. Widow of deceased servant alive. She alone is entitled to receive the amount of family pension.

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19. C.P.C., O. 39 Rr. 1 AND 2 AND M.P. LAND REVENUE CODE, S. 182:-
2000 RN 22 (HC)
SOMCHAND Vs. STATE OF M.P.

Encroacher ordered to be evicted under S. 182 of M.P. Land Revenue Code. Injunction in civil suit may be granted against eviction. Land declared to be Government land and encroacher ordered to be evicted. Injunction against eviction may be granted in civil suit.

●

20. CR.P.C.,SECTION 125: CRUELTY: CRIMINAL TRIAL : WIFE- UNCORROBORATED TESTIMONY
2000 (1) MPWN 59
DUKALHIN BAI Vs. GHANSHYAM VARMA

Cruel treatment with wife in her matrimonial home very difficult to prove. Wife found reliable witness. Even her uncorroborated testimony can be acted upon.

●

21. CR.P.C., SECTION 125 (3) : FAILURE TO COMPLY WITH THE ORDER OF MAINTENANCE : PUNISHMENT:-
2000 (1) CRIMES 12 (SC)
SHAHDA AND OTHERS Vs. AMJAD ALI AND OTHERS

Failure to comply with the order of maintenance. Punishment. Magistrate can impose sentence upto one month. Magistrate cannot be permitted to impose sentence for more than one month. If the order is not complied with, the wife can again approach the Magistrate for similar relief. Magistrate would not be entitled to impose sentence on such a person continuing him in custody until payment is made.

●

22. CR. P.C., Ss. 227/228: DYING DECLARATION OF DECEASED:- AND SATEE OF CHARGE
2000 (1) MPWN 45
MANSINGH Vs. STATE OF M.P.

Dying declaration of deceased cannot be seen at stage of charge when there is ample evidence against the accused persons.

●

23. CR.P.C. Ss. 397 AND 401: REVISION SCOPE
2000 (1) MPWN 35 (SC)
STATE OF U.P. Vs. UDAI NARAYAN

Revision before High Court against order framing charge. Scanning and scrutinizing of evidence not permissible. It cannot act as an appellate Court.

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24. **CR.P.C., Ss. 451, 482 AND 397 (2)**
2000 (1) MPWN 44
DEV KARAN MEVARA Vs. STATE OF M.P.

Return of truck to owner during pendency of criminal case under Ss. 304A, 337, 338 and 279 IPC. Security of Rs. 3,00,000/- and bank guarantee of the same amount. No interference can be made.

Interlocutory order. If no revision can be filed no recourse of inherent powers can also be taken else the provision under S. 397 (2) would become redundant.

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25. **LIMITATION ACT, ART. 61 (a):-**
2000 (1) MPWN 20
SUMITLAL JAIN Vs. ISHWARILAL

Suit for redemption of mortgaged property filed within 30 years of execution of mortgage deed.

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26. **M.P. LAND REVENUE CODE, Ss. 110, 169 (ii) 185 (ii) AND Ss. 158 AND 190:-**
2000 RN 30 (HC)
RAMLAL Vs. MANGAL SINGH

Person claiming to be inteded vendee does not acquire right of occupancy tenant under S. 169 (ii) or 185 (ii) cannot be mutated as Bhumiswami. M.P. Land Revenue and Tenancy Act, S. 2007 Person neither Muafidar, Inamdar not concessional holder under the Act cannot be mutated as Bhumiswami under the Code.

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27. **M.P.LAND REVENUE CODE, Ss. 170-B AND 165 (6) :-**
2000 RN 14 (HC)
URMILA BAI (Ms.) Vs. BANSHIDAS

Vendor and vendee both belonging to aboriginal tribe on date of sale. Subsequent delisting caste of vendor by Gazette notification. Transaction does not become void. Provisions not attracted.

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28. **M.P. LAND REVENUE CODE, S. 230:- KOTWARS:-**
2000 (1) MPWN 6
S.P. ANAND Vs. STATE OF M.P.

Kotwards having service land and monthly emoluments cannot be deemed economically or socially weak to approach the Court.

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29. *ISHWAR DASS JAIN Vs. SOHAN LAL (DEAD) BY LRS.*
(2000) I SCC. 434

A. Evidence Act, 1872- Ss. 68 proviso & 65 (a)- Proof of mortgage by certified copy- Suit for redemption- Certified copy of mortgage deed

filed by plaintiff mortgagor as a secondary evidence under S. 65 (a), defendant mortgagee having refused to file the original deed- Though in written statement defendant stating that there was no relationship between the parties as mortgagor and mortgagee, but in his additional pleas in the same written statement he admitting that the mortgage deed was executed but it was executed to circumvent the rent control legislation- Defendant in his evidence as DW also admitting execution of the mortgage- Held, there was no specific denial of execution of the mortgage deed and hence in view of proviso to S. 68 it was not necessary for plaintiff to call any attestor of the deed into the witness box, this not being a will- Mortgage thus stood proved by the certified copy- Transfer of Property Act, 1882, S. 59

B. Evidence Act, 1872. Ss. 92 and 91- Mortgage deed Mortgagor's suit for redemption Oral evidence is admissible under S. 92 (1) to prove that the document, though executed, was not intended to be acted upon and that it was a sham document, executed only as a collateral security. That would not amount to varying or contradicting the terms of the document. But on facts, held, such evidence was lacking. Transfer of Property Act, 1882, Ss. 59,60

The plea of the defendant in the written statement was that the mortgage deed though true was a sham document not intended to be acted upon. It was pleaded that the plaintiff demanded that a mortgage deed be executed by the defendant as "collateral security in order to guarantee that the shop will be vacated by the defendant whenever demanded by the plaintiff", that this was done to circumvent the rent control law and that plaintiff was and is a rich man and there was no occasion for him to mortgage his property.

HELD:

In spite of Section 92 (1) of the Evidence Act, it is permissible for a party to a deed to contend that the deed was not intended to be acted upon but was only a sham document. The bar arises only when the document is relied upon and its terms are sought to be varied and contradicted.

Gangabai v. Chhabubai. (1982) 1 SCC 4. relied on

Here the plaintiff owner has mortgaged his shop to the defendant, as security. The plea and evidence of collateral security offered by the defendant appears not to fit into a situation where the plaintiff has executed the mortgage. Obviously, if the plaintiff wanted to secure something by way of an additional security from the defendant, the normal course would have been to ask the defendant to give such a security and not for the plaintiff to execute a mortgage. Thus the reason mentioned and evidence given by the defedant as to why a sham document was executed falls to the ground.

C. Evidence Act, 1872. Ss. 34 & 65- Private extracts of alleged account books are not admissible in evidence. They can only be treated as

secondary evidence, if proper foundation is laid for adducing such evidence under S. 65 or other provisions of the Act. Words and phrases. **"book". Loose sheets or scraps of paper, not covered.**

In this case no account book or books were ever produced by the defendant in the Court. Only extracts of the defendant's account books were filed two years after the filing of the written statement and one-and-a-half years after the settlement of issues. The original books were not produced for comparison nor was their non-production explained and nor was the person who had prepared the extracts examined. The Supreme Court.

HELD:

The extracts of the alleged account books were wrongly treated as admissible by the courts below.

Under Section 34 sanctity is attached in the law of evidence to books of account if the books are indeed "account books" i.e. in original and if they show, on their face, that they are kept in the "regular course of business". Such sanctity cannot attach to private extracts of alleged account books where the original accounts are not filed in court. This is because, from the extracts, it cannot be discovered whether the accounts are kept in the regular course of business or if there are any interpolations or whether the interpolations are in a different ink or whether the accounts are in the form of a book with continuous page numbering. Hence, if the original books have not been produced, it is not possible to know whether the entries relating to payment of rent are entries made in the regular course of business. It is only in the case of the Bankers' Books Evidence Act, 1891 that certified copies are allowed or the case must come under Section 65 (f) or (g) of the Evidence Act. Private extracts of accounts in other cases can only be secondary evidence and unless a proper foundation is laid for adducing such secondary evidence and unless a proper foundation is laid for adducing such secondary evidence under Section 65 or other provisions of the Evidence Act, the privately handwritten copies of alleged account books cannot by themselves be treated as secondary evidence. For the purposes of Section 34 loose sheets of paper or scraps of paper cannot be termed as "book" for they can be easily detached and replaced.

Central Bureau of investigation v. V.C. Shukla, (1998) 3 SCC 410: 1998 SCC (Cri) 761, relied on

D. Rent Control and Eviction- Lease. Proof of. Plea of defendant that lease was created by plaintiff in his favour. Extracts of account books produced to show payment of rent by him as recorded in the account books allegedly maintained in regular course of business. Original account books never filed in the court. Held, extracts of the alleged account books were not admissible in evidence. Principal evidence relating to the alleged payment of rent being thus inadmissible, held, the plea of tenancy cannot stand.

E. Civil Procedure Code, 1908- Ss. 105 and 115 Appeal from orders. Question which can be raised. Extracts of account books, instead of the account books themselves, produced before trial court. Genuineness of the extracts challenged by plaintiff in cross-examination of the defendant and plaintiff contending that the account books were never produced. Plaintiff's plea against admissibility of the extracts rejected by trial court. Revision under S. 115 also dismissed by High Court on ground that there was no "case"decided within the meaning of the words "case which has been decided" in S. 115. Plaintiff thereupon questioning admissibility of the extracts of the account books in first appeal. Held, it was permissible for the plaintiff to raise that question in view of S. 105.

F. Rent Control and Eviction- Lease. On facts, whether a lease or a mortgage by plaintiff in favour of defendant. Suit for redemption of usufructuary mortgagee. Defendant admitting execution of the mortgage deed but alleging that it was a sham document which was executed as a collateral security in order to guarantee that the defendant tenant could be evicted from the shop premises whenever demanded. Endorsement of Sub-Registrar showing that Rs. 1000 was paid as mortgage money. In the copy of Municipal House Tax Register, defendant shown as "occupier" of a shop just as certain others also shown as "occupiers". According to terms of the mortgage deed, defendant was to be in possession and interest payable by the plaintiff as mortgagor was to be set off against the profit realised by mortgagor's occupation of the shop. Conflicting findings recorded on the question whether plaintiff was rich enough so as not to be in need to go in for the mortgage. Courts below taking the view that there was in fact a lease and not a mortgage. Held, vital material was omitted from consideration by the courts. There is a presumption of the correctness of the endorsement made by the Sub-Registrar under Section 58 of the Registration Act. Description as occupiers does not necessarily imply occupation only as tenants. There was no recital in the deed that it was to be set off against any "rent" payable by the defendant. Plaintiff's acute need for money was proved by the fact that he incurred losses in regard to his partnership. In view of non consideration of these vital aspects, held, the finding in regard to tenancy is liable to be set aside.

Baij Nath Singh v. Jamal Bros. & Co. Ltd., AIR 1924 PC 48 : 51 IA 18, relied on ***L. Ishwar Dass v. Haryana Woollen and General Mills Ltd., (1974) 1 SCC 95: AIR 1974 SC 592,*** referred to

G. Registration Act, 1908 - S. 58 - There is presumption of correctness of endorsement made in the deed (mortgage deed) by Sub-Registrar under S. 58. That presumption can be rebutted only by strong evidence to the contrary.

Baij Nath Singh v. Jamal Bros. & Co. Ltd. AIR 1924 48: 51 IA 18, relied on

H. Transfer of Property Act, 1882 - Ss. 60, 65, 67. Suit for redemption. Usufructuary mortgagee cannot deny title of his mortgagor Defendant's title being a derivative title as mortgagee, and he having come into possession of the whole property as a morgagee from the plaintiff, treating the plaintiff as full owner, held, it was not open to the defendant to question title of the plaintiff.

Tasker v. Small (1837) 3 My & Cr 63 : 5 LJ Ch 321 : Jai Nandan Tewari v. Umrao Koeri, AIR 1929 All 305 : 119 IC 568 : Shri Ram v. Thakar Dhan Bahadur Singh. AIR 1965 All 223 relied on.

(NOTE: Please also refer AIR 1967 S.C. Page 1058)

Courtesy :- Eastern Book Company. Lucknow.

30. CPC. O.6 R. 17 ADMISSIONS IN FAVOUR OF PLAINTIFF. WITHDRAWAL OF : LAW STATED.
2000 (1) SCC. 712
06 R. 17 AMENDMENT OF WRITTEN STATEMENT WITHDRAWAL OF ADMISSIONS

A. ADMISSION IN FAVOUR OF PLAINTIFF NOT TO BE WITHDRAWN- Inconsistent and repugnant pleas not to be raised. Defendant has right to take alternative pleas in defence by way of amendment, but subject to the qualifications that : (i) proposed amendment should not result in injustice to the other side; (ii) any admission made in favour of plaintiff should not be withdrawn; and (iii) inconsistent and contradictory allegations which negate admitted facts should not be raised. Suit for mandatory and prohibiting injunction seeking eviction of appellant/ defendant on ground that he was a licensee. Appellant pleading that he was a lessee. During trial seeking amendment of written statement to incorporate alternative plea that even if he was a licensee, his license was irrevocable and also that he was entitled to benefit of S. 60 (b) of Easements Act, 1882. Held, proposed amendment neither inconsistent nor repugnant to pleas already raised in defence. High Court in appeal erred in upholding finding of trial court that proposed amendment amounted to withdrawal of an admission made by appellant and would cause irretrievable prejudice to respondent. Easements Act, 1882, S. 60 (b)

B. CIVIL PROCEDURE CODE, 1908. Or. 6 R. 17- Amendment of pleadings. Held, should be permitted where it would result in solution of real controversy between parties, without altering original cause of action. Amendment cannot be claimed as a matter of right under all circumstances, but court ought not to adopt hypertechnical approach while deciding such prayers. Court's approach should be liberal particularly where any prejudice suffered by the other side can be compensated by costs.

C. CIVIL PROCEDURE CODE, 1908. OR. 6 R. 17- Amendment of pleadings. Held, principles equally applicable to amendment of plaint as well as written statement. However, as prejudice less likely to arise in case of amendment of written statement, courts are more liberal in permitting such amendments.

D. CIVIL PROCEDURE CODE, 1908. OR. 6 R. 17- Amendment of pleadings. Lapse of time, significance of. Where a legal right has accured to party due to lapse of time an amendment resulting in the defeat of such a right should not be allowed. However, delay on its own, untouched by fraud, should not be a ground for rejecting application for amendment and opposite party should be properly compensated with costs for the delay.

The appellant was the defendant in a suit for grant of mandatory and prohibitory injunction seeking eviction on the allegation that the he was a licensee. In his written statement the appellant pleaded that he was actually a lessee not a mere licensee. After the trial had begun, the appellant applied to the court seeking to amend his written statement and incorporate an alternative plea to the effect that, in case he was found to be a licensee, he was not liable to be evicted because his license was irrevocable. He also claimed the protection of the provisions of Section 60 (b) of the Indian Easements Act, 1882, on the ground that, on the basis of the license, he had executed works of a permanent nature and thereby incurred expenses. The trial court rejected the application for amendment, and so did the High Court in appeal.

Allowing the appeals, the Supreme Court

HELD:

In this appeal the appellant-defendant wanted to amend the written statement by taking a plea that in case he is not held a lessee, he was entitled to the benefit of Section 60 (b) of the Indian Easements Act, 1882. The plea sought to be raised is neither inconsistent nor repugnant to the pleas already raised in defence. The alternative plea sought to be incorporated in the written statement is in fact the extension of the plea of the respondent-plaintiff and rebuttal to the issue framed regarding liability of the appellant of being dispossessed on proof of the fact that he was a licensee liable to be evicted in accordance with the provisions of law. The mere fact that the appellant had filed the application after a prolonged delay could not be made a ground for rejecting his prayer particularly when the respondent-plaintiff could be compensated by costs. The finding of the High Court that the proposed amendment virtually amounted to withdrawal of any admission made by the appellant and that such withdrawal was likely to cause irretrievable prejudice to the respondent is erroneous. (Para 5)

The purpose and object of Order 6 Rule 17 CPC is to allow either party

to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Court and the Supreme Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.

The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which. however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or results in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.

Courtesy: Eastern Book Company Lucknow.

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31. SPECIFIC RELIEF ACT, SECTION 20: READINESS AND WILLINGNESS:-
(ALSO SEE SECTION 16 (C) SPECIFIC RELIEF ACT):-
AIR 2000 SC 191
MANZOOR AHMED Vs. GULAM HASSAN

Readiness and willingness can be inferred from evidence led by parties. Written statement filed by defendant showing that sale deed could not

be executed because other defendants were not prepared to execute same. Delay not being on part of plaintiff, equitable relief cannot be denied. Plaintiff deposing that he is ready and willing to perform contract. Notice was served on defendant for execution of sale deed. Plaintiff ready to purchase suit land within stipulated time and was ready to pay sale consideration. Defendants not showing readiness and willingness to perform their part of contract. They did not call upon plaintiff to get sale deed executed. There is no unwillingness on the part of the plaintiff to perform his part of the contract.

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32. MOTOR VEHICLES ACT, 1988: SECTION 168, QUANTUM OF COMPENSATION:-
AIR 2000 SC 201
SMT. SNEHA DUTTA Vs. H.P. ROAD TRANSPORT CORN.

Death of the bread earner of a family. Deceased earning monthly salary of Rs. 4,000 at the time of death. His contribution to his family would be Rs. 2,500 p.m. Contribution would have gone up to Rs. 5,000 p.m. had deceased survived the rest of his earning career.Average economic loss to the dependants would, therefore, be of Rs. 3000 p.m. Applying multiplier of 12 compensation payable to claimants would be Rs. 4 lakhs.

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33. CRIMINAL TRIAL : APPRECIATION OF EVIDENCE:-
AIR 2000 SC 210
KOLI LAKHMANBHAI CHANABHAI Vs. STATE OF GUJARAT

Eye witnesses not supporting prosecution case in etirety. His evidence to the extent supporting prosecution case and corroborated by other evidence can be relied upon. Disclosure of incident by said witness to other witnesses. They lodged FIR promtly with neme of accused who inflicted knife blows. Corroborated by recovery of knife. Recovery of blood stained bush-shirt and baniyan from accused at time of arrest. Injury alleged to be on thigh of accused could not have caused extensive blood stains found on clothes of accused. Conviction maintained.

EVIDENCE ACT SECTION 154 APPRECIATION OF EVIDENCE: HOSTILE WITNESSES:-

His evidence to the extent to which it supports the prosecution version can be relied upon.

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34. CR.P.C., SECTION 437 : BAIL:-
AIR 2000 SC 209
DHRUV K. JAISWAL Vs. STATE OF BIHAR

Application for bail dismissed by High Court by criptic order. Petitioner permitted to file application again. High Court requested to pass a reasoned order. The order of the Supreme Court is as under:

The petitioner is involved in a murder case and was taken into custody on 21-2-1988. According to the learned counsel the petitioner continues to be in custody even though the Investigating Agency has laid the final report. The impugned order has been passed on a bail application filed by the petitioner. The order reads thus:

"Heard counsel for the parties.

Considering the facts and circumstances of the case, I do not find any merit in this application. It is accordingly dismissed."

2. We are unable to find from the aforesaid order as to any reason why the learned Judge did not find any merit in the application for bail. Learned counsel for the petitioner adhered certain grounds to release the petitioner on bail. We do not know whether he urged such grounds before the High Court, as the impugned order is silent about it. In such a situation we feel that a more feasible course is to permit the petitioner to move the High Court again. If any such application is filed we request the High Court to pass a reasoned order while disposing of the application. With the aforesaid observations the SLP is dismissed.

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35. WORKMEN'S COMPENSATION ACT, 1923 : SECTION 3 (1) :-
2000 (1) VIDHI BHASVAR 85
B.H.E.L. Vs. SMT. GYAN KAUR

Employee killed during employment. Peril in the accident personal to the employee having no connection with employment also. Employer is under no obligation to pay compensation.

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36. HINDU SUCCESSION ACT 1956, SECTION 30:-
2000 (1) VIDHI BHASVAR 89
KARUMU Vs. REFEL

Hindu male can dispose of his property by a will. ***Valliammai Achi vs. Nagappa Chettiar and another, AIR 1967 SC 1153*** distinguished.

HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, CHAPTER III Ss. 18 (1) AND 19 : MAINTENANCE OF HINDU WIFE:-

Provisions under the Act do not debar a hindu from bequithing his property by way of will. Suit not filed by wife. no question of her maintenance arises.

SUCCESSION ACT, SECTION 63 READ WITH SECTION 68 EVIDENCE ACT:-

Under a will the husband did not give anything to his wife and sons. The will does not become suspicious. It was duly registered and proved by scribe and one attesting witness. Will was proved beyond doubt. ***Satya Pal Gopal Das Vs. Smt. Panchubala Dasi and other, AIR 1985 SC 500*** fol-

lowed. ***Om Prakash Sharma vs. Smt. Saraswati Bai and others, 1998 (1) Vidhi Bhasvar 95= 1998 (1) M.P.L.J. 183*** distinguished.

Paragraph 6,7,8 and 9 of the judgment are reproduced:

6. As noticed earlier, this appeal has only been admitted on the question, whether the Will is hit by the provisions of Hindu Adoptions and Maintenance Act 1955 as Bichhi could not have disposed of his property so as to defeat the legal right of his wife, as held in **AIR 1967 SC 1653** (?) It appears that there is no citation as above and there appears to be some error in that regard in the substantial question of law as framed. It may be noted that the above mistake has crept in, on account of the citation as above having been mentioned in the memo of appeal in para 6 there of. It further appears that the reference in the memo of appeal might have been to the case of ***Valliammai Achi v. Nagappa Chettiar and another*** **(AIR 1967 SC 1153).** It appears that the testator of that case Nagappa made a Will in June, 1934 and the controversy, whether he could make a Will and dispose of the property of the Joint Hindu Family by Will was under consideration. The said case, therefore, relates to a Will executed, before the Hindu Law relating to succession was codified.

7. Hindu Law regarding succession has since been codified and is now governed by the Hindu Succession Act, 1956. Chapter III of the Hindu Succession Act, 1956 relates to testamentary succession. Section 30 thereof clearly lays down that a Hindu may dispose of by Will any property, which is within his power to bequeath, by testamentary disposition. By the explanation thereof, it has further been enacted that the interest of a male Hindu in a Mitakshara coparcenery property is capable of being disposed of by Will. Thus, in view of the specific provisions as above regarding disposition of property by Will, there now remains hardly any doubt that his property could be disposed of by Will by Bichhi and, therefore, the Will could not be challenged on that ground.

8. So far as provisions of Hindu Adoptions and Maintenance Act, 1956 are concerned, it may be noticed that therein the right of maintenance of a wife has been ensured by making suitable provisions. Chapter III of the said Act relates to maintenance of wife and other members of the family. Section 18 (1) thereof lays down that a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime. Section 19 further provides that a Hindu wife is entitled to be maintained by her father-in-law after the death of her husband and that she is entitled to have maintenance from the estate of her husband or her father or mother or her son or daughter or his or her estate. However, none of these provisions can be construed as expressly or impliedly debarring a Hindu from bequeathing his property by way of Will. Moreover as already

noticed, this suit was not filed by the widow of Bichhi, who appears to have already died.

9. There fore, the appellants-defendants' challenge to the Will on the ground of competence and capacity of the testator, their father Bichhi, is not well-founded. As already noticed, the law laid down in **Valliammai Achi's** case (supra) does not, in any way further the contentions of the appellants in the above regard.

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37. M.P. ACCOMMODATION CONTROL ACT. S. 12 (1) (f):-
2000 (1) VIDHI BHASVAR 108
DURGAWATI JOLLY (SMT) Vs. HARVALLABH

Accommodation required after 15 years of retirement. Plaintiff not physically fit to run alleged educational institution. Requirement rightly held to be not bonafide. ***Mattulal Vs. Radhe Lal, AIR 1974 SC 1596*** followed.

M.P. ACCOMMODATION CONTROL ACT, S. 12 (1) (i):-

Proviso under section 12 (1) (i) is applicable to residential accommodation only and does not apply to non-residential accommodations.

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38. LAND ACQUISITION ACT, Ss. 9, 9 (4), 18, 12, 31 (2), 30 AND 12 (2):- WHO CAN MAKE REFERENCE
2000 (1) VIDHI BHASVAR 112
SHASHIKALA Vs. TRIMBAKRAO

No notice to person interested or public notice issued. No notice after filing the award under S. 12 also given person interested cannot make application for reference under S. 18. He can file civil suit. ***Virendra Nath Banerji Vs. Mritunjay Roy and others, AIR 1962 Cal 275*** relied on.

Interest in land or in compensation can be got settled either in reference or by a civil suit. ***Karnel Singh vs. Jagir Singh, AIR 1984 P & H 294*** and ***Dr. G.H. Grani vs. State of Bihar, AIR 1966 SC 237*** relied on.

Wilful suppression of notice entire acquistion proceedings may be challenged in civil suit. In such suit no challenge to compensation amount is permissible which can be made under S. 18 ***Smt. Sugandhi and others Vs. Collector, Raipur and others, AIR 1969 MP*** and ***State of Jammu & Kashmir Vs. Smt. Hamida Begum & others, AIR 1969 J & K 48*** relied on.

Person interested not served under Ss. 9 and 12. Either can file application for reference under S. 18 or civil suit under S. 31 (2).

LIMITATION ACT, ARTICLE 100:- Civil suit for setting aside the award. Plaintiff not party to the proceedings. Limitation starts from knowledge of the award. ***Raja Harishchandra Singh Vs. The Deputy Land Acquisition Officer and another, AIR 1961 SC 1500*** followed.

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39. **CR.P.C., SECTION 125: MAINTENANCE:-**
2000 (1) VIDHI BHASVAR 120
ANNAPURNA BAI Vs. AMAR SINGH

The husband casting aspersions against the character of woman is itself a cruelty to her and he also neglected his wife for three years. The husband being an able-bodied young man having agricultural lands is liable to pay maintenance.

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40. **POSSESSION:-**
2000 (1) VIDHI BHASVAR 127
PRAKASHCHANDRA Vs. PRASHASAK

Person in settled possession cannot be dispossessed by force. Person entitled to possession should seek it from the Court. Even the owner of the property cannot dispossess encroacher by force. Landlord cannot dispossess tenant by force even after expiry or termination of lease. **AIR 1989 SC 2047, AIR 1968 SC 620** and **AIR 1924 PC 144** relied on. **AIR 1989 SC 997** followed.

The petitioners residing in building constructed on Government land. Such building not belonging to Government. Petitioner should not be dispossessed under executive action. Decree for the purpose should be obtained from the civil Court. **AIR 1961 SC 1570** followed:

JURISDICTION:- Executive can act only in pursuance of powers given to it by law. Acts of executive towards the subject have no special meaning. Such act can give no immunity from the jurisdiction of the Court to inquire into legality of acts. **AIR 1931 PC 248** relied on.

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41. **EVIDENCE ACT, SECTION 45: CONFLICTING OPINIONS OF TWO MEDICAL WITNESSES : EFFECT OF:-**
2000 (1) M.P.H.T. 417
MUSTAKEEM Vs. STATE OF M.P.

That opinion should be accepted **which supports the direct evidence.** Dr. Agrawal deposing that the deceased had three lacerated wounds. Dr. P.C. Jain who had performed the autopsy, on the other hand, deposing that the deceased had 5 incised wounds. The evidence of Dr. Jain, which supported the direct evidence of eye witnesses that knife blows were given to the deceased, was accepted. **AIR 1977 SC 2274 and 1997 (7) SCC 156** relied on.

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42. **SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, SECTIONS 3 (1) (o) AND 22 AND NEGOTIABLE INSTRUMENTS ACT, SECTION 138:- APPLICATION OF THE PROVISIONS**
2000 (1) M.P.H.T. 433
M/s ROM INDUSTRIES LTD. Vs. STATE OF M.P.

The complaint under Section 138 of the Negotiable Instruments Act filed against the Petitioner/ Company on 18-10-1996 and the Magistrate taking cognizance thereon on 27-1-1997. The Petitioner/Company said to have been declared Sick Industrial Company by Board for Industrial and Financial Reconstruction (BIFR) subsequently on 30-7-1997 held that even if Section 22 of Sick Industrial Companies Act placed an embargo in proceeding to file a complaint, that provision did not come in the way of the present complaint which had been filed much earlier. The petition under Section 482 Cr.P.C. filed by the Petitioner-Company to quash the order of the Magistrate taking cognizance and directing issue of summons to the petitioner, dismissing by the High Court.

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43. SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, SECTION 22 (1) :- DECREE-NOT COERCIVE
2000 (1) M.P.L.J. 242
KEDIA DISTILLERIES LTD. Vs. APPELLATE AUTHORITY FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION, NEW DELHI

The provision of Section 22 (1) do not apply to a concerned decree because it does not partake the nature of a coercive proceedings which is barred. **AIR 1998 SC 2064, 1993 (78) Company cases 803, AIR 1986 Kar. 49, AIR 1979 Mad 339, 1946 NLJ 531= AIR 1947 Nag 53, 1997 SCC 649,** referred.

Bar on coercive proceedings. Grant or refusal of consent by Board for Industrial and Financial Reconstruction or Appellate Authority for Industrial and Financial Reconstruction involves exercise of sound judicial discretion by these statutory authorities which is not exercisable in any straight jacket manner and which is unqestionable unless the decision is shown to be perverse, irrational, illogical or unsupported by any reason.

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44. CR.P.C., SECTION 197 : SANCTION, I.P.C., OFFENCES UNDER SECTIONS 120-B, 409, 420, 467, 468 AND 471:-
2000 (1) M.P.H.T. 437
BABULAL Vs. STATE OF M.P.

It was not contorverted that no sanction was needed for offences under Sections 409 and 420 I.P.C. Even for offences under Sections 467, 468 and 471 I.P.C., when those offences were said to have been committed as mechanism to facilitate the commission of offences of 409 and 420 I.P.C. and therefore, were not severable from them, no sanction was needed even for them. **AIR 1966 SC 220 and JT 1999 (4) SC 499** relied on.

The judgment being of important one it is reproduced:-

The petitioner in this petition challenges the order dated 21-6-99 of C.J.M. Jabalpur whereby the C.J.M. rejected the objection of the petitioner that the trial against him should be dropped as no sanction of the

prescribed authority had been given against him under Section 197 Cr.P.C. for his trial.

The petitioner was Asstt. Engineer/S.D.O. in the Irrigation Deptt. There were sub-engineers and other accused working under his control. The allegations of the prosecution are that he and others committed offences punishable under Sections 120-B, 409, 420, 467, 468 and 471 I.P.C., The charges are that during the period March, 94 and April, 94 they falsely included the names of some labourers in the muster roll as having worked and showed payments to them. In facts such workers did not work and therefore, the muster roll had been connected and the money of the State which was shown paid was misappropriated and the State fund was cheated and this false muster roll was utilised as mechanism for that purpose. **Prima facie** this false muster roll amounts to forgery.

The trial Court has yet to consider what charges are to be framed as hearing on that has yet not taken place. However, the petitioner moved the trial Court that in the absence of proper sanction under Section 197 Cr.P.C. he could not be tried, the allegation being that he was not the person who was responsible for preparing the muster roll nor he checked the actual labourers working. He only paid money to those who were identified before him by the juniors on the basis of the muster roll whom he could not verify nor was he required to verify each worker or each muster roll.

The learned counsel, during arguments submitted that even if in the face of the Supreme Court's pronouncements in number of cases including the case of ***Baijnath Vs. State of M.P. (AIR 1966 S.C. 220)*** and ***State of Kerala Vs. Padmanabhan Nair,*** **JT 1999 (4) S.C. 499,** the petitioner may not be able to challenge that sanction was necessary for offence under Section 409 I.P.C., but for the alleged offence under Sections 467, 468 and 471 such sanction should be necessary and without sanction these charges should dropped. When the alleged forgery of muster roll or preparation of false documents are said to be mechanism to facilitate the criminal breach of trust of State funds, that part of the offence is only a methodology for achieving the ultimate end of offences under Sections 409 and 420 I.P.C. and they cannot be said to be severable. In view of pronouncements of the Supreme Court, there is no **prima facie** case made out for necessity of the sanction. There is no infirmity in the order of the trial Court on the point of sanction.

The petition is dismissed.

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45. N.D.P.S. ACT SECTION 50: EXTENT OF RIGHT TO ACCUSED ABOUT INFORMATION:-
2000 (1) M.P.H.T. 439
KAMAL SINGH THAKUR Vs. STATE OF M.P.

From the language of the provisions of law and after taking into con-

sideration the judgments of the Supreme Court, I am unable to hold that right to be informed or right of information would mean that suspect should be informed first that he has right under the statute and then the information should be supplied to him. The right to be informed would only mean that an information should be supplied to the accused which is his right and is an obligation of the empowered officer.

CRIMINAL TRIAL: POLICE WITNESS, RELIABILITY:-

The evidence of police officer may be believed even when independent witnesses do not support him. Independent witnesses however, discrediting themselves by admitting that they had affixed their signatures to various prosecution documents but could not say why they had so affixed their signatures.

EVIDENCE ACT, SECTION 25:- THE NATURE OF CONFESSION - ADMISSION:-

On enquiry by a police officer the accused, a passenger in a bus, stating that certain luggage (attache and a bag) in the bus belonged to him. It was held that this was not a 'confession' to which the provisions of Section 25 Evidence Act were attracted to make it inadmissible. It was admission made by an accused, which was not inadmissible in evidence. But alternatively. also held that even if such admissions were not taken into consideration, there was other evidence to show that the accused had control over the said luggage.

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46. M.P. ACCOMMODATION CONTROL ACT, SECTIONS 10, 11, AND 31 (1) :- 'EVERY ORDER' - 'INTERIM ORDER' APPELLABILITY 2000 (1) M.P.H.T. 448

MUKESH D. RAMTEK Vs. SMT. KESHAR SINGH

The words "every order" in Section 31 (1) refer only to a final order and not to an interim order passed by the Rent Controlling Authority. An interim order of the Rent Controlling Authority is not appealable under Section 31 of the Act. Order of fixation of interim rent during pendency of application under Section 10 is not appelable. **1972 MPLJ SN 132 and AIR 1967 SC 799** referred.

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47. CPC. O. 7 R. 11 AND O. 7 R. 10: REJECTION OF PLAINT ON THE GROUND OF JURISDICTION NOT PROPER:- 2000 (1) M.P.H.T. 458

PRATYUSH CHATTERJEE Vs. M/S SUPER AUTO FORGE PVT. LTD

The defendant raised an objection to the territirial jurisdiction of the Court in which the plaintiff brought the suit. This is not an application to be dealt with under O. 7 R. 11 CPC.

Trial Court wrongly treating the application as one under O. 7 Rule 11

C.P.C. allowing the application and directing the plaint to be returned for presentation to proper Court. Trial Court's Order was set aside. It was held that the objection contained in the application involved mixed question of law and fact and could be raised by the defendants in their written statement; and if raised, would be decided by the trial Court on merits in the light of the provisions of Section 15 to 21 of the Code of Civil Procedure.

(Note : Please refer to J.O.T.I. (1999) II page 146)

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48. C.P.C., O. 2 R. 2, BAR OF SUBSEQUENT SUIT:-
2000 (1) M.P.H.T. 452
AYODHYA PRASAD Vs. CHHEDILAL

The cause of action as disclosed in the plaint in the earlier suit, was wrongful detention of boring machine by the respondent/defendant. In his subsequent Suit No. 13-B/93 also he complains of wrongful detention of his machine and has prayed for relief of return of machine or price thereof along with the damages for the period preceding three years of the filing of aforementioned subsequent suit. Since the plaintiff/appellant had omitted to sue for the relief of return of machine or the price there of in the earlier suit, that relief would be deemed to have been relinquished by him. Therefore, the said relief of return of machine or the price there of could not have been claimed by him in subsequent Civil Suit No. 13-B/93, as it was barred under Order 2 Rule 2 C.P.C. In the case of ***M/s. Bengal Waterproof Ltd. Vs. M/s. Bombay Waterproof Manufacturing Co. and another (AIR 1997 SC 1398),*** the first suit has based on infringement of trade mark and passing off action till date of the earlier suit. The second suit was regarding continuous act of a infringement of trade and passing off action. on the part of the defendant subsequent to the filing of the earlier suit. It was held that such a subsequent suit was not barred. However, as noted earlier in the instant case, the wrongful detention as alleged took place prior to the filing of the first suit, and therefore, as mentioned earlier the relief in that regard could could have been claimed by the appellant in the earlier suit which he did not do. Therefore, the facts of the present case are distinguishable. It may also be noticed that the relief as above of return of machine or price thereof was also barred under the law of Limitation. That being so, the other relief of damages flowing from the basic relief as above, could also not be granted.

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49. MOTOR VEHICLES ACT, 1988, SECTIONS 145 AND 147 :- CENTRAL MOTOR VEHICLES RULES, 1989, RULE 142 :- THE TIME OF COVERAGE OF RISK MENTIONED IN COVER NOTE EFFECT OF:-
2000 (1) M.P.H.T. 464
SURESH CHAND AWASTHI Vs. AJESH KUMAR CHOUBEY

The time of coverage of risk although not mentioned in the Insurance policy, but mentioned in the cover note, which was held that the cover note is treated in law as policy of insurance. The time of coverage of risk will

start from the time mentioned in the cover note and not earlier from the previous midnight of the date of insurance.

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50. C.P.C., SECTION 96 (2):-
2000 (1) M.P.H.T. 468
BAHOR SINGH Vs. DEVI

A party choosing not to contest a suit in the trial Court, has still a right of appeal against the decree passed exparte against him. The defendant did not file written statement.

Court passed a judgment and decree under O. 8 R. 10 CPC. Such a judgment and decree are appealable.

M.B. ZAMINDARI ABOLITION ACT SAMVAT 2003 (ACT NO. 13 OF 1951), SECTION 4:-

Land recorded as 'charnoi' on the date of abolition of property rights. Such land vested in the State under Section 4 of M.B. Zamindari Abolition Act.

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51. COMPANY LAW, SECTION 34: DOCTRINE OF "CORPORATE VEIL". APPLICABILITY:-
2000 (1) M.P.H.T. 474
PERFECT INDUSTRIAL AGENCIES PVT. LTD. Vs. COMMERCIAL TAX OFFICER

Paragraph 9 of the judgment is reproduced:-

It is true that a company is a juristic entity and it is distinct from its directors and share holders. It is an abstraction of the law. Its corporate personality receives legal recognition. After its incorporaion under Section 34 of the Companies Act, 1956 it has a separate legal existence and the law recognises it as a legal person separate and distinct from its members. This new legal personality emerges from the moment of incorporation. But in course of time certain exceptions have grown in which there can be piercing of the "corporate veil" or cracking open the "corporate shell". One of such situations in which it is permisible to lift the mask of the corporate entity is, if it is being used for tax evasion or an attempt to do so. The arms of the law and especially of the taxing authorities clothed with that law are long enought to reach the factum behind the facade. If it were not so the business morality would be a casuality.

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52. CR.P.C., SECTIONS 24 (8) AND 301 (2) : APPOINTMENT OF SPECIAL PUBLIC PROSECUTOR IN A CASE BY THE STATE GOVERNMENT : POWER OF THE GOVERNMENT:-
2000 (1) M.P.H.T. 478
SHYAM RAMKISHAN SHARMA Vs. STATE OF M.P.

An advocate who was permitted under Section 301 (2) Cr.P.C. to act

under the direction of the Public Prosecutor subsequently appointed as a Special Public Prosecutor by the State Government under Section 24 (8) of the Cr.P.C. The appointment quashed in writ-petition.

Paragraph 7 of the judgment is reproduced:-

In the present case, it is an admitted fact that Shri Ansari had been engaged by the complainant in the sessions case and, therefore, he could not legitimately be expected to act with impartiality and detachment which is expected of a Public prosecutor. The apprehension entertained by the petitioners is reasonable. Though the facts of the case are such in which the State Government could appoint a Special Public Prosecutor to conduct the case and it could not be subjected to judicial review but the impugned order suffers from this infirmity that a counsel already engaged by the complainant has been appointed as a Special Public Prosecutor. As a counsel engaged by an accused cannot act as a Special Public Prosecutor. So also the counsel engaged by the complainant cannot be appointed as a Special Public Prosecutor. He can act only as per Section 301 (2) of the Code. In view of the admitted facts there is no need of calling a return as the infirmity is obvious.

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53. M.P. ACCOMMODATION CONTROL ACT, SECTION 12 (1) (f) : SUBSEQUENT EVENT MAY BE CONSIDERED:-
2000 (1) M.P.H.T. 481
R.P. TIWARI Vs. SMT. SOLUCHANA CHOUDHARY

The view that has been taken by this Court is that the subsequent event can be taken into consideration by the trial Court and also by the appellate Court. On the date the decree was passed by the trial Court and also by the first appellate Court, the sons of the plaintiff were definitely major and therefore the two Courts have rightly held that the ground for eviction under Section 12 (1) (f) of the Act is made out. If a subsequent event can be considered in favour of the tenant it should also be taken into account in favour of the landlord. To be literal is to see the skin and miss the soul. At the most the suit can be held to have been filed on the date both sons attained majority. Technically should not triumph over substance.

OWNER : MEANING OF:-

Even a lessor or a landlord whose title cannot be disputed by the lessee is also 'owner' of the accommodation within the meaning of Section 12 (1) (f).

Paragraph 8 of the judgment is reproduced:-

It is pointed out on the question No. 2 that earlier in Civil Revision No. 337 of 1997 this Court has held by order dated 7-5-1977 that the interrogatiories could be delivered with regard to title of Mukund Das and therefore, it must be considered whether Mukund Das was 'owner' of the

house within the meaning of Section 12 (1) (f) of the M.P. Accomodation Control Act, 1961. It is by now well settled that the landlord need not be absolute owner. If he is lessor or landlord and the tenant cannot deny his titled in view of Section 116 of the Evidence Act the landlord or the lessor would be deemed to be owner within the meaning of Section 12 (1) (f) of the Act. In ***Dadanbai Vs. Arjundas, (1995) 3 SCC 412***, the Supreme Court considered the meaning of 'owner' in Section 23-A (b) of the Act and held that a lessor whose title cannot be disputed by the lessee undoubtedly is owner at whose instance the proceedings for eviction were maintainable. The words used in Section 23-A (b) of the Act are the same as in Section 12 (1) (f) of the Act. The same view has been taken by the Supreme Court in ***Anar Devi Vs. Nathuram, (1994) 4 SCC 250 and S.R. Sinha Vs. H. Banerjee, (1991) 4 SCC 572.*** This Court took the same view in ***Asif Ali Vs. Rahandomal, AIR 1986 MP 143.*** As the defendant has been held to be tenant of Mukund Das on the basis of the material on record it is not necessary to trace the title of Mukund Das. Once the defendant has been held to be tenant of Mukund Das he cannot question his title in view of the rule of estoppel in Section 116 of the Evidence Act. The plaintiff is transfer from Mukund Das on the basis of registered sale deed. She would be 'owner' of the accommodation within the meaning of Section 12 (1) (f) of the Act.

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54. M.P. ACCOMMODATION CONTROL ACT, SECTION 12 (1) (f) : ALTERNATE ACCOMMODATION : BURDEN OF PROOF:-
2000 (1) M.P.H.T. 501
REGHAVENDRA KUMAR Vs. FIRM PREM MACHINERY & CO.

The High Court set aside the judgments and decrees of the Courts below on the grounds that the Courts below had wrongly placed the onus on the defendant-tenant of proving that alternative accommodation was not suitable for the plaintiff-landlord and that the Courts below had ignored the fact that plaintiff-landlord had admitted that he and his father were in possession of certain shops and had not stated why these alternative shops were not suitable for their business or they are vacant. It was held that the High Court in the second appeal erred in law by setting aside concurrent findings of fact of the Courts below by re-appreciating the entire evidence. Appeal allowed by setting aside the impugned judgment of the High Court and the judgments and decrees of the Courts below are restored.

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55. EXPLOSIVE SUBSTANCES ACT : SECTION 7 :- DELEGATION OF POWER BY GOVT. FROM D.M. TO A.D.M. BAD
2000 (1) M.P.H.T. 505
STATE OF M.P. Vs. BHUPENDRA SINGH

The power of granting consent under Section 7 of the said Act rests with the Central Government. The Central Government has delegated it to the District Magistrate. It is, in our view, not competent for the State Gov-

ernment to further delegate to the Additional District Magistrate a power of the Central Government which the Central Government has delegated to the District Magistrate.

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56. M.P. EXCISE ACT, SECTIONS 34, 49-A AND 49-B AND CONSTITUTION OF INDIA, ARTICLE 21: CR.P.C., SECTION 437 :-
2000 (1) M.P.H.T. 507
SHAKUR KHAN Vs. STATE OF M.P.

Accused-appelant has been arrested for keeping his possession liquor, denatured spirit meant for human consumption. The provisions engrafted under Section 49-B the Act are positively neither sound not in consonance with the spirit of our Constitution, and, therefore, they cannot but an embargo on the power of grant of bail under the Act.

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57. M.P. EXCISE ACT, SECTION 49-B AND POWER TO GRANT BAIL:-
2000 (1) M.P.L.J. 270
MOTILAL Vs. STATE OF M.P.

Offences under Sections 34 and 49-A. Grant of bail to accused bar neither sound not in consonance with spirit of Constitution of India.

Paragraph 5 and 6 of the judgment are reproduced:-

It appears, the legislature has intended two types of opposition from the side of the prosecution, arbitrary, unjust, unfair and unreasonable and the other one a bonafide and reasonable opposition. If the opposition by prosecution has been only for the sake of opposition, being arbitrary or unjust, then the judicial power in regard to allowing bail has been kept intact, but if it has been reasonably fair and bona fide then, it appears from the language, the bail could not be granted. I am of the view that it is against all cannons of justice, legal or natural. Even in a case of murder bail can be granted. Depending of course on the merits of the factual aspects involved in it, but the fact remains that there is no offence where bail can never be granted.

That apart, the fundamental right of personal liberty envisaged under Article 21 of the Consititution of India is paramonut and forms the basis structure of the Constitution. In any case it cannot be over ridden by any statutory law of the country else the latter would be declared ultra vires. The circumscribing boundaries in the shape of procedure established by law have been given in the Constitution itself, and it being parent law of the country no other statutory law can override it. Thus, only on this count I am of the opinion that the provisions engrafted under section 49-B of the Act are positively neither sound nor in consonance with the spirit of our Constitution, and therefore, they cannot but an embargo on the power of grant of bail under the Act.

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58. **CR.P.C., SECTION 439 : BAIL : CONFLICTING ORDERS ON THE BAIL OF THE SAME ACCUSED ON THE SAME TERMS ISSUED BY THE HIGH COURT:-**
2000 (1) M.P.H.T. 509
STATE OF M.P. Vs. R.P. GUPTA, ADVOCATE

First bail application allowed on 2-7-1999 while another application of the same accused was rejected on 5-8-1999 by the High Court. Hence, conflicting orders. Second application was filed on the instruction of the accused's brother who did not inform about previous order. It was held since earlier application was allowed there can be no malafide intention in filing second bail application. **It was further held that in furture, in bail application full particulars of the person or persons and results of the earlier applications should be given. 1986 (II) MPWN 58** relied on.

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59. **MOTOR VEHICLES ACT, 1939, SECTIONS 95 (5) AND 96 (1) :- 2000 (1) M.P.H.T. 513 : LIABILITY OF INSURANCE COMPANY**
BAPU Vs. KARANSINGH

Members of the 'Barat' party being carried in two tractors. Two members getting down from the front tractor for urination. Meanwhile the rear tractor coming at a high speed and, driven rashly and negligently, dashing against those two persons and turning turtle. Those two persons sustaining injurises and dying on the spot. Insurance Company of the rear tractor held liable in view of the provisions of Sections 95 (5) and 96 (1) to pay compensation to legal representatives of the two deceased persons.

Extracts from the paragraph 5 are reproduced:-

It is true that Karansingh was carrying passengers in his tractor-trolley in breach of the terms and conditions of the policy. According to the insurance policy only six labourers could be carried in the tractor. But the tractor did not overturn because of the travelling of the passengers in the trolley. There Lordships of the Supreme Court in case of ***B.V. Nagaraju vs. Oriental Insurance Co. Ltd.,*** where the driver of the truck allowed more persons to travel in the truck than allowed by Motor Vehicle Rules and the insurance policy, held that on account of this breach, Insurance Co. cannot be absolved from its liability. Even otherwise, in view of the provisions of Sections 95 (5) and 96 (1) of the Motor Vehicles Act, the Insurance Co. was liable to pay compensation. Even if the insurer was entitled to avoid the liability of paying compensation on some grounds, still it was liable to pay compensation to the person entitled to the benefit of the award. In view of the provisions of Sections 95 (5) and 96 (1) of the Motor Vehicles Act, the respondent Insurance Company was liable to pay compensation to the claimants. If the Insurance Company feels that it was not liable to indemnify the insured, it could take legal steps against the insured in accord-

ance with the provisions of law. The learned Tribunal commited error in absolving it.

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60. C.P.C., O. 37 R. 3 (4):- NOTICE BE SERVED ON THE DEFENDANT REGARDING "SUMMONS FOR JUDGMENT":-
2000 (1) M.P.H.T. 529
CHUNNILAL Vs. VINOD KUMAR

According to sub-rule (4) of Rule 3, after the defendant has entered appearance and filed an address for service of notice on him, the plaintiff shall serve on him a summons for judgment in Form 4 A in Appendix B. It is then that the defendant's participation comes up. In ***United Western Bank Vs. Manoj Hosiery,*** **1997 MPWN 92** it has been held relying upon ***Ramesh Chandra Vs. Central Bank, 1992 JLJ 434*** that the provision under Rule 3 (4) of Order 37 is mandatory.

In view of the above legal position the decree dated 16-7-1996 without following the mandatory procedural requirement was not valid. It ought to have been set aside under Order 37 Rule 4 CPC. This revision is allowed and the decree is set aside.

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61. SERVICE LAW: DISTINCTION BETWEEN 'DISCHARGE SIMPLICITOR' AND 'REMOVAL' PROBATIONER:-
2000 (1) M.P.H.T. 623
T.M. VARGHESE Vs. M.P PUBLIC SERVICE COMMISSION, INDORE

If the termination of the service of a probationer is on account of his unsatisfactory work and no stigma is attached, it is discharge simplicitor to which the protection of Article 311 (2) Constitution of India will not be available. But if the termination of the service of the probationer is on the ground of his misconduct, inefficiency or for similar reason and there is stigma in the impugned order such termination is removal to which the protection of Art. 311 (2) of the Constitution of India would be available.

FACTS OF THE CASE:-

By order dated 12-08-91 (Annexure P-9) the services of the petitioner as Senior stenographer (P.A.) in M.P. Public Service Commission, Indore were terminated with immediate effect on the ground that during the period of probation his work was not found satisfactory and one month's salary was paid to him in lieu of one month's notice. The note sheet (Annexure R-1) stated that the work of the petitioner was not satisfactory, he had absolutely no knowledge of Hindi and his work as an English typist and Stenographer was not of the desired standard and therefore his services to be terminated by giving him one month's notice. It was held that the termination of the service of the petitioner was discharge simpliciter. No enquiry was needed to be held. The petitioner was not entitled to protection of Arts. 14, 16 and 311 of the Constitution of India. The termination of the

service of the petitioner was valid. Writ petition challenging the termination order dismissed.

The extract from the note sheet is as under:

"श्री वर्गीस का कार्य संतोषजनक नहीं है। इन्हें हिन्दी भाषा का बिलकुल ज्ञान नहीं है। अंग्रेजी शीघ्रलेखन/अंकलेखन का स्तर भी ठीक नहीं है। उपरोक्त सभी स्थितियों को दृष्टिगत रखते हुए इनकी सेवाएं समाप्त करने हेतु एक माह का नोटिस दिया जावे।"

62. BENAMI TRANSACTIONS (PROHIBITION) ACT, S. 4 (1) AND (2) : SUIT TRANSACTION OF SALE OF HOUSE : T.P. ACT, SECTION 45 : PRINCIPLE OF APPLICABILITY OF LAW EXPLAINED:- 2000 (1) M.P.H.T. 654 JUDGEMENT BY HON'BLE JUSTICE SHRI V.K. AGRAWAL

ABDUL HAMEED KHAN Vs. ABDUL WAHEED KHAN

Plaintiff/respondent filed a suit for partition alleging that the suit house was purchased by him and his brother the defendant/appellants by their joint funds. Defendant's Contention was that the plaintiff respondent did not pay any part of consideration to the suit house. The defendant's version was that the plaintiff's name was also recorded with him out of love and affection.

The judgment being of general importance the whole order is reproduced:

JUDGMENT

1. This appeal is directed against the judgment and decree dated 25-4-95 in Civil Suit No. 45-A/84, by I Addl. District Judge, Bhopal whereby the suit of the defendant-appellant for partition and possession of half the portion of the suit house, was decreed.

2. The facts leading to the present appeal in brief are that the plaintiff-respondent filed a suit for partition alleging that the suit house was purchased by him and his brother the defendant-appellant by their joint funds. However, since the defendant-appellants is claiming right over the whole of the property, the relief for partition in equal parts of the suit house, was sought. The defendant- appellant resisted the suit and averred that the whole of the consideration was paid by the defendant-appellant, and that the plaintiff- respondent herein, did not pay any part of consideration of the suit house. It was only out of love and affection that the name of the respondent-plaintiff was got recorded along with his own name by the defendant-appellant.

3. The learned trial Court framed several issues including as to whether the suit house was purchased jointly by the parties and as to whether

the defendant-appellant out of love and affection got the name of his brother-the plaintiff-respondent recorded in the registered sale deed. The learned trial Court discussed all the above issues jointly and relying upon the case reported in **AIR 1994 SC** 1687 (which appears to be in fact ***Duvuru Jaya Mohana Reddy and another Vs. Alluru Nagi Reddy and others (AIR 1994 SC 1647),*** it was held that since the Benami Transaction (Prohibition) Act, 1988, had retrospective operation and was applicable, the defendant-appellant could not raise the above plea. It appears that the trial Court did not consider the factual aspect of the matter and did not consider the evidence in detail in the impugned judgment in view of the dictum of law of the Supreme Court in ***Duvuru Jaya Mohana Reddy and another Vs. Alluru Nagi Reddy and others*** (supra).

4. The learned counsel for the defendant- appellant has urged that the Supreme Court decided the case of ***Duvuru Jaya Mohana Reddy and another*** (supra), relying on the decision of that Court in ***Mithilesh Kumari Vs. Prem Behari Khare (AIR 1989 SC 1247),*** in which it has been held that the provisions of Benami Transaction (Prohibition) Act, 1988 (here in after referred to as 'Act' for short) would apply to proceedings pending on the date of commencement of the 'Act'. However, it has been submitted that the decision in ***Mithilesh Kumari Vs. Prem Behari Khare*** (spura) was over-ruled by that Court in ***R. Rajagopal Reddy (dead) by L.Rs. and others Vs. Padmini Chandrashekharan (dead) by L.Rs. (AIR 1996 SC 238),*** where in it has been observed:

> "As a result of the aforesaid discussion it must be held, with respect, that the Division Bench erred in taking the view that Section 4 (1) of the Act could be pressed in service in connection with suits filed prior to coming into operation of that Section. Similarly the view that under Section 4 (2) in all suits filed by persons in whose names properties are held no defence can be allowed at any future stage of the proceedings that the properties are held benami, cannot be sustained. As discussed earlier Section 4 (2), will have a limited operation even in cases of pending suits after Section 4 (2) came into force if such defences are not already allowed earlier. It must, therefore, be held, with respect, that the decision of this Court in **Mithilesh Kumari's** case (AIR 1989 SC 1247) does not lay down correct law so far as the applicability of Section 4 (1) and Section 4 (2) to the extent here in above indicated, to pending proceedings when these Sections came into force, is concerned."

5. It has been submitted by the learned counsel for the appellant that the suit transaction took place on 5-1-1961 when the sale deed of the suit property was got executed, and the suit was filed on 23-6-1984. The suit transaction therefore, took place, prior to coming into force of the 'Act' which came into force from 5-9-1988, so far as Sections 3, 5 and

8 of the 'Act' are concerned and from 19-5-1988 for the remaining provisions. Therefore, it has been submitted that the transaction in suit having taken place in the year 1961, such prior to the promulgation of the said 'Act' the suit could not be hit by any of the provisions of the 'Act' as has been laid down in **R. Rajagopal Reddy's** case (supra). It was also submitted that the learned trial Court erred in holding otherwise, and decreeing the suit of the plaintiff-respondent on the basis of law laid down in **Duvuru Jaya Mohana Reddy's** case (supra).

6. It has further been urged by the learned counsel for the appellant that, since the trial Court has not assessed the evidence placed on record and has not given cogent, detailed and specific reasons for discarding the evidence led by the plaintiff, the matter deserves reconsideration by the learned trial Court.

7. The contention as above appears to be justified. It is clear that the position of law has changed in view of the pronouncement in **R. Rajagopal Reddy's** case (supra), and it is therefore clear that the provisions of 'Act' would not affect the suit transaction of sale of the suit house. The matter deserves consideration as to whether in the facts and circumstances of the case, the plaintiff-respondent was entitled to succeed in his claim. Reference in this connection may be made to Section 45 of Transfer of Property Act, which provides for joint transfer for consideration by two or more persons.

8. Since the above aspects have not been considered on merits by the learned trial Court, which has not considered and appreciated the evidence placed on record, the case deserves to be remanded back for trial afresh, as has been prayed by the learned counsel for the appellant.

9. Accordingly, the impugned judgment and decree is set aside. The case is remanded back to the trial Court for trial afresh, in view of the observations made as above, and it is directed that the trial Court shall decide the matter in accordance with law, within a period of one year from today.

NOTE:- The Judicial Officers are also requested to go through the latest law regarding Benami Transaction which is as under:-

1. Purchasing of property with money provided by one's father or a Bank would not render the transaction a benami one. The words 'paid' or 'provided' interpreted. ***Pavan Kumar Vs. Rochiram Nagdev, AIR 1999 SC 1823.***

2. Benami Transaction alleged burden of proof. Citation as above.

3. Prohibition under the Act against benami transactions. It was held that it is prospective. Citation as above.

63. CONSTITUTION OF INDIA, ARTICLES 226 & 227:- PERVERSE FINDING OF SUBORDINATE COURTS OR TRIBUNALS : POWER OF THE HIGH COURT TO SET ASIDE THE FINDINGS AND RECORD ITS OWN FINDING:
2000 (1) M.P.H.T. 680
STEEL AUTHORITY OF INDIA LTD. Vs. STATE INDUSTRIAL COURT

High Court while exercising its writ jurisdiction cannot act as a Court of appeal & substitute the finding of Industrial Court by its own findings after reappraising the evidence as a Court of appeal. However, if the sub-ordinate Courts or Tribunals record finding which is perverse, nothing prevents High Court from setting aside the said finding and records its own finding.

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64. M.P. CEILING ON AGRICULTURAL HOLDINGS ACT, SECTIONS 11 AND 12 : CONSTITUTION OF INDIA, ARTICLE 227: POWER TO REVIEW:-
2000 (1) M.P.H.T. 684
GHANSHYAMSINGH Vs. STATE OF M.P.

Final order passed by S.D.O. on 16-2-1989. Certain lands were declared as surplus and vested in the State. Suo motu review by S.D.O. after taking permission of the Collector. Certain modifications were made in that order on 23-3-1991. It was held that there exist no provisions under M.P. Act, 1969, i.e. M.P. Ceiling on Agricultural Holdings Act, 1960 conferring power of review on any revenue authority. S.D.O. and Collector acted illegally and without any jurisdiction. Hence the order passed in review has been quashed and petition allowed.

Paragraph 6 of the judgment is reproduced:-

Full Bench of this Court in ***Himat Singh Vs. Board of Revenue and another, 1966 JLJ 119,*** while dealing with the provision of Abolition of Jagirs Act, 1951 clearly held that the Board or Revenue has no power to review its own decision giving in appeal under S. 29 of the Act. This Court, again, in ***Chitra Rekha Bai alias Usha Devi (Smt) Vs. Board of Revenue, 1995 Revenue Nirnay 150,*** while dealing with the provisions of M.P. Ceiling on Agricultural Holdings Act, 1960 has clearly held:

> "It is settled proposition of law that power to review is a creature of statute and if express power is not conferred then this power cannot be exercised".

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65. CONTRACT ACT, SECTIONS 2 (b) AND 3:- COMMUNICATION OF THE ACCEPTANCE:-
2000 (1) M.P.H.T. 693
GIRIDHARILAL KESHARWANI Vs. STATE OF M.P.

Notice inviting tender for disposal of tendu leaves for the year 1979 was published on 27-12-1978 in the M.P. Gazette. Petitioner submitted his

offer. Tendu Patta Tenderers Agreement dated 20-1-1979 was signed by the petitioner and Conservator of Forests on behalf of Govt. of M.P. Tenders were opened on 20-1-1979. Tender offered by the petitioner was accepted by the Conservator of Forests. Petitioner stated that he was not communicated acceptance. Record shows that registered cover was sent to him but he declined to accept it. It was held that it would be deemed that the communication of the respondents accepting the tender of the petitioner has been served on him. Hence, there is specific agreement between the petitioner and respondents.

Paragraph 10 of the judgment is reproduced:-

Rejoinder has been filed on behalf of the petitioner in which a certificate signed by the President of the Municiapal Council dated 29th March, 1985 has been placed on record, which shows that the petitioner is resident of Village Sarai, District Sidhi, and is residing as tenant at Hanumana, since 1975. Aforesaid certificate produced by the petitioner itself shows that he is the resident of Village Sarai and is residing as tenant at Hanumana. Registered letter was sent at the petitioner's address at Sarai, which he has declined to accept. From where the respon dents got the address of the petitioner is of no consequence. According to the certificate produced by him, he is the resident of Village Sarai and he having declined to accept the registered cover conveying acceptance of his tender, it would be deemed that the communication of the respondents accepting the tender of the petitioner has been served on him. Once it is held so, the authority of this Court in the case of **Kalluram Kesharvani** (Supra) is of no assistance to the petitioner as in the said case, On fact, this Court found that the acceptance of the tender was not communicated to the petitioner. I do not find any substance in this submission of Shri Dabir.

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66. C.P.C., O. 41 RR. 33 AND 22 : CHALLENGE WITHOUT FILING CROSS-APPEAL:- LAW EXPLAINED:-
2000 (1) JLJ 134
RAJESH Vs. RUKMANI (SMT.)

Issue of desertion decided against respondent not challenged by filing cross-appeal. The appellate Court has still Jurisdiction to decide the same under discretionary power under R. 33. ***Pannalal Vs. State of Bombay and others, AIR 1963 SC 1516*** observed.

The observations made by the Supreme Court in Pannalal's case are as under:-

"The wide wording of O. 41 R. 33 was intended to empower the appellate Court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between a respondent and a respondent. It empowers the appellate Court not only to give or refuse relief to the appellant by allowing or dismissing the appeal but also to give

such other relief to any of the respondents as "the case may require". If there was no impediment in law the High Court in appeal could, therefore, though allowing the appeal of the defendant-appellant by dismissing the plaintiff's suits against it. give the plaintiff respondent a decree against any or all the other defendants who were parties to the appeal as respondents. While the very words of the rule make this position abundantly clear the illustration puts the position beyond argument

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67. CRIMINAL PRACTICE : EXPLANATION OF INJURIES:-
2000 (1) JLJ 128
SANTOSH Vs. STATE OF M.P.

Minor injuries on the person of the accused not noticeable by prosecution witnesses. Non-explanation of such injuries does not affect prosecution case.

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68. CR.P.C. SECTION 125 : DELAY IN FILING APPLICATION : EFFECT OF:-
2000 (1) JLJ 134
RAJESH Vs. SMT. RUKMANI

Wife not proceeding under Section 125 for maintenance allowance. She was residing with her parents and young son. Therefore, no adverse reference can be drawn against her in Matrimonial case.

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69. C.P.C., O. 9 R. 13, O. 5 R. 2 AND O. 9 R. 13 EXPL. : SUMMONS SERVED WHICH WAS NOT ACCOMPANIED WITH THE COPY OF THE PLAINT:-
2000 (1) JLJ 95
LALIYA Vs. BHAGWAN AND OTHERS

Summons served not accompanied with copy of plaint. Defendant was not properly served Ex-parte decree was rightly set aside.

NOTE: Judicial Officers are requested to go through O. 9 R. 6 CPC.

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70. C.P.C., O. 41 R. 22 : RIGHT TO CHALLENGE AN ISSUE:-
2000 (1) JLJ 138
ANIL TIWARI Vs. SAHEB SINGH

Issue decided against respondent which was not challenged by filing cross-objections. Mere arguments cannot sustain. The respondent raised an objection before the High Court the appellants were not the legal relatives of the deceased and were therefore, not entitled to any compensation for his death. But this issue was decided by the Tribunal in fovour of appellant 2 and 3 and this finding has not been challenged by the respondents by filing cross-objection. Therefore, the objections raised by respondents are not sustainable.

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71. PRECEDENT: APPLICABILITY AND THE LAW LAID DOWN: PER INCURIUM JUDGMENT. WHAT?
2000 (1) JLJ 108
JAIBHAN SINGH PAWAIYA Vs. SHRI MADHAVRAO SCINDHIA

Paragraphs 34 and 35 are reproduced:-

It may be noticed that although like cases should be decided alike but this principle is not an absolute rule nor of universal application. It does admit exceptions. Where there is no discussion regarding applicability of the relevant statutory provisions and the decision has been reached by a Bench in the absence of knowledge of a decision binding on it or a statute and in either case it is shown that had the Court had the said material before it, it must have reached a contrary decision. It is clearly a case of a decision per incuriam which has no binding effect. This principle does not extent to a case where if different arguments had been placed before the said Bench or a different material had been placed before it, it might have reached a different conclusion.

RATIO DECIDENDI : It cannot be lost sight of that It is not everything in a judgment which is binding but it is the ratio decidendi of the decision, that is the principle upon which the case is decided and for this reason it is important to analyse and isolate from it the ratio decidendi. Even where the facts appear to be identical, it is not obligatory to draw the same inference as drawn in the earlier case.

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72. CONSTITUTION OF INDIA, ARTICLE 32 : CRIMINAL TRIAL : EXEMPTION TO THE ACCUSED, SEVERAL CASES PENDING IN CIVIL COURTS : CR.P.C., SECTION 317, EXEMPTION TO ACCUSED FROM APPEARING IN THE COURT:
(2000) 1 SCC 709
V.K. JAIN Vs. UNION OF INDIA

Paragraphs 1 and 2 of the judgment are reproduced:

This writ petition is filed under Article 32 of the Constitution for quashing various prosecution proceedings launched against this petitioner for the offence under Section 138 of the Negotiable Instruments Act merely on the ground that the petitioner is unable to go to all the different courts where the cases are pending. He contends that he was not participating in the affairs of the Company which issued the cheques. It is a defence which he can adopt in the prosecutions. But merely raising such a contention now is no ground for quashing the prosecutions.

All the same, considering the plight of the petitioner in defending prosecution proceedings instituted at various places in India on the sterngth of the cheques issued by the Company of which he was the Director, we permit the petitioner to move the court concerned (before which the prosecution is pending in any of the cases) for exempting him from personal ap-

pearance. This can be doen only after making the first appearance in the court concerned. If any such application is filed by the petitioner, we direct the court concerned to exempt him from personal appearance on the following conditions:

1. A counsel on his behalf would be present in the particular court on the day when his case is taken up.
2. He will not dispute his identity as the accused in the case.
3. He will be present in court when such presence is imperatively needed.

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73. **CR.P.C., Ss. 195 (1) (b) (ii) & 195 (3), BIHAR LAND REFORMS ACT, 1950 SECTION 19, "COURT WHO IS" AND WORDS AND PHRASES "COURT":-**
(2000) 1 SCC 607
KESHAB NARAYAN BANERJEE Vs. STATE OF BIHAR

The word 'Court' does not include Compensation Officer appointed under S. 19 of Bihar Land Reforms Act, 1950 for determination of compensation for divesting proprietor, tenure-holder or intermediary of his right in the estate or tenure under the Act. Such Compensation Officer is neither a civil court even though he possesses certain powers possessed by civil court under C.P.C. nor a revenue court, not a criminal court as defined in S. 195 (3) Cr.P.C.

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74. **CRIMINAL TRIAL : CIRCUMSTANTIAL EVIDENCE : APPRECIATION OF :-**
(2000) 1 SCC 628
V. VIJAY KUMAR Vs. STATE OF KERALA AND OTHER CONNECTED CASES

In case of circumstantial evidence, the prosecution must establish different circumstances beyond reasonable doubt and all those circumstances taken together must lead to no other inference except that of the guilt of the accused. To justify an inference of guilt the circumstances from which such inference is sought to be drawn must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

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75. **CRIMINAL TRIAL : APPRECIATION OF EVIDENCE : NAMES NOT MENTIONED IN THE F.I.R.:-**
(2000) 1 SCC 662
SATNAM SINGH Vs. STATE OF RAJASTHAN

Though PW lodged FIR immediately after the occurrence but names of the eye witnesses not mentioned therein by him. It was held that would not by itself impeach the credibility of the eye witnesses.

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76. CRIMINAL TRAIL : INDEPENDENT WITNESSES:-
(2000) 1 SCC 707
JOSEPH FERNANDEZ Vs. STATE OF GOA

An independent witness appearing in a particular case as prosecution witness, although happening to be prosecution witness in other cases also, held, does not ipso facto cease to be an independent witness.

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77. EVIDENCE ACT, SECTION 45: OPINION OF EXPERT R/w/s 2 (iii) (a) AND (o) N.D.P.S. ACT:-
(2000) 1 SCC 707
JOSEPH FERNANDEZ Vs. STATE OF GOA

Contraband seized is whether "Charas". Where the analyst in his examination-in-chief stated in definite terms that the contraband was "Charas", the probative value of his evidence, held could not be destroyed merely because in cross- examination he could not answer whether the contraband contained cowdung also.

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78. M.P. ACCOMMODATION AND CONTROL ACT : BONAFIDE REQUIREMENT : APPRECIATION OF :-
(2000) 1 SCC 679
RAGHAVENDRA KUMAR Vs. FIRM PREM MACHINERY & CO.

The learned Single Judge of High Court while formulating the first substantial question of law proceeded on the basis that the plaintiff landlord admitted that there ware a number of plots, shops and houses in his possession. It is true that the plaintiff landlord in his evidence stated that there were a number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that the suit premises was suitable for his business purpose. It is a settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. In the present case the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.

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79. PRACTICE AND PROCEDURE : PRECEDENT :
(2000) 1 SCC 644
SUB-INSPECTOR ROOPLAL Vs. LT. GOVERNOR THROUGH CHIEF SECRETARY

A subordinate Court is bound by the precedent of superior court, and a Bench in a court is bound by the precedent of a coordinate Bench. Jurisprudential basis for honouring a precedent also explained. A Bench of CAT in the present case, though aware of a judgment of a Coordinate Bench on a similar issue taking a contrary view. Such an approach deprecated. It

was held the latter Bench should have referred the matter to a large Bench if it did not feel persuaded to agree with the earlier Bench.

REMAND:-

Normally the case should have been remanded to the Tribunal for decision of issue involved in this case by a larger Bench of the Tribunal but keeping in view that time already consumed by this case and cost and inconvenience already suffered by the parties concerned because of the indiscretion of the Tribunal. It is considered in the interest of justice that the matter be put to rest.

PRACTICE & PROCEDURE : STATE AS A LITIGANT/ PARTY:-

Government should play an important role and act as an amicus curiae. Once the matter is judicially decided. Govt. should not further agitate the matter so as to give an impression of playing a partisan role.

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80. N.D.P.S. ACT : RIGHT TO BE SEARCHED BEFORE A GAZETTED OFFICER, NATURE OF COMPLIANCE:-
(2000) 1 SCC 707
JOSEPH FERNANDEZ Vs. STATE OF GOA

The whole judgment from paragraphs 2 to 4 are reproduced:-

2. Learned counsel tried to highlight a point that Section 50 of the Narcotic Drugs and Psychotropic Substances Act has not strictly been complied with by PW 8, the officer who conducted the search. According to the learned counsel for the appellant the searching officer should have told the person who was subjected to search that he had a right to be searched in the presence of a gazetted officer or a Magistrate. In this case PW 8 has deposed that she told the appellant that if he wished he could be searched in the presence of the gazetted officer or a Magistrate to which the appellant had not favourably reciprocated. According to us the said offer is a communication about the information that the appellant has a right to be searched so. It must be remembered that the searching officer had only Section 50 of the Act then in mind unaided by the interpretation placed on it by the Constitution Bench. Even then the searching officer informed him that **"if you wish you may be searched in the presence of a gazetted officer or a Magistrate"**. This according to us is in substantial compliance with the requirement of Section 50. We do not agree with the contention that there was non-compliance with the mandatory provision contained in Section 50 of the Act.

3. Learned counsel then contended that one of the panch witnesses was not an independent witness inasmuch as he had obliged the police in other cases also. We are not inclined to say that if a person happened to witness other instances that would denude him of his independent character.

4. The last attempt made by the learned counsel was based on a truncated sentence found in the cross-examination of PW 1. The analyst who tested the contraband in the laboratory, to a question in cross-examination has said that he could not answer whether the contraband contained cowdung also. In the certificate which he issued after analysis, as well as in the examination-in- chief, the witness has stated in definite terms that the contraband was "Charas". Hence, the aforesaid isolated answer is hardly sufficient to destroy the probative value of the evidence of that witness.

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81. I.P.C., SECTION 34 : COMMON INTENTION : APPRECIATION OF EVIDENCE :-
(2000) 1 SCC 615
MOHD. ANWAR Vs. STATE OF DELHI AND OTHER CONNECTED CASE

Co-accused accompanying the main accused to commit dacoity and when chased and cornered by the police party, taking out his pistol from his pocket. Main accused firing a shot from his. 32 bore revolver killed a police informer who was accompanied by the police party. It is even assumed that the co-accused had also fired a shot from his pistole, there was nothing to establish that thereby any injury was caused to anybody. Six psersons initially charged by prosecution but four of them discharged by trial court. Evidence of PWs that co-accused had exhorted the main accused by saying "maro salon ko" found to be unsafe to rely upon. From facts and circumstances, it was held that it cannot be inferred that the co-accused was having any common intention to commit the crime for which the main accused was convicted. Hence conviction of the co-accused under S. 302 r/w S. 34 has to be set aside.

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82. REGISTRATION ACT, Ss. 17 (1) (b) AND 2 (6) AND T.P. ACT, SECTION 3 & 54 :- IMMOVABLE PROPERTY, PLANT AND MACHINERY EMBEDDED IN THE EARCH IF COVERED?
(2000) 1 SCC 633
DUNCANS INDUSTRIES LTD. Vs. STATE OF U.P.

Plant and Machinery embedded in the earth is covered in the immovable property. It depends upon the fact and circumstances of each case. Primarily the intention of the party concerned at the time of embedment. to have the embedment temporarily or permanently has to be taken into consideration. In the present case on examination of agreement of sale and deed of conveyance along with attendant circumstances in the instant case and the nature of the machines, the machines embedded in the earth to constitute a fertilizer plant, therefore, they were known as immovable properties.

STAMP ACT : S. 47-A : VALUATION OF PROPERTY BY COLLECTOR AND SCOPE OF JUDICIAL REVIEW BY THE SUPREME COURT:-

Question of valuation is a question of fact. Hence, where the valuation is baded on relevant material, it was held that Supreme Court would not interfere with the same. More so when the valuation was not seriously challenged before the High Court. Enquiry Cimmittee appointed by Collector for determining the market value of the property is within the powers of the collector.

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83. SERVICE LAW : ADMINISTRATIVE LAW : SUBORDINATE LEGISLATION:- OFFICE MEMORANDUM NOT MAKING KNOWN TO AFFECTED PERSON : EFFECT
(2000) 1 SCC 644
SUB INSPECTOR ROOPLAL Vs. LT. GOVERNOR THROUGH CHIEF SECRETARY

Office Memorandum not making known to the affected persons (deputationists here) shows that the OM was in fact never acted upon. Hence cannot be relied upon by the Government to support its case.

CONSTITUTION OF INDIA, ARTS. 14 AND 16: FAIRNESS AND REASONABLENESS:-

Executive instructions (O.M. dated 29-5-1986 issued by Govt. of India) denying benefit of service rendered by a deputationist on equivalent post in his parent department. This was against the law already laid down by Supreme Court. Use of the expression "whichever is later" in the instructions also making them self contradictory. No logic could be seen behind use of this expression. The offending portion declared unreasonable and therefore struck down as violative of Art. 14. Statute Law, Doctrine of severability applied. Only offending portion which was severable from rest of executive instructions, struck down.

SERVICE LAW: ABSORPTION : PERMANENT ABSORPTION:-

Deputationist, held in the context, if were not to be given benefit of service rendered by them on equivalent post in their parent department, should have been informed of it so that they could decide to seek or not to seek permanent absorption.

EQUATION OF POST:-

Question of equivalence could not be resolved solely on the basis of pay scales.

SENIORITY:-

Service rendered on equivalent post in parent department before absorption in deputation department, it was held counts for seniority. Govt. of India, O.M. dated 29-5-1986, offending portion of the O.M. which denied benefit of previous service, declared unconstitutional.

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84. CONSTITUTION OF INDIA, ART. 215, REVIEW POWER OF THE HIGH COURT :-
(2000) 1 SCC 666
M.M. THOMAS Vs. STATE OF KERALA

As a court of record power and duty to review own judgment held, are both inherent in every High Court. And as a Court of record High Court is unquestionably a superior court of plenary jurisdiction and is competent to determine scope of its jurisdiction. Thus it has not only power but also duty to correct any error apparent on face of record. Appellant seeking exemption under a particular section in respect of vesting of private forests in the State. Forest Tribunal dismissing petiton. In appeal High Court Division Bench allowing petition on basis of another section even though no claim made thereunder by appellant and no evidence led. It was held in review jurisdiction High Court rightly dismissed the appeal and set aside its earlier order which went beyond the claim in the petition and thus its order was vitiated by error apparent on the face of the record. High Courts generally as Courts of record, power of review inherent in High court. High Court has power to review its own order.

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85. PRACTICE AND PROCEDURE : CONSUMER PROTECTION ACT, SECTIONS 21, 22 AND 13 (1) : DECIDING A CASE WITHOUT NOTICE TO THE COMPLAINANT : EFFECT OF:-
(2000) 1 SCC 721
SEVAK AYAT NIRYAT CO. Vs. ORIENTAL INSURANCE CO. LTD.

The order is bad in law. The whole order is reproduced:-

This appeal is directed against the judgment dated 10-1-1996 passed by the National Commission. The main ground urged before us is that the notice of hearing of the appeal was not served to the counsel for the appellant- complainant and consequently he could not put in an appearance before the National Commission. The judgment passed by the National Commission also indicates that nobody was present on behalf of the complainant. This fact is not disputed on behalf of the respondent. Consequently, the appeal is allowed. The impugned judgment passed by the National Commission is set aside and the case is remanded to it to decide it afresh after giving an opportunity of hearing to the appellant. The commission is requested to dispose of the claim petition at an early date.

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86. CR.P.C., SECTIONS 239, 240, 227 AND 245 : FRAMING OF CHARGE, NO REASONS ARE REQUIRED TO BE RECORDED:-
(2000) 1 SCC 722
KANTI BHADRA SHAH Vs. STATE OF W.B.

No reasons are required to be recorded when charges are to be framed against an accused. Reasons are to be recorded only when accused is to be discharged.

Remand : Cr.P.C., Sections 204 and 167:- Reasoned order is not needed while issuing process, remanding the accused to custody and passing over to next stages in trial. It would burden the trial courts with extra work and add to delay in disposal of cases.

Cr.P.C., Ch. 33 (Ss. 436 to 450) Granting or rejecting bail:-

Order granting or rejecting bail. Court while issuing the order should avoid expressing one way or the other no contentious issues except in cases such as those falling under S. 37 of NDPS Act.

Section 239 shows that the Magistrate is obliged to record his reasons if he decides to discharge the accused. But in view of Section 240 there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation. he is only required to frame a charge in writing against the accused. If the trial court decides to frame a charge there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is prima facie order that the trial Judge has formed the opinion, upon considering the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned. Even in cases instituted otherwise than on a police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. Even in a trial before a Court of Session, the Judge is required to record reasons only if he decides to discharge the accused (vide Section 227 of the Code). But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge.

If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, there is no need to further burden the already burdened trial courts with such extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. A detailed order may be passed for culminating the proceedings before them, but it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. It is a salutary guideline that when orders rejecting or granting bail are passed, the court should avoid expressing one way or the other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

In the present case as the Metropolitan Magistrate has chosen to frame the charge. the High Court, when moved by the accused for quashment of the charge, could have re-examined the records to consider whether the charge framed was sustainable or not. If the High court decides to quash the charge it is open to the High Court to record the reasons thereof. The present order of the High Court is one of setting aside the charge without stating any reason. But the direction to the Magistrate to consider the materials once again and then to frame a charge for the same offence (if the Magistrate reaches the opinion that there is ground for presuming the commission of offence) is simply to repeat what the Metropolitan Magistrate had done once at the first instance. To ask him to do the same thing over again is adding an unnecessary extra work on the trial court. Be that as it may, the State has not challenged the order of the High Court, Hence the impugned order of the High Court need not be set aside. It is for the Metropolitan Magistrate to exercise his functions under Section 239 or Section 240 of the Code as he deems fit in the light of the observations made above.

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87. NEGOTIABLE INSTRUMENTS ACT, SECTION 138 : Cr.P.C. S. 320 COMPROMISE : COMPOUNDING OF OFFENCE:- ENTERING INTO COMPROMISE DURING THE PENDENCY OF THE APPEAL:- (2000) 1 SCC 762
O.P. DHOLAKIA Vs. STATE OF HARYANA

Paragraphs 1 to 3 of the order are reproduced:-

It appears that the petitioner has already entered into a compromise with the complainant and the complainant appearing in person through counsel states that the entire money has been received by him and he has no objection if the conviction already recorded under Section 138 of the Negotiable Instruments Act is set aside.

Mr. Mahabir Singh, the learned counsel appearing for the State of Haryana however contends that the conviction and sentence having been upheld by all the three forums, this Court need not interfere with the same and it was open for the parties to enter into a compromise at an earlier stage when the appeal was pending. Now this Court need not show any indulgence. There is some force in the aforesaid contention. But taking into consideration the nature of offence in question and the fact that the complainant and the accused have already entered into a compromise, we think it appropriate to grant permission, in the peculiar facts and circumstances of the present case, to compound. Necessarily the conviction and sentence under Section 138 of the Act stands annuled.

Permission was granted as an exceptional case.

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88. ARBITRATION AND CONCILIATION ACT, S. 11 (6) APPOINTMENT OF ARBITRATOR BY THE CHIEF JUSTICE WHEN NOT REQUIRED:-
2000 (1) M.P.L.J. 209
MUKESH KUMAR Vs. RAJ KUMAR

Once the arbitrator has already been appointed there is no occasion for Chief Justice or his designate to exercise powers under section 11 (6).

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89. ARBITRATION AND CONCILIATION ACT, SECTION 11 (6):-
2000 (1) M.P.L.J. 190 (S.C.)
ADOR SAMIA PRIVATE LIMITED Vs. PEEKAY HOLDINGS LIMITED

Orders being of an administrative nature cannot be subjected to any challenged directly under Art. 136 of the Constitution.

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90. I.P.C. SECTION 307 AND ARMS ACT, SECTIONS 25 AND 27:-
2000 (1) M.P.L.J. S.N. 3
GANESHEE NATHOO RAIKWAR Vs. STATE OF M.P.

Appellant/accused fired at complainant from close distance with country/made pistol and caused injuries in circumstances had complainant died he would have been guilty of murder. Appellant did not possess any licence for weapon which he used for commission of offence. Conviction of appellant under section 307, I.P.C. and Sections 25 and 27 of Arms Act maintained.

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91. C.P.C. , O. 33 Rr. 1 AND 3 :-
2000 (1) M.P.L.J. S.N. 2
KANHAIYALAL GOUR Vs. SHYAM

Application to sue as indigent person. Examption from personal presentation of application. Application can be presented by authorised agent of applicant.

C.P.C., O. 33 R. 1 and O. 39 Rr. 1 and 2:-

An interlocutory application under O. 39 Rules 1 and 2, Civil Procedure Code can be made pending decision of a proper application and the Court has inherent power to issue an order in the nature of O. 39 Rules 1 and 2, Civil Procedure Code as the suit will be deemed to be instituted on the date of the presentation of the application for permission to sue as indigent person.

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92. CONSTITUTION OF INDIA AND SERVICE LAW : APPOINTMENT OF M.P. LOWER JUDICIAL SERVICES:-
2000 (1) M.P.L.J. 272
RAJNEESH KUMAR JAIN Vs. STATE OF M.P.

The rules framed are not discriminatory. Relaxation in upper age limit to Government servants. Candidates earlier practising law at Bar constitute a distinct class. Grant of different treatment to them by providing age relaxation justified.

With the courtesy to M.P.L.J. Publishers, Nagpur the head notes of the judgment is reproduced:-

(a) M.P. Lower Judicial Services (Recruitment and Conditions of Service) Rules, 1994, R. 7 (b)- *Age limit of 35 years for entry to judicial service- No justification for increasing age limit.*

On directions of the Supreme Court in the All India Judges Association case, **AIR 1993 SC 2493,** the age of superannuation of members of the judiciary was increased from 58 to 60 and correspondingly, thereafter, age limit of 35 was prescribed uniformly in the rules for recruitment to judicial service. The age of retirement of government servants after 5th pay commission has been increased from 58 to 60 years but there is no corresponding increase of the age of superannuation of judicial officers which continues to be 60 years as before, In these circumstances, there is absolutely no justification for increasing the age limit for entry to judicial service.

(b) M.P. Lower Judicial Services (Recruitment and Conditions of Service) Rules, 1994 - *Recruitment to judicial services -Rules not discriminatory.*

Recruitments to judicial services is not comparable to other services of the State because in the former the source of recruitment is from amongst the practising Advocates in the Bar or those advocates who subsequently joined other services. There is no other source of recruitment. The nature of duties and functions of a Judge are not comparable with the duties and functions of any other holder of a post or office in the services of the State other than judiciary. The challenge on the ground of discrimination has no merit.

(c) M.P. Lower Judicial Services (Recruitment and Conditions of Service) Rules. 1994, R. 7 (b)- *Recruitment to judicial services. Relaxation in upper age limit to Government servants. In service candidates earlier practising law at Bar constitute a distinct class. Grant of different treatment to them by providing age relaxation justified.*

The source of recruitment to judicial services is only from amongst law graduates. Majority of law graduates join the bar to practice law in the courts. There are candidates who had practised at the bar for certain number of years and who voluntarily or due to compulsions of circumstances were required to join services. Such in-service candidates who had been earlier practising law at the Bar constitute a distinct class. A grant of different treatment to them by providing age relaxation has justification. The candidates belonging to this class of government servants are not comparable

with candidates available in the Bar. Grant of age relaxation to the former class is based on reasonable classification which has a reasonable nexus with object to make recruitment from all available sources. Such age relaxation cannot be extended to the members of the bar because that would mean increase of the prescribed age limit for members of the bar from 35 to 38 and thus fixing an age limit which would not give them a reasonable long tenure to seek promotion to the highest post of District Judge in the judicial career and would be a deterrent to the successful members of the Bar in competing for judicial service. So far as M.P. Rules are concerned even for in-service candidates the requirement of minimum 3 year's practice at the Bar has not been dispensed with. Such candidates have to fulfil minimum prescribed three years practice at the Bar to compete with other practising lawyers in the written test and via-voce test. Their experience in service is, however, found to be worth giving some weightage for providing them avenue of recruitment to judicial service. **AIR 1993 SC 2493,** Ref.

(d) M.P. Lower Judicial Services (Recruitment and Conditions of Service) Rules, 1994, R. 7 (b) Second proviso - ***Recruitment to judicial services. Relaxation of age upto 38 years applies only to, permanent or temporary government servants and not to employees of autonomous bodies or government servants of any other category such as work charged or contingency paid.***

(e) Constitution of India, Art. 234 - ***Recruitment to judicial service Article 234 source of power.***

Recruitment to judicial services cannot be regulated by rules made by the Governor alone under proviso to Article 309 of the Constitution of India. The source of power to legislate and frame rules for recruitment to judicial service is to be found in Article 234 of the Constitution. Under Article 234 of the Constitution, the appointment to judicial service of the State for post other than that of District Judges shall be made by the Governor of the State in accordance with the rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court Exercising jurisdiction in relation to such State. M.P. Civil Services (Special Provision for Appointment of Women) Rules, 1997, providing reservation of posts for women and age relaxation to them are not framed by the Governer in consultation with the High Court and P.S.C. The Rules of 1997 framed under Article 309 of the Constitution can have no application for recruitment to judicial services which are governed only by the specific Rules of 1994 framed for judicial services under Article 234 read with proviso to Article 309 of the Constitution.

(f) Constitution of India, Arts. 14 and 16 and M.P. Lower Judicial Services (Recruitment and Conditions of Service) Rules, 1994, R. 7- ***Recruitment to judicial services. Reservation of seats for women and grant of age relaxation. Differential treatment is justified from nature of judicial service and source of recruitment.***

The source of recruitment for judicial service is limited to the law graduates either at the Bar or in any department of the government. Since the source of recruitment is limited the availability of women candidates is also limited to such law graduates amongst women who are at the Bar or in services. In other department of the state. there are posts and wings well suited for recruitment of women. Opportunity of employment to women who suffer from pecuniary and social disabilites such as the divorcees, deserted woman and widows may be provided in other departments but is not found suitable in judiciary. In the matter of reservation of seats for women and for grant of age relaxation to them differential treatment is justified from the nature of judicial service and the source of recruitment. The attack to the rule on the ground of discrimination under Articles 14 and 16, therefore, cannot be sustained. **AIR 1963 SC 268,** Distinguished.

(g) Constituation of India, Arts. 234 and 309 - ***Recruitment to judicial service. Reservation of seats to women candidates. Policy matter.***

The grant of reservation of seats and reservation to women candidates for recruitment to judicial services is essentially a policy matter to be decided by the appointing Authority depending upon various relevant factors such as the nature and source of recruitment, availability of suitable number of posts, the need for representation of a special calss and the requirements to service. Women judicial officers might be required to be appointed to courts specially constituted for dealing with laws concerning women, children and families. Therefore, a valid policy of reservation in future for women for recruitment to judicial services is not ruled out.

(h) M.P. Lower Judicial Services (Recruitment and Conditions of Service) Rules, 1994. R. 7 (d) - ***Law Graduates in service who had practised for minimum 3 years at Bar are qualified to apply.***

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93. CR.P.C., SECTION 313 AND EVIDENCE ACT, SECTION 27 : EVIDENTARY VALUE
2000 (1) M.P.L.J., S.N. 7
JAGDHARI Vs. STATE OF M.P.

Statement of accused under Section 313 can be considered along with other evidence to base a conviction.

EVIDENCE ACT, SECTION 27 : MEMORANDUM OF SEIZURE:-

It is not safe to convict an accused in the absence of corroborative, direct or circumstantial evidence.

The evidence on memorandum of seizure is a very weak type of evidence and in the absence of corroborative, direct or circumstantial evidence, is unsafe to convict an accused.

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94. I.P.C. SECTION 376, & EVIDENCE ACT, S. 3: RAPE : PROOF OF AGE OF PROSECUTRIX :-
2000 (1) M.P.L.J. S.N. 10
BABA @ AKHILESH Vs. STATE OF M.P.

Entry of date of birth in school Admission Register. Entry would not stand proved by its production. Entry can only be proved by person who made it or person in whose person it was made or by person who had given details for making entry.

NOTE:- Judicial Officers are requested to go through Sections 35 and 74 of the Evidence Act.

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95. STAMPS ACT, SECTION 3 : TAXING STATUTE:-
2000 (1) M.P.L.J. S.N. 5
VIMLA DEVI Vs. DHANRAJ SINGH

The taxing statute must be construed strictly. The taxable event is creation of instrument. It cannot be interpreted according to the supposed intentment of the maker.

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96. BENAMI TRANSACTIONS (PROHIBITION OF THE RIGHT TO RECOVER PROPERTY) ORDINANCE, 1988, SECTION 4 (3) (b) AND TRUSTS ACT, SECTION 82:-
(2000) 1 SCC 459
G. GANGACHARAN Vs. C. NARAYANAN

The property was held in the name of a person as a trustee. Appellant sent money from abroad to respondent for purchasing property in the name of appellant but respondent purchasing property in his own name and in the name of his brothers. The suit was filed by the appellants for the possession of the property on its market value. The suit was decreed by the trial Court. The High Court found that the property was being held in the name of respondent as a trustee, appellant was the beneficial owner and the case was governed by Section 82 of Indian Trusts Act. It was held that the respondent cannot invoke the provisions of the said Ordinance/Act to contend that recovery of possession of property was prohibited there under. Moreover since the proceedings for execution of the decree in favour of the appellant was pending when the Ordinance came into force. Ordinance Act itself not retrospective in operation will not apply in the present case.

INTERPRETATION OF STATUTES: RETROSPECTIVITY : BENAMI TRANSACTIONS (PROHIBITION OF RIGHT TO RECOVER PROPERTY) ORDINANCE, 1988 S. 1:-

Neither the Ordinance not the Act which replaced it retrospective in operation. Hence not applicable to pending proceedings. ***R. Rajgopal Reddy Vs. Padmini Chandrasekharan, (1995) 2 SCC 630*** relied on.

●

97. REPRESENTAION OF THE PEOPLE ACT, SECTION 123 : ELECTION : CORRUPT PRACTICE:-
(2000) 1 SCC 481
R.P. MOIDUTTY Vs. P.T. KUNJU

Onus of proof is on the election petitioner. Standard of proof is similar to that required in proving a criminal quasi criminal charge. Alleged corrupt practice should be pleaded and proved.

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98. CONSUMER PROTECTION ACT, SECTION 2 (1) (d) (i) AND 23:- "CONSUMER":-
(2000) 1 SCC 512
KALPAVRUKSHA CHARITABLE TRUST Vs. TOSHNIWAL BROTHERS

Civil Appeal No. 9737/96, decided on 12the August, 1999.

Charitable trust running a Diagnostic Centre. Patients taking advantage of CT scan etc. at the Centre ordinarily required to pay for the same and only ten per cent of them being provided free service. In such circumstances, machines purchased by the said trust for use in the Diagnostic Centre, held were meant for "commercial purpose". Hence the earlier decision in ***Kalpavriksha Charitable Trust Vs. Toshniwal Brothers*** that charitable trust, in respect of the said machines was not a "consumer" affirmed.

Paragraphs 6 to 9 of the judgment are reproduced:

6. It is therefore, clear that in spite of the commercial activity, whether a person would fall within the definition of "consumer" or not would be a question of fact in every case. The National Commission had already held on the basis of the evidence on record that the appellant was not a "consumer" as the mechinery was installed for "commercial purpose". We have been again referred to various documents, including the "project document", submitted by the appellant itself to the bank for a loan to enable it to purchase the machinery in question, but we could not persuade ourselves to take a different view.

7. Learned counsel for the appellant then referred to the case of, ***CIT v. Surat Art Silk Cloth Manufacturers' Assn. (1980) 2 SCC 31*** wherein the activity of a charitable institution, though commercial in nature, was held to be a part of the charitable activity. This decision does not help the appellant as it was a decision rendered under the Income Tax Act the question which we are considering here had not arisen in that case.

8. Learned counsel for the appellant then referred to the decision of this Court in ***CIT v. Federation of Indian Chambers of Commerce & Industries (1981) 3 SCC 156*** and contended that if the dominant object of the trust or institution is charitable, the activity carried on by it would not be treated as an activity for profit. It is contended on the basis of

the above decision that the activities carried on by the appellant were not profit-oriented nor was there any intention or object to carry on those activities to earn profit. This again was the decision rendered under the Income Tax Act and is not on the point involved in the present case whether the appellant was a "consumer" within the meaning of the Consumer Protection Act, 1986.

In the instant case, what is to be considered is whether the appellant was a "consumer" within the meaning of the Consumer Protection Act, 1986, and whether the goods in question were obtained by him for "resale" or for any "commercial purpose". It is the case of the appellant that every patient who is referred to the Diagnostic Centre of the appellant and who takes advantage of the CT scan etc. has to pay for it and the service rendered by the appellant is not free. It is also the case of the appellant that only ten per cent of the patients are provided free service. That being so, the "goods" (Machinery) which were obtained by the appellant were being used for "commercial purpose".

NOTE:- For further study relating to case ***Kalpavriksh Charitable Trust vs. Toshniwal Brothers*** please refer to **2000 (1) SCC 515** This was the re-hearing of the same case because the appeal was dismissed by Supreme Court. Subsequently appellant's counsel filing an application stating that he was the only counsel of the appellant but on the date of decision he was busy in another case and could not therefore, argue the appeal taken up by the Supreme Court. The application further stated that another counsel deputed to mention the case of non-appearance of the appellant's counsel was not entitled to argue the appeal. In such circumstances the counsel of the appellant heard by the Supreme Court.

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99. TADA ACT, SECTION 15 AND EVIDENCE ACT, SECTIONS 24 TO 27 : CONFESSION OF ACCUSED : EVIDENTIARY VALUE:
(2000) 1 SCC 498
GURDEEP SINGH Vs. STATE (DELHI ADMN.)

Such confession when made voluntarily and truthfully, held, can be exclusively relied on for conviction. No corroboration is necessary in such a case. Confessional statement under TADA and those in other criminal proceedings were explained by the Supreme Court.

The appellant was convicted by the Designated Court under Section 302 and 324 of the Penal code, 1960, Section 5 of the Explosive Substances Act, 1908 and Section 9-B (2) of the Explosives Act, 1884. The prosecution case was based only on circumstantial evidence including a confessional statement which the appellant had made to the Superintendent of Police, Core of Detectives, Karnataka. The appellant contended that the said confession could not be relied on by the Designated Court to convict him as the same had not been made voluntarily. He added that the

confession was recorded when the appellant was in handcuffs, there was another policeman in the same room holding the chain of his handcuffs, and even outside the room, in which his confession was recorded there were armed guards. That such set-up revealed by itself that threat perception was hanging over his head. Dismissing the appeal the Supreme Court held the legislature has conferred a different standard of admissibility of a confessional statement made by an accused under the TADA Act, from those made in other criminal proceedings. While under Section 15 of the TADA Act a confessional statement by an accused is admissible even when made to a police officer not below the rank of Superintendent of Police, in other criminal proceedings it is not admissible unless made to a Magistrate. Section 25 of the Indian Evidence Act debars from evidence a confession of an accused to a police officer, except what is permitted under Section 27.

However, there is one common feature, both in Section 15 of the TADA Act and Section 24 of the Indian Evidence Act that the confession has to be voluntary. Section 24 of the Evidnece Act interdicts a confession, if it appears to the court to be the result of any inducement, threat or promise in certain conditions. The principle therein is that confession must be voluntary. Voluntary means that one who makes it out of his own free will inspired by the sound of his own conscience to speak nothing but the truth.

Paragraphs 15 to 20 of the judment are reproduced:-

15. The legislature has conferred a different standard of admissibility of a confessional statement made by an accused under the TADA Act, from those made in other criminal proceedings. While under Section 15 of the TADA Act a confessional statement by an accused is admissible even when made to a police officer not below the rank of Superintendant of Police, in other criminal proceedings it is not admissible unless made to a Magistrate. Section 25 of the Indian Evidence Act debars from evidence a confession of an accused to a police officer, except what is permitted under Section 27.

16. In ***Sahib Singh v. State of Haryana (1997) 7 SCC 231*** this Court while dealing with the TADA Act held that the meaning of confession as under the Indian Evidence Act shall also apply to a confession made under the TADA Act : (SCC pp. 242-43, paras 46-47)

> "46. The Act, like the Evidence Act, does not define 'confession' and, therefore, the principles enunciated by this Court with regard to the meaning of 'confession' under the Evidence Act shall also apply to a 'confession' made under this Act. Under this Act also, 'confession' has either to be an express acknowledgment of guilt of the offence charged or it must admit substantially all the facts which constitute the offence. Conviction on 'confession' is based

on the maxim **'habemus optimum testem, confitentem reum'** which means that confession of an accused is the best evidence against him. The rationale behind this rule is that an ordinary, normal and same person would not make a statement which would incriminate him unless urged by the promitings of truth and conscience.

47. Under this Act, although a confession recorded by a police officer, not below the rank of Superintendent of Police, is admissible in evidence, such confessional statement, if challenged, has to be shown, before a conviction can be based upon it, to have been made voluntarily and that it was truthful."

17. In other words, there is one common feature, both in Section 15 of the TADA Act and Section 24 of the Indian Evidence Act that the confession has to be voluntary. Section 24 of the Evidence Act interdicts a confession. if it appears to the court to be the resullt of any inducement, threat or promise in certain conditions. The principle therein is that confession must be voluntary. Section 15 of the TADA Act also requires the confession to be voluntary. Voluntary means that one who makes it out of his own free will inspired by the sound of his own conscience to speak nothing but the truth. As per **Stroud's judicial Dictionary,** 5th Edn., at p. 2633 **'threat'** means:

> "It is the essence of a threat that it be made for the purpose of intimidating, or overcoming, the will of the person to whom it is addressed (per Lush, J., ***Wood v. Bowron (1866) 2 QB 21*** cited Intimidate)".

18. ***Words and Phrases,*** Permanent Edition, Vol. 44, p. 622, defines voluntary as:

> "**Voluntary**" means a statement made of the free will and accord of accused, without coercion, whether from fear of any threat of harm, promise, or inducement or any hope of reward- ***State v. Mullin. 85 NW 2d 598, 600, 249, lown 10*** " where used in connection with statements by accused. words **'voluntary'** and **'involuntary'** import statements made without constraint or compulsion by others and the contrary. ***Commonwealth v. Chin kee 186 NE 253, 260. 283 Mass 248.***"

19. In ***Words and Phrases*** by John B. Saunders 3rd Edn, Vol. 4 p 401, "**voluntary**" is defined as:

"The classic statement of the principle is that ***Lord Sumner in Ibrahim v. Regem5 1914 AC 599*** (AC at p. 609) where he said, "It has long been established as a positive rule of English criminal law that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to be a voluntary statement, in the sense

that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. The principle is as old as Lord Hale." However, in five of the eleven text-books cited to us... support is to be found for a narrow and rather technical meaning of the word "voluntary". According to this view "voluntary" means merely that the statement has not been made in consequence of (i) some promise of advantage or some threat (ii) of a temporal character (iii) held out or made by a person in authority, and (iv) relating to the charge in the sense that it implies that the accused's position in the contemplated proceedings will or may be better or worse according to whether or not the statement is made, ***R. v. Harz, R. v. Power (1966) 3 All ER 433, 454, 455,*** (All ER at pp. 454, 455) per Cantley. V."

20. So the crux of making a statement voluntarily is, what is intentional, intended, unimpelled by other influences, acting on one's own will, through his own conscience. Such confessional statements are made mostly out of a thirst to speak the truth which at a given time predominates in the heart of the confessor which impels him to speak out the truth. Internal compulsion of the conscience to speak out the truth normally emerges when one is in despondency or in a perilous situation when he wants to shed his cloak of guilt and nothing but disclosing the truth would dawn on him. It sometimes becomes so powerful that he is ready to face all consequences for clearing his heart.

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100. EXPLOSIVE SUBSTANCES ACT, SECTIONS 4, 5, AND 7 : SANCTION BY THE DISTRICT MAGISTRATE: GOVERNMENT DELEGATED POWER TO DISTRICT MAGIMAGISTRATE:- DELEGATION NOT PERMISSIABLE TO ADM
(2000) 1 SCC 555
STATE OF M.P. Vs. BHUPENDRA SINGH

Where the Central Government delegated the power to District Magistrate, it was held the State Government could not further delegate the same to Additional District Magistrate. Hence, consent granted by an Additional District Magistrate, although he was empowered by the State Government to exercise powers of District Magistrate under CrPC or any other law for the time being in force is bad.

CONSTITUTION OF INDIA, ARTICLE 258 : CONFERMENT OF POWERS OF UNION OR OFFICERS OF STATE : DELEGATION OF POWERS:-

Paragraphs 2 to 6 of the judgment are reproduced:

2. The respondent was apprehended on 17-2-1977 and it is the case of the appellant that detonators were found in his possession. A charge-sheet was filed against him under the provisions of Sections 4 and 5 of the Explosive Substances Act, 1908 ("the said Act"). Cognizance was

taken and the trial proceded to some extent. The respondent then filed a revision petition before the High Court of Madhya Pradesh contending that the consent of the Central Government which was requisite under Section 7 of the said Act had not been properly obtained. The High Court accepted the respondent's contention and quashed the proceedings against him. The State of Madhya Pradesh is in appeal.

3. For a prosecution under the said Act, the consent of the Central Government is requisite by virtue of the provisions of Section 7 thereof. By notification dated 2-12-1978 the Central Government entrusted to the District Magistrates, inter alia, in the State of Madhya Pradesh its functions under Section 7 of the said Act.

4. The consent for the prosecution of the respondent was granted by the Additional District Magistrate of the district concerned and, in this behalf, reliance was placed, on behalf of the appellant, upon a notification dated 24-4-1995 issued by the appellant whereunder it appointed the Joint Collector and Executive Magistrate as Additional District Magistrate for the district of Gwalior and directed that he should "exercise powers of District Magistrate conferred under the said Code (Criminal Procedure Code) or under any other law for the time being in force". The submission on behalf of the appellant is that, by reason of the latter notification, the power under Section 7 of the said Act delegated by the Central Government to the District Magistrate had now been delegated to the Additional District Magistrate and that, accordingly, the consent that he granted for the prosecution of the respondent was valid.

5. It is difficult to accept the submission. The power of granting consent under Section 7 of the said Act rests with the Central Government. The Central Government had delegated it to the District Magistrate. It is, in our view, not competent for the State Government to further delegate to the Additional District Magistrate a power of the Central Government which the Central Government had delegated to the District Magistrate.

6. The decision of this Court in ***Hari Chand Aggarwal v. Batala Engg. Co. Ltd. AIR 1969 SC 483 : 1969 Cri LJ 803*** is also of some relevance. This Court said that where, by virtue of a notification under Section 20 of the Defence of India Act, the Central Government had delegated its powers under Section 29 to a District Magistrate, an Additional District Magistrate was not competent to requisition property under Section 29 simply because he had been invested with all the powers of a District Magistrate under Section 10 (2).

NOTE : Following are the tow legal Maxims :

DELEGATE POTESTAS NON POTEST DELEGARI :

A delegated power cannot be delegated. The maxim lays down the

general rule that an agent cannot delegate his powers or duties to another, in whole or in part, without the express authority of the principal or authority derived from statute.

DELEGATUS NON POSTEST DELEGARE :

The expression means that a delegate cannot delegate. The person to whom an office or a duty is delegated cannot lawfully delegate the duty upon another, unless expressly authorized to do.

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101. C.P.C., SECTION 100 AND ORDER XLI, RULE 27 READ WITH ORDER VII, RULE 7
2000 (1) M.P.H.T. 32 (NOC)
NOMANALI Vs. GOVINDLAL

Appellant landlord filed a suit for conviction against the respondent in the ground of requirement of the shop. His suit was dismissed as he failed to prove the genuine need of the shop. During the pendency of the First Appeal the tenanted premises was demolished by the appellant and he took possession of the open land. Respondent (tenant) also filed an application before the First Appellate Court by its judgment and decree remanded the case to the trial Court and directed to keep it pending and be tagged along with the Civil Suit, filed by the respondent for restitution of his possession. The judgment and the decree of the first appellate Court was set aside and the appeal filed by the appellant before the First Appellate Court was dismissed as it rendered infructuous.

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102. CR.P.C., SECTION 125 SUB CLAUSE (b) TO CALUSE (1) OF SECTION 125:-
2000 (1) M.P.H.T. 602
MADHURI BAI Vs. MINOR SURENDRA KUMAR

Saddles liability also on the mother, like father, to maintain her minor children. The word 'his' in the clause mean and includes both 'male' and 'female' ***Dr. Mrs. Vijaya Manohar Arbat Vs. Kashirao Rajaram Sawai and another, AIR 1987 SC 1100*** relied on.

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103. CR.P.C., SECTIONS 161, 173, 174 AND 207 : SUPPLY OF COPIES OF STATEMENTS TO ACCUSED:-
2000 (1) M.P.H.T. 543
BHARAT Vs. STATE OF M.P.

The statements of the prosecution witnesses are recorded by the police in connection with inquest under Section 174 Cr.P.C. Under the provisions of Chapter XII and are covered by Section 161 Cr.P.C. and hence their copies have to accompany with the report submitted to the Court under Section 173 Cr.P.C. and those have to be supplied to the accused under Section 207 Cr.P.C.

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104. CR.P.C., SECTION 482 AND PREVENTION OF CORRUPTION ACT OF 1988, SECTIONS 13 (1) (e), 13 (2) AND 17:-
2000 (1) M.P.H.T. 558
STATE OF M.P. Vs. SHRI RAM SINGH

Investigation and proceedings initiated by Police against three respondents for possession of assets disproportionate to the known sources fo their incomes. The High Court quashed the investigation and proceedings on the ground that it had not been conducted by an authorised officer. Hence, criminal appeals were filed before the Supreme Court. The Order of the Superintendent of Police authorising the investigation against the respondents does not show the non-application of mind or has been passed in a mechanical and casual manner. The High Court should not have liberally construed the provisions of the Act in favour of the accused resulting in closure of the trial of the serious charges made against the respondents in relation to commission of offences punishable under an Act legislated to curb the illegal and corrupt practices of the public officers. The S.P. appears to have applied his mind and passed the suitable orders.

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105. CONSTITUTION OF INDIA, ARTICLE 226 : NATURAL JUSTICE AND WORDS AND PHRASES : AUDI ALTERAM PARTEM :-
2000 (1) M.P.H.T. 596
VIKAS Vs. DEVI AHILYA VISHWAVIDHYALAYA, INDORE

Cancellation of B.E. degree of the petitioner by Devi Ahilya Vishwavidhyalaya Indore based on exparte enquiry on the allegation that the petitioner had furnished a false caste certificate. University did not serve any show cause notice to the petitioner not providing any opportunity of hearing. It was held that the rule of Audi Alteram Partem not followed. Cancellation set aside allowing the writ.

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106. CONSTITUTION OF INDIA, ARTICLE 226 : PRACTICE AND PROCEDURE : COURT WHEN CAN BE MADE A PARTY:-
2000 (1) M.P.H.T. 549
JITENDRA SINGH THAKUR Vs. MEERA PRASAD

The Third Additional District Judge, Chhindwara was also wrongly impleaded in the writ petition as one of the respondents. The petitioner was not aggrieved by the ejectment part. but by the part relating to payment of arrears of rent and mesne profits.

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107. M.P. ACCOMMODATION CONTROL ACT, SECTION 23-A : SUIT BY A WIDOW ALLEGING TO BE A CO-OWNER : RIGHTS OF THE BROTHERS COULD NOT BE ENQUIRED INTO IN THESE PROCEEDINGS:-
2000 (1) M.P.H.T. 41 (NOC)
SMT. BHAGWATI KASHYAP Vs. BHAIYA INDUSTRIES

Suit maintainable at her instance if she established that respondent No. 1 was her tenant.

The whole order is reproduced:-

1. This is revision against the order dated 15-3-1999 in Case No. 90/7/47/96 of Rent Controlling Authority Indore by which respondents No. 2 and 3 Ashok Verma and Arun Verma have been impleaded as parties to the proceedings instituted by the petitioner under Section 23-A of the M.P. Accommodation Control Act, 1961 (hereinafter to be referred to as the Act) against the respondent No. 1 for eviction on the ground of her **bonafide** requirement.

2. According to petitioner Smt. Bhagwati Kashyap the respondent No. 1 is her tenant in the suit accommodation. She has pleaded that she requires the accommodation **bonafide** for her own residence and she has no other accommodation of her own in the city. She is a retired Government servant and, therefore, she is covered by the definition of landlord in Section 23-J of the Act.

3. The respondents No. 2 and 3 are brothers of the petitioner. They have been impleaded as parties by the impugned order as they claim to be the landlords of the respondent No. 1. It would be for the petitioner to prove during the proceedings under Section 23-A of the Act that the respondent No. 1 is her tenant. The respondents No. 2 and 3 have no right to intermeddle in those proceedings. The scope of such proceedings is limited. The rights claimed by the respondents No. 2 and 3 cannot be enquired into in such proceedings. They have already filed separate suits for declaration of their title. Even if the petitioner is co-owner of the suit accommodation the proceedings under Section 23-A of the Act at her instance would be maintainable if she establishes that the respondent No. 1 is her tenant. Therefore, the impugned order permitting intrusion of the respondents No. 2 and 3 in this proceedings is not in conformity with the law.

4. The revision is allowed. The impugned order is set aside.

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108. MOTOR VEHICLES ACT, 1988, SECTION 173: APPEAL:-
2000 (1) M.P.H.T. 557
NATIONAL INSURANCE CO. LTD. Vs. PAWAN KUMAR

The policy was issued from 1-10-93 to 30-9-94. Insurer paid the amount by cheque. Cheque was dishonoured. Communication was made to the policy holder on the same day and the policy was cancelled. Proof of communication and quantum of proof required.

The whole order is reproduced:-

The appeal is at the behest of the National Insurance Company Ltd. against the award dated 10-5-99 passed by the 1st Addl. Motor Accidents

Claims Tribunal, Rajnandgaon, in Claim Case No. 47/94. Learned counsel for the appellant submitted that the vehicle in question at the relevant point of time, was not insured and he invited our attention to paragraph 4 of the award wherein it is stated that the insurance premium of Rs. 7,032/- was paid by cheque on 30-9-1993 and the policy was issued. which was effective from 1-10-1993 to 30-9-1994. But, the said cheque, by which the premium amount was paid was dishonoured from the Bank, And was returned on 12-10-1993. In paragraph 4 of the award, the date 1-10-1993 is wrongly mentioned and since the cheque was dishonoured, the policy did not remain in force. He stated that a communication was also made to the Policy Holder on 12-10-1993 that the cheque has been dishonoured and policy is cancelled.

The Claims Tribunal considered the aspect of the matter on merit. The Insurance Company examined its officer, Sitaram Nagmore as witness, who stated before the Claims Tribunal that an intimation was given to the Policy Holder by a registered post. He also made a statement that the communication was made to the Policy Holder about dishonour of the cheque, which is clear from the letter (Ex.D-2) which was on the file of the Insurance Company. The Claims Tribunal recorded the findings that it has not established that the communication regarding dishonour of the cheque, was given to the Policy Holder.

For establishing the fact of intimation, which admittedly was sent by registered post, the Insurance Company should have filed the best evidence, i.e. the receipt of sending the postal letter by registered post and the acknowledgment due. Since the material for establishing the fact of sending of intimation to the Policy Holder is not on record, the finding of the learned Claims Tribunal cannot be said to have suffered from any error.

109. I.P.C. SECTION 304-A:-
2000 (1) M.P.H.T. 545
DR. KAILASH CHANDRA Vs. STATE OF M.P.

Injunctions of tetracycline and chloroquine were given to the deceased boy without caution test. No symptoms of Maleria. Papers for the patient not prepared. Negligence proved.

The whole order is reproduced:-

1. It is evidence on record as well as the Judgment which has been put to challenge.
2. Shri Jaisingh submitted, that the charge is erroneous and, therefore, the Trial Court has committed an error in convicting and sentencing the petitioner.
3. The charge clearly shows that petitioner has been charged and committed the act of rashness, which is punishable in view of the provi-

sions of Section 304-A of the Indian Penal Code.

4. Apart from that the evidence of prosecution witnesses examined by prosecution equivocally proves that, Petitioner committed the rash act in giving injections of tetracycline and chloroquine without caution test. The evidence on record shows that the deceased boy was not having **prima facie** symptoms of malaria. The evidence further shows that, petitioner did not prepare the papers which are required to be prepared before injecting those two injections mentioned above. The blisters appearing on hips of deceased with redishness immediately after the administration of injections, cannot be ignored. The medical evidence showed that there was irruption on the whole body in the form of blisters. It shows that there was out burst of histamine. A doctor is professionally expected to prepare the record before administering the injections for making a note as to why he was administering those injections to the patient. Non-preparation of such papers, or, not keeping a note of symptoms observed by him which made the petitioner to inject those two injections is nothing but the rashness, which is culpable under the provisions of Section 304-A of the Penal Code. Such rash and negligent Medical Practitioners have started playing with the life of innocent persons and, therefore, for the purpose of sounding an alarm to such persons for protection of the larger interest of the society, it is necessary to inflict such sentence on such offenders. Therefore, the sentence is also not severe.

5. I do not find any way the impugned judgment and order of conviction and sentence are improper, incorrect or illegal. Thus, the revision petition stands dismissed and not admitted.

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110. I.P.C. SECTION 409:-
2000 (1) M.P.H.T. 614
RAMESH CHANDRA TIWARI Vs. STATE OF M.P.

The mere fact that the accused deposited the price of the lost wheat, does not attach the offence to him. The act of crime was not the act of the petitioner/ accused. No evidence of mens rea.

The whole order is reproduced:

1. The petitioner's conviction fot offence under Section 409 IPC made by A.C.J.M. Bilaspur in Cr. Case No. 1460/80 by judgment dated 11-6-90 was confirmed by the impugned judgment of VI Addl. Sessions Judge, Bilaspur in Cr. Appeal Nos. 74/90 and 63/90 decided on 13-6-94. The appellate Court reduced the sentence to R.I. for 6 months and fine of Rs. 1500/- while the Magistrate had sentenced him to R.I. for 2 years and fine of Rs. 1500/-

2. The charge found established by the two Courts below was that in his

capacity as Co-operative Inspector of village Lormi he was authorised by B.D.O. Lormi to bring 500 bags of wheat from the godown of F.C.I. Bilaspur for the purpose of distribution to labourers under wheat for work scheme. Under this authorisation the petitioner drew 500 quintals of wheat from godown of F.C.I. Bilaspur. It was taken in 2 instalments, first of 400 bags on 10-7-80. It was transported in 4 trucks to Lormi. Thereafter, since wheat was short by 12 quintals 60 Kg. in the first 4 trucks, a total delivery of 113 bags was taken by this accused on 11-7-80, so as to make total receipt of 500 quintals. These 13 bags were carried in truck No. 2365 of which P.W. 1 Bhagwat was the driver. Co-accused Shivprasad was made to sit in the truck to carry wheat to the godown of the departement in Lormi. With the earlier 4 trucks Devnarayan (P.W. 4) had accompanied. The prosecution case is that at the godown of the Department, instead of 113 bags, only 100 bags were off-loaded and 13 bags were missing on the way. Since the petitioner had received the gate pass for the same, he was held responsible for that loss and he deposited a sum of Rs. 1120/- as its price for the loss on 17-7-80 for which receipt was issued to him. The prosecution case further was that from the truck on the way, Shivprasad off-loaded 13 bags somewhere and brought only 100 bags to the department and then he took away 13 bags to some other place. Both the Courts held both the accused guilty of offence under Section 409 IPC.

3. There is no dispute by the petitioner that he was authorised to bring 500 quintals of wheat. He had withdrawn that much wheat under two gate-passes and had got loaded 113 bags in truck No. CPT 2365 but he did not know what happened to 13 bags which was loaded in this truck with which Shivprasad had accompanied. He, however, paid the price because there was loss of that wheat. His defence was that he had been falsely implicated and he had never used any part of the wheat for himself.

4. The prosecution evidence was mainly consisting of the facts that this accused was authorised to bring the wheat, that he took it in his charge and gate passes were issued in his favour and wheat was short when it was delivered in the godown, Shivprasad was also held liable for the crime. According to Bhagwat, driver of the truck, it was Shivprasad who got off-loaded 13 bags in the way and 100 bags were taken to Lormi.

5. The question is whether on the basis of this evidence the present petitioner is responsible as he had taken the gate pass, for criminal breach of trust. He admits of having obtained the gate pass. He was not in the truck. Criminal law does not permit inference of offence by this. The prosecution had to prove the guilt of the accused beyond doubt. It is Shivprasad who was responsible for this criminal misappropriation.

There is no witness who says that Ramchandra-petitioner had instructed Shivprasad to do so. He was certainly responsible for its delivery in full weight. So he was responsible for the loss, but he did not commit criminal breach of trust. He may not have been so vigilent as to see that nobody misappropriates in the way. If somebody on who he relied, committed theft, he cannot be held criminally liable. The trial Court as well as the appellate Court had given no thoughts on this part. They have not cared to see that criminal liability has to be established by establishing ***mens rea*** for the act of crime. In this case, even the act of crime was not the act of the accused. There is no evidence of ***mens rea***.

6. On analysis of the evidence and perusal of the judgment of the two Courts below this Court finds that the conviction of this petitioner is totally unfounded for the offence under Section 409 of the Indian Penal Code. The mere fact that he deposited the price of the lost wheat, does not attach the offence to him. He is acquitted of the charge. The appeal is accepted.

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111. I.P.C., SECTION 504:- BREACH OF PEACE BY LETTER
2000 (1) M.P.H.T. 612
VIVEK KUMAR Vs. C.K. SHUKLA

A person receiving letters is not in a position to commit breach of peace. He may feel provoked but whether the complainent felt provoke to commit some offence is not shown in the present case. There is not doubt that the letters contain so filthy language for the complainant and his daughter that it is worse than physical hurt to read this language. But technically, it is not possible to attract the provisions of Sections 504 IPC.

The whole order is reproduced:

1. The petitioner has been tried for offence of insulting respondent No. 1 punishable under Section 504, IPC., Respondent No. 1 had filed a complaint against him on which cognizance was taken, as the petitioner, who is son-in-law of the respondent No. 1, had written letters containing filthy abuses to respondent No. 1 and his daughter, who is also wife of the petitioner. These letters were sent by post and the petitioner did not hand over those letters to the complainant.

2. When cognizance of the offence was taken by the magistrate and charges were framed against him, the petitioner approached the Sessions Court in revision but the Sessions Court, Bhopal in Cr. Rev. No. 210/96, decided on 9-1-97, dismissed the revision holding that the charge was justified under Section 504, IPC.,

3. Although notice has been served to respondent No. 1 but nobody has come to argtic on his behalf.

4. The only contention raised by the counsel for the petitioner is that an

essential condition of offence is not only the insulting words but they should be in order to give provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence. The argument is that in this case insulting words were used in letters by post and there was no possibility of breach of public peace by the complainant or anybody on his behalf. The learned counsel supports his arguments by observations of the Single Bench of Nagpur High Court in a case of ***R.M. Siffles Vs. M.R. Dixit, AIR 1924 Nagpur 121 (2)***; where it was held that when insult is by letters, there is no possibility of breach of peace or offence being committed and so the necessary ingredients of Section 504, IPC is absent. No offence under that Section is therefore made out.

5. Section 504 is in the following terms

"**Section 504:-** Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to breach the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

It is thus clear that a person receiving letters is not in a position to commit breach of peace. He may feel provoked but whether the complainant felt provoke to commit some offence is not shown in the present case. There is no doubt that the letters contain so filthy language for the complainant and his daughter that it is worse then physical hurt to read their language. But technically it is not possible to attract the Provisions of section 504 I.P.C.

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112. *STATE OF MAHARASTRA VS. SURESH*
(2000) 1 SCC. 471

A. Penal Code, 1860. Ss. 376 and 302 - Rape and murder of a four-year-old girl. Prosecution case based on circumstantial evidence. Circumstances of last seen together, recovery of dead body from the place pointed out by the accused, evidence of test identification parade, injuries found in the male organ of the accused and detection of stains of human blood and semen on underclothes of the accused at the time of his arrest Held, on facts, circumstances sufficient to convict the accused respondent with the offence of rape and murder of the minor girl.

B. Penal Code, 1860. Ss. 302 and 376 - Sentence. Death sentence Whether a rarest of the rare cases. Rape and murder of a four-year-old girl. Held, case perilously near the region of "rarest of the rare cases" But since the accused respondent was acquitted by the High Court, the lesser option is not foreclosed and hence sentence of death awarded by trial court al-

tered to sentence of life imprisonment. Sentences imposed by trial court on all other counts would reamain unaltered.

Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580, relied on

C. Criminal Trial. Circumstantial evidence. Last seen together. Rape and murder of a minor girl aged 4 years Three PWs seeing a little girl crying in the company of a man on the day of the incident. Both accused and victim were strangers to the PWs. Reason for the PWs remembering them was that next day when they heard about the murder of a little girl, they recollected seeing the man along with the little girl the previous day. PWs later identifying the accused in test identification parade. Held, recollection about the victim in the company of the accused was natural. Contention that there was inherent incredibility in the evidence of the PWs as normally accused would have taken precaution not to be seen by any other person on the way cannot be accepted. Penal Code, 1860, Ss. 376 & 302

Held :

If a criminal court is to view the testimony of the three witnesses as unnatural it would be easy to brush it aside with the stereotyped reasoning that those persons had no cause to remember having seen the man with the girl accompanying him. Such a reasoning overlooks the broad aspect that a human mind, on hearing about any shocking incident, would have the tendency to recollect any previous event which could have had a connection with that incident. If as a matter of fact those witnesses had occasion to see a crying girl of that age on the very day of the gruesome episode as happened in this case, there is nothing improbable in those witnesses remembering the person who was seen in the company of that girl. If they had immediately informed the police that they noticed a similarly-aged girl crying in the company of an utter stranger of that locality that cannot be brushed aside as a doubtful conduct. Either the three witnesses concocted the story falsely or what they said must be true. No reason was suggested for those three witnesses to bother themselves to concoct such a canard.

It is not possible to accept that there is "an inherent incredibility in the evidence" on the premise that a culprit kidnapping a minor girl with a sinister design would normally take the precaution not to be seen by any other person on the way, but in this case the culprit along with the girl had moved from place to place in the town. Such a reasoning as a proposition of human conduct cannot be accepted. The victim would certainly have been abducted by somebody (even assuming that it was not this respondent) and that person had taken the abducted girl from her house up to the place of occurrence (farm). Unless it is suggested that there was another alternative and a safer route for the culprit to take the girl unnoticed by any shopkeeper or even a pedestrian, there is no rationale in the reasoning

that there is "inherent incredibility" in the version that the respondent would have taken the girl through this route.

D. Evidence Act, 1872 S. 9 - Test identification parade. Object and modalities of . Any relaxation in the modality to be followed in the parade should not impair the main object of the parade. On facts, held, modus adopted by the Magistrate in conducting the parade was reasonably foolproof.

In this case the criticism of the modus adopted in conducting the TI parade by the Executive Magistrate was based on the evidence of two witnesses who said that the accused were taken on foot from the police station to the place where the parade was conducted and that their faces were not covered during such transit. The minutes of the test identification parade conducted by the Magistrate who himself was examined as PW contained details of the steps adopted by him. Seven other persons were kept ready in the room and the witnesses were kept in another room from where they could not see the suspect. Thereupon the suspect was brought from the lock-up with the help of two respectable persons and all precaution were taken that the witnesses could not see the suspect during such transit. Then the suspect was permitted to stand anywhere among the 7 persons. It was thereafter that the witnesses were brought with the help of the same respectable persons and the witnesses were then asked to identify the person whom they saw on the crucial day. The Supreme Court

Held :

Identification parades are not primarily meant for the court. They are meant for investigation purposes. The object of conducting a test identification parade is twofold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. So the officer conducting the test identification parade should ensure that the said object of the parade is achieved. If he permits dilution of the modality to be followed in a parade, he should see to it that such relaxation would not impair the purpose for which the parade is held. The safeguards adopted in this case by the Executive Magistrate were quite sufficient for ensuring that the parade was conducted in a reasonably foolproof manner.

Budhsen v. State of U.P. (1970) 2 SCC 128 : 1970 SCC (Cri) 343 ; Ramanathan v. State of T.N., (1978) 3 SCC 86 : 1978 SCC (Cri) 341, relied on.

E. Evidence Act, 1872 Ss. 27, 106 and 114 Recovery of dead body from a place pointed out by the accused - Possibilities also exist that accused would have seen someone else concealing that dead body at that

place or he would have been told by somebody else that the dead body was concealed there. But if the accused does not tell the court about the happening of any of the two possibilities, then the court can presume that the accused had himself concealed the dead body.

Held :

Three possibilities are there when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by him. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilites the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by him. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.

F. Criminal Trial Circumstantial evidence. Falsity of defence plea - Rape and murder of a minor girl Doctor finding injuries on the male organ of the accused (para 11) No explanation could be given by the accused and instead false answer given. Held, such injuries sustained by the accused is a formidable incriminating circumstance and the false answer given by accused can be counted as providing a missing link for completing the chain of circumstances.

Courtesty:- Eastern Book Company. Lucknow.

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113. S.C., S.T (P.A.) ACT 1989 : Ss. 2 (1) (d) & 514 R/W/Ss 4 (2) AND S. 193 CR.P.C.
TRIALS BY SPECIAL COURTS: ONLY AFTER COMMITMENT :
JT 2000 (1) SC 375 GANGULA ASHOK VS. STATE OF A.P.

The Court of Sessions is specified to conduct a trial and no other Court can conduct the trial of offences under the Act. The Particular Court of Session, even after being specified as a Special Court, would **continue to be essentially a Court of Session and designation of it as a special Court would not denude it of its character or even powers as a Court of Session.** The trial in such a court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for "Trial before a Court of Session".

Unless it is positively and specifically provided differently no Court of

Session can take cognizance of any offence directly, without the case being committed to it by a magistrate. Neither in the Code nor in the Act there is any provision what soever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a magistrate.

If other enactment contains any provision which is contrary to the provisions of the Code, such other functions would apply in place of the particular provision of the Code. If there is no such contrary provision in other laws, then provisions of the code would apply to the matters covered thereby. A Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the magistrate in accordance with the provisions of the code.

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114. HINDU MARRIAGE ACT 1955. Ss 13 (1) (i) 13 (1) (ia) AND S. 23 AND S. 25 S.3 EVIDENCE ACT 2000 (1) JLJ 75
AMITA Vs. A.K. RATHORE.

CRUELTY : APPRICIATION OF EVIDENCE :

If sufficiently strong and conclusive circumstantial evidence adduced-adultery may be inferred. The word **'Satisfied'** used in S.23 must mean satisfied on preponderance of probabilities and not satisfaction beyond reasonable doubt; which requires proof of higher standard in criminal or quasi-criminal trial. **Proof beyond reasonable doubt is not postulated where human relationship is involved and eye witnesses are difficult to obtain.** (***Shobha Rani Vs. Madhukar Redd. AIR 1988 S.C. 121***) relied on.

The word **'Satisfied'** means satisfied on preponderance of probabilities. It is not satisfaction beyond reasonable doubt which is required in Criminal Cases. **AIR 1975 SC 1534** and **AIR 1988 SC 121** followed.

Single voluntary intercourse with another person is sufficient to obtain decree of divorce, conception from another person admitted in so many letters and affidavits case of sexual intercourse with another person proved. **AIR 1980 Orrissa 171** relied and **A.I.R. 1967 S.C. 581** distinguished.

ADULTERY- Sufficiently strong and conclusive circumstantial evidence adduced- adultery may be informed. Single voluntary intercourse with another person is sufficient to obtain decree of divorce. Husband threatened to commit suicide implicated in false case of cruel treatment with demand of dowry wife also found indulged in extra-marital sexual relationship. Several love letters recovered from her written to her paramour, husband's life put in danger case of divorcee is made out.

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115. ADVERSE POSSESSION STARTING POIN OF LIMITATION LIMITATION ACT : ART 64 AIR. 2000 SC. PAGE 212
AJIT CHOPRA Vs. SADHURAM & OTHERS

Limitation Act (36 of 1963), Art. 64 Adverse possession. Limitation. Starting point. Eviction suit. Revision confirming Rent Appellate Authority's finding that there existed relationship of landlord and tenant between parties Tanant given 3 months time for vacation of premises. Tenant was thus licensee during the 3 months period. Adverse possession will start after expiry of three month's period. Suit filed within 12 years' time from date of expiry of three month's period Would be within time. Plea that there was no relationship of landlord and tenant during pendency of tenant's statutory revision as the same came to end when landlord's appeal was allowed by appellate authority. Rejected.

Limitation : Purchase of suit house by plaintiff subject to result of eviction proceedings pending between vendor of suit house and its tenant. Tenant in possession of premises as tenant till conclusion of eviction proceedings when in revision High Court ordered eviction. Tenant cannot claim that he was in adverse possession vis-a-vis plaintiff purchaser from date of purchase as latter had **no right to immediate physical possession** according to agreement between parties.

Civil P.C. (5 of 1908) S. 47 (before its amendment in 1976) : Applicability. Eviction order Sale of suit house during pendency of proceedings Order not executed by purchaser. Purchaser filing eviction suit afresh Counter-affidavit filed by tenant that he had acquired title by adverse possession. Subsequent suit for possession by landlord based on his title Fact of plea of adverse possession as raised by tenant, admitted by plaintiff Subsequent suit not barred under S. 47 on ground that suit was virtually one for execution of order of eviction passed in first rent control case.

Civil P.C. (5 of 1908) Ss. 47, 11 : Bar of separate suit. Earlier eviction proceedings based on lease. Decree for eviction. Not executed within time. subsequent suit for possession based on title. Not barred by S. 11 or S. 47.

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116. HINDU SUCCESSION ACT, SECTION 14 : HINDU WIDOW'S REMARRIAGE ACT, SECTION 2, MADRAS HINDU (BIGAMY, PREVENTION AND DIVORCE) ACT, SECTION 2 :- WIDOW'S ESTATE:- AIR 2000 SC 434
VELAMURI VENKATA SIVAPRASAD Vs. KOTHURI VENKATESWARLU

Widow's estate. Conversion of limited ownership into absolute one. Remarriage of widow prior to Hindu Widow's Remarriage Act, 1956 and Hindu Succession Act. Widow is divested of even limited ownership of her deceased husband's property. Notwithstanding the fact that remarriage is void in terms of provisions of Bigamy prevention Act of 1949.

A limited right of maintenance permeats into an absolute right under S. 14 (1) of the Hindu Succession Act but in the event of there being a re-marriage of the widow prior to 1956 the widow is divested of even the limited ownership of her deceased husband's property. The Hindu Widow's Re-marriage Act of 1856 had its full play on the date of re-marriage itself, as such Succession Act could not confer the widow who has already re-married, any right in terms of S. 14 (1) of the Act of 1956. The Succession Act has transformed a limited ownership to an absolute ownership but it cannot be made applicable in the event of there being a factum of pre divestation of estate as a limited owner. If there existed a limited estate or interest for the widow, it could become absolute but if she had no such limited estate or interest in lieu of her right of maintenance from our of deceased husband's estate. there would be no occasion to get such non-existing limited right converted into full ownership right. The Act of 1956. incidentally is prospective in its operation and no element of retrospectivity can be attributed therein.

Section 2 of the Hindu Widow's Re-marriage Act, 1856, therefore, has taken away the right of widow in the event of re-marriage and the Statute is very specific to the effect that the widow on re-marriage would be deemed to be otherwise dead. The words "as if she had then died" occurring in S. 2 of 1856 Act are rather significant. The legislature intended therefore that in the event of a re-marriage, one looses the rights of even the limited interest in such property and after re-marriage the next heirs of her deceased's husband shall thereupon succeed to the same. It is thus a statutory recognition of a well reasoned pre-existing Shastric law.

However, since wife widow got re-married to her brother-in-law in the year 1953, the marriage is a void marriage, but that does not obliterate the dis-qualification from in-heritance by reason of re-marriage. Voidness of marriage cannot be termed to be an absolute nullity. In the contextual facts, the doctrine of sincerity has its due application. Widow cannot take advantage of her own immoral conduct and illegality to confer upon herself a right to continue to get maintenance from the properites of her deceased husband under the consent decree. The Madras Hindu (Bigamy, Prevention and Divorce) Act of 1949 being penal in nature, was introduced in the Statute Book to prohibit bigamous marriages and to provide for a right of divorce on certain grounds as mentioned therein. statutory prohibition cannot be treated to be in aid of conferment of right, it is a prohibitory statute and not a conferring statute. Any mechanical and literal applicability of the Act of 1949 would lead to incongruity as well as absurdity since in the event the widow is married to a person without having a spouse living the widow divests herself of any right to deceased's properties by reason of S. 2 of the Act of 1856, but in the event the widow is married to a person with a spouse living, the same tantamounts to no marriage and resultantly enti-

tlement under the general law would be available to the widow : what has been prohibited would, in effect, amount to conferment of a right of inheritance on the deceased husband's property- this is contrary to all cannons of law.

LPA No. 20 of 1977, D/- 31-3-1978 (Andhpra), Reversed.

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117. N.D.P.S. ACT, SECTIONS 55, 57, CONVICTION UNDER SECTION 18:-

AIR 2000 SC 468

THANDI RAM Vs. STATE OF HARYANA

Non-compliance with the provisions of Sections 55, 57 of Act. Conviction Vitiated. Notwithstanding no prejudice having been caused to accused. Accused sentenced to imprisonment for 10 years, already undergone sentence for 9 years, acquitted.

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118. SERVICE LAW : JUDICIAL SERVICES:-

(2000) 1 SCC 416

HIGH COURT OF JUDICATURE AT BOMBAY Vs. SHASHIKANT

DEPARTMENTAL ENQUIRY:- Findings of the Enquiry Officer are not binding on the Disciplinary Authority.

Judicial Review of the decision of the Departmental enquiry. Judicial Enquiry is permissible if there is violation of natural justice or statutory regulations.

Control of the High Court:- It is the duty of the High Court to maintain purity in subordinate judiciary.

Judicial System:- Judiciary floats only over the confidence of the people in its probity.

Judiciary:- Status of Judges at all levels represents the state and its authority

Judiciary:- DISHONESTY IN:- A dishonest Judicial personage is an oxymoron.

This judgment is reproduced as it is being of immense importance for the Judicial Officers from the point of view of Judicial conduct and ethics:-

A Judicial Magistrate has been disrobed of his judicial vestment by a panel of five Judges of the Bombay High Court on the administrative side. This was a sequel to an innocent litigant being wrongfully arrested, handcuffed and paraded in public. But two other Judgese of the same High Court, on the judicial side, ordered him to be rerobed with full chasuble. That judgment of the Division Bench is now being challenged by the Registrar of the High Court of Bombay (on behalf of the said High Court) by special leave.

2. The first respondent was the Joint Civil Judge (Junior Division) of the Maharashtra Judicial Service. While functioning as a Judicial Magistrate of the First Class at Ahmadnagar he had to deal with a criminal case instituted on a police report in which the complainant was one Ranchhoddas Govinddas Gandhi (hereinafter referred to as "the complainant") The first respondent Magistrate pronounced judgment in the case acquitting the accured on 7-11-1985. But the complainant sent a petition to the District and Sessions Judge, Ahmadnagar on 4-1-1986. alleging that he was wrongfully arrested by the police on 15-10-1985 as per a warrant of arrest issued by the Magistrate; and that he was handcuffed and paraded through the streets of his locality; and that he was kept in the lock-up during the night; and that on the next day (16-10-1985) he was produced before the Magistrate. It was further alleged that the first respondent Magistrate, when the complainant was produced in open court, retired to his chambers and ordered release of the complainant. It was further alleged in the complaint that the said arrest was knavishly manipulated at the behest of the accused in the criminal case through an illegal warrant of arrest surreptitiously stage-managed.

3. After holding a preliminary enquiry the High Court framed charges against the first respondent and appointed Shri K.J. Rohee, Joint District Judge (as the enquiry officer) to conduct a formal enquiry into the charges. He submitted a report on 1-3-1994 exonerating the first respondent of the charges. But the Disciplinary Committee of the High Court (consisting of five Judges of the Bombay High Court) after a scrutiny of the report of the enquiry officer. was not disposed to approve the findings therein. The Committee differed from the findings and proposed to proceed into the matter. A notice was thereupon issued to the first respondent calling upon him to show cause as to why the findings of the enquiry officer on the crucial points be not repudiated. and a major penalty of dismissal from service be not imposed on him.

4. The first respondent submitted his representation to the aforesaid notice. The Disciplinary Committee of the High Court considered the said representation and decided to reject the same as it arrived at the conclusion that the charges framed against him stood proved. So the Committee decided to recommend imposition of punishment of compulsory retirement on the first respondent. The Governor later issued orders on the said recommendation compulsorily retiring the first respondent.

5. The Division Bench of the High Court quashed the order of imposition of compulsory retirement on the first respondent mainly on the premise that the Disciplinary Committee had not put forward adequate reasons for differing from the findings of the enquiry officer. It was further held that the Disciplinary Committee did not discuss how the enquiry officer went wrong and why his findings were not acceptable to the Committee. The Division Bench has upheld the contention of the first respondent that.

"when the disciplinary authority differed from the findings entered by an enquiry officer, it is imperative to discuss materials in detail and contest the conclusions of the enquiry officer and then record their own conclusions".

6. The Division Bench of the High Court has propounded a legal Proposition as follows:

"It is an established principle in disciplinary jurisprudence that when the disciplinary authority differs from the findings of the enquiry officer, it has to discuss the entire case threadbare and establish that each finding of the enquiry officer was totally improbable that in the light of the materials the only conclusion that can be arrived at by an ordinary prudent man. is the conclusion arrived at by the disciplinary authority."

7. Dr. D. Y. Chandrachud, learned counsel who argued for the appellant has termed the aforesaid reasoning as contrary to the well-established principles in service law and that the enquiry officer's conclusions cannot be equated with the findings of a statutory body, nor can the Disciplinary Committee's powers be made equivalent to the powers of revisional or appellate authority. According to the learned counsel. the Division Bench has misdirected itself on the legal premise as to the Disciplinary Committee's power to dissent from the conclusion of the enquiry officer.

8. Before we consider the aforesaid legal aspect a few more factual details are to be delineated. Warrants of arrest were issued by the first respondent Magistrate to the prosecution witnesses in the criminal case on 30-8-1995. When the complainant appeared in court on 16-9-1985 without knowing the aforesaid order he was told by the Assistant Public Prosecutor (Smt Jyotsna Rathod) that a non-bailable warrant of arrest was pending against him. On her advice the complainant filed an application for cancellation of the warrant and the first respondent Magistrate passed orders thereon cancelling the warrant.

9. In spite of such order of cancellation the complainant was arrested on 15-10-1985 and was subjected to the ignominy of being paraded manacled through the public road in his locality and he was produced before the Court on 16-10-1985. On that day also, the Assistant Public Prosecutor Smt Jyotsna Rathod helped him by bringing to the notice of the first respondent Magistrate that the complainant was brought under arrest unnecessarily. According to the complainant the accused and his advocate were present in the Court on 16-10-1985 when he was produced there, even though there was no posting of the case on that day. The complainant sent a petition to the Sessions Judge against the first respondent Magistrate and the Bench Clerk of the Court complained of the said arrest alleging that it was ordered by the Magistrate under illegal influence exerted on him by accused in the criminal case.

10. The consistent stand of the first respondent Magistrate was that

the above story of arrest of the complainant on 15-10-1985 is absolutely untrue and that neither the complainant nor any witness was produced before him on 16-10-1985 and that the complainant made a false petition against him as he would have been very much piqued by the order of acquittal of the accused in the criminal case.

11. The fact that the complainant was arrested on 15-10-1985 and was handcuffed and paraded through the road and was produced before the Magistrate on the next day has been spoken to by the complainant in the enquiry with all vivid details. That part of the story is fully supported by Smt Jyotsna Rathod, (by the time she was examined in the enquiry she became a Judge of the Junior Division) by testifying that she too was present in the Court when the complainant was produced in court under arrest on 16-10-1985 and that she herself saw the warrant of arrest under which he was taken into custody. That apart, a report forwarded by the Assistant Inspector of Police, Karmala Police Station showed that he verified the station records and found that a warrant of arrest had reached the police station on 15-10-1985 for arresting a man named Ranchhoddas Govinddas Gandhi and that he was arrested thereunder and he was produced before the Court on the next day. (Shri Uday Umesh Lalit, Learned counsel for the first respondent contended that the said report of the Assistant Inspector of Police was not made available to the enquiry officer. However, it must be pointed out that the first respondent was aware of such a report as he had referred to it in his reply to the show-cause notice issued by the Disciplinary Committee.)

12. The following facts are, therefore, crystal clear: first is, that the complainant made an application on 16-9-1985 for cancellation of the warrant of arrest which he believed to have been ordered by the Magistrate. Second is that a month later i.e. on 15-10-1985, the complainant was arrested by the police under a warrant of arrest issued by the first respondent and he was produced before the Magistrate on 16-10-1985 who released him. Repudiation of those facts made by the first respondent is motivated to cover up the real facts.

13. Third is, that the warrant of arrest under which the complainant was arrested on 15-10-1985 should have been part of the records of the Magistrate's Court. But in spite of detailed search the aforesaid warrant could not be traced. Such a surreptitious missing of that warrant is a strong circumstance which the Disciplinary Committee had countenanced against the first respondent.

14. Fourth is the fact that the roznama (proceedings diary of the Court) maintained in the said criminal case as it is now made available is a fabricated document. We perused the original of that fabricated roznama. It is unnecessary for us to enumerate the various broad grounds for showing that the present roznama is a fabricated document, for even the first re-

spondent's counsel was unable to explain the glaring features of fabrication thereof. It was so fabricated as to suit the present stand of the first respondent that the complainant was not arrested and produced before him on 16-10-1985. It is important to point out that the first respondent did not dispute that the aforesaid forged roznama contains his signature at a number of places where the Magistrate's signature should appear.

15. The Disciplinary Committee enumerated all the above reasons in its proceedings for dissenting from the enquiry officer's conclusions. In fact all such reasons have been set out in the notice issued by the Disciplinary Committee to the first respondent requiring him to show cause why the conclusions of the enquiry officer be dissented from.

16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

17. In ***State of A.P v. S. Sree Rama Rao AIR 1963 SC. 1723*** this Court has stated so and further observed thus:

> "The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independant finding on the evidence."

18. The above postition has been reiterated by this Court in subsequent decisions. One of them is ***B.C. Chaturvedi v. Union of India. (1995) 6 SCC 749.***

19. The reasoning of the High Court that when the Disciplinary Committee differed from the finding of the enquiry officer it is imperative to discuss the materials in detail and contest the conclusion of the enquiry officer, is quite unsound and contrary to the established principles in administrative law. The Disciplinary Committee was neither an appellate nor a revisional body over the enquiry officer's report. It must be borne in mind that the enquiry is primarily intended to afford the delinquent officer a reasonable opportunity to meet the charges made against him and also to afford the punishing authority with the materials collected in such enquiry as well as the views expressed by the enquiry officer thereon. The findings of the enquiry officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision-making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the enquiry officer. But it is not necessary that the disciplinary authority should "discuss materials in detail and contest the conclusions of the enquiry officer". Otherwise the position of the disciplinary authority would get relegated to a subordinate leval.

20. The legal position on that score has been stated by this Court in ***A.N. D. Silva v. Union of India AIR 1962 SC 1130*** that neither the findings of the enquiry officer nor his recommendations are binding on the punishing authority. The aforesaid position was settled by a Constitution Bench of this Court way back in 1963 ***(Union of India v. H.C. Goel AIR 1964 SC 364)***. The Bench held that "the Government may agree with the report or may differ, either wholly or partially, from the conclusions recorded in report". Their Lordships laid down the following principle:

> "If the report makes findings in favour of the public servant and the Government disagrees with the said findings and holds that the charges framed against the public servant are prima facie proved, the Government should decide provisionally what punishment should be imposed on the public servant and proceed to issue a second notice against him in that behalf".

21. Thus the Division Bench of the High Court has not approached the question from the correct angle which is evident when the Bench said that it is imperative for the Disciplinary Committee to discuss the materials in detail and contest the conclusion of the enquiry officer. The interference so made by the Division Bench with a well-considered order passed by the High Court on the administrative side was by overstepping its jurisdiction under Article 226 of the Constitution.

22. It is the Full Court of all Judges of the High Court of Bombay which has authorised the Disciplinary Committee of five Judges of that High Court to exercise the functions of the High Court in respect of punishment of judicial officers. Such functions involve exercise of the powers envisaged in Article 235 of the Constitution. It is the constitutional duty of every High Court, on the administrative side, to keep guard over the subordinate judiciary functioning within its domain. While it is imperative for the High Court to protect honest judicial officers against all ill-conceived or motivated complaints, the High Court cannot afford to bypass any dishonest performance of a Member of the subordinate judiciary. Dishonesty is the stark antithesis of judicial probity. Any instance of a High Court condoning or compromising with a dishonest deed of one of its officers would only be contributing to erosion of the judicial foundation. Every hour we must remind ourselves that the judiciary floats only over the confidence of the people in its probity. Such confidence is the foundation on which the pillars of the judiciary are built.

23. The Judges, at whatever lelvel they may be, represent the State and its authority, unlike the bureaucracy or the members of the other service. Judicial service is not merely an employment nor the Judges merely employees. They exercies sovereign judicial power. They are holders of public offices of great trust and responsibility. If a judicial officer "tips the scales of justice its rippling effect would be disastrous and deleterious". A dishonest judicial personage is an oxymoron. We wish to quote the following observations made by Ramaswamy, J., in ***High Court of Judicature at Bombay v. Shirishkumar Rangrao Patil (1997) 6 SCC 339 :*** (SCC p. 358, para 16)

> "The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Aricles 235, 124 (6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection."

24. When such a constitutional function was exercised by the administrative side of the High court any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by this Court in the afore-cited decisions. In the present case, as per the judgment under appeal the Division Bench of the Bombay High Court appears to have snipped off the decision of the disciplinary Committee of the High Court as if the Bench had appeal powers over the decision of the five Judges on the administrative side. At any rate the Division Bench has clearly exceeded its jurisdictional frontiers by interfering which such an order passed by the High Court on the administrative side.

25. We. therefore. allow this appeal and set aside the impugned judgment of the Division Bench of the Bombay High Court.

Courtesy : Eastern Book Company, Lucknow.

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119. SERVICE LAW: CIVIL SERVANT:- LONG LEAVE TERMINATIOIN
1999 (II) MPWN 163 (SC)
GANGANAGAR ZILA DUGDH UTPADAK SAHKARI SANGH Vs. PRIYANKA JOSHI

Civil Servant dismissed for not joining service despite of notice even after long leave. Dismissal with reasoned order not casting any stigma. No enquiry necessary.

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120. C.P.C. O. 9 R. 13 AND CONSUMER PROTECTION ACT, SECTIONS 17 AND 18:-POWER TO SET ASIDE
1999 (II) MPWN 145 (SC)
JYOTSNA ARBIND KUMAR SHAH Vs. BOMBAY HOSPITAL TRUST

State Consumer Redressal Commission has no jurisdiction to set aside reasoned ex-parte order. No such jurisdiction has been provided under Consumer Protection Act, 1986.

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121. C.P.C., O. 20 RR. 12 AND 13:-PARTITION SUIT : SUIT FOR ACCOUNTS AND MESNE PROFITS.
1999 (II) MPWN 152
TOP SINGH Vs. SUNDER SINGH

Preliminary decree passed in partition suit. No suit for accounts and mesne profits maintainable. Relief sought can be agitated in final decree.

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122. C.P.C., OR. 21 RR. 66 (2), 89 AND 90 AND SPECIFIC RELIEF ACT, SECTION 38:- KNOWLEDGE OF AUCTION SALE
1999 (II) MPWN 160
NANHEBHAI Vs. KHATUNBI

Auction sale in execution of decree. Notice under R. 66 (2) not issued. Judgment-debtor did not avail remedy provided under Rr. 89 and 90. Precluded to raise objection in subsequent suit. Suit by auction-purchaser for perpetual injuction against judgment debtor. Judgment debtor is precluded to say that notice of auction sale under O. 21 R. 66 (2) CPC was not issued.

●

123. CR.P.C.. S. 154:- DELAY : EFFECT
1999 (II) MPWN 172
SHAMBHULAL Vs. STATE OF M.P.

Rape committed at 10 p m raining night. FIR on next day not delayed when police station is 9 kms. away

124. CR.P.C., SS. 173 (6), (7) AND S. 161 AND EVIDENCE ACT, SECTION 145:- RECORDING OF STATEMENTS TWICE - SUPPLY OF COPIES
1999 (II) MPWN 166
ANANDILAL Vs. STATE OF M.P.

Statements of witnesses recorded twice during investigation Both sets of the statements have to be supplied to accused.

Statements of prosecution witnesses recorded twice during investigation. Both sets of statements can be used for contradictions by the accused.

125. CR.P.C., SECTION 223:-JOINT TRIAL
1999 (II) MPWN 153
K.K. PATNAYAK (DR. SMT) Vs. STATE OF M.P.

Different offenders of offences under Ss. 306, 498 A and 202 IPC, cannot be tried jointly.

126. CR.P.C. 311 AND EVIDENCE ACT, SECTION 165:-LACUNA WHAT IS
1999 (II) MPWN 151 (SC)
RAJENDRA PRASAD Vs. NORCOTIC CELL

Recall of witnesses cannot be ordered to fillup the **lacuna** in prosecution case. Error in conducting the case cannot be regarded lacuna. Such error can be corrected by recalling witness or adducing additional evidence.

127. CR.P.C., S. 378 AND EVIDENCE ACT, SECTION 118 AND 145:- MINOR CONTRADICTIONS
1999 (II) MPWN 165
STATE OF M.P. Vs. HARIVALLABH

Trial Court's appreciation of evidence unwarranted. **Minor contradictions** are natural. Judgment of acquittal based on such mistaken ground liable to be interfered with.

Evidence of child witness and other witnesses cannot be thrown out on minor contradictions.

128. CR.P.C. SECTIONS 389 AND 439:-GRANTING OF BAIL TO ANOTHER ACCUSED : SIMILAR CIRCUMSTANCE.
1999 (II) MPWN 177
LAL SINGH Vs. STATE OF M.P.

Application for suspension of sentence or for bail in exceptional case may be reconsidered when facts not rightly put forth. Suspension of sen-

tence or bail granted to the accused similarly involved. Another accused also entitled to same relief.

●

129. CR.P.C., SECTION 482:-ABUSE OF PROCESS : UNTENABLE COMPLAINT
1999 (II) MPWN 158
MAHESH KUMAR NIGAM Vs. RAGHUNATH SINGH

Continuance of untenable criminal complaint. Abuse of the process of Court. Such complaint is liable to be quashed.

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130. HINDU SUCCESSION ACT, 1956, SECTION 14 (1) AND (2) AND M.P.L.R. C. SS. 109 AND 110:- OWNERSHIP IN WHAT PROPERTY
1999 RN 418 (HC)
NEERABAI Vs. BOARD OF REVENUE

Female having property of other relations not bound to maintain her only given right of maintenance. She does not acquire full ownership over such property. She acquires full ownership on property of her husband given for maintenance.

Agricultural land given to wife for maintenance. She acquires right of full ownership. Her name would be mutated on such land. If given by other relation she does not acquire right of Bhumiswami.

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131. LIMITATION ACT, 1963, SECTION 27 AND ART. 65:-ADVERSE POSSESSION
1999 RN 407 (HC)
THEPALI Vs. DADDI

Long possession under unregistered sale deed. Possession open, continuous and peaceful. Possessor's name also recorded in land records. Such possession cannot be disturbed by the Courts.

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132. MOTOR VEHICLES ACT, 1988, SECTION 140: NO FAULT LIABILITY: AWARD OF INTERIM COMPENSATION:
1999 (3) TAC 723 (GUJ. H.C.)
NEW INDIA ASSURANCE CO. LTD. Vs. DAYBEN

Contention that claimants have come up with four versions of the accident and as such insurer could not have been made liable for payment of Rs. 50,000/- as interim compensation. Whether on technical please, the benevolent provisions of the Act can be allowed to be frustrated by the courts at the hands of insurer? No. Purpose and object of the section is to provide immediate financial help to the claimants. If ultimately insurer is exonerated from liability, Tribunal can pass appropriate order for refund.

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दोष निवारण

माह फरवरी 2000 एवं अप्रैल 2000 में "ज्योति जर्नल" में कुछ भूलें उद्‌भूत हुई हैं, कृपया उन्हें ठीक कर लें:-

1. पृष्ठ क्रमांक 135 नीचे से 7वीं पंक्ति में or के स्थान पर of पढ़ें।
2. पृष्ठ क्रमांक 136 के उपर से ग्यारहवीं पंक्ति में 'दषित' के स्थान पर 'दूषित' पढ़ें।
3. पृष्ठ क्रमांक 170 पर शीर्षक के रूप में STAR FARMAMENT. लिखा जावे
4. पृष्ठ क्रमांक 175 पर ग्यारहवीं पंक्ति में Servant to named के स्थान पर Servant to be named पढ़ा जावे।
5. पृष्ठ क्रमांक 188 पर प्रथम Note में Compromise के स्थान पर Contract पढ़ें।
6. पृष्ठ क्रमांक 188 पर ही सबसे नीचे की नोट में When peusons appearing to guilty of offence के स्थान पर person appears to be guilty of an offence पढ़ा जावे।
7. पृष्ठ 194 पर टिट बिट नं. 11 में Scrutinishing में h कम करना है
8. पृष्ठ 196 पर टिट बिट नं. 14 में 304 के बाद 300 लिखना है।
9. पृष्ठ 208 पर टिट बिट नं. 47 में 41 के स्थान पर 141 लिखना है।
10. पृष्ठ क्रमांक 224 में टिट बिट क्रमांक 61 में M.P. के स्थान पर M.B. पढ़ा जावे।
11. पृष्ठ 243 पर टिट बिट क्रमांक 83 में 32 के स्थान पर 34 पढ़ा जावे।
12. पृष्ठ 251 टिट बिट नं. 92 में शीर्षक की दूसरी पंक्ति में or के स्थान पर on पढ़ा जावे।
13. पृष्ठ 254 पर टिट बिट क्रमांक 93 में छठी पंक्ति में adsolute के स्थान पर absolute पढ़ा जावे।

शुद्धि पत्र

1. ज्योति खंड छह भाग 1 फरवरी 200 में पृष्ठ 4 पर श्लोक की दूसरी पंक्ति में 'भगते' के स्थान पर 'मगते' पढ़ें।
2. इसी अंक में पृष्ठ 32 में BE NICE में अनुक्रमांक 2 को Do your Sock के वहां पर स्थापित कर बाद की पंक्ति में से 2 विलोपित हो।
3. टिट बिट क्र. 108 व 109 में अधिनियम का वर्ष 1939 के स्थान पर 1988 पढ़ा जावे।

CIRCULAR

A LETTER BY HON'BLE DR. JUSTICE K. RAMASWAMY MEMBER NATIONAL HUMAN RIGHTS COMMISSION TO THE HON'BLE THE CHIEF JUSTICE OF M.P. DTD' 22 DEC 1999 BY THE HIGN COURT TO J.O.T.I. BY MEMO NO B/1161-II- 15/7/ PT II. JBP 8-3-2000

Right to speedy trial is a facet of fair procedure guaranteed in Article 21 of the Constituion. In kartar Singh's case (Constiitutionality of TADA Act case) J.T. 1992(2) SC 423, the Supreme Court held that speedy trial is a component of personal liberty. The procedural law. if the trial is not conducted expeditiously, becomes void, violating Article 21 as was held in Hussain Ara's four cases in 1979. In Antulay's case, 1992 (1) SCC 215, a constitution bench directed completion of the trial within two years in cases relating to offences punishable upto 7 years, and for beyond seven years, within a period of three years. If the prosecution fails to produce evidence before the expiry of the outer limit, the prosecution case stands closed and the court shall proceed to the next stage of the trial and dispose it of in accordance with law. That view was reiterated per majority even in the recent judgement of the Supreme Court in Raj Dev Sharma II versus Bihar, 1999 (7) SCC 604 by a three-Judge bench.

In Common Cause case, 1996 (2) SCC 775 in D.O. Sharma I's case it was held that the time taken by the courts on account of their inability to earry on the day-to-day trial due to pressure of work, will be excluded from the dead-line of two years and three years, respectively, imposed in the aforesaid cases. In the latest Raj Dev Sharma's case 1999 (7) SCC 604 for majority reiterated the above view.

In Common Cause II case, 1996 (4) SCC 33, the Supreme Court directed release of the undertrial prisoners, subject to certain conditions mentioned therein. The principle laid down in Common Cause case is not self-executory. It needs monitoring, guidance and direction to the learned Magistrates in charge of dispensation of criminal justice system at the lower level, before whom the undertrial prisoners are produced for extension of the period of remand. It is common knowledge that it is the poor, the disadvantaged and the neglected segment of the society who are unable to cither furnish the bonds for release or ar not aware of the provisions to avail of judicial remedy of seeking a bail and its grant by the court. Needless or prolonged detention not only violates the right to liberty guaranteed to every citizen, but also amounts to blatant denial of human right of freedom of movement to these vulnerable segments of the society who need the protection. care and consideration of law and criminal justice dispensation system.

In this background. may I seek your indulgence to consider the above perspectives and to set in motion appropriate directions to the Magistracy

to follow up and implement the law laid down by the Supreme Court in the Common Cause II case? For your ready reference, the principles laid therein are deduced as set guidelines are enclosed herewith. I had a discussion with Hon'ble the Chief Justice of Andhra Pradesh High Court, who was gracious enough to have them examined in consultation with brother Judges and necessary directions issued to all the Magistrates and Session Judges to follow up the directions and ensure prevention of unnecessary restriction of liberty of the under-privileged and poor undertrial prisoners. I would request you to kindly consider for adoption and necessary directions issued to the Magistrates and Sessions Judges within your jurisdiction to follow up and ensure enjoyment of liberty and freedom of movement by poor undertrial prisoners.

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DRAFT CIRCULAR MEMORANDUM TO BE ISSUED BY THE HIGH COURT OF ANDHRA PRADESH TO ALL THE DISTRICT AND SESSIONS JUDGES.

All the District and Sessions Judges of Andhra Pradesh, are aware of the directions of the Supreme Court of India issued on May 1st, 1986 in Writ Petition (C) No. 1128 of 1986 (Common Cause Vs. Union of India and Others) wherein elaborate directions were given regarding release of undertrials languishing in Jails for long periods.

The directions of the Supreme Court are reproduced hereunder for ready reference :

"(a) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment **not exceeding three years** with or without fine and if trials for such offences are **pending for one year** or more and the accused concerned have not been released on bail but are in jail for a period of **six months or more,** the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to such conditions, if any, as may be found necessary, in the light of Section 437 of the Criminal Procedure Code (Cr.PC).

(b) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment **not exceeding five years,** with or without fine, and if the trials for such offences are **pending for two years** or more and the accused concerned have not been released on bail but are in jail for a period of **six months or more,** the criminal court concerned shall release the accused on bail or on personal bond to executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437 (Cr.P.C.)

(c) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable **with seven years or less,** with or without fine, and if the trials for such offences are **pending for two years or more** and the accused concerned have not been released on bail but are in jail for a period of **six months or more,** the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437 (Cr.PC.)

It is noticed that the various remanding Courts in Andhra Pradesh are routinely extending the periods of remand of prisoners without verifying whether any of them fall under any of the 3 Categories mentioned by the Supreme Court Supra.

It is also noticed that the District Level Review Committees for Under Trial prisoners constituted with the concurrence of the High Court by the Government of Andhra Pradesh vide G.O. Ms. 356 dated 14.7.1980 of Home (Prisons. 13) Department have not been regularly meeting in all the Districts. Even if they do meet they are not examining whether the cases being reviewed fall under any of the 3 Categories mentioned by the Supreme Court of India.

In order to ensure that the directions of the Supreme Court of India are scrupulously compiled with, and Under Trial Prisoners do not languish in Jails for long periods, the following instructions are issued for immediate implementation :

1. All Courts, whether Judicial Magistrates of First Class or Special Courts, before extending the period of remand of any prisoners, should ascertain the period of remand already undergone by the prisoner and examine whether he is entitled to be released on bail as per the directions not able to furnish surety/security they may be released on personal bonds to ensure their attendance on the dates of hearing.
2. The District Level Review Committees for Under Trial Prisoners should meet, without fail, atleast once in every 3 months and review the cases of all prisoners who are in Judicial Custody for periods of six months or more. These meetings should invariably be presided over by the Principal District & Sessions Judge himself.
3. As and when a case falling under any of the 3 Categories mentioned by the Supreme Court is noticed, either while extending the period of remand of the U.T. prisoner or during the meeting of the District Level Review Committees, the concerned Court should, suo moto, "release the accused on bail or on person bond to be executed by the accused and subject to such conditions, if any, as may be found necessary, in the light of Section 437 of the Code of Criminal Procedure".

न्यायिक अधिकारी गणों हेतु नई जानकारी
नई अधिकारिता, नई प्रक्रिया
कार्यालय बीमा लोकपाल, भोपाल

सूचना

भारत सरकार के वित्त मंत्रालय के आर्थिक मामलों से संबंधित बीमा विभाग द्वारा दिनांक 11 नवम्बर, 1998 को प्रकाशित अधिसूचना के माध्यम से जन शिकायत निवारण नियम 1998 जारी किया गया है। जिसके अंतर्गत बीमा परिषद नियंत्रण निकाय के द्वारा बीमा लोकपाल की नियुक्ति का प्रावधान किया गया है।

तद्नुसार मध्यप्रदेश के लिये बीमा लोकपाल की नियुक्ति की गई है, जिसका कार्यालय प्रथम तल, 117, जोन–II, महाराणा प्रताप नगर, भोपाल–462011 में स्थापित किया गया है। बीमा लोकपाल को बीमा संबंधी निम्न प्रकार की शिकायतें प्राप्त करने एवं उन पर विचार करने का अधिकार है:–

(क) बीमाकर्ता द्वारा किसी दावे को आंशिक या पूर्ण रूप से अस्वीकृत किया जाना,

(ख) पॉलिसी के नियमों के अंतर्गत चुकाई गई अथवा चुकाई जाने वाली किसी बीमा किश्त के संबंध में विवाद।

(ग) दावे से संबंधित पॉलिसी की विधिक संरचना के संबंध में विवाद।

(घ) दावा भुगतान में विलंब।

(ड) किश्त प्राप्त किये जाने के पश्चात बीमित व्यक्ति को बीमा दस्तावेज जारी न किया जाना।

एतद् द्वारा सूचित किया जाता है कि कोई भी बीमित व्यक्ति जिसे जीवन बीमाकर्ता या साधारण बीमाकर्ता के संबंध में उपरोक्त कोई शिकायत है, वह स्वयं या अपने विधिक उत्तराधिकारी के माध्यम से लिखित शिकायत बीमा लोकपाल को उसके उपरोक्त पते पर, बीमाकर्ता के मध्यप्रदेश स्थित ऐसे कार्यालय के विरूद्ध भेज सकता है जिसके द्वारा उक्त शिकायती मामलों का निस्तारण किया जाना है।

बीमा लोकपाल को भेजी जाने वाली शिकायत लिखित और बीमादार या उसके विधिक उत्तराधिकारी द्वारा हस्ताक्षरित होनी चाहिए। उसमें शिकायतकर्ता का पूरा नाम व पता, उस बीमा कार्यालय का पूरा पता जिसके विरूद्ध शिकायत की गई है, शिकायत से संबंधित सभी तथ्य एवं संबंधित दस्तावेज यदि कोई हों, जो कि शिकायत के आधार हों, शिकायतकर्ता को हुई हानि की प्रकृति एवं उसकी राशि एवं बीमा लोकपाल से अपेक्षित राहत को स्पष्ट उल्लेख होना चाहिए।

बीमा लोकपाल को दी गई शिकायत तभी दर्ज की जायेगी जबकि–

(अ) शिकायत करने से पूर्व बीमाधारक ने संबंधित बीमाकर्ता कार्यालय को लिखित अभ्यावेदन प्रस्तुत किया हो और बीमाकर्ता ने उस अभ्यावेदन को या तो अस्वीकार कर दिया हो या बीमकर्ता द्वारा अभ्यावेदन प्राप्त किये जाने के एक माह के अंदर बीमाधारक को कोई उत्तर न प्राप्त हुआ हो या बीमकर्ता के द्वारा दिये गये उत्तर से शिकायतकर्ता संतुष्ट न हो।

(ब) बीमाधारक के अभ्यावेदन को बीमाकर्ता द्वारा अस्वीकार किये जाने या अभ्यावेदन का अंतिम उत्तर दिये जाने के पश्चात एक वर्ष का समय न बीता हो।

(स) शिकायत किसी ऐसे विषय से संबंधित न हो जिसके संबंध में कोई वाद किसी भी न्यायालय, उपभोक्ता फोरम या मध्यस्थ (आरबिट्रेटर) के पास लंबित है या पहले लंबित था।

यदि बीमाधारक एवं बीमा कंपनी दोंनों ही लिखित रूप से पारस्परिक समझौते के अनुसार उपरोक्त संदर्भित मामलों में मध्यस्थता करने का अनुरोध करते हैं तो बीमा लोकपाल की गई शिकायत के संबंध में परामर्शदाता एवं मध्यस्थ के रूप में कार्य करेगा।

शिकायतकर्ता की शिकायत ठीक एवं उचित है अथवा विचार करने योग्य है या नहीं है, इस संबंध में बीमा लोकपाल का निर्णय अंतिम होगा।

शिकायत निवारण की विधि या बीमा लोकपाल द्वारा दिया गया निर्णय उपरोक्त जन शिकायत निवारण नियम, 1998 के प्रावधानों के अनुरूप होगा।

दिनांक 5--4--2000

न्यायमूर्ति तेज शंकर
बीमा लोकपाल

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GENERAL INFORMATION DNA TEST

CENTRE FOR DNA FINGERPRINTING AND DIAGNOSTICS

(An autonomous Centre of the Department of Biotechnology. Ministry of Science & Technology, Govt. of India)

CCMB CAMPUS, UPPAL ROAD, HYDERABAD- 500 007, INDIA

Dr. G V RAO, Scientist-III

INFORMATION ABOUT DNA FINGERPRINTING ANALYSIS

We are pleased to inform you that the autonomous Centre for DNA Fingerprinting and Diagnostics (CDFD) has now been set up in Hyderabad by Government of India under the Department of Biotechnology. At present,

CDFD is housed in the East Wing. 3rd floor of CCMB. A separate building and facilities for CDFD are expected to be ready by the end of 1998. Until then, CCMB is extending all infrastructural facilities to CDFD for its functioning. Therefore, we have begun to provide DNA Fingerprinting service to the various investigative agencies, as well as to the citizens to resolve cases of **paternity & maternity disputes, identification of mutilated remains, identification of missing child, exchange of babies in hospital wards, rape, murder etc.**

For the purpose of DNA Fingerprinting a volume of 10 ml heparinized blood (in case of adults) and 2.5 ml (in case of children), is required. For the identification of deceased persons the blood samples of the nearest relations (viz., mother, father, husband, wife and children) should be sent for comparision along with the material objects relevant to the case. All the concerned persons in a case can either come to CDFD, on any working day (Monday to Firday) between 10:00 a.m. to 6:00 p.m., along with their passport size photographs to give their blood samples (with prior information of their arrival at CDFD) OR the blood samples can be collected, by using the sterile blood collection material sent by us, in the presence of Court authorities, sealed, and sent under certification. The samples should be sent on ice in a thermous flask through courier or by a person. Attested passport size photographs of concerned persons should accompany the samples.

In case of forensic exhibits, as mentioned below, the samples should be sent as mentioned against:

Teeth, bones & hair	:	In a dry ploythene bag.
Seminal Swabs	:	The cotton swab should be placed in a clean dry glass vial/bottle and sealed.
Muscle tissues	:	The muscle tissues close to the bone should be dissected and about 100 gm of tissues should be sent in a clean glass bottle without any preservative (unless specifically mentioned by us), on ice.
Blood stains	:	The stains should be sent in a dry polythene bag and sealed.

CENTRE FOR DNA FINGERPRINTING AND DIAGNOSTICS

On request, sterile vials with anticoagulant and blood collection material, identification cards and the forwarding note will be sent by us to the concerned authorities by Courier/ Speed Post/ Registered Post. All particulars in the indentification card and the forwarding note should be completed.

The charges for the DNA Fingerprinting test for each blood sample will be Rs. 2.500/- whereas for a non-blood sample such as body fluid stains,

teeth, bones, hairs and postmortem tissues it will be Rs. 5,000/- for each sample. The amount has to be paid in advance, along with the samples, through Cash/IPO/Cheque/ Demand Draft in favour of OSD, CDFD, Hyderabad- 500 007. The DNA typing report will be forwarded at the earliest on receipt of the payment.

The following conditions will apply for the appearance of the Scientist for deposing evidence in the court:

1. Personal security of the Scientist has to be ensured from the time of his arrival till his departure.
2. Return airfare/II Class AC two tier from Hyderabad and back (TA/DA as permissible according to Government of India rules).
3. Reception at the airport/railway station and accommodation in a guest house or the best available hotel in the town.
4. Rs. 1000/- per hour as consultancy for giving expert evidence.
5. All these payments are to be made in person to our representative before his departure.

Please do not hesitate to contact us in case you need more information.

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HIGH COURT OF M.P. MEMORANDUM NO. 3405 DTD. 9-4-69 FILE NO 3405/ III-2-9/40. PT. I.F. NO 15

Sub. : Release of Prisoners from prison on receipt of release orders from courts through Private agency.

1. It has been brought to the notice of this court that release orders are sometimes sent to jails through private agency. This is not warranted by rules and is highly objectionable. In order to avoid mishap in releasing the prisoners, I am directed to say that any orders including release warrants which are to be communicated to or served on any authorities or person must invariably be served through the servants of the court or through post but not through private agency.
2. The practice to the contrary prevailing in any district must be discontinued forthwith.
3. The above instructions should be brought to the notice of all the courts subordinate to you for strict compliance.

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HIGH COURT OF M.P. MEMORANDUM NO. 9475 DTD. 2.12.69 FILE NO. 3405/III-2-9/40 PT. I.F. NO. 15 SUB. SERVICE OR COMMUNICATION OF ORDERS INCLUDING RELEASE WARRANTS ON JAIL AUTHORITIES.

1. The Hon'ble the Chief Justice views with great concern the non-compliance of the instructions contained in this Registy memo. no. 3405/III-2-9/40-Pt. I F. no. 15 dated 9-4-63 (copy enclosed for ready reference) and desires that orders including release warrants which are to be communicated or served on Jail authorities must be served through the servants of the courts or through post after making necessary entries in the Court Dak-Books.
2. The above instructions should be brought to the notice of all the Courts subordinate to you for strict compliance.

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पठन-पाठन-मनन

GOOD LISTENING

You have two ears and only one tongue, so you should listen twice as much as must as you should talk," goes an old saying. But not many follow it.

Instead of being compulsive listeners, most of us are continuous talkers without saying anything of substance. Such people lack a sense of direction, because they do not listen. And an effective personality cannot emerge without direction.

Good listening is more than just registering the words uttered by the person sitting opposite. The listener is not merely a tape recorder. He must respond to the person talking. Concentration, intelligence, humility and patience must be expressed on the face while listening.

Sitting in stony silence or not concentrating is probably as bad as not listening at all. Boredom, lack of interest, disapproval in expressions or gestures are discourtesy, particularly if the speaker is the boss. Only a few are good listeners. Most of us not natural good listeners, but can improve with practiice. Be careful when conversing with another person.

Courtesy :- Y.C. Halan and H.T. Careers plus enhance New Delhi April 27, 2000

केवल पढ़ें नहीं, अपनाएं भी

पत्र–पत्रिकाएं पढ़ने के पश्चात कितने लोग उसमें प्रकाशित तार्किक एवं स्पष्ट विचारों को अपने व्यवहार में अपनाते हैं। हमें केवल मनोरंजन अथवा ज्ञान वृद्धि हेतु ही पत्रिका नहीं पढना चाहिए, अपितु उसमें प्रकाशित लेखों का गहन एवं तर्कसंगत विश्लेषण कर उनको व्यवहारिकता का जामा भी पहनाना चाहिए। स्तरीय पत्रिकाओं में उठाए गए विचार, मुद्दे एवं आलेखों का प्रमुख उददेश्य वैचारिक जागृति के साथ ही सामाजिक एवं व्यवहारिक बदलाव लाना होता है। इसमें प्रकाशित अधिकांश सामग्री एवं

सुझाव विचार करने के साथ ही अनुसरणीय होते हैं। देखने में आता है कि उच्च शिक्षित एवं प्रबुद्ध वर्ग की व्यवहारिक तौर पर कोई नया अथवा भिन्न कार्य करने में इसलिए संकुचाते हैं क्योंकि इससे समाज से कटने अथवा प्रताड़ित होने पर डर रहता है और सुलझी हुई तथा बृहद मानसिकता होने के पश्चात भी वे सड़ी–गली मान्यताओं, कुप्रथाओं अंधविश्वासों एवं अस्वस्थ परंपराओं से दीमक की तरह चिपके रहते हैं। इसलिए इसी से **उपदेश से अच्छा उदाहरण** वाली कहावत चरितार्थ होगी और भारत को स्वस्थ, विचारशील एवं प्रगतिशील विचारधारा वाला देश बनाने की कोशिश सच्चे अर्थों में सार्थक हो पाएगी। अतः पत्र–पत्रिकाओं को केवल पढ़ें नहीं, उनके विचारों को अपने व्यवहार में उतारें।

साभार : लेखक कारूलाल जामड़ा एवं दैनिक भास्कर 8-3-1988, **1988 (3) ज्योति पृष्ठ 16 से पुनः प्रकाशन**

(**नोट** : इस लेख में यह पूर्व कल्पना है कि पाठक पढ़ते हैं।)

Prejudices are most difficult to eradicate from the heart whose soil has never been loosened or fertilised by education, they grow there, firm as weeds among stones

CHARLOTTE BRONTE
1988 (4) ज्योति पृष्ठ 6 से पुनः प्रकाशन

FEAR

"We are all afraid - for our confidence, for the future, for the world. That is the nature of the human imagination. Yet every man, every civilisation, has gone forward because of its engagement with what it has set out to do. The personal commitment of a man to his skill, the intellectual commitment and the emotional commitment working together as one, has made the Ascent of Man."

- J. BRONOWSKI

"If you force your heart and nerve and sinew to serve your turn long after they are gone, And so hold on when there is nothing in you, Except the Will which says to them: "Held on !."

- KIPLING

किसी न्यायालय के सूचना फलक से

न्यायालय आदेश

1. अधिवक्तागण न्यायालय में अपने प्रकरण से संबंधित किताबें तथा बेयर एक्ट अपने साथ लेकर आवें।
2. पक्षकार विजिटर गैलरी में ही बैठें।
3. न्यायालय में कुछ चबाना तथा धूम्रपान एवं थूकना निषेध है, स्मरण रहे कि यह न्याय का मंदिर है तथा इसे साफ रखना एक दायित्व है।
4. किसी भी प्रकार का शोर निषिद्ध है, कफ तथा फिट्स (दौरे) से पीड़ित व्यक्ति न्यायालय कक्ष के बाहर जावें।
5. विजिटर बेंच में सोते पाये गये व्यक्तियों को न्यायालय से बाहर जाने को कहा जावे।
6. कोई भी व्यक्ति छड़ी, छाता, ब्रीफकेस, आग्नेयास्त्र आदि न्यायालय कक्ष में नहीं लावेगा। अपवाद स्वरूप, केवल अशक्त व्यक्ति न्यायालय कक्ष में छड़ी (वाकिंग स्टिक) ला सकेंगे।
7. अधिवक्ताओं का ध्यान बार कौंसिल तथा उच्च न्यायालय द्वारा निर्धारित "वृत्तिक आचरण एवं शिष्टाचार स्तर" के निम्नलिखित नियमों की ओर आकिर्षत किया जाता है :–
   (ए) प्रत्येक अधिवक्ता न्यायालय में हर समय केवल निर्धारित वेशभूषा में उपस्थित होगा तथा वह हमेशा उपस्थित होने योग्य वेशभूषा में रहेगा।
   (बी) न्यायालय के प्रति अधिवक्ता सम्मानपूर्ण दृष्टिकोण रखेगा, क्योंकि स्वतंत्र समुदाय बनाये रखने के लिए न्यायिक अधिकारियों की प्रतिष्ठा आवश्यक है, इस बात को ध्यान में रखना चाहिए।
   (सी) कोई भी अधिवक्ता किसी भी अवैध अथवा अनुचित तरीके से न्यायालय के निर्णय को प्रभावित नहीं करेगा।
   (डी) कोई भी अधिवक्ता किसी ऐसे प्रकरण में जिसमें पहले से ही किसी अधिवक्ता का वकालत नामा अथवा उपस्थिति–ज्ञापन प्रस्तुत हो चुका है, उसमें बिना उस अधिवक्ता की सहमति के उपस्थित नहीं होगा, यदि ऐसी सहमति प्रस्तुत नहीं की जाती है तो, वह न्यायालय में सहमति प्राप्त न कर सकने के कारण बताते हुये, न्यायालय के समक्ष आवेदन करेगा तथा न्यायालय की अनुमति प्राप्त होने के पश्चात् उपस्थित होगा।
   (ई) पीठासीन अधिकारी द्वारा मांगे जाने पर प्रत्येक अधिवक्ता अपना परिचय–पत्र प्रस्तुत करेगा।
8. वे अधिवक्ता जिन्होंने आखिर में तर्क प्रस्तुत किये हों वे न्यायालय के उठने तक न्यायालय कक्ष में रुके रहेंगे।

न्यायालय के आदेशानुसार

From Notice Board of a Court

COURT ORDER

1. Advocates are required to come in Court with their books and bare Acts as may be necessary concerning their cases.
2. Litigants to sit only in visitor's gallery.
3. Chewing and Smoking inside the Court room is strictly prohibited and no body to spit inside Court remembering it is a Temple of Justice and to maintain its cleanliness is an obligation.
4. Noise of all kinds is strictly prohibited. Persons troubled with fits or coughing should go out of the Court room.
5. Persons found sleeping on the visitor's benches asked to leave the Court room.
6. Walking stick/s, umbrella/s, briefcase/s, fire arm/s etc., are not to be brought inside the Court room with exception to infirm persons who can bring their walking sticks.
7. Advocates are reminded to the following rules laid down by the Bar Council known as "Standards of Professional Conduct and Etiquette Rules" as also the rules framed by the High Court.
   (a) An Advocate to appear in Court at all times only in the prescribed dress and his appearance always be presentable.
   (b) An Advocate to maintain towards the Court a respectful attitude bearing in mind that the dignity of the Judicial Officer is essential for the survival of the free Community.
   (c) An Advocate not to influence the decision of a Court by any illegal or improper means.
   (d) An Advocate shall not enter appearance in any case in which there is already a Vakalatnama or memo of appearance filed by an Advocate engaged for a party except with his consent. In case such consent is not produced, he shall apply to the Court stating reasons as to why the said consent could not be produced and shall appear only after obtaining the permission of the Court.
   (e) Every Advocate on being asked by the Presiding Officer of the Court shall show his identity card.
8. Lawyers who are last to argue the case are to stay in Court room till the Court rises.

By Order of the Court