30th Year

Pursuit of Excellence

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MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

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MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

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EDITORIAL

Esteemed Readers,

The year 2024 marks a historic milestone – the 75th anniversary of the Constitution of India. It is a moment for reflection, celebration and commitment to the principles that have guided our nation. Envisioned as a transformative document, the Constitution has stood the test of time, upholding democracy, justice, equality and liberty while adapting to the evolving needs of our society. As legal professionals, scholars and custodians of justice, we owe it to the makers of this magnificent document to re-evaluate our role in strengthening its ideals for a rapidly changing legal and social landscape.

The Constitution is not just a static text but a living document that grows with us. Over these 75 years, it has proven to be resilient and versatile, facilitating dynamic judicial interpretation. As new challenges emerge–technological advancements, globalization and evolving legal rights–our constitutional values continue to provide the foundation for justice and equality. To honour this occasion, we are publishing an article in this issue. I hope readers will enjoy reading it.

One of the pressing challenges facing the judiciary today is the growing reliance on electronic evidence in litigation. Technology has revolutionized the way evidence is presented and adjudicated, making it essential for judges, advocates and legal scholars to equip themselves with the necessary skills and understanding. Recognizing this need, a two-day workshop on Cyber Laws, Forensic Science and Electronic Evidence was conducted at the Regional Training Centre, Gwalior, for all the stakeholders of criminal justice administration on 30.11.2024 & 01.12.2024. This workshop was inaugurated by Hon'ble Shri Justice Jitendra Kumar Maheshwari, Judge, Supreme Court of India. Hon'ble Shri Suresh Kumar Kait, Chief Justice High Court of Madhya Pradesh, Hon'ble Shri Justice Sanjeev Sachdeva, Hon'ble Shri Justice Sushrut Arvind Dharmadhikari, Hon'ble Shri Justice Anand Pathak along with other companion Judges graced the workshop. Such initiatives bridge the gap between law and technology, fostering confidence in the judiciary's ability to dispense justice in a digital age. We are also publishing a research paper on the relevancy of audio recordings in evidence.

Simultaneously, the role of continuous education in the legal profession cannot be overstated. The District and Additional Sessions Judge Refresher

Course from 18.11.2024 to 23.11.2024 offered an opportunity for judicial officers to revisit core principles, engage with emerging jurisprudence and sharpen their skills. These programmes serve as a reminder that learning in the legal profession is perpetual. By staying updated on contemporary issues–be it constitutional law, human rights or digital justice-legal practitioners ensure that the Constitution remains a living, breathing force.

In addition, the Academy also conducted online training programmes on the Negotiable Instruments Act, 1881, Electricity Act, 2003 and Land Acquisition Act, 2013. Alongside, sessions for the ongoing Special Workshop for Advocates and ECT programmes were also conducted. As this year comes to a close, we are publishing a brief report on the academic activities undertaken.

I would like to conclude by quoting Dr. B.R. Ambedkar, Father of our Constitution, who said:

> However good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it happen to be a good lot.

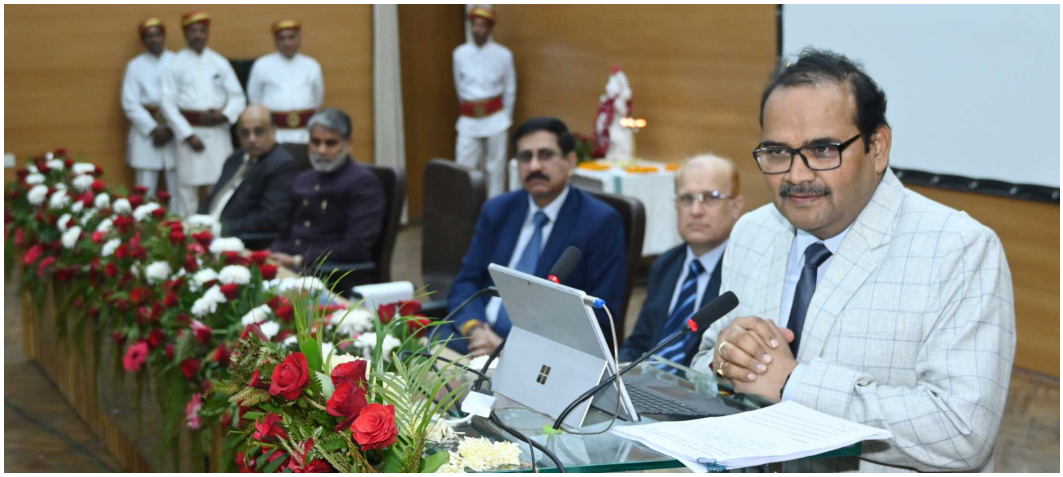
This quotation highlights the urgent need that as we celebrate 75 years of the Constitution, time also calls for introspection. While we honour the successes, we must acknowledge areas where our justice delivery system needs reform–access to justice, judicial pendency and inclusivity. These remain challenges, but with collaboration and innovation, we can uphold the Constitution's promise to the people of India.

Let us use this opportunity to rededicate ourselves to the ideals of the Constitution–strengthening justice, embracing change and ensuring that our legal system remains robust and dynamic.

Best Wishes,

Krishnamurty Mishra
Director

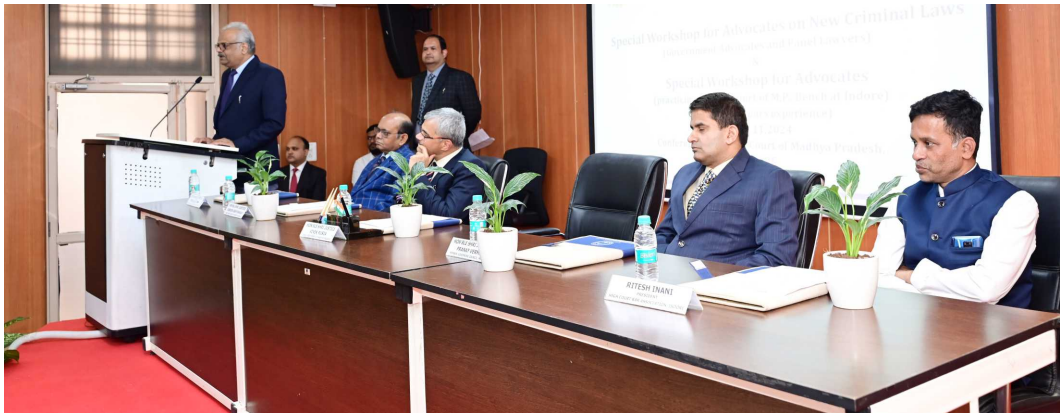
GLIMPSES OF WORKSHOP ON –
CYBER LAWS, FORENSIC & DIGITAL EVIDENCE
HELD ON 30.11.2024 & 01.12.2024 AT GWALIOR



Hon'ble Shri Justice J.K. Maheshwari, Judge, Supreme Court of India inaugurating the workshop on 30.11.2024 at Gwalior

GLIMPSES OF WORKSHOP ON –
CYBER LAWS, FORENSIC & DIGITAL EVIDENCE

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR



Hon'ble Shri Justice Vivek Rusia, Administrative Judge of Bench at Indore addressing the participants on Special Workshop for Advocates on 30.11.2024 (Bench at Indore)

Refresher Course for the District Judges (Entry Level & Selection Grade) (on completion of 5 years service) (Group - II) (18.11.2024 to 23.11.2024)

HON'BLE SHRI JUSTICE ROOPESH CHANDRA VARSHNEY DEMITS OFFICE

Hon'ble Shri Justice Roopesh Chandra Varshney has demitted office on His Lordship's attaining superannuation.

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

His Lordship, as Judge of District Judiciary, worked in different capacities at various places like Shivpuri, Sabalgarh (Morena), Karera (Shivpuri), Ragogarh (Guna), Bhander (Datia), Rewa, Gwalior, Morena, Bhind, Neemuch and Chhindwara. His Lordship also served as District & Sessions Judge (the then designation), Mandla and Principal District & Sessions Judge, Rewa and was superannuated on 31st December, 2022.

Thereafter, on 1st May, 2023, His Lordship was appointed as Judge of High Court of Madhya Pradesh.

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

We on behalf of JOTI Journal wish His Lordship a very happy, healthy and prosperous life.

PART – I

OUR LEGENDS
HON'BLE SHRI JUSTICE G. G. SOHANI
12TH CHIEF JUSTICE OF HIGH COURT OF MADHYA PRADESH

Some individuals leave an indelible mark on the world, shaping the course of history through their unparalleled achievements, vision and determination. One such legendary personality is Hon'ble Shri Justice Gangadhar Ganesh Sohani, whose inspiring life story is revisited in this edition of OUR LEGENDS**.**

Born on 18th December, 1928 Justice Sohani hailed from a family that valued education and culture. His early education provided a strong foundation for his intellectual and professional growth. A brilliant student, he pursued higher education in law, obtaining degrees from prestigious institutions such asVictoria College, Gwalior, Allahabad University, Government Law College, Bombay, and the School of Economics, Bombay.

After enrolling as an advocate, Justice Sohani began his legal career in Indore**,** practicing civil, criminal and labour cases. From August, 1961 to February, 1970 he served as Deputy Government Advocate. Known for his deep understanding of legal principles and his practical application of the law, he soon earned a reputation as a meticulous and persuasive lawyer. His practice spanned diverse legal areas, including constitutional, civil, and criminal law, and his unwavering commitment to justice earned him immense respect among peers and clients.

Recognizing his legal acumen and dedication, Justice Sohani was appointed as Judge of the Madhya Pradesh High Courton2nd June, 1973**.** His tenure on the bench was marked by landmark judgments that reflected his profound legal knowledge, fairness and commitment to upholding justice. Known for his impartiality and sharp intellect, he consistently interpreted the law to uphold the principles of equity and humanity.

Justice Sohani's leadership qualities were further acknowledged when he was appointed as Acting Chief Justice of the Madhya Pradesh High Court on 20th October, 1989 and subsequently, as Chief Justice. During his elevation, an ovation ceremony was held on 21st October, 1989 at Jabalpur, where he expressed his concerns about the immense expectations placed on the Judiciary. He addressed the Bar and Bench with these memorable words:

> "Judiciary is passing through a very critical stage. It is cracking under the staggering load of litigation. The state of health of any society is measured by the state of health of its Judiciary... Wherever I may go and wherever I may settle down, I can assure you that I shall always consider myself a member of this family, because the ties which have been formed can never be broken."

Justice Sohani's tenure as Chief Justice of Madhya Pradesh, High Court ended with his transfer to the Patna High Courton24th October, 1989.He served as Chief Justice there until his retirement on18th December, 1990. His leadership played a pivotal role in modernizing court operations, improving efficiency and ensuring timely delivery of justice. Justice Sohani's reforms contributed to a more accessible and responsive judicial system in Bihar.

Throughout his illustrious career, Justice Sohani remained a beacon of integrity, humility and dedication. His judgments not only demonstrated legal precision but also reflected his deep sense of humanity and social justice. Beyond the courtroom, he mentored young lawyers and judges, sharing his vast experience and shaping the future of the legal fraternity.

Justice G. G. Sohani was also a patron of arts and literature, embodying a multifaceted personality that extended beyond his professional life. Known for his humility and simplicity, he remained deeply connected to his family and community.

Justice Sohani passed away in October, 2007 leaving behind a remarkable legacy. His life serves as a testament to the ideals of justice, fairness and dedication. Through his landmark judgments, his leadership as Chief Justice and his broader contributions to the judiciary, Justice Gangadhar Ganesh Sohani has left an enduring impact on India's legal landscape. His life and work continue to inspire generations in the legal community and beyond.

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ANNUAL REPORT OF MADHYA PRADESH STATE JUDICIAL ACADEMY, 2024

Judicial training plays a pivotal role in maintaining the integrity, efficiency and adaptability of the judiciary. In a dynamic legal landscape characterized by rapid legislative changes, technological advancements and evolving societal expectations, continuous education equips judges and legal professionals with the tools to interpret and apply the law effectively. This year the Madhya Pradesh State Judicial Academy has attempted to encompass andragogical methodologies of teaching in its various training programmes.

The Academy has conducted a diverse array of training programmes in 2024. These initiatives catered to judicial officers, advocates and other stakeholders of the justice system, focusing on enhancing their knowledge, skills and efficiency in the administration of justice. In all, **91 programmes** were conducted by the Academy; **61 training programmes** for judicial officers, benefitting **4,276 participants** over **194 days**. Furthermore, **26 programmes** for advocates and related stakeholders saw **1,51,338 participants** across **42 days**. The Academy has conducted **5 progammes** for the ministerial staff whereas **59 programmes** were conducted at district headquarters. Thus, in the **64 training sessions 5762 participants** were engaging over a period of **182 days**. These efforts underscore the Academy's commitment to building a well-informed and efficient judicial system.

Key Programmes of the year 2024

In continuation thereof; the following were the key programmes for this year:

1. **Workshops on New Criminal Laws**

Recognizing the significant legislative changes in criminal laws, MPSJA conducted 35 training sessions on New Criminal Laws across various districts for all stakeholders of justice dispensation system prior to its enforcement. We conducted a training of trainers programme which trained around 21 judicial officers they in turn went to all the districts in a cluster based training programme so as to apprise all the Judicial Officers across the State about the new changes. These workshops ensured uniform interpretation and application of the new laws, enabling judicial officers to adapt to the updated legal framework effectively.

2. **Training on Intellectual Property Laws**

In collaboration with United Kingdom Intellectual Property Office and the International Trademark Association, a two day specialized colloquium on Intellectual Property Laws was held on 28th&29thSeptember, 2024, at the Brilliant Convention Centre, Indore. This programme catered to judges of the district

judiciary and focused on enforcement and litigation issues related to intellectual property, equipping participants with the knowledge to handle complex cases in this domain. It was a one of a kind training programme for it involved expert resource persons from abroad and the vent was thoroughly live streamed.

On the same line, the Academy in collaboration with MPSLSA, Jabalpur organized a Symposium on – Intellectual Property Rights was held on 16th November, 2024 at Jabalpur for Advocates.

3. **Transnational Crimes Workshop by CEELI Institute, Prague**

In collaboration with the CEELI Institute, Prague and Federal Judicial Centre, Washington DC, a two-day workshop on transnational crimes was organized on 10th& 11th August, 2024. This workshop brought together participants from across India to address global challenges in crime management and foster international cooperation. This was also the first time that the Academy hosted a transnational workshop.

4. **Workshop on – Cyber Laws, Forensic & Digital Evidence**

A comprehensive **Workshop on – Cyber Laws, Forensic & Digital Evidence** was held on 30th November & 1st December, 2024 at the Regional Training Centre in Gwalior for all the Stakeholders of Criminal Justice Administration. With around 320 participants, the workshop explored critical issues at the intersection of technology and law, offering insights into handling digital evidence and leveraging forensic science in judicial proceedings.

5. **Samvad: Juvenile Justice Stakeholder Meet**

A dedicated two-day meet was held on 3rd& 4th August, 2024 addressing key issues related to children with disabilities. Principal Magistrates from across the State and other stakeholders engaged in meaningful dialogue to strengthen care and protection mechanisms for juveniles. The programme emphasized collaborative efforts among stakeholders to enhance the effectiveness of the juvenile justice system. It is pertinent to mention that children with disabilities also participated in this event and also, all the sessions were relegated in sign language as well.

6. **Symposium on Forest and Wildlife Laws**

A symposium focusing on critical issues related to forest and wildlife laws was held on 2nd& 3rd February, 2024. Judges and forest officers gained insights into challenges and strategies for effective enforcement of these laws, highlighting the need for environmental conservation within the judicial framework. An exhibition of forest related articles was also put up so that the judicial officers get an information about the seized articles or an insight as to how the crime is committed.

The following data offer a glimpse of the various programmes conducted:

PROGRAMMES CONDUCTED IN THE YEAR 2024
(January to December, 2024)

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of Partici-pants
Induction Training Course for Civil Judges (Entry Level)					
1.	Induction Training Course for Civil Judges (Entry Level) (*Institutional Final Phase*)	Civil Judges (Entry Level) of recruitment 2022	16.01.2024 to 30.01.2024 (two weeks)	MPSJA	118
		Civil Judges Junior Division (2022-2023 batch)	28.08.2024 to 05.10.2024 (six weeks)		141
2.	Induction Training Course for Civil Judges (Entry Level) (*Institutional Second Phase*)	Civil Judges (Entry Level) of recruitment 2022 & 2023 batches	01.04.2024 to 27.04.2024 (four weeks)		142
3.	Induction Training Course for Civil Judges (Entry Level) (*Institutional First Phase*)	Civil Judges (Entry Level) of recruitment 2022 & 2023 batches	05.02.2024 to 02.03.2024 (four weeks)		6
		Civil Judge Junior Division 2023 batch	28.08.2024 to 21.09.2024 (four weeks)		1
Institutional Foundation Training Course					
4.	Foundation Training Course (*Final Phase*)	District Judges (Entry Level) appointed directly from the Bar of 2023 batch	19.02.2024 to 15.03.2024 (four weeks)	MPSJA	2
Institutional Advance Training Course for District Judges (Entry Level) on Promotion					
5.	Institutional AdvanceTraining Course for District Judges (Entry Level)	District Judges (Entry Level) appointed on promotion from Civil Judge Senior Division and Limited Competitive Exam of 2023-24	19.02.2024 to 15.03.2024 (four weeks)	MPSJA	80
Refresher Course for Civil Judges (on completion of 5 years service)					
6.	Refresher Course for Civil Judges	Civil Judges Senior Division	05.02.2024 to 10.02.2024 (one week) (Group-I)	MPSJA	41

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of Partici-pants
			18.03.2024 to 23.03.2024 (one week) (Group-II)		54
Refresher Course for the District Judges (Entry Level & Selection Grade) (on completion of 5 years service)					
7.	Refresher Course	District Judges (Entry Level & Selection Grade)	22.07.2024 to 27.07.2024 (one week) (Group-I)	MPSJA	54
			18.11.2024 to 23.11.2024 (one week) (Group-II)		47
In-Service/ Mid-Career Judicial Educational Programmes					
8.	Symposium on – Key issues relating to Forest & Wild Life Laws	Judicial Magistrates dealing with cases under Forest & Wild Life Laws and Forest Officers	02.02.2024 & 03.02.2024 (two days)	MPSJA	54
9.	Sensitization programme on Guidelines issued on Sexual Harassment of Women at Work Place	Judges of all cadre	02.03.2024 (one day)	MPSJA/ District Headquarters	104
10.	Training of Trainers Course on – New Criminal Laws	-do-	16.03.2024 & 17.03.2024 (two days)	MPSJA	19
11	Awareness programme on – Sentencing Policy, Presumption under different laws and importance of Section 313 CrPC	-do-	23.03.2024 (one day)	MPSJA/ District Headquarters	98
12	Awareness Programme on – Civil Appeals, Criminal Appeals and Criminal Revisions	Judges of HJS cadre	27.04.2024 (one day)	MPSJA/ District Headquarters	100
13	Training Course on – New Criminal Laws, 2023	Judges of all cadre	28.04.2024 (one day)	**Jabalpur** (*Distt. Jabalpur, Katni & Narsinghpur*)	145
14	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Rewa**	60
15	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Khandwa** (*Distt. Khandwa & Burhanpur*)	35

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of Partici-pants
16	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Dewas**	28
17	Training Course on – New Criminal Laws, 2023	-do-	05.05.2024 (one day)	**Shivpuri** (*Distt. Shivpuri & Sheopur*)	39
18	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Bhopal** (*Distt. Bhopal, Vidisha, Narmadapu-ram, Sehore & Raisen*)	180
19	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Satna**	48
20	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Dhar** (*Dist. Dhar, Alirajpur & Jhabua)*	71
21	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Mandsaur** *(Distt. Mandsaur, Neemuch & Ratlam*)	103
22	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Chhatarpur** (*Distt. Tikamgarh, Chhatarpur & Panna*)	81
23	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Seoni** (*Distt. Chhindwara, Balaghat & Seoni*)	87
24	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Mandla** *(Distt. Dindori & Mandla***)**	27
25	Training Course on – New Criminal Laws, 2023	-do-	12.05.2024 (one day)	**Guna** (*Distt. Guna &Ashoknaga r*)	54
26	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Sidhi** (*Distt.Sidhi & Singrauli*)	43
27	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Indore**	96
28	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Ujjain** (*Distt. Ujjain & Agar-Malwa*)	68

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of Partici-pants
29	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Barwani** (*Distt. Mandleshwar & Barwani*)	48
30	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Sagar** (*Distt. Sagar & Damoh*)	81
31	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Shahdol** (*Distt. Shahdol, Umaria & Anuppur*)	49
32	Training Course on – New Criminal Laws, 2023	-do-	18.05.2024 (one day)	**Betul** (*Distt. Betul & Harda*)	45
33	Training Course on – New Criminal Laws, 2023	-do-	-do-	**Rajgarh** (*Distt. Rajgarh & Shajapur*)	42
34	Training Course on – New Criminal Laws, 2023	-do-	26.05.2024 (one day)	**Gwalior** (*Distt. Gwalior, Datia, Bhind & Morena*)	166
35	Training Courses on – New Criminal Laws, 2023	remaining Judges of the State	01.06.2024 (one day)	MPSJA/ District Headquarters	129
36	Workshop on – Key issues relating to the POCSO Act, 2012 with special reference to amendment relating to sexual offences, trial and enquiry in Children's Court	Judges dealing with POCSO cases	05.07.2024 & 06.07.2024 (two days)	MPSJA	45
37	Workshop on – Key issues relating to the Juvenile Justice	Principal Magistrates	12.07.2024 & 13.07.2024 (two days)	MPSJA	45
38	Conference on – Family Laws and Gender Justice	Principal and Additional Principal Judges of Family Courts and Judges dealing with matrimonial cases	19.07.2024 & 20.07.2024 (two days)	MPSJA	51
39	"SAMVAD" State Level Consultation on – Protecting the Rights of Children with Disability	Judges of all cadre	03.08.2024 & 04.08.2024 (two days)	MPSJA	20

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of Partici-pants
40	Transnational Crimes Workshop (Group 1) for Master Trainers (*CEELI Institute, Prague/FJC, Washington DC in collaboration with NJA*)	Master Trainers from all over the country	10.08.2024 & 11.08.2024 (two days)	MPSJA	24
41	Specialised Educational Programme on – Motor Accident Claim cases	Judges dealing cases under the Act	24.08.2024 (one day)	online	131
42	Interactive Session on – Key issues relating to cases under the Protection of Women from Domestic Violence Act, 2005 and maintenance u/s 125 CrPC	Judges dealing with cases under PWDVA Act	21.09.2024 (one day)	online	183
43	Colloquium on – Intellectual Property	Judges of District Judiciary	28.09.2024 and 29.09.2024 (two days)	Brilliant Convention Centre, Indore	97 (In addition to that all the Judicial Officers of the State participa-ted virtually)
44	Awareness programme on – Vulnerable Witness Scheme	Judges of HJS cadre	05.10.2024 (one day)	online	All Judges of HJS cadre of district judiciary
45	Special Training	District & Additional Sessions Judge	09.11.2024 (one day)	MPSJA	1
46	Interactive Session on – Key issues relating to cases of dishonour of cheque under the Negotiable Instruments Act, 1881	Judicial Magistrates	09.11.2024 (one day)	online	128
*47	Workshop on – Cyber Laws, Forensic & Digital Evidence	Judges and other stakeholders of Criminal Justice Administration	30.11.2024 & 01.12.2024 (two days)	Regional Training Centre of MPSJA at Gwalior	80 (In addition to that all the Judicial Officers of the State participa-ted virtually)
48	Specialised Educational Programme on – Land Acquisition Laws	Judges dealing with cases under Land Acquisition Laws	07.12.2024 (one day)	online	120
49	Specialised Educational Programme on – Electricity Act	Judges dealing with cases under Electricity Act	20.12.2024 (one day)	-do-	133

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of Partici-pants
e-Committee Special Drive Training and Outreach Programme through State Judicial Academies (for Judges)					
50	ICT & e-Courts Induction Programme for the newly recruited Civil Judges (ECT_17_2024)	Newly recruited Civil Judges, Junior Division	02.03.2024 (one day)	MPSJA/ District Headquarters	248
51	Training Programme on Cyber Laws & Appreciation & Handling of Digital Evidence for Judicial Officers (ECT_14_2024)	Judges of all cadre	23.03.2024 (one day)	MPSJA	40
			19.10.2024 (one day)		47
52	Programme for New Master Trainers under the (ECT_3_2024)	Master Trainers	20.08.2024 & 21.08.2024 (two days) (Group-A)	online	54
			23.11.2024 & 24.11.2024 (two days) (Group-B)		42
Programmes at other Institutes					
53	Specialized Educational Programme at State Medico Legal Institute, Bhopal	Newly appointed/ promoted Judges of HJS cadre	23.04.2024 to 25.04.2024 (three days)	State Medico Legal Institute, Bhopal	29
			20.11.2024 to 22.11.2024 (three days)		30
54	Specialized Educational Programme at Regional Forensic Science Laboratory, Bhopal	-do-	21.11.2024 to 23.11.2024 (three days)	Regional Forensic Science Laborator, Bhopal	39
Total No. of participants					**4276**
Judicial Educational Programmes for other stakeholders					
55	Regional Workshop for Advocates	Advocates practicing in districts Jabalpur, Katni, Satna, Rewa, Sidhi, Singrauli, Umaria, Dhar Shahdol, Anuppur, Dindori, Mandla, Seoni, Balaghat, Indore, Dewas and Jhabua	22.03.2024 & 23.03.2024 (two days)	MPSJA/ District Headquarters	120
56	Special Workshop for Advocates on – New Criminal Laws	Government Advocates and Panel Lawyers	27.05.2024 & 28.05.2024 (two days)	MPSJA	106
57	Training Course on – New Criminal Laws *(in collaboration with Directorate of Prosecution)*	Prosecution Officers	28.05.2024 & 29.05.2024 (two days)	CAPT, Bhopal	200

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of Partici-pants
58	Regional Workshops for Advocates on – New Criminal Laws	Advocates practicing at Jabalpur, Katni, Satna, Rewa, Sidhi, Singrauli, Umaria, Dhar Shahdol, Mandla,Anuppur,Seoni, Dindori, Indore Balaghat, Dewas and Jhabua	31.05.2024 & 01.06.2024 (two days)	MPSJA/ District Headquarters	All the Advocates practicing in the districts
59	Training Course on – New Criminal Laws (*in collaboration with Directorate of Prosecution*)	Prosecution Officers	04.06.2024 & 05.06.2023 (two days)	CAPT, Bhopal	200
60	Training Course on – New Criminal Laws (*in collaboration with Directorate of Prosecution*)	-do-	11.06.2024 & 12.06.2024 (two days)	CAPT, Bhopal	225
61	Regional Workshop for Advocates on – New Criminal Laws	Advocates practicing at Bhopal, Vidisha,Hoshangabad, Betul, Raisen, Harda, Sagar, Damoh,Tikamgarh, Panna, Chhatarpur, Khandwa, Chhindwara, Ratlam, Mandsaur Mandleshwar, Alirajpur	19.06.2024 & 20.06.2024 (two days)	MPSJA/ District Headquarters	All the Advocates practicing in the districts
62	Regional Workshop for Advocates on – New Criminal Laws	Advocates practicing at Gwalior, Datia, Bhind, Morena, Sheopur, Guna, Shivpuri,Sehore, Ashoknagar, Rajgarh,Ujjain, Shajapur, Narisinghpur, Neemuch, Barwani and Burhanpur	21.06.2024 & 22.06.2024 (two days)	-do-	All the Advocates practicing in the districts
63	Regional Workshop for Panel Lawyers	Panel Lawyers of High Court Legal Services Committee, Indore	09.08.2024 to 11.08.2024 (three days)	Conference Hall, High Court of M.P., Bench Indore	82
64	Regional Workshop for Panel Lawyers	Panel Lawyers of High Court Legal Services Committee, Gwalior	13.09.2024 to 15.09.2024 (three days)	Regional Training Centre of MPSJA, Gwalior	35
65	Special Workshop for Advocates (*having 0-5 years experience*)	Advocates practicing in High Court of Madhya Pradesh, Bench at Gwalior	13.09.2024 to 15.09.2024 (three days)	Regional Training Centre of MPSJA, Gwalior	62

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of Partici-pants
66	Special Workshop for Advocates on – New Criminal Laws	Government Advocates and Panel Lawyers of Bench Gwalior	15.09.2024 (one day)	-do-	70
67	Special Workshop for Advocates	Advocates practicing at Jabalpur	28.09.2024 (one day)	MPSJA	150
68	Special Workshop for Advocates	Advocates practicing in the High Court of Madhya Pradesh	23.11.2024 (one day)	-do-	150
69	Special Workshop for Advocates (*having 0-5 years practice*)	Advocates practicing in the High Court of Madhya Pradesh Bench at Indore	30.11.2024 (one day)	Conference Hall, High Court of Madhya Pradesh, Bench Indore	62
70	Special Workshop for Advocates on – New Criminal Laws	Government Advocates and Panel Lawyers of Indore Bench	30.11.2024 (one day)	-do-	60
*71	Workshop on – Cyber Laws, Forensic & Digital Evidence	Judges and other stakeholders of Criminal Justice Administration (Advocates, Prosecution Officers and Senior Police Officers)	30.11.2024 & 01.12.2024 (two days)	Regional Training Centre of MPSJA at Gwalior	80 (Advocates) 85 (Prosecution Officers) & 85 (Senior Police Officers)
e-Committee Special Drive Training and Outreach Programme through State Judicial Academies (for Advocates)					
72	Advocate/Advocate Clerk e-Courts Programme at District Headquarters (ECT_4_2024)	Advocate/ Advocate Clerk	27.01.2024 (one day)	MPSJA/ District Headquarters	2646 viewers
			03.08.2024 (one day)		1,40,000
73	Advocate/Advocate Clerk e-Courts Programme at Taluk/Village (ECT_7_2024)	Advocate/ Advocate Clerk	03.02.2024 (one day)	MPSJA/ Tehsil Locations	2292 viewers
			27.07.2024 (one day)		3307
			05.10.2024 (one day)		811
74	Training Programme for Advocates/Advocate Clerks Computer Skill Enhancement Programme (ECT_12_2024)	Advocates/ Advocate Clerks	23.11.2024 (one day)	online	42

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of Partici-pants
Trainings in collaboration with Madhya Pradesh State Legal Services Authority					
75	Capacity Building Training Course for Chief & Deputy Legal Aid Defence Counsels appointed under the revised LADCS Scheme of NALSA	Chief & Deputy Legal Aid Defence Counsels	01.07.2024 to 03.07.2024 (three days)	MPSJA	138
76	Capacity Building Training Course for Assistant Legal Aid Defence Counsels appointed under the revised LADCS Scheme of NALSA	Assistant Legal Aid Defence Counsels	08.07.2024 to 10.07.2024 (three days)	-do-	130
77	Symposium on – Intellectual Property Rights	Government Advocates and Panel Lawyers of High Court of M.P., Principal Seat, Jabalpur, Panel Lawyers of High Court and District Court Legal Services Authority, Jabalpur and Legal Aid Defense Counsels	16.10.2024 (one day)	Conference Hall, High Court of M.P., Jabalpur	200
Total No. of participants					**1,51,338**
Judicial Educational Programmes for Ministerial Staff					
78	Training Programmes conducted at District Headqarters	All the staff of District Courts	59 programmes	MPSJA/ District Headquarters	5084
e-Committee Special Drive Training and Outreach Programme through State Judicial Academies (for ministerial staff)					
79	Programme for Technical staff of District Courts Hardware & software maintenance, Data Replication, Data monitoring, VC equipment, LAN connections etc.(ECT_11_2024)	Technical Staff/ District System Administrator/ System Officers	17.02.2024 (one day)	MPSJA/ District Headquarters	228
			24.02.2024 (one day)	-do-	178
80	Training Programme for Court Managers & Administrative Head Staffs of District Judiciary(ECT_5_2024)	Court Managers & Administrative Head Staff of District Judiciary	06.09.2024 (one day)	-do-	196
81	Training Programme on Digitization at High Court level for High Court Digitization officials/staff (ECT_6_2024)	High Court Digitization officials/staff	24.10.2024 (one day)	online	17
82	Programme for Technical staff of District Courts Hardware & software maintenance, Data Replication, Data monitoring, VC equipment, LAN (ECT_10_2024)	Technical Staff & NIC Coordinators at High Court	30.11.2024 (one day)	MPSJA/ District Headquarters	59
Total No. of participants					**5762**

S. No.	Target Group	No. of Training Programmes	No. of Participants	Days consumed
1	No. of Training Programmes conducted for Judicial Officers from January to December, 2024	62	4276	194
2	No. of Training Programmes conducted for other stakeholders from January to December, 2024	26	1,51,338	42
3	No. of Training Programmes conducted for ministerial staff of the District Judiciary from January to December, 2024 (at district headquarters)	64 (5 by MPSJA+ 59 at District HQ)	5762	182

* Programme conducted jointly for Judicial Officers and other Stakeholders of Criminal Justice Administration.

The Madhya Pradesh State Judicial Academy focused on methodology that is more participative and on interactive lines rather than conventional lectures. Some of the methods adopted included live practical exercises in sessions, QR button – a screen depicting various numbers, a question comes when the question is picked, presentations by participants, mentimeter – a live online poll, Expert talks for example, a session by revenue officials was arranged in which they demonstrated the nuances pertaining to demarcation and introduced various documents about the land records, Role Plays, Simulations or Moot Courts, Excursion Trips, Book reviews, Study Tours, for instance, participants were taken to the Nanaji Deshmukh Veterinary Science University, Jabalpur to appreciate the evidence in forest cases efficiently. Some sessions were devoted on mental well-being of the participants and also, on financial management. Special attention was given to analyzing judgments and discussing the issues while maintaining anonymity. These were some initiatives we took so as to embrace andragogy style of teaching.

Conclusion

This brief overview is indicative of Academy's unwavering dedication to enhancing the competence and responsiveness of the District judiciary. Through comprehensive training and skill-building, the Academy has attempted to contribute to improving the quality of justice delivery. By addressing contemporary legal challenges, adopting androgogical training methodolgies and promoting a culture of continuous learning, Academy reinforces its role as a cornerstone of judicial excellence and continues steadfast in its quest for pursuit of excellence.

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AUDIO-RECORDING EVIDENCE IN UNVEILING CORRUPTION: A CRUCIAL TOOL IN LEGAL BATTLES

Padmesh Shah
Additional Director, MPSJA

In the midst of legal battles against corruption, this article examines the legal standing of audio- recordings and their pivotal role in establishing a factual foundation for corruption allegations. Courts, in their pursuit of truth, increasingly acknowledge the evidentiary value embedded in audio-recordings. These recordings, which capture conversations filled with concealed intentions and covert dealings, serve as a compelling means of corroborating claims in corruption cases. Audio-recording evidence has become a vital tool in unravelling intricate webs of deceit in the fight against corruption. This article explores the significance of audio-recordings in corruption cases, highlighting their legal standing, ethical considerations and impact on the pursuit of justice. The evolving landscape of audio-recording evidence intersects with broader discussions surrounding the ethics of surveillance, the boundaries of privacy and the adaptability of legal systems to technological advancements.

Nature of Audio-Recording Evidence

The first question that arises is whether audio-recording evidence qualifies as a document u/s 3 of the Evidence Act or Section 2 of the Bhartiya Sakshya Adhiniyam. The term "document" is derived from the Latin word "*documentum*" meaning something that "instructs" or "provides information," as defined in the Oxford English Dictionary as "something written, inscribed, etc., which furnishes evidence or information upon any subject, such as a manuscript, title deed, coin, etc." Any written material capable of being evidence can be considered a document and the medium on which the writing is inscribed is immaterial. A document may be anything that conveys information, and its form is irrelevant – whether it is written on paper, parchment, stone or metal. To answer the question whether a audio-recording produced by the prosecution falls within the ambit of a document as defined u/s 3 of the Evidence Act or Section 2 of the Bhartiya Sakshya Adhiniyam, if it is considered a document, the consequences are clear in the light of Section 207 CrPC., which requires that a copy be furnished to the accused. Otherwise, it is not applicable.

In ***Ziyauddin Burhanuddin Bukhari v. Brij Mohan Ramdas Mehra and ors., (1976) 2 SCC 17***, an election trial, the admissibility of audio-recordings of election speeches was considered. The Supreme Court held that audio-recordings of speeches are "documents" u/s 3 of the Evidence Act, standing on the same

footing as photographs. Similarly, in ***Tukaram S. Dighole v. Manik Rao Shivaji Kokate, (2010) 4 SCC 329*** another election dispute, the Court addressed the admissibility of audio/video cassettes. Citing the ***Ziyauddin's case*** (supra), the Hon'ble Supreme Court reiterated that audio and video cassettes are "documents" as defined u/s 3 of the Evidence Act.

In ***P. Gopalakrishnan v. State of Kerala, AIR 2020 SC 1***, audio-recordings of speeches and in ***Singh Verma v. State of Haryana, (2016) 15 SCC 485***, compact discs were similarly held to be "documents" not different from photographs and were deemed admissible in evidence. After amendments to the Evidence Act, a sub-section was added, further establishing that electronic records presented for court inspection are considered documentary evidence u/s 3 of the Evidence Act.

Constitutional Validity of Audio-Recording Evidence:

In the past, the constitutional validity of audio-recording evidence has been questioned in various cases. The argument raised before courts was that such recordings were obtained without the consent or knowledge of the accused, thereby violating the fundamental rights of the accused, particularly, the right to privacy. It was contended that such recordings are a violation of Article 20(3) of the Constitution, which is based on the legal maxim *nemo tenetur prodere accusare seipsum*, meaning "No man is obliged to be a witness against himself."

In ***Justice K. S. Puttaswamy (Retd.) & anr. v. Union of India & ors., (2017) 10 SCC 1***, a 9-Judge Constitution Bench of the Supreme Court held that the right to privacy is a fundamental right. However, it is not absolute and must be balanced with other rights and values. The Court also recognized that the right to privacy is available not only against the State but also against private individuals.

This raises the question of whether evidence collected in violation of the fundamental right to privacy is admissible? In ***State of Punjab v. Baldev Singh, (1999) 6 SCC 172***, while dealing with section 50 of the Narcotic Drugs and Psychotropic Substances Act, a 5-Judge Constitution Bench of the Supreme Court held that the nature of the evidence obtained and the nature of the safeguard violated are both relevant factors. The Court emphasized that evidence obtained in a manner that causes prejudice to the accused should not be admitted. However, in ***State v. Navjot Sandhu, (2005) 11 SCC 600***, the Parliament attack case, the Court, while referencing ***Pooran Mal v. Director of Inspection (Investigation), New Delhi & ors., (1974) 1 SCC 345***, held that even if evidence is obtained illegally, it is still admissible. The Court noted that disallowing such evidence

simply because it was obtained illegally would obstruct the administration of justice. However, it was also cautioned that judges have discretion to disallow evidence in criminal cases if the strict rules of admissibility would unfairly prejudice the accused – a principle considered essential in criminal jurisprudence.

In ***Pooran Mal*** (supra), the Court stated that when there is no express or implied prohibition in the Constitution, it is unwarranted to invoke the spirit of the Constitution to exclude evidence. Therefore, audio-video recordings are admissible as evidence. In ***Yusufalli Esmail Nagree v. State of Maharashtra, AIR 1968 SC 147***, the Supreme Court addressed this issue specifically and held that as long as the individuals recorded were free to talk or not to talk, and there was no duress, coercion or compulsion, nor were the statements extracted in an oppressive manner, the protection under Article 20(3) of the Constitution could not be invoked.

Question of Admissibility

Questions surrounding the admissibility of audio-recording evidence have frequently arisen. The question of admissibility is defined under the Evidence Act and the Constitution of India does not provide a framework for evaluating the admissibility of evidence. The test applied in both civil and criminal cases as to determine whether evidence is admissible and whether it is relevant to the issues at hand. If relevant, it is admissible, regardless of how it was obtained.

One of the earliest cases addressing the admissibility of audio-recorded evidence was ***Rup Chand v. Mahabir Parshad, AIR 1956 P&H 173,*** where the Punjab and Haryana High Court declined to consider audio-recorded conversation as writing. The admissibility of audio-recorded evidence was denied u/s 145 of the Evidence Act but was allowed for impeaching a witness's credibility u/s 155(3). In ***S. Pratap Singh v. State of Punjab, AIR 1964 SC 72,*** a Constitutional Bench of the Supreme Court held that audio-recorded evidence was admissible. The Court also stated that the fact that audio-recordings could easily be tampered with, was not sufficient ground for rejecting them. In this case, the audio-recording was admitted to corroborate a witness's statement that such a conversation had indeed taken place.

In the landmark case **Yusufalli Esmail Nagree** (supra), the Supreme Court unequivocally held that audio-recordings provide an accurate method of storing and reproducing sounds and are admissible u/s 7 of the Evidence Act as a relevant fact. The Court emphasized that the admissibility of a audio- recording is based on what it proves and not the audio itself. The audio is not admissible in

isolation; it becomes admissible when played, allowing the Court to obtain evidence of the conversation or sound to be proved. The evidence received aurally is what is admissible to prove the relevant fact.

After the enactment of the Information Technology Act, 2000, electronic evidence came under consideration, including audio-recorded conversations. Sections 65(A) and 65(B) of the Evidence Act confirmed that audio-recorded conversations could now be admissible in court if they were relevant and authentic. Judicial precedents have guided the admissibility of such evidence.

Based on the above discussion, the following conditions must be satisfied for an audio-recording to be admissible:

1. The audio must be clean and the recording device must have been in proper working order before the recording was made.
2. The audio must not have been tampered with or altered in any way and the chain of custody must be established.
3. The voices on the audio must be identifiable by witnesses who can confirm their identity.
4. A transcript of the recording should be prepared and verified against the original recording.
5. If in electronic form, the recording must be accompanied by a certificate u/s 65-B of the Evidence Act.

Courts remain cautious when admitting audio-recordings, particularly in cases with contradictions in witness testimonies or where the chain of custody is unclear. For example, if a complainant's testimony is inconsistent, the audio-recording may be ruled inadmissible. Additionally, under the Bhartiya Sakshya Adhiniyam, 2023, if the original recording is not produced, the prosecution must file a certificate u/s 63 BSA to establish the admissibility of the recording.

Appreciation of Audio-Recording Evidence

What is the best evidence of sounds captured in a recording? The only clear answer is that the best evidence is the reproduction of those sounds when the recording is played using appropriate sound reproduction equipment. Confusion often arises due to the fact that human voices are commonly recorded and their content is often presented in written form. However, if the relevant evidence was, for example, the screech of tires before a collision and that sound was recorded, the best method of presenting this evidence would be by playing the recording. There is no difference in principle when the recorded sound is the human voice.

Regarding audio-recordings, the Bombay High Court in ***C. R. Mehta v. State of Maharashtra, 1993 CriLJ 2863***, observed:

> "The law is quite clear that audio-recorded evidence, if it is to be acceptable, must be sealed at the earliest point of time and not opened except under orders of the Court."

In ***R. Venkatesan v. State, 1980 CriLJ 41***, the Madras High Court considered the evidentiary value of a audio-recorded conversation. In that case, the conversation was not audible throughout, and the recording was broken at a crucial point. The accused alleged tampering and the accuracy of the recording was not proven, nor was the voices properly identified. In such circumstances, the Court concluded that it would not be safe to rely on the audio-recorded conversation as corroborating the prosecution's witness testimony.

In ***Ram Singh v. Col. Ram Singh, 1985 Supp SCC 611***, the Supreme Court, addressing the admissibility of audio-recorded evidence, laid down the conditions for admissibility in para 32 as follows:

(i) The speaker's voice must be duly identified by the maker of the record or by others who recognize the voice. If the speaker denies the voice, strict proof is required to verify whether it truly belongs to the speaker.

(ii) The accuracy of the audio-recorded statement must be proven by the maker through satisfactory evidence, whether direct or circumstantial.

(iii) Any possibility of tampering or erasure of a part of the audio must be ruled out, as it could render the statement out of context and inadmissible.

(iv) The statement must be relevant according to the rules of the Evidence Act.

(v) The recorded cassette must be carefully sealed and kept in safe or official custody.

(vi) The speaker's voice must be clearly audible and not distorted by background noise or disturbances.

The test is whether there is sufficient material for the court to conclude that the recorded sounds accurately reproduce the original conversation of the identified persons. In other words, the recording must be supported by evidence that the conversation took place and would be admissible if proven through oral testimony. Admissibility does not require the party submitting the audios to eliminate every possibility of inaccuracy.

The following conditions must be established when introducing evidence of an audio-recording:

(a) The audio was checked and confirmed to be clean before the recording was made.

(b) The recording equipment was in proper working order.

(c) The audio was not tampered with or altered; the chain of custody must be clearly established.

(d) Officers or other witnesses played the audio after recording and identified the voices.

(e) A transcript of the voices was prepared and if shorthand notes were used, they should be preserved.

(f) The recording was replayed and the officers or witnesses compared it with the transcript, verifying the identity of the voices and the content of the conversation.

Voice Sampling

During or after an investigation, the prosecution may file an application before the Court seeking permission to obtain a voice sample from individuals involved in a audio-recording. This request is often opposed on the grounds that no legal provision allows the Court to grant such permission, and that collecting a voice sample violates the protection under Article 20(3) of the Constitution of India. However, the 11-Judge Bench of the Supreme Court in ***State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808*** held that when an accused is asked to provide a fingerprint, signature, or handwriting specimen, it is not considered testimony of a "personal nature." These specimens are innocuous and unchangeable, similar to voice samples. Following the same reasoning, in ***Ritesh Sinha v. State of Uttar Pradesh, 2019 INSC 855***, the Supreme Court ruled that providing a voice sample is not testimony and does not fall under the expression “to be a witness.”

Regarding the absence of a provision for obtaining voice samples, the Apex Court in ***Ritesh Sinha*** (supra), after considering sections 53, 53A and 311A of the CrPC, acknowledged that there is no specific provision for voice sampling in the CrPC. However, in para 25 of the judgment, after detailed discussion, the Court, exercising its power under Article 142 of the Constitution, ruled that until explicit provisions are included in the CrPC, a Judicial Magistrate has the authority to order a person to provide a voice sample for crime investigation purposes.

An additional question arises regarding whether a Judicial Magistrate can exercise this power after taking cognizance of the case. The Madhya Pradesh High Court has provided guidance in such instances where the final report has been submitted and the case is before the trial court. In ***Buddha Sen Kumhar v. State of M.P., (2018) 1 Crime 414***, an application for voice sampling was allowed after the charge sheet was filed but before further proceedings. In ***Baliram v. State of M.P.,M.Cr.C. No. 54639/2022*** (03.09.2023), an application for voice sampling was filed when most prosecution witnesses had already been examined. The division bench of the Madhya Pradesh High Court held that such an application did not constitute further investigation but was essential to uncover the truth and ensure fair, impartial justice. The Court allowed the voice sample collection even at the later stage of the case.

It is evident from the aforementioned cases that obtaining a voice sample does not violate any constitutional rights. A Judicial Magistrate has the power to order the collection of a voice sample, and such an application can be made at any stage of the proceedings.

Importance of Transcript

The mere existence of recordings is not sufficient; transcripts play a crucial role in ensuring the accuracy, admissibility and comprehension of such evidence in the judicial process. Transcripts aid legal professionals, judges and other stakeholders in reviewing and analysing evidence effectively, promoting fairness and transparency. They serve as authenticated records of conversations, which enhances the admissibility of audio-recording evidence in court. The court has emphasized the necessity of reliable transcripts to corroborate audio-recordings and to establish their admissibility when properly authenticated.

Transcripts enable a comprehensive understanding of recorded conversations, allowing for detailed analysis and evaluation during trial proceedings. They provide essential contextualization and interpretation of recorded interactions, helping to clarify nuances, tone and intent that may not be evident from the audio alone. Furthermore, transcripts facilitate effective cross-examination and impeachment of witnesses by highlighting discrepancies or inconsistencies between the recorded statements and their testimony.

Defendants are entitled to receive transcripts of audio-recorded conversations prior to the prosecution's presentation of evidence, ensuring a fair trial by allowing thorough cross-examination.

Transcripts also serve as indispensable tools for preserving and documenting evidence for future reference, appeals or reviews. They play a multifaceted role in legal proceedings, from enhancing the accuracy and admissibility of evidence to improving accessibility and interpretation for all involved.

In ***Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra, (1976) 2 SCC 17***, the court held that while audio-recordings are the primary evidence, transcripts can be used to show what was recorded at the time of transcription and can serve as a safeguard against tampering. The transcripts were also treated as corroborative evidence, which a witness could use to refresh their memory u/s 159 of the Evidence Act. The contents could be presented as direct oral evidence as prescribed by section 160 of the Evidence Act.

Transcripts are vital in legal proceedings as they provide corroborative evidence, assist in verifying the accuracy of recordings and support the cross-examination process. The prosecution must provide transcripts to the accused, allowing them to challenge the presented evidence and confront witnesses with their earlier recorded statements. This enhances the fairness of the trial process. However, strict adherence to procedural requirements is essential to ensure the admissibility of transcripts. When audio-recording evidence is submitted, the court must listen to the audio and simultaneously compare it with the transcript to authenticate its contents.

Conclusion

Audio-recordings can serve as compelling evidence in corruption cases, provided they meet the stringent requirements for admissibility. It is essential to ensure that all procedural safeguards are strictly followed to prevent challenges to the credibility of the evidence. This includes obtaining the necessary certificates, meticulously documenting the chain of custody, preparing accurate transcripts and having witnesses ready to confirm the identities of the voices. Addressing any potential inconsistencies in witness testimonies that could undermine the audio-recordings' admissibility is also crucial. By adhering to these guidelines, the chances of successfully introducing audio-recording evidence in corruption cases are significantly improved.

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हम भारत के लोग

(संविधान की 75वीं वर्षगांठ पर आलेख)

तजिन्दर सिंह अजमानी

जिला एवं अतिरिक्त सत्र न्यायाधीश, इंदौर

जिस तरह जीवन के छुए–अनछुए पहलूओं एवं कही–अनकही बातों को संचारित करने लिए आत्मकथा एक माध्यम है उसी तरह जब किसी राष्ट्र को संपूर्ण रूप से आत्मसात करना हो तो उस राष्ट्र को संचालित करने वाले विधान का स्थान महत्वपूर्ण होता है संभवतः इसीलिए संविधान को किसी भी राष्ट्र की आत्मकथा के रूप में भी परिभाषित किया गया है।

शताब्दियों से परतंत्र रहे देश में सत्ता हस्तांतरण की अनिश्चितता, सीमाओं का विभाजन, रियासतों के मन में चल रहे अंतर्द्वंद, जनसंख्या की विशालता एवं जीवनशैली की विविधता जैसी चुनौतियों के मध्य संविधान सभा ने संविधान की रचना के लिए लक्ष्य संबंधी प्रस्ताव रखा कि–

> **''यह विधान–परिषद् भारतवर्ष को एक पूर्ण स्वतंत्र जनतंत्र घोषित करने का दृढ़ और गम्भीर संकल्प प्रकट करती और निश्चय करती है कि उसके भावी शासन के लिये एक विधान बनाया जाये''।**

हमारे संविधान का प्रारूप तैयार करने का अविस्मरणीय कार्य कॉन्स्टीट्यूशन हॉल में आरंभ हुआ जिसे पुरानी संसद भवन के केन्द्रीय कक्ष के रूप में जाना जाता है। संविधान के प्रभावशील होने के बाद संविधान सभा अस्तित्व में नहीं रही और 1952 में नई संसद के गठन तक इसने ही भारत की अस्थायी संसद का रूप ले लिया था।

संविधान सभा के अध्यक्ष डॉ राजेन्द्र प्रसाद, उपाध्यक्ष डॉ एच.सी.मुखर्जी संवैधानिक सलाहाकार सर बी.एन राव, सचिव श्री एच.वी.आर आयंगर थे। इसी प्रकार विधान के मस्विदे की जांच करने तथा उसमें आवश्यक संशोधनों का सुझाव रखने के लिए डॉ. बी. आर. अम्बेडकर की अध्यक्षता में प्रारूप समिति गठित की गई जिसके अन्य सदस्य अल्लादी कृष्णास्वामी अय्यर, एन. गोपालस्वामी आयंगर, श्री के.एम.मुंशी, सैयद् मुहम्मद सादुल्ला, सर बी.एल. मित्तर और श्री डी.पी.खेतान थे। इन समितियों के अतिरिक्त विभिन्न विषयों पर सुझाव व रिपोर्ट प्रस्तुत करने हेतु निगोशिएटिंग कमेटी, रूल्स कमेटी, नियम–निर्मातृ समिति, स्टीयरिंग कमेटी, एडवाइजरी कमेटी एवं रियासती कमेटी गठित की गई थी।

विधान परिषद द्वारा विचार में लिए गए प्रत्येक विषय को इस लेख में समाहित करना संभव नहीं है लेकिन, संविधान सभा का पहली बार समवेत होना, राष्ट्रीय ध्वज को स्वीकार किया जाना अर्द्ध–रात्रि को भारतीय विधान परिषद का अधिवेशन आहूत होना, महात्मा गांधी के चित्र का उद्घाटन, संविधान को पारित किया जाना, संविधान को पारित किए जाने के बाद विशेष अधिवेशन आहूत किया जाना कुछ ऐसे अविस्मरणीय क्षण थे जिनके संबंध में संविधान सभा के समक्ष की गई कार्यवाही की सजीवता को महसूस करने का प्रयास करते हैं।

09 दिसम्बर 1946 (सोमवार) – प्रथम बैठक

भारतीय विधान परिषद् की प्रथम बैठक कॉन्स्टीट्यूशन हॉल नई दिल्ली में सोमवार 9 दिसबंर 1946 के सुबह 11 बजे आरंभ हुई। सर्वप्रथम संयुक्त प्रांत के आचार्य जे.बी कृपलानी ने इम्पीरियल लेजिस्लेटिव काउंसिल के सदस्य एवं भारत के सबसे पुराने पार्लियामेंटेरियन माने जाने वाले डॉ. सच्चिदानंद सिन्हा का नाम अस्थाई सभापति के रूप में प्रस्तावित किया एवं आसन ग्रहण करने का निवेदन किया। हर्षध्वनि के बीच वे आसन पर विराजित हुए इसके बाद सभापति ने अमेरिका, चीन और आस्ट्रेलिया की सरकार से मिले, शुभकामना संदेशों का वाचन किया एवं उद्घाटन भाषण दिया।

प्रथम दिवस ही विधान–परिषद में मद्रास से 43, बम्बई से 19, बंगाल से 25, उत्तर प्रदेश से 42 पंजाब से 12, बिहार से 30, मध्यप्रांत और बरार से 14, आसाम से 7, सीमा प्रांत से 2, उड़ीसा से 9, सिंध से 1 दिल्ली से 1, अजमेर–मेरवाड़ा से 1 एवं कूर्ग से 1 सदस्य इस प्रकार कुल 207 सदस्यों ने परिचय पत्र पेश कर रजिस्टर में हस्ताक्षर किए।

22 जुलाई सन् 1947 (मंगलवार) – राष्ट्रीय पताका संबंधी प्रस्ताव

संयुक्त प्रांत जनरल से पंडित जवाहरलाल नेहरू द्वारा इस आशय का प्रस्ताव प्रस्तुत किया गया कि

"निश्चय किया जाता है कि भारत का राष्ट्रीय झंडा तिरंगा होगा जिसमें गहरे केसरिया, सफेद और गहरे हरे रंग की बराबर–बराबर की तीन आड़ी पट्टियां होगी। सफेद पट्टी के केंद्र में चरखे के प्रतीक स्वरूप गहरे नीले रंग का एक चक्र होगा। चक्रकी आकृति उस चक्रके समान होगी जो सारनाथ के अशोक कालीन सिंह स्तूप के शीर्ष भाग पर स्थित है। चक्रका व्यास सफेद पट्टी की चौड़ाई के बराबर होगा। राष्ट्रीय झंडे की चौड़ाई और लम्बाई का अनुपात साधारणतया 2:3 होगा"

पं जवाहरलाल नेहरू द्वारा प्रस्ताव के संबंध में किए गए संबोधन के मुख्य अंश इस प्रकार हैं–

- हम इस झंडे को केवल गौरव और उत्साह से ही नहीं वरन् शरीर में एक स्फूर्ति और उत्तेजना समेत मानते थे। कभी–कभी जब हम पराजित और निरूत्साह हो जाते थे तब इस झंडे का दर्शन आगे बढ़ने के लिये उत्साह दिलाता था। उस समय हममें से अनेकों जो आज यहां उपस्थित नहीं है हमारे अनेकों साथी जो संसार से कूच कर गये हैं इस झंडे को थामे रहते थे– और बहुत से तो मृत्यु–पर्यन्त इस झंडे को थामे रहे और मरते–मरते झंडे को ऊंचा रखने के लिए दूसरे को सौंप गये।
- उस झंडे से जिसे हममें से बहुत विगत वर्षों से प्रयोग में ला रहे थे इस झंडे में कुछ थोड़ा अन्तर है। रंग वही हैं गहरा केसरिया, सफेद और गहरा हरा। सफेद पट्टी में पहले चरखा था जो भारत के जन–साधारण का प्रतीक स्वरूप था, जो उनके उद्योग का प्रतीक स्वरूप था जो हमें महात्मा गांधी जी के संदेश द्वारा प्राप्त हुआ था इस विशेष चरखे के प्रतीक को इस झंडे में थोड़ा–सा बदल दिया है– उसे हटाया नही गया है।
- यह अंतर क्यों किया गया? साधारणतया झंडे पर एक ओर का चिन्ह ऐसा होना चाहिए जो दूसरी ओर से ठीक वैसा ही दिखाई दे, अन्यथा एक कठिनाई उपस्थित हो जाती है, वह नियम के विरूद्व है। चरखा जिस रूप में झंडे पर पहले था, उसका चक्र एक ओर था और तकुआ दूसरी ओर। यदि आप झंडे के दूसरी ओर से देखें तो चक्र इस ओर जाता था और तकुआ उस ओर। यदि ऐसा नहीं होता तो वह अनुपात में नहीं है, क्योंकि चक्रलट्ठे की ओर होना चाहिए न कि झंडे के सिरे की ओर।
- यह व्यवहारिक कठिनाई थी, इसलिए यह यथेष्ठ विचार करने के बाद हमने वास्तव में यह धारणा की कि, इस महान चिन्ह को जिसने लोगों में उत्साह भरा है, रखा जाए, लेकिन कुछ परिवर्तन के साथ और वह यह कि चक्रको रखा जाए और अन्य शेष भाग को नहीं रखा जाए अर्थात् तकुए और माल को जो कि गड़बड़ी पैदा कर रहा था। चरखे का महत्वपूर्ण भाग वहां है ही। इस प्रकार चरखे एवं चक्रकी प्राचीन परंपरा कायम रही, लेकिन चक्रकिस प्रकार का होना चाहिए हमारे दिमागों में अनेकों चक्रआए पर विशेषकर एक प्रसिद्व चक्रअनेक स्थानों पर जिसने हमने सबने देखा है

अशोक की प्रमुख लाठ के सिरे का तथा अन्य स्थानों का चक्रवह चक्रभारत की प्राचीन सभ्यता का चिन्ह है वह और भी अनेक बातों का प्रतीक है।

- प्रस्ताव में यह बताया गया है कि झंडे की चौड़ाई और लम्बाई का अनुपात साधारणतया 2:3 होगा। आपने ''साधारणतया'' शब्द पर ध्यान दिया होगा अनुपात के लिए कोई पूर्ण सिद्वांत नहीं है, क्योंकि वही झंडा किसी विशेष अवसर पर किसी ऐसे अनुपात का हो जो कि और भी अधिक उपयुक्त हो या किसी अन्य अवसर पर किसी अन्य स्थान में इस अनुपात में थोडा सा परिवर्तन करें इसलिए इस अनुपात की अनिवार्यता नहीं है, लेकिन साधारणतया 2:3 का अनुपात एक ठीक अनुपात है। कभी–कभी 2:1 का अनुपात इमारतों पर झंडा फहराने के लिए उपयुक्त होता है।

झंडे को स्वीकार करने के प्रस्ताव पर संविधान सभा के विभिन्न सदस्यों ने अपने विचार अभिव्यक्त किये अंत में अध्यक्ष के निवेदन पर सभी सदस्यों ने अपने–अपने स्थान पर आधे मिनिट तक खड़े होकर झंडे के प्रति सम्मान प्रकट किया।

दो झंडे जिसमें से एक रेशम का और दूसरा खादी का प्रदर्शित किया गया था राष्ट्रीय अजायबघर में रखने संबंधी प्रस्ताव परिषद ने स्वीकार किया।

14 अगस्त, सन् 1947 (बृहस्पतिवार) – रात्रि–कालीन सत्र

भारतीय विधान–परिषद् का पांचवा अधिवेशन, कॉन्स्टीट्यूशन हाउस, नई दिल्ली में रात के 11 बजे अध्यक्ष माननीय डॉ. राजेंद्र प्रसाद के सभापतित्व में प्रारंभ हुआ।

संयुक्त प्रांत जनरल की श्रीमती सुचेता कृपलानी ने वन्देमातरम् गान का प्रथम पद गाया सभी लोगों ने खड़े होकर सुना।

अध्यक्ष के प्रस्ताव पर वीरों की पुण्य–स्मृति में जिन्होंने देश में और बाहर स्वातंत्र्य–संग्राम में अपनी बलि दी, सभा दो मिनट तक मौन खड़ी रही। घड़ी के 12 (मध्यरात्रि) बजते ही अध्यक्ष तथा सदस्यगण खड़े हो गये और प्रतिज्ञा ग्रहण की। अध्यक्ष ने प्रतिज्ञा का एक–एक वाक्य पहले हिन्दुस्तानी में और फिर अंग्रेजी में पढ़ा और सदस्यों ने उसे दोहराया।

> **''अब जब कि हिन्दवासियों ने त्याग (कुर्बानी) और तप से स्वतंत्रता (आजादी) हासिल कर ली है, मैं..... जो उस विधान परिषद (आईन साज मजलिस) का एक सदस्य (मेम्बर) हूं, अपने को बड़ी नम्रता (निहायत इनकिसारी) से हिन्द और हिन्दवासियों की सेवा (खिदमत) के लिए अपने को अर्पण (वक्फ) करता हूं ताकि यह प्राचीन (कदीम) देश (मुल्क) संसार में अपना उचित और गौरवपूर्ण (बाइज्जत) जगह पा लेवे और संसार में शांति स्थापना (अमन कायम) करने और मानव जाति (इंसान) के कल्याण (बहबूदी) में अपना पूरी शक्ति लगाकर खुशी–खुशी हाथ बटा सकें''**

तदुपरांत अध्यक्ष ने प्रस्ताव किया कि वायसराय को इस बात की सूचना दी जाए कि भारतीय विधान परिषद ने भारत का शासनाधिकार ग्रहण कर लिया है और भारतीय विधान परिषद ने इस सिफारिश को स्वीकार कर लिया है कि 15 अगस्त सन् 1947 ईस्वीं से लार्ड माउंटबैटन इंडिया के गवर्नर जनरल हों।

सभा ने प्रस्ताव स्वीकार किया।

इसके बाद श्रीमती हंसा मेहता ने 74 महिलाओं की ओर से राष्ट्रीय पताका भेंट की। अंत में श्रीमती सुचिता कृपलानी ने ''सारे जहां से अच्छा हिन्दोस्तां हमारा'' तथा ''जन–गण–मन अधिनायक जय हे'' की प्रथम कुछ पंक्तियों का गायन किया।

अध्यक्ष ने सभा शुक्रवार 15 अगस्त सन् 1947 ईस्वी प्रातः 10 बजे के लिए स्थगित की।

15 अगस्त सन् 1947 ईस्वी (शुक्रवार) – राष्ट्रीय पताका का उत्तोलन

भारतीय विधान–परिषद कान्स्टीट्यूशन हाल नई दिल्ली में प्रातः 10 बजते ही समवेत हुई। अध्यक्ष माननीय डॉ. राजेंद्र प्रसाद, भारत के गवर्नर–जनरल, लार्ड माउंटबैटन तथा श्रीमती माउंटबैटन के साथ परिषद–भवन में प्रविष्ट हुये।

अध्यक्ष ने संयुक्त राज्य के प्रधानमंत्री, कैंटरबेरी के आर्चबिशप, चीन प्रजातंत्र के प्रेसीडेंट जनरल च्यांगकाईशेक, कनाडा के प्रधानमंत्री, आस्ट्रेलिया के प्रधानमंत्री, नानकिंग की प्रबंधकारिणी सभा युवान के सभापति, इंडोनेशिया के प्रजातंत्र की ओर से डॉ. स्योडार्सनो, नेपाल सम्राट के मंत्री, ओसलो से नार्वे के प्रधानमंत्री तथा स्थानापन्न वैदेशिक मंत्री से प्राप्त शुभकामना संदेशों का वाचन किया। अध्यक्ष ने सभा को सूचित किया कि फ्रांस के वैदेशिक मंत्री श्री एम. गिराड एवं अमेरिका के प्रेसीडेंट से भी शुभकामनाओं के संदेश मिले हैं जिन्हें परिषद् की कार्यवाही में शामिल कर दिये गए हैं।

गवर्नर–जनरल लार्ड माउंटबैटन एवं विधान परिषद के अध्यक्ष डॉ राजेन्द्र प्रसाद ने विधान परिषद को संबोधित किया

> अध्यक्ष ने विधान परिषद का ध्यान आकृष्ट कराया कि हिज एक्सीलेंसी झंडोतोलन का संकेत देंगे। तोपों की आवाज सुनाई पड़ी, गवर्नर–जनरल ने व्यक्त किया कि यह इमारत की छत पर झंडा फहराने का संकेत ळें

अंततः सभा बुधवार 20 अगस्त 1947 के प्रातः 10 बजे के लिये स्थगित हुई।

28 अगस्त सन् 1947 – महात्मा गांधी के चित्र की भेंट और अनावरण

पश्चिमी भारत की रियासतों का समूह–4, के श्री ए.पी पट्टानी ने विधान परिषद को अवगत कराया कि महात्मा गांधी के चित्र को दूसरी गोलमेज सभा के समय इंग्लैण्ड के प्रसिद्ध चित्रकार सर ओसवाल्ड वर्ले द्वारा चित्रित किया था और उनके पिताजी ने उसे खरीद लिया था। जब वह चित्र हिन्दुस्तान पहुंचा तो उसे सावधानी से उसी प्रकार बंद कर रख दिया था जैसे वह आया था उसे देखने की आज्ञा नहीं दी गई। सन् 1935 में पिताजी ने गुप्त रूप से उनसे कहा कि जब नई सरकार की स्थापना होगी तो वह यह चित्र राष्ट्र को भेंट कर दे 16 फरवरी, 1938 को इससे 10 मिनट पहले की वे भावनगर से हवाई जहाज से हरीपुरा महात्मा गांधी से मिलने जाते उनका स्वर्गवास हो गया।

श्री ए.पी पट्टानी ने प्रस्ताव रखा कि–

> **"यह निश्चय किया जाता है कि भारतीय विधान परिषद सर प्रभा शंकर पट्टानी के राष्ट्र को प्रदान किए हुए सर ओसवाल्ड बर्ले द्वारा चित्रित महात्मा गांधी के चित्र को स्वीकार करती है।'**

परिषद द्वारा प्रस्ताव पारित किये जाने के बाद अध्यक्ष महोदय ने चित्र का अनावरण किया।

25 नवंबर सन् 1949 (शुक्रवार) – डॉ. बी.आर अम्बेडकर का संविधान के मसौदे पर उद्बोधन

भारतीय संविधान सभा, कॉन्स्टीट्यूशन हॉल नई दिल्ली में प्रातः 10 बजे अध्यक्ष महोदय डॉ राजेन्द्र प्रसाद के सभापतित्व में समवेत हुई। संविधान के मसौदे पर सभा के विभिन्न सदस्यों ने अपने विचार रखे अंत में प्रारूप समिति के अध्यक्ष डॉ. बी.आर. अम्बेडकर ने सभा को संबोधित किया, महत्वपूर्ण अंश इस प्रकार हैं.....

- संविधान सभा प्रथम बार 9 दिसम्बर 1946 को समवेत हुई थी, उस समय से अब तक 02 वर्ष 11 महीने और 17 दिन हुए है।
- संविधान सभा के कुल 17 सत्र हुए जिनमें से प्रथम 6 सत्र लक्ष्यमूलक संकल्प पारित करने और मूलाधिकार विषयक, संघ संविधान विषयक, संघ की शक्तियों, प्रांतीय संविधान विषयक, अल्पसंख्यक वर्ग विषयक तथा अनुसूचित क्षेत्रों और अनुसूचित जनजातियों विषयक समितियों के प्रतिवेदनों पर विचार करने में लगे।
- सातवें, आठवें, नौवें, दसवें और ग्यारहवें सत्रों में संविधान के मसौदे पर विचार हुआ। संविधान सभा के इन ग्यारह सत्रों में 165 दिन लगे। इनमें से सभा ने 114 दिन संविधान के मसौदे पर विचार करने में लगाये।
- मसौदा समिति का निर्वाचन संविधान सभा ने 29 अगस्त 1947 को किया था। उसकी पहली बैठक 30 अगस्त को हुई। 30 अगस्त से उसकी बैठक 141 दिनों तक हुई और इस समय में वह संविधान का मसौदा तैयार करने में लगी रही।
- मसौदा समिति को परामर्श देने के लिए संवैधानिक परामर्शदाता द्वारा तैयार किये गये संविधान के मूल मसौदे में 243 अनुच्छेद और 13 अनुसूचियॉ थीं। मसौदा समिति द्वारा जिस रूप में संविधान का प्रथम मसौदा संविधान सभा में उपस्थित किया गया था उसमें 315 अनुच्छेद और 8 अनुसूचियां थी। विचार–विमर्श के समाप्त होने पर संविधान के मसौदे में अनुच्छेदों की संख्या बढ़कर 386 हो गई। अपने अंतिम रूप में संविधान के मसौदे में 395 अनुच्छेद और 8 अनुसूचियां है।
- संविधान के मसौदे पर भेजे गये कुल संशोधनों की संख्या लगभग 7635 थीं जबकि इनमें से सभा में पेश किये गये संशोधनों की संख्या 2473 थी।
- जो श्रेय मुझे दिया गया है उसका वास्तव में मैं अधिकारी नहीं हूं उसके अधिकारी श्री बी.एन. राउ भी है जो इस संविधान के संवैधानिक परामर्शदाता है और जिन्होंने मसौदा समिति के विचारार्थ संविधान का एक मोटे रूप में मसौदा बनाया।
- मसौदा समिति ने 141 दिन तक बैठक की। सबसे अधिक श्रेय संविधान के मुख्य मसौदा लेखक श्री एस.एन. मुखर्जी को है। बहुत ही जटिल प्रस्थापनाओं को सरल तथा स्पष्ट से स्पष्ट वैध भाषाओं में रखने की उनकी योग्यता की बराबरी कठिनाई से की जा सकती है और न ही कठिन परिश्रम करने की उनकी सामर्थ्य की तुलना की जा सकती है।

26 नवंबर सन् 1949(शनिवार) – संविधान का पारित होना

भारतीय संविधान सभा, कॉन्स्टीट्यूशन हॉल नई दिल्ली में प्रातः 10 बजे अध्यक्ष महोदय माननीय डॉ राजेन्द्र प्रसाद के सभापतित्व में समवेत हुई।

बम्बई जनरल के सरदार वल्लभभाई जे. पटेल ने सभा को सूचित किया कि हैदराबाद राज्य सहित संविधान की प्रथम अनुसूची के भाग ख में उल्लेखित समस्त नौ राज्यों ने 12 अक्टूबर को दिए उनके वक्तव्य में उल्लेखित रीति के अनुसार संविधान को स्वीकार करना प्रकट किया है।

अब संविधान सभा के अध्यक्ष डॉ. राजेन्द्र प्रसाद के उद्‌बोधन का समय था, प्रमुख अंश इस प्रकार से है–

- मैं कुछ उन तथ्यों का वर्णन करना चाहूंगा जो इस कार्य की महानता को प्रकट करेंगे जिसको हमने लगभग 3 वर्ष पूर्व हाथों में लिया था। यदि आप उस जनसंख्या पर विचार करेंगे जिसका इस सभा को ध्यान रखना पडा तो आपको विदित होगा कि वह रूस रहित समस्त यूरोप की जनसंख्या से अधिक है। यह जनसंख्या 31 करोड 90 लाख है और रूस रहित यूरोप की जनसंख्या 31 करोड 70 लाख है।

- संविधान के संबधं में जिस रीति को संविधान सभा ने अपनाया वह यह थी कि सर्वप्रथम 'विचारणीय बातें' निर्धारित की गई जो कि लक्ष्य मूलक संकल्प के रूप में थीं, जो अब हमारे संविधान की प्रस्तावना है।
- हमारे यहां लगभग छः सौ रियासतें थीं जो भारत के राज्य–क्षेत्र के तिहाई भाग से अधिक भाग को घेरे हुए थीं और जिनमें देश की एक चौथाई जनसंख्या थी। जब अंग्रेजो ने इस देश को छोडना निश्चित किया तो उन्होंने हमको शक्ति दी, पर इसके साथ–साथ उन्होंने यह भी घोषणा की, कि राज्यों से जो संधियां या संबधं उनके थे वे सब भंग हो गये। इस घोषणा के परिणामस्वरूप राजा या राजाओं के गुट को यह अधिकार मिल गया था कि वे स्वाधीन हो जायें और यहां तक कि किसी विदेशी शक्ति से संधि संबंधी बातचीत भी करें और इस प्रकार इस देश में स्वाधीन राज्य क्षेत्र के भागों की स्थापना हो।
- अतः आरंभ में ही उनके प्रतिनिधियों को सभा में लाने के लिये संविधान सभा को उनसे बातचीत करनी पडी जिससे कि उनसे परामर्श कर संविधान बनाया जा सके। प्रथम प्रयास में ही सफलता मिली और कुछ रियासतें शुरू में ही इस सभा में आ गई पर कुछ रियासतें संकोच करती रही। केवल यह कहना पर्याप्त होगा कि अगस्त, 1947 तक जब कि स्वाधीनता अधिनियम प्रवृत्त हुआ लगभग सब रियासतें भारत में प्रवेश कर गई सिवा दो उल्लेखनीय अपवादों के–उत्तर में कश्मीर और दक्षिण में हैदराबाद। कश्मीर ने तुरंत ही अन्य राज्यों के उदाहरण का अनुसरण किया और प्रविष्ट हो गया। हैदराबाद सहित सब रियासतों से आगे कार्रवाई न करने (स्टैन्डस्टिल) के करार हुये और हैदराबाद की स्थिति पूर्ववत् बनी रही।
- यह कहना चाहिए कि रियासतों की जनता और शासकों को श्रेय प्राप्त है और सरदार पटेल के बुद्विमत्तापूर्ण तथा दूरदर्शी पथ प्रदर्शन के अधीन राज्य मंत्रालय के लिए भी यह कम श्रेय की बात नहीं है कि सरदार पटेल ने जो घोषणा की है उससे स्थिति स्पष्ट हो गई है और इस नये संविधान में रियासतों और प्रांतों में वह अंतर नहीं है, जो पहले था।
- यह एक स्वाभाविक इच्छा है कि हमारी अपनी भाषा होनी चाहिये और देश में बहुत सी भाषाओं के प्रचलित होने के कारण कठिनाइयों के होते हुए भी हम हिन्दी को अपनी राज भाषा के रूप में स्वीकार कर सके हैं जो एक ऐसी भाषा है जिसे देश में सबसे अधिक लोग समझते हैं। अब यह इस समूचे देश का कर्तव्य है और विशेषकर उनका जिनकी भाषा हिन्दी है कि इसको ऐसा रूप दें और इस प्रकार से विकसित करें कि यह एक ऐसी भाषा बन जाए जिससे भारत की सामाजिक संस्कृति की पर्याप्त तथा सुंदर रूप में अभिव्यक्ति हो सके।
- ऐसी केवल दो खेद की बातें है जिनमें मुझे माननीय सदस्यों का साथ देना चाहिए। विधानमंडल के सदस्यों के लिए कुछ अर्हतायें निर्धारित करना मैं पसंद करता। यह बात असंगत है कि उन लोगों के लिये हम उच्च अर्हताओं का आग्रह करें जो प्रशासन करते है या विधि के प्रशासन में सहायता देते हैं और उनके लिये हम कोई अर्हता न रखें जो विधि का निर्माण करते हैं।
- दूसरा खेद इस बात पर है कि हम किसी भारतीय भाषा में स्वतंत्र भारत का अपना प्रथम संविधान नहीं बना सके दोनों मामलों में कठिनाईयां व्यवहारिक थी और अविजेय सिद्ध हुई। पर इस विचार से खेद में कोई कमी नहीं हो जाती है।
- माननीय सदस्यों को यह जान कर खुशी होगी कि इस कार्यवाई में जनता बडी दिलचस्पी ले रही थी और मुझे यह विदित हुआ है कि जितने समय तक संविधान विचाराधीन रहा उस समय में 53,000 दर्शकों को दर्शक गैलरी में जाने दिया गया।

- जिन बातों पर खर्च हुआ है यदि आप उन बातों पर विचार करें तो जो खर्च सभा ने अपने तीन वर्ष के जीवन में किया है वह बहुत अधिक नहीं है। मैं समझता हूँ कि 22 नवम्बर तक 63,96,729 रूपया खर्च में आया है।

आखिरकार वह क्षण आया जिसकी प्रतीक्षा न केवल संविधान सभा अपितु संपूर्ण स्वतंत्र भारत वर्ष कर रहा था, अध्यक्ष डॉ. राजेन्द्र प्रसाद ने व्यक्त किया कि–

डॉ अम्बेडकर द्वारा जो प्रस्ताव पेश किया गया था उस पर अब सभा का मत लेना शेष रह गया है।

प्रश्न यह है:

''कि इस सभा द्वारा निश्चित किये गये रूप में यह संविधान पारित किया जाये।''

प्रस्ताव स्वीकार किया गया।

अध्यक्ष ने संविधान को प्रमाणित किया एवं यह उल्लेख किया कि सभा का एक और सत्र निमंत्रित करने का उन्हें प्राधिकार दिया जाए। सभा 26 जनवरी सन् 1950 ई. की किसी ऐसी तिथि तक के लिये स्थगित हुई जिसे अध्यक्ष द्वारा नियत किया जाना था।

24 जनवरी, सन् 1950 – संविधान सभा का विशेष सत्र

26 नवंबर सन् 1949 को हमारा संविधान पारित किया गया जिसे पूर्ण रूप से 26 जनवरी 1950 से प्रभावी होना था, लेकिन संविधान सभा द्वारा अध्यक्ष को विशेष सत्र आहूत करने हेतु अधिकृत किया गया था उसी के अनुसरण में दिनांक 24 जनवरी, 1950 को संविधान सभा कॉन्सटीट्यूशन हॉल, नई दिल्ली में प्रातः 11 बजे अध्यक्ष माननीय डॉ राजेन्द्र प्रसाद के सभापतित्व में समवेत हुई। सर्वप्रथम श्री रत्नप्पा कुम्भार बम्बई राज्य एवं डॉ. वाई. एस. परमार हिमाचल प्रदेश ने शपथ ग्रहण की और रजिस्टर में हस्ताक्षर किये।

राष्ट्रगान की घोषणा – अध्यक्ष द्वारा यह अवगत कराया गया कि एक समय यह विचार किया गया था कि राष्ट्र–गान के विषय को सभा के समक्ष रखा जाए और वह एक प्रस्ताव द्वारा इसके संबंध में निर्णय करे किंतु अब यह समझा गया है कि राष्ट्र–गान के संबंध में एक प्रस्ताव स्वीकार कर रस्मी तौर से निर्णय करने के स्थान पर मैं ही एक वक्तव्य दे दूं इसीलिय मैं यह वक्तव्य देता हूं कि–

> **''जिस गान के शब्द तथा स्वर 'जन–गण–मन' के नाम से विख्यात है वह भारत का राष्ट्रगान है, किंतु उसके शब्दों में सरकार की आज्ञा से यथोचित अवसर पर हेर फेर किया जा सकता है। वंदेमातरम् के गान का जिसका भारतीय स्वतंत्रता के संग्राम में ऐतिहासिक महत्व रहा है, 'जन,गण,मन' के समान ही सम्मान किया जाएगा और उसका पद उसके समान ही होगा।''**

राष्ट्र–गान की घोषणा करते ही सभा में हर्ष ध्वनि हुई अध्यक्ष ने व्यक्त किया कि मुझे आशा है कि इससे सदस्यों को संतोष हो जाएगा।

राष्ट्रपति का निर्वाचन – हमारा संविधान पूर्ण रूप से 26 जनवरी, 1950 से लागू होना था, लेकिन 24 जनवरी, 1950 को राष्ट्रपति के निर्वाचन की प्रक्रिया प्रारंभ की गई जिसके तहत निर्वाचन अधिकारी तथा संविधान सभा के सचिव श्री एच.वी.आर. आयंगर ने अवगत कराया कि भारत के राष्ट्रपति पद के लिए केवल एक मनोनयन मत डॉ0 राजेन्द्रप्रसाद है, उनका नाम पंडित जवाहरलाल नेहरू ने प्रस्तावित और समर्थन सरदार वल्लभभाई पटेल ने किया तब यह घोषित किया गया कि भारत के राष्ट्रपति पद के लिए डॉ. राजेन्द्र प्रसाद नियमानुसार निर्वाचित किए जाते हैं।

संविधान का हिन्दी में अनुवाद – विधान परिषद् की प्रथम बैठक से अंतिम बैठक तक विभिन्न अवसरों पर सदस्यों ने मंशा जाहिर की थी कि संविधान की भाषा हिन्दी होनी चाहिए और अध्यक्ष डॉ. राजेंद्र प्रसाद ने आश्वस्त किया था कि 26 जनवरी से पूर्व संविधान का हिन्दी अनुवाद प्रकाशित किया जायेगा और 24 जनवरी, 1950 को जब संयुक्त प्रांत जनरल के प्रोफेसर शिब्बनलाल सक्सेना ने प्रश्न किया क्या संविधान का कोई हिन्दी अनुवाद तैयार किया गया है? इस पर अध्यक्ष श्री राजेन्द्र प्रसाद ने व्यक्त किया कि संविधान का हिन्दी अनुवाद तैयार है, श्री घनश्याम सिंह गुप्त ने अध्यक्ष महोदय को संविधान के हिन्दी अनुवाद की प्रतियां समर्पित की जिस पर अध्यक्ष ने हस्ताक्षर किए।

संविधान की प्रतियों पर सदस्यों द्वारा हस्ताक्षर – संविधान सभा के सभी सदस्यों के लिए सभवतः ऐतिहासिक एवं भावपूर्ण क्षण था, जब कठिन परिश्रम के उपरांत संविधान की प्रतियां तैयार थीं अध्यक्ष श्री राजेन्द्र प्रसाद ने वक्तव्य दिया कि–

> **''संविधान की तीन प्रतियां तैयार हैं। एक अंग्रेजी की प्रति है जो हाथ से लिखी गई है और जिसमें कलाकारों के चित्र अंकित किए हैं। दूसरी प्रति अंग्रेजी में छपी हुई प्रति है। तीसरी प्रति हाथ से लिखी हुई हिन्दी की प्रति है तीनों प्रतियां मेज पर रख दी गई है सदस्यों से प्रार्थना है कि वे एक–एक कर आएं और संविधान की प्रतियों पर हस्ताक्षर करें''।**

सभी सदस्यों ने बारी–बारी से संविधान की प्रतियों पर हस्ताक्षर किये।

मद्रास जनरल के श्री एम.अनंतशयनम् आयंगर ने अध्यक्ष जी से अनुमति मांगी कि सभी लोग ''जन–गण–मन''गाना चाहते हैं। अध्यक्ष जी ने अनुमति प्रदान की तब श्रीमती पूर्णिमा बनर्जी ने अन्य सदस्यों के साथ 'जन–गण–मन' का गान किया, इस दौरान सभी सदस्य खड़े रहे फिर अध्यक्ष जी ने वंदेमातरम कहा तत्पश्चात् श्री लक्ष्मीकांत मैत्र ने अन्य सदस्यों के साथ बंदेमातरम का गान किया इस दौरान सभी सदस्य खड़े रहे।

इसके पश्चात् संविधान सभा अनिश्चित तिथि तक के लिए स्थगित हो गई।

मंतव्य – 09 दिसम्बर 1946 को संविधान सभा ने संकल्प लिया कि भारत वर्ष के भावी शासन के लिए एक विधान बनाया जाए, दिनांक 26 नवंबर 1949 को संविधान को अधिनियमित, अंगीकृत और आत्मार्पित किया एवं दिनांक 26 जनवरी 1950 को हमारा संविधान पूर्णतः लागू हुआ।

डॉ. भीमराव अम्बेडकर ने संविधान को कार्यान्वित करने वालों के लिए ये संदेश दिया कि 'मैं समझता हूं कि संविधान चाहे जितना भी अच्छा हो यदि उसे कार्यान्वित करने वाले लोग बुरे हैं तो वह निस्संदेह बुरा हो जाता है।'

इसी प्रकार डॉ राजेन्द्र प्रसाद ने ये प्रकट किया कि 'आखिर संविधान एक यंत्र के समान एक निष्प्राण वस्तु ही तो है उसके प्राण तो वे लेाग है जो उस पर नियंत्रण रखते है और उसका प्रर्वतन करते है और देश को आज ऐसे ईमानदार लोगों के वर्ग से अधिक किसी अन्य वस्तु की आवश्यकता नहीं है जो अपने सामने देश के हित को रखें।'

09 दिसम्बर 1946 को संविधान सभा के संकल्प, 14 अगस्त की अर्द्धरात्रि को संविधान सभा के सदस्यों द्वारा ली गई शपथ एवं पारित संविधान की प्रस्तावना के मर्म का अनुगमन अपेक्षित है तभी वास्तविक अर्थों में संविधान को आत्मार्पित किया गया है, ऐसा **हम भारत के लोग** अनुभूत कर सकेंगे।

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PART – II

NOTES ON IMPORTANT JUDGMENTS

251. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 31(5) and 34(3)

Application for setting aside arbitral award – Limitation – Application filed with a delay of 73 days – Arbitration award was passed by Collector on 14.09.2022 – Application u/s 34 filed on 18.04.2023 alongwith application u/s 5 of the Limitation Act – Collector did not comply with the mandatory provision of section 31(5) and did not deliver copy of award to person concerned – Appellant was a rustic villager and not aware of the provisions of the Arbitration Act – It is not known when the award came to the knowledge of appellant – Presumption can be drawn that appellant filed appeal within extended period of 30 days over and above 90 days as provided u/s 34(3) of the Act – Held, application was found to be within limitation.

माध्यस्थम एवं सुलह अधिनियम, 1996 – धाराएं 31(5) एवं 34(3)

माध्यस्थम् पंचाट अपास्त करने हेतु आवेदन – परिसीमा – आवेदन 73 दिवस के विलंब से प्रस्तुत किया गया – माध्यस्थम् पंचाट कलैक्टर ने दिनांक 14.09.2022 को पारित किया था – धारा 34 का आवेदन दिनांक 18.04.2023 को परिसीमा अधिनियम की धारा 5 के आवेदन सहित प्रस्तुत किया गया – कलैक्टर ने धारा 31 (5) के आज्ञापक प्रावधान का पालन नहीं किया और पंचाट की प्रति संबंधित पक्षकार को प्रदान नहीं की – अपीलार्थी साधारण ग्रामीण व्यक्ति था और माध्यस्थम अधिनियम के उपबंधों से अवगत नहीं था – यह ज्ञात नहीं कि अपीलार्थी को पंचाट की जानकारी कब प्राप्त हुई – यह उपधारणा की जा सकती है कि अपीलार्थी ने अधिनियम की धारा 34(3) में यथा उपबंधित 90 दिनों से अधिक 30 दिनों तक बढ़ाई गई अवधि में अपील दायर की है – अभिनिर्धारित, आवेदन परिसीमा के अंतर्गत पाया गया।

Ganpat v. Land Acquisition Officer and Sub-Division Officer and ors.

Judgment dated 16.07.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Arbitration Appeal No. 57 of 2024, reported in 2024(3) MPLJ 419

Relevant extracts from the judgment:

This Court is also of the considered opinion that when the collector himself appears to be ignorant of law, and has not complied with the mandatory provisions of Section 31(5) of the Act of 1996, by not delivering the copy of the award to the appellant, it is unreasonable and unjustifiable for the court to shift entire burden of proof on the appellant, who hails from a remote village of district Dhar, to show that the application under section 34 was filed in time. Thus, under the facts and circumstances of the case, it can be safely presumed that the appellant filed the appeal within the extended period of 30 days over and above the 90 days as provided under section 34(3) of the Act of 1996.

A perusal of the aforesaid order also reveals that it is also distinguishable, as in the said order, the court has emphasized on the knowledge of the award, whereas, in the case at hand, this court has already held that it is not exactly known as to when the award came to the knowledge of the appellant because the certified copy of the award was obtained by some other person, and it is also not the case that any undue delay was caused in filing the application u/s.34 of the Act of 1996 as the delay was of 73 days only. Thus, in the facts and circumstances of the case, this Court is of the considered opinion that the aforesaid decision of Allahabad High Court is also of no avail to the respondents.

Resultantly, the appeal is allowed, and the impugned order dated 06.04.2024 is hereby set aside, and it is held that the application u/s.34 of the Act of 1996 filed by the appellant was within limitation. Consequently, the matter is remanded back to the District Court for its decision on the merits of the case.

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252. CIVIL PROCEDURE CODE, 1908 – Section 9

LAND REVENUE CODE, 1959 (M.P.) – Sections 248 and 257

Civil suit – Maintainability – Whether civil suit for declaration and injunction on the basis of adverse possession can be filed without availing the remedy of appeal against the order of Tehsildar passed u/s 248(c) of MPLRC? Held, Yes – Proceedings u/s 248 MPLRC are summary proceedings, which do not have effect of *res judicata* regarding the question of title – Even, filing of civil suit during pendency of first appeal before Revenue Court, has no adverse effect.

सिविल प्रक्रिया संहिता, 1908 – धारा 9

भू–राजस्व संहिता, 1959 (म.प्र.) – धाराएं 248 एवं 257

व्यवहार वाद – पोषणीयता – क्या भू-राजस्व संहिता की धारा 248 (सी) के अंतर्गत पारित तहसीलदार के आदेश के विरूद्ध अपील के उपचार का लाभ

उठाए बिना प्रतिकूल कब्जे के आधार पर घोषणा और निषेधाज्ञा के लिए व्यवहार वाद दायर किया जा सकता है? अभिनिर्धारित, हाँ – धारा 248 भू-राजस्व संहिता के अंतर्गत कार्यवाही संक्षिप्त कार्यवाही है, जो स्वामित्व के प्रश्न के संबंध में पूर्व न्याय का प्रभाव नहीं रखती – यहां तक कि, राजस्व न्यायालय के समक्ष प्रथम अपील के लंबित रहने के दौरान व्यवहार वाद का प्रस्तुत किया जाना प्रतिकूल प्रभाव नहीं रखेगा।

Olpherts Pvt. Ltd., Katni v. Sarla Devi Mahila Mandal and ors.

Order dated 13.02.2024 passed by the High Court of Madhya Pradesh in Civil Revision No. 796 of 2023, reported in 2024(3) MPLJ 694

Relevant extracts from the order:

It is relevant to mention here that although sub-section (3) of Section 248 of the Code was omitted in the year 2000 but no amendment was made in section 257 of the Code barring jurisdiction of civil Courts regarding establishment/decision of/about title over the disputed property, therefore, it cannot be said that omitting of sub-section (3) of Section 248 of the Code, has effect of excluding jurisdiction of civil Court.

Although against the order of section 248 of the Code there is remedy of first appeal under section 44 of Code before SDO but as has been held by this Court in the case of ***Santprasad v. Jawaharsingh, 1963 MPLJ Note 45***, the omission cannot be interpreted to mean that a litigant who has not pursued his remedy before the revenue Court at all, is precluded from bringing a suit in the civil Court to establish his title. It is pertinent to mention here that under the Code finality has not been given to the orders passed in the proceedings under section 248 of the Code especially in respect of establishment of title before civil Court.

In the case of ***Gappulal Meena and ors. v. Gajanand and ors., 2001(1) MPHT 150***, a coordinate Bench of this Court also considered almost identical controversy and has held as under:

> "In a Division Bench's decision of this Court, in the case of ***Bhupendra Singh v. Gopalkunwar, 1970 JLJ 256***, it has been held that the assumption the jurisdiction of Civil Court, where the order of authorities is a nuliity, is not barred. In another decision of this Court in the case of ***Radhe Mohan v. Omnarayan Dubey,1991 Revenue Nirnay 87***, it was pointed out that ex parte order of partition by Tehsildar can be challenged in civil suit for declaration of title.

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> From the evidence discussed hereinabove, it is apparent that the service of proceedings of partition, by Revenue Court, vide Ex. D-8, upon the plaintiff/appellant was not proper and in the circumstances, the order of partition by Revenue Court is not binding upon the plaintiff. Both the Courts below therefore, erred in law in dismissing the suit of the plaintiff on the ground that she was properly served in partition proceedings."

From bare reading of section 248 of the Code itself it is clear that the proceedings under section 248 of the Code, are summary proceedings, and so far as question of title is concerned, such proceedings do not have effect of res-judicata. In the case of ***Maa Kaila Devi Enterprises through its Partners v. State of M.P. and ors., 2012(2) MPLJ 562 (DB)*** (para 16), a division bench of this Court had considered the nature and scope of enquiry under section 248 of the Code and held that the procedure prescribed under section 248 of the Code in regard to ejectment is summary in nature.

In view of the aforesaid legal position it can very well be said that principle/procedure of first exhausting of available alternative/statutory remedy is applicable only in the case of approaching to the High Court under Article 226/227 of the Constitution of India and not in respect of invoking of jurisdiction of Civil Court under section 9 of Civil Procedure Code, unless jurisdiction of civil Court is clearly excluded creating bar under the Code/special Act itself or any finality has been given to the order under the Code.

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253. CIVIL PROCEDURE CODE, 1908 – Sections 10 and 151

Stay of suit – Plaintiff and defendant are real brothers – Plaintiff filed suit for permanent injunction, possession, mesne profits and compensation – Earlier, a suit was filed by other members of joint Hindu family for declaration and injunction relating to the same suit property, in which both plaintiff and defendant were co-defendants – Co-defendants cannot file counter-claim against each other, therefore, the *interse* dispute between them was not a subject-matter of earlier suit – It can be decided only in a separate suit – Section 10 of CPC will not apply in such a case and therefore suit is maintainable and not liable to be stayed.

सिविल प्रक्रिया संहिता, 1908 – धाराएं 10 एवं 151

वाद का रोक दिया जाना – वादी और प्रतिवादी सगे भाई हैं – वादी ने स्थायी निषेधाज्ञा, आधिपत्य, अंतःकालीन लाभ और क्षतिपूर्ति के लिए वाद प्रस्तुत किया – पूर्व में संयुक्त हिंदू परिवार के अन्य सदस्यों द्वारा उसी संपत्ति के संबंध में घोषणा एवं निषेधाज्ञा के लिए वाद प्रस्तुत किया गया था, जिसमें वादी और प्रतिवादी दोनों सह–प्रतिवादी थे – सह–प्रतिवादी एक–दूसरे के विरूद्ध प्रति–दावा प्रस्तुत नहीं कर सकते हैं, इसलिए, उनके बीच के अंर्तविवाद पूर्व के वाद की विषय वस्तु नहीं थी – यह केवल पृथक वाद में निश्चित किया जा सकता है – सी.पी.सी. की धारा 10 ऐसे मामले में लागू नहीं होगी और इस कारण वाद पोषणीय है तथा वाद रोके जाने योग्य नहीं हैं।

Arvind Kumar v. Trilok Kumar

Order dated 12.03.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 2480 of 2021, reported in 2024(3) MPLJ 650

Relevant extracts from the order:

The previous suit was filed by mother and two brothers i.e. Santosh Kumar and Sanjay Kumar against remaining 2 brothers i.e. Arvind Kumar and Trilok Kumar (plaintiff and defendant in the present suit) in respect of the whole Joint Hindu Family Property. The plaintiffs are seeking declaration of title of a joint owner of the suit property and the injunction that defendants be restrained not to sale the same to anyone. In the said suit, the present plaintiff filed separate written statement as defendant No.1 and in which by way of special pleading he pleaded that the Tehsildar Malharganj in case No.45-A of 27/1989-1990 vide order dated 10.07.1990 recorded his name as owner of the suit land bearing survey No.1181 area 0.670 hectare. The defendant is separately contesting the earlier suit (now first appeal) as defendant No.2. The present suit is filed by plaintiff Arvind Kumar in order to protect his suit land from the defendant by seeking permanent injunction and now the possession because during pendency of the possession the defendant said to have dispossessed him.

Therefore, the dispute between plaintiff and defendant is altogether different dispute in which plaintiff is seeking decree for possession and protection of his suit land. Plaintiff and defendant both are codefendants in the previous suit and it is a settled law that the codefendants cannot fight against each other as they cannot file a counter claim against each other. Hence, any inter se dispute

between plaintiff and defendant in respect of survey No.1181 area 0.670 hectare cannot be decided in pending first appeal before this Court.

The Apex Court in case of ***Rohit Singh and ors. v. State of Bihar(Now State of Jharkhand) and ors., (2006) 12 SCC 734*** and now in case of ***Damodhar Narayan Sawale v. Tejrao Bajirao Mhaske, 2023 SCC OnLine SC 566*** has held that codefendants cannot file the counter claim against each other, therefore, the *inter se* dispute between the co-defendants cannot be decided and if they have a separate dispute in respect of one of the property, they can contest separately and for which Section 10 of CPC will not apply.

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254. CIVIL PROCEDURE CODE, 1908 – Section 11

***Res judicata* – Applicability between the co-defendants – Held, the principle of *res judicata* is applicable not only between the plaintiff and the defendants but also between the co-defendants on fulfilment of three primary conditions i.e. there is conflict of interest between the co-defendants, there is necessity to decide the said conflict in order to give relief to plaintiff and there is final decision adjudicating the said conflict – When in earlier suit, rights of co-defendants in respect of suit land were neither in issue nor adjudicated even, principle of *res judicata* will not be applicable.**

सिविल प्रक्रिया संहिता, 1908 – धारा 11

पूर्व न्याय – सहप्रतिवादियों के मध्य प्रयोज्यता – अभिनिर्धारित, पूर्व न्याय का सिद्धांत न केवल वादी एवं प्रतिवादीगण के मध्य अपितु सहप्रतिवादियों के मध्य भी तीन प्राथमिक शर्तों की पूर्ति होने पर लागू होता है, अर्थात सहप्रतिवादीगण के मध्य हितों का विवाद है, वादी को अनुतोष प्रदान करने के लिए उक्त विवाद का निराकरण आवश्यक है एवं उक्त विवाद का निराकरण करते हुए अंतिम निर्णय पारित किया गया है – पूर्व न्याय का सिद्धांत लागू नहीं होगा जब पूर्व वाद में वादग्रस्त भूमि के संबंध में न तो सहप्रतिवादीगण के अधिकार विवादित थे और न ही उनका विनिश्चय हुआ।

Har Narayan Tewari (D) through Legal Representatives v. Cantonment Board, Ramgarh Cantonment and ors.

Judgment dated 08.07.2024 passed by the Supreme Court in Civil Appeal No. 8829 of 2010, reported in (2024) 8 SCC 114

Relevant extracts from the judgment:

The general policy behind the principle of res judicata as enshrined under Section 11 CPC is to avoid parties to litigate on the same issue which has already been adjudicated upon and settled. This is in consonance with the public policy so as to bring to an end the conflict of interest on the same issue between the same parties. One of the basic essential ingredients for applying the principle of res judicata, as stated earlier also, is that the matter which is directly and substantially in issue in the previous litigation ought not to be permitted to be raised and adjudicated upon in the subsequent suit. It is a settled law that the principle of res judicata is applicable not only between the plaintiff and the defendants but also between the co-defendants. In applying the principle of res judicata between the co-defendants, primarily three conditions are necessary to be fulfilled, namely, (i) there must be a conflict of interest between the co-defendants; (ii) there is necessity to decide the said conflict in order to give relief to plaintiff; and (iii) there is final decision adjudicating the said conflict. Once all these conditions are satisfied, the principle of res judicata can be applied *inter se* the co-defendants.

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255. CIVIL PROCEDURE CODE, 1908 – Section 20 and Order 1 Rules 3 & 7

(i) Civil suit – Issue of territorial jurisdiction – Suit was filed by the plaintiff for recovery of payment of goods shipped – The contract comprised of sale of goods which took place at Delhi and Shipment of goods from Mumbai to Djibouti – Appellant alleged that they were not part of the first transaction which occurred at Delhi, hence, suit could not have been brought against them in Delhi – Held, transactions were intertwined and cannot be compartmentalized – Plea of not having territorial jurisdiction was set aside.

(ii) Issue of territorial jurisdiction – Preliminary issue – Question of territorial jurisdiction should not be deferred – It should be decided at the outset.

सिविल प्रक्रिया संहिता, 1908 – धारा 20 एवं आदेश 1 नियम 3 एवं 7

(i) सिविल वाद – प्रादेशिक क्षेत्राधिकार का वाद विषय – वादी द्वारा भेजे गये माल के भुगतान की वसूली हेतु दावा प्रस्तुत किया गया – संविदा में माल का विक्रय जो दिल्ली में हुआ एवं माल को मुम्बई से जिबूटी भेजा जाना समाविष्ट था – अपीलार्थी ने यह आक्षेपित किया कि पहला संव्यवहार दिल्ली में हुआ था जिसमें वे सम्मिलित नहीं थे अतः उनके विरूद्ध दिल्ली में वाद नहीं लाया जा सकता – अभिनिर्धारित, संव्यवहार

परस्पर अंतर्मिश्रित है एवं उन्हे पृथक नहीं किया जा सकता – प्रादेशिक क्षेत्राधिकार न होने के अभिवाक् को अपास्त किया गया।

(ii) प्रादेशिक क्षेत्राधिकार का वाद विषय – प्रारंभिक वाद विषय – प्रादेशिक क्षेत्राधिकार के प्रश्न को स्थगित नहीं किया जाना चाहिए – इसे प्रारंभ में ही निराकृत करना चाहिए।

Arcadia Shipping Limited v. Tata Steel Limited and ors.

Judgment dated 16.04.2024 passed by the Supreme Court in Civil Appeal No. 5599 of 2024, reported in (2024) 9 SCC 374

Relevant extracts from the judgment:

Section 20(c) of the Code accords *dominus litis* to the plaintiff to institute a suit within local limits of whose jurisdiction the cause of action, wholly or in part arises. Every suit is based upon the cause of action, and the situs of the cause of action, even in part, will confer territorial jurisdiction on the court. The expression 'cause of action' can be given either a restrictive or wide meaning. However, it is judicially read to mean - every fact that the plaintiff should prove to support their right to the judgment.

Order I Rule 3 of the Code states that the plaintiff may join as a defendant in one suit, all persons against whom, the plaintiff claims the right to relief in respect of, or arising out of, the same act or transaction or series of transactions. The claim *viz*. the defendants can be joint, several or in the alternative. Thus, it is permissible to file one civil suit, even when, separate suits can be brought against such persons, when common questions of law and fact arise.

Order I Rule 7 of the Code permits a plaintiff who is in doubt as to the person from whom they are entitled to obtain redress, to join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, can be decided in one suit.

The supply order was placed in Delhi and the payment was to be released in Delhi. Accordingly, the cause of action arose in part at Delhi, in terms of Section 20(c) of the Code. As per Order I Rules 3 and 7 of the Code, it was permissible for Bhushan Steel to enjoin in a single suit all the defendants, including Arcadia. Their claim of right to relief lies against all such defendants. Further, the relief claimed was in respect of or arising out of a series of transactions, the sale of goods and then their shipment, which transactions were connected and synchronized with the relief claimed. The cause of action could not have been adjudicated without impleading all the defendants as parties. Thus, in

terms of Order I Rule 3, the relief claimed by Bhushan Steel lies against all the defendants, albeit to different extents and was 'in respect of and arises out of a series of transactions'. Thus, Bhushan Steel was within its rights to enjoin all the defendants under a single suit as per Order I Rule 7 of the Code such that the extent of liability of each defendant could be decided in the same suit.

Therefore, the Division Bench of the High Court was right in setting aside the finding recorded by the Single Judge *viz* issue no. 1 – territorial jurisdiction.

However, we must also record that a question of territorial jurisdiction should ordinarily be decided at the outset rather than being deferred till all matters are resolved.

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256. CIVIL PROCEDURE CODE, 1908 – Section 20 and Order 7 Rule 10

Return of plaint on the ground of territorial jurisdiction – Civil suit for recovery of money is filed before the court at Mhow, District Indore – Application for return of plaint filed by the defendant on the ground that no cause of action has arisen at office of plaintiff in Mhow, District Indore, which was rejected by the trial court – As per plaint, negotiations took place at Delhi – None of the defendants has ever had any negotiations or agreement at Mhow – All defendants reside at Bombay and no corporate office of defendant is situated at Mhow – E-mails and phone calls received at Mhow, do not create any cause of action regarding negotiations – Trial court of Mhow lacks territorial jurisdiction – Order set aside and trial court directed to return the plaint with liberty to file before competent court.

सिविल प्रक्रिया संहिता, 1908 – धारा 20एवं आदेश 7 नियम 10

प्रादेशिक क्षेत्राधिकार के आधार पर वाद पत्र का लौटाया जाना – धन की वसूली के लिए व्यवहार वाद महू, जिला इंदौर के न्यायालय के समक्ष प्रस्तुत किया गया – प्रतिवादी द्वारा वाद को लौटाये जाने के लिए आवेदन इस आधार पर प्रस्तुत किया गया कि वादी के कार्यालय महू, जिला इंदौर में कोई वाद कारण उत्पन्न नही हुआ है, जिसे विचारण न्यायालय ने अस्वीकार कर दिया – वाद पत्र के अनुसार वार्ता दिल्ली में हुई – किसी भी प्रतिवादी ने कभी भी महू में कोई वार्ता या करार नहीं किया – सभी प्रतिवादी बॉम्बे में निवास करते हैं और प्रतिवादी का कोई कॉर्पोरेट कार्यालय महू में स्थित नहीं है – महू में प्राप्त ई–मेल और फोन कॉल, वार्ता के संबंध में कोई वाद कारण उत्पन्न नहीं करते – महू न्यायालय को प्रादेशिक क्षेत्राधिकार नहीं है – आदेश अपास्त किया गया

और विचारण न्यायालय को सक्षम न्यायालय के समक्ष वाद प्रस्तुत करने की स्वतंत्रता के साथ वाद को लौटाये जाने का निर्देश दिया गया।

Sunil Lulla v. Nirmala Janki Cinemas Pvt. Ltd., Mhow and ors.

Order dated 05.02.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 241 of 2015, reported in 2024(3) MPLJ 656

Relevant extracts from the order:

The term "cause of action" has certainly not been defined in civil procedure code but, Courts of India have perceived the entire bundle of facts to be the relevant facts for constituting a cause of action, which relate the place of occurrence. The facet of "cause of action" would postulate accrual of all relevant facts at a place for attracting "territorial jurisdiction" of a court and as such the phrase. In respect of any cause of action arising at any place where it has also a subordinate office, at such place" used in the explanation appended to Clause (c) of Section 20, Civil Procedure Code would acquire prominence for appreciating the fact of the accrual of the cause of action at particular place.

In the present case, according to plaint negotiation took place in Delhi at Mr. Ponty Chaddhas Farm House, thus no cause of action has arisen at Mhow as none of the defendants has ever had any negotiation or agreement at Mhow which may give rise to the cause of action at Mhow as such, nothing material has taken place at village-Kadoria, Tehsil Mhow.

In the considered opinion of this Court, findings of the court below is that plaintiff had received certain e-mails and phone calls at Mhow, hence, cause of action has arisen at Mhow is totally misplaced. All the defendants resided in Bombay and no corporate office of the defendants is situated at Mhow and no negotiation took place at Mhow and, therefore, E-mails do not create any cause of action regarding negotiation, hence, in the considered opinion of this Court, trial court has committed error in holding that court at Mhow has territorial jurisdiction to try the suit filed by respondent.

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257. CIVIL PROCEDURE CODE, 1908 – Section 51 and Order 21 Rules 37 and 40

Execution of money decree – Arrest and detention of judgment-debtor – Procedure prescribed under Order 21 Rule 40 has to be followed and Executing Court is required to conduct an enquiry – Notice issued to judgment-debtor as per Order 21 Rule 37 – Judgment-debtor appears

before Executing Court in compliance of the said notice – Without conducting an enquiry, judgment-debtor has been directed to be sent to civil prison – Held, before sending judgment-debtor to civil prison, proviso to section 51 has to be complied with and Executing Court has to record its satisfaction for sending judgment-debtor to civil prison – Order passed without following mandatory provision, not sustainable.

सिविल प्रक्रिया संहिता, 1908 – धारा 51 एवं आदेश 21 नियम 37 एवं 40 धन की डिक्री का निष्पादन – निर्णीतऋणी की गिरफ्तारी एवं निरोध – आदेश 21 नियम 40 में दी गई प्रक्रिया का पालन करना होगा और निष्पादन न्यायालय को जांच करनी होगी – आदेश 21 नियम 37 के अनुसार निर्णीतऋणी को नोटिस जारी किया गया – निर्णीतऋणी उक्त नोटिस के पालन में निष्पादन न्यायालय के समक्ष उपस्थित हुआ – जांच किये बगैर निर्णीतऋणी को सिविल कारागार भेजा गया – अभिनिर्धारित, निर्णीतऋणी को सिविल कारागार भेजे जाने के पूर्व धारा 51 के परन्तुक का पालन करना होगा एवं निष्पादन न्यायालय को, निर्णीतऋणी को सिविल कारागार भेजने के लिए अपनी संतुष्टि अभिलिखित करनी होगी – आज्ञापक उपबन्धों का पालन किए बिना पारित आदेश स्थिर रखने योग्य नहीं।

Jeevan Singh v. Jagdish

Order dated 18.03.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 7406 of 2023, reported in 2024(3) MPLJ 307

Relevant extracts from the order:

Before ordering detention of judgment debtor in civil prison, the Court has to record reasons in writing of its satisfaction of existence of any of the conditions enumerated in Clause (a), Clause (b) or Clause (c) of the proviso to Section 51. It is specifically mandated that prior to detention of judgment debtor in civil prison reasons have to be recorded in writing, satisfaction has to be arrived at and at least one of the contingencies contemplated under Clause (a), Clause (b) or Clause (c) of the proviso have to be held to be existing. The procedure which has been laid down in sub-rule (1) of Rule 40 of Order 21 has to be followed and the conditions laid down in the proviso to Section 51 have to be held existing.

In this regard, I may profitably refer to the decision of this Court in ***Subhash Chand Jain v. Central Bank of India, AIR 1999 MP 195*** in which it has been held as under:-

"From a bare reading of the relevant provisions quoted above, it is evident that when executing Court exercises discretion of issuing show cause against the detention in prison then executing Court has to follow the procedure laid down in Clause (1) of Rule 40 of Order 21 which provides that after notice issued under Rule 37; the Court shall proceed to hear the decree holder and to take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison. In the case in hand the executing Court after issuing show cause did not hold any enquiry as contemplated of Clause (1) of Rule 40 of Order 21 nor has complied the conditions laid down in proviso to Section 51 so as to record its reasons after its satisfaction for detaining or sending the judgment-debtor in civil prison"

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258. CIVIL PROCEDURE CODE, 1908 – Section 51 and Order 21 Rules 37 and 40

(i) Execution of money decree by detention of judgment-debtor in civil prison – When can be ordered? Whenever an application under Order 21 Rule 37 CPC is filed, the Executing Court has to follow the procedure laid down under Order 21 Rule 40(1) CPC – Executing Court neither conducted any enquiry as contemplated in clause (1) of Rule 40 nor recorded any satisfaction as provided in proviso to section 51 for detaining or sending the judgment-debtor to civil prison – Order not sustainable.

(ii) Money decree – Execution by detention of judgment-debtor in civil prison – Judgment-debtor has no property or source to pay decreetal amount – Cannot be sent to civil prison due to poverty as poverty is not an offence. (*Jolly George Varghese & anr. v. Bank of Cochin, AIR 1980 SC 470* relied on).

सिविल प्रक्रिया संहिता, 1908 – धारा 51 एवं आदेश 21 नियम 37 एवं 40

(i) धन की डिक्री का निष्पादन – निर्णीतऋणी के सिविल कारागार में निरोध द्वारा – कब आदेशित किया जा सकता है? जब आदेश 21 नियम 37 सीपीसी के अन्तर्गत आवेदन प्रस्तुत किया जाता है तब निष्पादन न्यायालय को आदेश 21 नियम 40(1) सीपीसी में उल्लिखित प्रक्रिया का पालन करना होगा – निष्पादन न्यायालय ने नियम 40 के खण्ड (1) के

अन्तर्गत न तो जांच की और न ही निर्णीतऋणी को सिविल कारागार में भेजने या निरूद्ध रखने के संबंध में धारा 51 के परंतुक में विहित अपने समाधान को लेखबद्ध किया – आदेश स्थिर रखे जाने योग्य नहीं।

(ii) धन की डिक्री – निर्णीतऋणी के सिविल कारागार में निरोध द्वारा निष्पादन – निर्णीतऋणी के पास कोई सम्पत्ति नहीं या डिक्री धन के भुगतान हेतु कोई स्त्रोत नहीं – उसे निर्धनता के कारण सिविल कारागार नहीं भेजा जा सकता क्योंकि निर्धनता एक अपराध नहीं है (*जॉली जॉर्ज वर्गीस व अन्य वि. बैंक ऑफ कोचीन, एआईआर 1980 एससी 470* पर निर्भर)

Sadkik Akaram v. Kuldeep

Order dated 30.01.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 7452 of 2023, reported in 2024(3) MPLJ 69

Relevant extracts from the order:

Bare reading of the said provisions shows that when executing Court exercises discretion of issuing show cause against the detention in prison then executing Court has to follow the procedure laid down in clause (1) of Rule 40 of Order 21 which provides that after issuance of notice under Rule 37, the Court shall proceed to hear the decree holder and to take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison. In the instant case the executing Court after issuing show cause did not hold any enquiry as contemplated in Clause (1) of Rule 40 of Order 21 nor has complied the conditions laid down in proviso to S. 51 so as to record its reasons after its satisfaction for detaining or sending the judgment-debtor in civil prison.

It is clear that merely because there is a money decree in favour of respondent/D.H., the petitioner/J.D. who has no property or source to pay the decreetal amount, cannot be sent to civil prison because poverty is not an offence. The impugned order also does not show that executing Court has followed the provisions contained in Section 51, Order 21 rule 37 and 40 CPC in their true letter and spirit.

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259. CIVIL PROCEDURE CODE, 1908 – Section 141, Order 7 Rule 11 and Order 20 Rule 12

Mesne Profits **– Decree for recovery of possession passed in 1973 specifically provided for holding an inquiry regarding *mesne profits* in accordance with Order 20 Rule 12 CPC – In 2014, decree holder/respondents moved an application for holding an inquiry regarding *mesne profits* – Judgment debtor/Petitioner filed an application under Order 7 Rule 11(d) of CPC contending that it is barred by limitation and therefore, should be rejected – Held, the application for determination of *mesne profits* by conducting an inquiry as directed by the decree, is continuation of the suit and is in the nature of preparation of the final decree – Where no limitation is prescribed, it would be inappropriate for a Court to provide limitation – Application for such inquiry cannot be said to be barred by limitation – Order rejecting the said application filed by judgment-debtor upheld.**

सिविल प्रक्रिया संहिता, 1908 – धारा 141, आदेश 7 नियम 11 एवं आदेश 20 नियम 12

अन्तः कालीन लाभ – कब्जे के प्रत्युद्धरण (आधिपत्य प्राप्ति) हेतु 1973 में पारित आज्ञप्ति में विशिष्टतः यह प्रावधानित था कि संहिता के आदेश 20 नियम 12 के अनुसार अन्तः कालीन लाभ के निर्धारण हेतु जांच की जाएगी – 2014 में आज्ञप्तिधारी/प्रत्यर्थी ने अन्तः कालीन लाभ का निर्धारण करने हेतु जांच किये जाने बाबत आवेदन प्रस्तुत किया – निर्णितऋणी/याचिकाकर्ता ने संहिता के आदेश 7 नियम 11 (घ) के अंतर्गत आवेदन प्रस्तुत किया कि उपरोक्त आवेदन परिसीमा बाह्य है एवं उसे निरस्त किया जाना चाहिए – अभिनिर्धारित, अन्तः कालीन लाभ निर्धारण हेतु जांच किये जाने के लिए प्रस्तुत किया गया आवेदन आज्ञप्ति के निर्देशानुसार है और यह दावे की निरंतरता है और अंतिम आज्ञप्ति की तैयारी स्वरूप है – जहां कोई परिसीमा प्रावधानित नहीं है वहां न्यायालय के लिए परिसीमा प्रावधानित करना अनुचित है – ऐसी जांच हेतु प्रस्तुत आवेदन को परिसीमा से बाधित होना नहीं माना जा सकता – निर्णीतऋणी द्वारा प्रस्तुत किये गये आवेदन को निरस्त किये जाने के आदेश की पुष्टि की गई।

Choudappa and anr. v. Choudappa since deceased by LRs. and ors.

Order dated 03.09.2024 passed by the Supreme Court in Special Leave Petition (C) No. 3056 of 2023, reported in (2024) 9 SCC 236

Relevant extracts from the order:

It is in the light of the provision of Order 20 Rule 12 CPC that the Court of first instance while passing the judgment and order dated 12.07.1973 had specifically stated as under: -

> "An inquiry be held regarding future *mesne profits* of the said suit lands from the date of the suit, that is 24-9-1963 under Order 20 Rule 12(a) CPC"

Now, such an inquiry is nothing but a continuation of the suit and is in the nature of preparation of the final decree and as such, it cannot be said that any application moved as a reminder for completing the inquiry is barred by limitation or is liable to be dismissed on the ground of delay or laches.

The learned counsel for the petitioners has placed reliance upon a recent decision of this Court in ***M/s. North Eastern Chemicals Industries (P) Ltd. & anr. v. M/s. Ashok Paper Mill (Assam) Ltd. & anr.*** passed in Civil Appeal No. 2669 of 2013 on 11th December, 2023 to contend that where no limitation is provided, steps ought to be taken for initiation of proceedings within a reasonable time and not decades later.

In the aforesaid relied upon decision, the Court has clearly stated that in a situation where no limitation stands provided either by specific applicability of the Limitation Act or by the special statute governing the dispute, the Trial Court must undertake a holistic assessment of the facts and circumstances of the case to examine the possibility of delay. When no limitation stands prescribed, it would be inappropriate for a Court to supplement the legislature's wisdom by its own and provide a limitation.

In view of the aforesaid decision also, no limitation as an absolute rule could be provided in such matters and it depends upon the facts and circumstances of each case whether the proceedings have been initiated in a fairly reasonable time.

The two Courts below having held that the proceedings are not barred by limitation and that actually the proceedings are not in the nature of a fresh proceedings, rather than a continuation of the old suit in the form of a preparation of the final decree, we cannot find fault with the said decisions. We are not inclined to grant any indulgence in the matter. The present petition is, accordingly, dismissed.

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260. CIVIL PROCEDURE CODE, 1908 – Section 151

Insufficiently stamped instrument – Admitted in evidence and marked as exhibit – Whether such order/proceeding can be recalled? Held, Yes – Admission of an insufficiently stamped instrument and its marking as exhibit in evidence can be recalled for the ends of justice by the court in exercise of inherent powers saved by section 151 CPC.

सिविल प्रक्रिया संहिता, 1908 – धारा 151

अपर्याप्त रूप से स्टाम्पित लिखत – साक्ष्य में स्वीकार किया गया और प्रदर्शांकित किया गया – क्या इस तरह के आदेश/कार्यवाही को वापस लिया जा सकता है? अभिनिर्धारित, हाँ – न्यायालय द्वारा धारा 151 सिविल प्रक्रिया संहिता अंतर्गत, न्याय के उद्देश्य की पूर्ति के लिये, अन्तर्निहित शक्ति का प्रयोग करते हुए साक्ष्य में ग्राह्य किये गये अपर्याप्त रूप से स्टाम्पित लिखत एवं उसके प्रदर्शित किये जाने को वापस लिया जा सकता है।

G.M. Shahul Hameed v. Jayanthi R. Hegde

Judgment dated 09.07.2024 passed by the Supreme Court in Civil Appeal No. 1188 of 2015, reported in AIR 2024 SC 3339

Relevant extracts from judgment:

The Presiding Officer of a court being authorised in law to receive an instrument in evidence, is bound to give effect to the mandate of Sections 33 and 34 and retains the authority to impound an instrument even in the absence of any objection from any party to the proceedings. Such an absence of any objection would not clothe the Presiding Officer of the court with power to mechanically admit a document that is tendered for admission in evidence. The same limitation would apply even in case of an objection regarding admissibility of an instrument, owing to its insufficient stamping, being raised before a court of law. Irrespective of whether objection is raised or not, the question of admissibility has to be decided according to law. The Presiding Officer of a court when confronted with the question of admitting an instrument chargeable with duty but which is either not stamped or is insufficiently stamped ought to judicially determine it. Application of judicial mind is a *sine qua non* having regard to the express language of Sections 33 and 34 and interpretation of *pari materia* provisions in the Stamp Act, 1899 ("the 1899 Act" hereafter) by this Court. However, once a decision on the objection is rendered – be it right or wrong – Section 35 would kick in to bar any question being raised as to admissibility of the instrument on the ground that it is not duly stamped at any stage of the proceedings and the party aggrieved by alleged improper admission has to work out its remedy as provided by Section 58 of the 1957 Act.

Profitable reference may be made to the decision of this Court in ***Javer Chand v. Pukhraj Surana, AIR 1961 SC 1655***. There, provisions of Section 36 of the 1899 Act, which is *pari materia* Section 35 of the 1957 Act, came up for consideration. A Bench of four Hon'ble Judges of this Court held that when a document's admissibility is questioned due to improper stamping, it must be decided immediately when presented as evidence. The relevant paragraph is extracted hereunder :

> "Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. Once the court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the court. The court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. The record in this case discloses the fact that the hundis were marked as Exts. P-1 and P-2 and bore the endorsement "admitted in evidence" under the signature of the court. It is not, therefore, one of those cases where a document has been inadvertently admitted, without the court applying its mind to the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a court of superior jurisdiction."

Once again, addressing a matter concerning Section 36 of the 1899 Act, a Bench of three Hon'ble Judges of this Court in ***Ram Rattan v. Bajrang Lal, (1978) 3 SCC 236*** held as follows:

> "When the document was tendered in evidence by the plaintiff while in witness box, objection having been raised by the defendants that the document was inadmissible in evidence as it was not duly stamped and for want of registration, it was obligatory upon the learned trial Judge to apply his mind to the objection raised and to decide the objects in accordance with law. Tendency sometimes is to postpone the decision to avoid interruption in the process of recording evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. This, however would not mean that the objection as to admissibility on the ground that the instrument is not duly stamped is judicially decided; it is merely postponed. In such a situation at a later stage before the suit is finally disposed of it would nonetheless be obligatory upon the court to decide the objection. If after applying mind to the rival contentions the trial court admits a document in evidence, Section 36 of the Stamp Act would come into play and such admission cannot be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. The court, and of necessity it would be the trial court before which the objection is taken about admissibility of document on the ground that it is not duly stamped, has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case and *where a document has been inadvertently admitted without the court applying its mind as to the question of admissibility, the instrument could not be said to have been admitted in evidence with a view to attracting Section 36* (see ***Javer Chand v. Pukhraj Surana, AIR 1961 SC 1655***). The endorsement made by the learned trial Judge that "Objected, allowed subject to objection", clearly indicates that when the objection was raised it was not judicially determined and the document was merely tentatively marked and in such a situation Section 36 would not be attracted."

On the face of such an order, it does not leave any scope for doubt that on the date the GPA was admitted in evidence and marked as an exhibit, the trial court did not deliberate on its admissibility, much less applied its judicial mind, resulting in an absence of judicial determination. In the absence of a "decision" on the question of admissibility or, in other words, the trial court not having "decided" whether the GPA was sufficiently stamped, Section 35 of the 1957 Act

cannot be called in aid by the respondent. For Section 35 to come into operation, the instrument must have been "admitted in evidence" upon a judicial determination. The words "judicial determination" have to be read into Section 35. Once there is such a determination, whether the determination is right or wrong cannot be examined except in the manner ordained by Section 35. However, in a case of "no judicial determination", Section 35 is not attracted.

In the light of the aforesaid reasoning of the trial court of admitted failure on its part to apply judicial mind coupled with the absence of the counsel for the appellant before it when the GPA was admitted in evidence and marked exhibit, a factor which weighed with the trial court, we have no hesitation to hold that for all purposes and intents the trial court passed the order dated 19-10-2010 in exercise of its inherent power saved by Section 151 CPC, to do justice as well as to prevent abuse of the process of court, to which inadvertently it became a party by not applying judicial mind as required in terms of Sections 33 and 34 of the 1857 Act. We appreciate the approach of the trial court in its judicious exercise of inherent power.

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261. CIVIL PROCEDURE CODE, 1908 – Section 151 and Order 14 Rules 3 & 5
PUBLIC TRUSTS ACT, 1951 (M.P.) – Section 26
Proceeding u/s 26 of the Act of 1951 – Framing of issues – The scheme of the Act stipulates the need for an inquiry u/s 26 – The object is to provide a speedy and efficacious remedy – Mandatory provisions applicable to the trial of a regular civil suit, cannot be applied to proceedings u/s 26 mechanically – Framing of issues is not mandatory, either expressly or by necessary implication – Discretion lies in the hands of the court; it can either frame the issues or frame the points of determination while finally deciding the matter – Application for framing of issues found to be rightly rejected.

सिविल प्रक्रिया संहिता, 1908 – धारा 151 एवं आदेश 14 नियम 3 व 5
लोक न्यास अधिनियम, 1951 (म.प्र.) – धारा 26
1951 के अधिनियम की धारा 26 के अंतर्गत कार्यवाही – वादप्रश्नों की विरचना – अधिनियम की योजना धारा 26 के अंतर्गत जांच की आवश्यकता को निर्धारित करती है – इसका उद्देश्य एक त्वरित और प्रभावी उपचार प्रदान करना है – नियमित व्यवहार वाद में लागू होने वाले अनिवार्य प्रावधानों को धारा 26 के अंतर्गत की जाने वाली कार्यवाही पर यांत्रिक रूप से लागू नहीं किया जा सकता – अभिव्यक्त रूप से या आवश्यक निहितार्थ वादप्रश्नों की

विरचना करना अनिवार्य नहीं है – न्यायालय का यह विवेकाधिकार है कि वह या तो वादप्रश्न निर्मित करे या मामले को अंतिम रूप से निराकृत करते समय विचारणीय बिन्दु निर्मित करे – वाद प्रश्नों की विरचना करने के लिए प्रस्तुत आवेदन उचित रूप से अस्वीकार किया गया।

Vijay Kumar Tevraiya and ors. v. Registrar Public Trust and Sub-Divisional Officer (Revenue), Tikamgarh and ors.

Order dated 01.02.2024 passed by the High Court of Madhya Pradesh in Writ Petition No. 19978 of 2022, reported in 2024(3) MPLJ 509

Relevant extracts from the order:

The scheme of the Act of 1951 does not provide for a "trial", but an "inquiry". Thus, the mandatory provisions as applicable to trial of a regular civil suit cannot be mechanically applied to proceedings under Section 26 of the Act of 1951.

The reliance of the petitioners on para-41 of the judgement of the Hon'ble Supreme Court in the case of ***Ramrameshwari Devi v. Nirmala Devi & Ors., 2011 (8) SCC 249***, seems to be misplaced as the said matter arose from a regular civil suit. The learned counsel also relied on para-19 of the judgment in the case of ***Makhan Lal Bangal v. Manas Bhunia, 2001 (2) SCC 652,*** to contend that framing of issues is of paramount importance in the proceedings. However, in the same judgement the Hon'ble Supreme Court in para 21 has held that defective framing of the issues though material, has not vitiated the trial inasmuch as the parties have gone to the trial with full knowledge of the allegations and counter-allegations made in the pleadings.

A Division Bench of this Court, in the case of ***Dhanpal Singh & ors. v. Hariram, AIR 1974 MP 32***, has considered the scope of proceedings under sections 26 and 27 of the Act of 1951 and has held that under section 27 the District Judge is given authority to decide whether a Trust is being properly managed or not, and if it is not being properly managed, then it can remove trustee (s), appoint trustee (s) and can give directions regarding management of the Trust. Thus, the scope is only to decide the aspects of management of Public Trust. By barring Civil Suit, the intention is to provide speedy efficacious remedy. The counsel for the respondents seem to be correct in submitting that if the same procedure as trial in a regular civil suit is followed, then the very objective of carving out the speedy remedy through the District Court shall be frustrated.

The reliance on section 28 of the Act of 1951 seems to be misplaced. The said provision merely enables the Registrar is having power to take evidence. Mere enabling a court or authority to take evidence does not make it mandatory to frame issues, unless provided expressly or by necessary implication.

Thus, the petition seeking framing of issues holding it to be mandatory part of procedure seems to be misconceived. The scheme of sections 26 to 32 of the Act of 1951 does not provide for any such mandatory procedure for framing of issues, either expressly or by necessary implication. The District Court has already held that points of determination will be framed while finally deciding the matter. The Court is not barred from framing issues and/or from taking evidence. However, the discretion exercised by the Court in refusing to frame issues cannot be interfered with by holding it to be a violation of mandatory provision.

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262. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17 and Order 41 Rule 27

Amendment of plaint when suit is remanded – Documents of plaintiff taken on record in appeal under Order 41 Rule 27 of CPC and the matter was remanded to the trial court – Said documents were not in possession of the plaintiff during trial – Application for amendment of plaint was filed when matter was remanded to trial court – Amendment sought was with reference to additional documents filed – Held, amendment would not change the nature of suit – Application should be allowed.

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17 एवं आदेश 41 नियम 27

वाद प्रतिप्रेषित किए जाने पर वाद पत्र में संशोधन – अपील में आदेश 41 नियम 27 सीपीसी के अन्तर्गत वादी के दस्तावेज अभिलेख पर लिए गए और मामला विचारण न्यायालय को प्रतिप्रेषित किया गया – विचारण के दौरान कथित दस्तावेज वादी के आधिपत्य में नहीं थे – जब मामला विचारण न्यायालय को प्रेषित किया गया तब वाद पत्र में संशोधन हेतु आवेदन प्रस्तुत प्रस्तुत किया गया – वांछित संशोधन उन अतिरिक्त प्रस्तुत किए गये दस्तावेजों के संबंध में था – अभिनिर्धारित, संशोधन वाद के स्वरूप में परिवर्तन नहीं करेगा – आवेदन स्वीकार किया जाना चाहिए।

Riyazuddin v. Nisaruddin @ Antim Lala and ors.

Order dated 22.03.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 1689 of 2023, reported in 2024(4) MPLJ 94

Relevant extracts from the order:

This Court has held that after remand, the jurisdiction of the lower Court depends upon the terms of the order of remand, and this Court has directed the trial court to frame additional issues, if any, necessary and to decide the same in accordance with law, thus, merely if the Appellate Court has not specifically directed to the trial court to entertain an application for amendment, it cannot be inferred that the Appellate Court had restricted the same. As already observed, it has been held by the appellate court that the documents which have been filed by the petitioner/plaintiff under Order 41 Rule 27 of the CPC, were not available with the petitioner/plaintiff during the trial. In such circumstances, if the petitioner/plaintiff is not allowed to incorporate the aforesaid documents in the body of the plaint, the order on the application under Order 41 Rule 27 of the CPC, which was allowed by the district appellate court would become otiose, and that cannot be the intention of the District Appellate Court.

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

(i) Rejection of plaint under Order 7 Rule 11 CPC – Scope – Grounds as contained in Rule 11 are not exhaustive and are merely illustrative – Plaint can be rejected on other grounds also, if suit is not maintainable.

(ii) Rejection of plaint – Plaintiff, who himself was the executant of the gift deed, filed the suit seeking for declaration that gift deeds are null and void – Suit filed after three years of execution of gift deeds – Plaintiff tried to bring the suit within limitation period by using clever drafting – Plaint found to be manifestly vexatious and not disclosing a clear right to sue – Held, suit is barred by law – Order of trial court rejecting application under Order 7 Rule 11 was quashed.

(iii) Limitation for filing suit – If a suit is based upon multiple causes of action, period of limitation will begin to run from date when right to sue first occurs – Successive violations will not give rise to fresh cause of action.

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

(i) वादपत्र का आदेश 7 नियम 11 सीपीसी के अंतर्गत नामंजूर किया जाना – विस्तार – नियम 11 में दिए गए आधार परिपूर्ण नहीं है एवं वह केवल दृष्टांत दर्शक है – यदि वाद पोषणीय नहीं है तो अन्य आधार पर भी वाद पत्र नामंजूर किया जा सकता है।

(ii) वादपत्र नामंजूर करना – वादी जो स्वयं दान विलेख का निष्पादनकर्ता था, ने दान विलेखों को शून्य व अकृत घोषित करने हेतु वाद प्रस्तुत किया – दानविलेख के निष्पादन के तीन वर्ष उपरान्त वाद प्रस्तुत किया गया – वादी ने चतुराई पूर्ण अभिवचन का उपयोग करते हुए वाद को परिसीमा के भीतर लाने का प्रयास किया – वाद स्पष्टतः तंग करने वाला एवं स्पष्ट वादकारण दर्शित करने वाला नहीं पाया गया – अभिनिर्धारित, वाद विधि द्वारा वर्जित – विचारण न्यायालय का आदेश जिसके द्वारा आदेश 7 नियम 11 के आवेदन को निरस्त किया गया था, को अभिखण्डित किया गया।

(iii) वाद प्रस्तुत करने की परिसीमा – यदि वाद अनेक वाद कारणों पर आधारित है, तो परिसीमा की अवधि उस दिनांक से प्रारंभ होगी जब प्रथम बार वाद प्रस्तुत करने का अधिकार उत्पन्न हुआ – अधिकार के उत्तरोत्तर उल्लंघन से नया वाद हेतुक उत्पन्न नहीं होगा।

Manjula Chordiya and anr. v. Bharat Chordiya and anr.

Order dated 06.03.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 115 of 2022, reported in 2024(3) MPLJ 132

Relevant extracts from the order:

In the instant case, respondents No.1/plaintiff's main plea is that the applicants have committed fraud with him, but it is noteworthy that plaintiff himself is the executor of the said gift deeds, which were executed in the year 2016, therefore, the aforesaid fact was known to the plaintiff since the execution of the gift deeds i.e. in the year 2016, but soon after the execution of the gift deeds plaintiff has not filed any suit against the appellants/defendants No.1 and 2 for setting aside the aforesaid gift deeds and for declaring them as null and void, since the present civil suit has been filed on 06/07/2021. As per the Article 58 of the Limitation Act, the period of limitation is three years and if a suit is based upon multiple causes of action, the period of limitation will begin to run from the

date when the right to sue first accrues. The successive violation of the right will not give rise to fresh cause of action and suit is liable to be dismissed from the day when the right to sue first accrued.

It is also observed that averments made in the instant plaint, are cleverly drafted to bring suit within limitation and false plea of alleged compromise in a suit filed by plaintiff's brother is raised in the plaint. It is alleged that as per the terms of compromise with plaintiff's brother, gift deeds were executed by the plaintiff in favour of the defendants No.1 and 2. The plaintiff did not file any relevant document in support of alleged compromise. From bare reading of the plaint, it is found that plaint is manifestly vexatious and meritless and not disclosing a clear right to sue, therefore, the trial Court should exercise its power under Order VII Rule 11 of CPC to ascertain the materials for cause of action.

Therefore, it is a settled position of law that the averments and the allegations made in the instant plaint are required to be considered at the time of deciding the application under Order VII Rule 11 CPC is accepted, in that case also by such vague allegations with respect to the date of knowledge, the plaintiff cannot be permitted to challenge the documents after a period of 05 years. By such a clever drafting and using the word "fraud", the plaintiff has tried to bring the suit within the period of limitation invoking Section 17 of the Limitation Act.

Thus, in view of the aforesaid law laid down by Hon'ble the Apex Court and for the reasons cited above, this Court is of the considered opinion that the provision of Order VII Rule 11 of CPC is not exhaustive and is merely illustrative and in a suit if not maintainable, plaint can be rejected on other grounds also.

In view of the aforesaid, the civil suit filed by the respondent No.1/plaintiff is hopelessly barred by law and allowing its continuance would be gross misuse of process of law. Hence, the plaint deserves to be rejected, but the trial Court has erred in not exercising the power under Order VII Rule 11 of CPC. For the reasons cited above, impugned order passed by the trial Court cannot be sustained and it deserves to be quashed.

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264. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11
TRANSFER OF PROPERTY ACT, 1882 – Section 53-A
Suit for permanent injunction – Maintainability – Plaintiff instituted the suit on the basis of agreement to sell the immovable property for protecting his possession u/s 53A of the Transfer of Property Act –

Plaintiff failed to claim relief of specific performance – No averments in the plaint showing that conditions which are necessary u/s 53-A of the Act for defending or protecting possession are fulfilled – Suit is not maintainable – Plaint rejected.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11
संपत्ति अंतरण अधिनियम, 1882 – धारा 53-क
स्थायी निषेधाज्ञा हेतु वाद – पोषणीयता – वादी ने अचल सम्पत्ति के विक्रय अनुबंध के आधार पर उक्त संपत्ति पर अपने आधिपत्य की संरक्षा हेतु धारा 53-क सम्पत्ति अन्तरण अधिनियम के अन्तर्गत वाद प्रस्तुत किया – वादी विनिर्दिष्ट अनुपालन के अनुतोष की मांग करने में विफल रहा – वाद पत्र में यह दर्शित करने हेतु कोई अभिवचन नहीं कि सम्पत्ति अन्तरण अधिनियम की धारा 53-क के अंतर्गत आधिपत्य के बचाव अथवा उसके संरक्षण के लिए आवश्यक शर्ते पूरी होती है – वाद पोषणीय नहीं – वाद पत्र नामंजूर।

Pushpa Patel and ors. v. Neelima Tiwari and anr.

Order dated 25.01.2024 passed by the High Court of Madhya Pradesh in Civil Revision No. 381 of 2022, reported in 2024(3) MPLJ 78

Relevant extracts from the order:

A bare perusal of the plaint averments would reveal that there is no pleading why suit for specific performance has not been filed. Further, there is no averment in the plaint fulfilling the conditions, which are necessary in order to defend or protect the possession under Section 53-A of the Act, as has been held by the Supreme Court in the case of ***Sirmat Shamrao Suryavanshi and anr. v. Pralhad Bairoba Suryavanshi (dead) by LRs and ors., 2002(1) MPLJ 589 (SC)***. Therefore, even assuming the suit for permanent injunction maintainable in order to protect possession under section 53-A of the Act of 1882 even without claiming relief of specific performance, the suit was not maintainable as the necessary ingredients to claim relief under section 53-A of the Act of 1882 are absent in the plaint.

The matter can be looked from another angle also. The suit has been filed before the trial Court on 02.2.2022 i.e. after 11 years of entering into an agreement of sale. If filing of such suit, without claiming relief of specific performance is allowed, then any person may enter into an agreement of sale by giving a meager amount as earnest money and thereafter without showing his

willingness to get the sale executed may retain possession, which is not permissible under the law prevailing in the country.

So, in the above discussion, this Court finds that the Trial after perusing the plaint averments has wrongly rejected the application under Order 7 Rule 11 of CPC filed by applicants/defendants. Accordingly, it is found that suit filed by the respondent/plaintiff seeking relief of permanent injunction without claiming relief of specific performance of agreement is not maintainable. Hence, the impugned order passed by the trial Court is set aside. The suit filed by the respondent/plaintiff is rejected.

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265. CIVIL PROCEDURE CODE, 1908 – Order 19 Rules 1 & 2 and Order 39 Rules 1 & 2

Suit for declaration and injunction – Plaintiff filed application for issuance of temporary injunction under Order 39 Rules 1 & 2 which was supported by affidavit – Defendant moved an application under Order 19 Rules 1 & 2 for calling the plaintiff for cross-examination with respect to the said affidavit – Trial Court rejected the application – Whether order is justified? Held, No – Plaintiff claimed her right, title and interest in the suit property whereas in earlier proceedings before the revenue authorities, she had relinquished her right, title and interest in the property in favour of her brother – The said contradiction can be reconciled only when the deponent is called for cross-examination – But the said cross-examination would be for limited purpose of deciding application for temporary injunction – Provisions as contained in Order 19 Rules 1 & 2 and Order 39 Rules 1 & 2 also suggest that deponent (of Affidavit) can be called for cross-examination to prove a particular fact.

सिविल प्रक्रिया संहिता, 1908 – आदेश 19 नियम 1 व 2 एवं आदेश 39 नियम 1 व 2

घोषणा और निषेधाज्ञा के लिए वाद – वादी ने आदेश 39 नियम 1 और 2 के अंतर्गत अस्थायी निषेधाज्ञा प्रदान किये जाने हेतु आवेदन प्रस्तुत किया जो शपथ पत्र से समर्थित था – प्रतिवादी ने आदेश 19 नियम 1 और 2 के अंतर्गत वादी को उक्त शपथ पत्र के संबंध में प्रतिपरीक्षण के लिए आहूत करने हेतु आवेदन प्रस्तुत किया – विचारण न्यायालय ने आवेदन निरस्त किया – क्या आदेश न्यायानुमत है? अभिनिर्धारित, नहीं – वादी ने वाद संपत्ति में अपने अधिकार, स्वामित्व और हितों का दावा किया था, जबकि पूर्व कार्यवाहियों में वादी ने राजस्व अधिकारियों के समक्ष उसके भाई के पक्ष में, संपत्ति में उसके अधिकार स्वामित्व और हित त्याग दिये थे – उक्त विरोधाभास का समाधान

तभी किया जा सकता है जब साक्षी को प्रतिपरीक्षण के लिए बुलाया जाता है – परंतु उक्त प्रतिपरीक्षण का सीमित उद्देश्य अस्थायी निषेधाज्ञा के आवेदन का निराकरण करना होगा – आदेश 19 नियम 1 और 2 एवं आदेश 39 नियम 1 और 2 में निहित प्रावधान भी यह सुझाव देते है कि साक्षी (शपथकर्ता) को किसी विशिष्ट तथ्य को साबित करने के लिए, प्रतिपरीक्षण हेतु आहूत किया जा सकता है।

Ramji Rai v. Champa Rai and ors.

Order dated 22.04.2024 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 6745 of 2023, reported in 2024(3) MPLJ 520

Relevant extracts from the order:

Perusal of Order XIX indicates that any court may at any time for sufficient reason may order that either facts may be proved by affidavit or that affidavit of witness may be read at the hearing on such conditions as the court thinks reasonable. Such conditions may include calling of deponent for cross-examination (for limited purpose). Apparently, proviso appears to be independent than the main provision but it further gives liberty to the court once court is satisfied about the bonafide desires of either party about production of a witness for cross-examination then instead of taking evidence by way of affidavit, court can direct the witness to be produced by the party. Therefore, any fact or facts including the facts about temporary injunction can also be proved through examination of deponent who filed affidavit in support of certain facts.

Rule 2 of Order XIX give discretion to the parties to move appropriate application for giving evidence by affidavit. In that manner, this provision is affirmative in nature because it gives liberty or chance to a party to lead evidence whereas Rule 1 appears to be enabling because under Rule 1, court directs the party to prove particular facts by affidavit or by cross-examination of witness or on such conditions as the court thinks reasonable. Therefore, Rule 1 and 2 infact support each other to reach to the analogy that evidence on affidavit and cross-examination of deponent can bring the truth about any particular fact.

One more aspect deserves consideration is Rule 1 of Order XXXIX which starts with the expression "Where in any suit it is proved by affidavit or otherwise". It indicates the legislative intent that any fact can be proved by affidavit or any other method other than it. That method can be by way of calling deponent/witness. Therefore, word otherwise also leads to proposition that deponent (of affidavit) can be called for cross-examination to prove particular facts. In the present case, facts as surfaced in affidavit and in support of

application under Order XXXIX Rule 1 and 2 CPC are to be verified. That can be done by resorting to the provisions as contained in Order XIX of CPC.

However, it is to be kept in mind that said cross-examination would be limited for the purpose for which deponent is called. Documents exhibited in this regard would serve that purpose only.

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266. COMMERCIAL COURTS ACT, 2015 – Section 12-A

PRACTICE AND PROCEDURE:

Commercial suit – Pre-litigation mediation – Bypassing statutory mandate where urgent interim relief is sought for – Plaintiff has no absolute choice and right to paralyse section 12-A of the Act – Prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over section 12-A of the Act – The Commercial Court has a role to check when deception and falsity is apparent or established and thereby should examine the nature and subject-matter of the suit, the cause of action and the prayer of interim relief.

वाणिज्यिक न्यायालय अधिनियम, 2015 – धारा 12-क

प्रथा एवं प्रक्रिया:

वाणिज्यिक वाद – वाद-पूर्व मध्यस्थता – जहां अत्यावश्यक अंतरिम राहत की मांग की जाती है वहां सांविधिक आदेश को दरकिनार करना – वादी के पास अधिनियम की धारा 12-क को निष्क्रिय बनाने का कोई आत्यांतिक विकल्प एवं अधिकार नहीं है – अविलंब अंतरिम राहत हेतु प्रार्थना अधिनियम की धारा 12-क से बच निकलने और उससे छुटकारा पाने हेतु एक मुखौटा या दिखावा नहीं होना चाहिए – जब धोखाधड़ी और मिथ्या स्पष्ट अथवा स्थापित हो तब इनकी जांच हेतु वाणिज्यिक न्यायालय की भूमिका होती है एवं उसे वाद की प्रकृति एवं विषय-वस्तु, वाद कारण एवं अंतरिम राहत के अनुतोष की प्रार्थना की जांच करनी चाहिए।

Yamini Manohar v. T.K.D. Keerthi

Order dated 13.10.2023 passed by the Supreme Court in SLP (C) Diary No. 32275 of 2023, reported in (2024) 5 SCC 815

Relevant extracts from the order:

This Court in ***Patil Automation Pvt. Ltd. & ors. v. Rakheja Engineers Pvt. Ltd., (2022) 10 SCC 1*** has held that Section 12A of the CC Act is mandatory. Pre-litigation mediation is necessary, unless the suit contemplates urgent interim relief. At the same time, the judgment observes:

> "In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word 'contemplate' or urgent interim relief, we need not dwell upon it. The other aspect raised about the word 'contemplate' is that there can be attempts to bypass the statutory mediation under Section 12-A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2)CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80(2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12-A does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the plaints in question."

The aforesaid paragraph refers to Section 80(2) of the Code, which permits the suit, praying urgent interim relief, to be filed by seeking the leave of the court. The proviso to Section 80(2) of the Code states that, if, after hearing the parties, the court is satisfied that no urgent or immediate relief is required to be granted in the suit, the court may return the plaint for presentation to it after compliance with requirements of Section 80(1) of the Code.

Section 12A of the CC Act does not contemplate leave of the court, as is clear from the language and words used therein. Nor does the provision necessarily require an application seeking exemption. An application seeking wavier on account of urgent interim relief setting out grounds and reasons may allay a challenge and assist the court, but in the absence of any statutory mandate or rules made by the Central Government, an application per se is not a condition under Section 12A of the CC Act; pleadings on record and oral submissions would be sufficient.

The words used in Section 12A of the CC Act are – "A suit which does not contemplate any urgent interim relief", wherein the word "contemplate" connotes to deliberate and consider. Further, the legal position that the plaint can be

rejected and not entertained reflects application of mind by the court viz. the requirement of 'urgent interim relief'.

In the present case, it is an accepted fact that an urgent interim relief has been prayed for and the condition that the plaint "contemplates" an urgent interim relief is satisfied. Therefore, the impugned judgment/order of the Delhi High Court dated 08.05.2023, which upholds the order of the District Judge (Commercial Court)-01, South District at Saket, New Delhi dated 06.02.2023, rejecting the application under Order VII, Rule 11 of the Code, is correct and in accordance with law.

Our attention is drawn to the judgment of the High Court of Judicature at Bombay in ***Kaulchand H. Jogani v. M/s. Shree Vardhan Investment & ors., 2022 SCC OnLine Bom 4752***, wherein the following observations have been made:

> "In my considered view, the proper course would be to assess whether there are elements which prima facie indicate that the suit may contemplate an urgent interim relief irrespective of the fact as to whether the plaintiff eventually succeeds in getting the interim relief. In a worst case scenario, where an application for interim relief is presented without there being any justification whatsoever for the same, to simply overcome the bar under Section 12A, the Court may be justified in recording a finding that the suit in effect does not contemplate any urgent interim relief and then the institution of the suit would be in teeth of Section 12A notwithstanding a formal application."

The High Court of Delhi in ***Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Limited, 2022 SCC OnLine Del 3529*** observes:

> "The contention that it would be necessary for the plaintiff to file an application seeking exemption from the provisions of Section 12A of the Commercial Courts Act, 2015, is unmerited. This Court cannot accept the said contention for several reasons.
>
> First of all, there is no provision under Section 12A of the Commercial Courts Act, 2015 that requires the plaintiff to make any such application in a suit which involves urgent interim reliefs. As stated above, if the suit involves urgent interim relief, Section 12A of the Commercial Courts Act, 2015 is inapplicable and it is not necessary for the plaintiff to enter into a pre-institution mediation.

> Second, a suit, which does not contemplate urgent interim relief, cannot be instituted without exhaustion of pre-institution mediation, as required under Section 12A(1) of the Commercial Courts Act, 2015. As noted above, the Supreme Court has held that the said provision is mandatory and it is compulsory for a plaintiff to exhaust the remedy of pre-institution mediation, in accordance with the rules before instituting a suit. The Court has no discretion to exempt a plaintiff from the applicability of Section 12A(1) of the Commercial Courts Act, 2015. It is not permissible for the court to pass an order contrary to law; therefore, an application seeking exemption from engaging in pre-institution mediation, in a suit that does not involve urgent interim reliefs, would not lie.
>
> This Court also finds it difficult to accept that a commercial court is required to determine whether the urgent interim reliefs ought to have been claimed in a suit for determining whether the same is hit by the bar of Section 12A(1) of the Commercial Courts Act, 2015. The question whether a plaintiff desires any urgent relief is to be decided solely by the plaintiff while instituting a suit. The court may or may not accede to such a request for an urgent interim relief. But that it not relevant to determine whether the plaintiff was required to exhaust the remedy of pre-institution mediation. The question whether a suit involves any urgent interim relief is not contingent on whether the court accedes to the plaintiff's request for interim relief.
>
> The use of the words "contemplate any urgent interim relief" as used in Section 12(1) of the Commercial Courts Act, 2015 are used to qualify the category of a suit. This is determined solely on the frame of the plaint and the relief sought. The plaintiff is the sole determinant of the pleadings in the suit and the relief sought.
>
> This Court is of the view that the question whether a suit involves any urgent interim relief is to be determined solely on the basis of the pleadings and the relief(s) sought by the plaintiff. If a plaintiff seeks any urgent interim relief, the suit cannot be dismissed on the ground that the plaintiff has not exhausted the pre-institution remedy of mediation as contemplated under Section 12A(1) of the Commercial Courts Act, 2015."

We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or

mask to wriggle out of and get over Section 12A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad-interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order VII, Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order VII, Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely,

(i) prima facie case,

(ii) irreparable harm and injury, and

(iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyze Section 12A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12A of the CC Act. An 'absolute and unfettered right' approach is not justified if the pre-institution mediation under Section 12A of the CC Act is mandatory, as held by this Court in Patil Automation Private Limited (supra). The words 'contemplate any urgent interim relief' in Section 12A(1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must "contemplate", which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of section 12A of the CC Act is not defeated.

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267. COURT FEES ACT, 1870 – Section 7(iv)(c), Schedule II and Article 17(iii) CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11

Payment of court fees – Fixed or *ad valorem* – Suit was filed seeking declaration that the sale deed be declared void – Plaintiff valued the suit on the basis of value of land mentioned in the sale deed but paid fixed

court fees for the relief of declaration and permanent injunction – Plaintiff is an executant of sale deed which bears his thumb impression and sale consideration is mentioned therein – Plaintiff is required to pay *ad valorem* Court fees on sale consideration and not on fixed court fees.

न्यायालय फीस अधिनियम, 1870 – धारा 7(iv)(ग), अनुसूची II एवं अनुच्छेद 17(iii) सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11

न्यायालय शुल्क का भुगतान – निश्चित या मूल्यानुसार – विक्रय विलेख को शून्य घोषित किये जाने हेतु वाद दायर किया गया – वादी ने विक्रय विलेख में उल्लिखित भूमि के मूल्य के आधार पर वाद का मूल्यांकन किया किन्तु घोषणा और स्थायी निषेधाज्ञा की सहायता के लिए निश्चित न्यायालय शुल्क का भुगतान किया – वादी विक्रय विलेख का निष्पादक है जिस पर उसके अंगूठे का निशान है और उसमें विक्रय प्रतिफल का उल्लेख किया गया है – वादी को विक्रय प्रतिफल के मूल्यानुसार न्यायालय शुल्क का भुगतान करना आवश्यक है न कि निश्चित न्यायालय शुल्क का।

Rajpalsingh v. Dilip Anjana and ors.

Order dated 29.02.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 1875 of 2023, reported in 2024(3) MPLJ 605

Relevant extracts from the order:

The Division Bench of this Court in the case of ***Ambika Prasad & ors. v. Shri Ram Shiromani @ Chandrika Prasad Dwivedi & anr., 2011 (3) MPLJ 184*** has considered the judgment of Apex Court in the case of ***Suhrid Singh*** (supra) and judgment of Full Bench in the case of ***Sunil S/o Dev Kumar Radhelia & ors. v. Awadh Narayan & ors., 2010 (4) MPLJ 431*** and held that admittedly the plaintiff is an executant of the sale deed sought to be declared as void. The sale deed bears his thumb impression and the sale consideration is clearly mentioned therein, hence, the sale deed, in our considered opinion, is voidable and plaintiffs have to pay the ad valorem court fee as held by the Supreme Court in the case of ***Suhrid Singh @ Sardool Singh v. Randhir Singh & ors., (2010) 12 SCC 112***. So far as the judgment passed in the case of Sunil Radhelia (supra) is concerned, same was not produced before the Full Bench and had this decision been brought to the notice of Full Bench in all probability they too would have taken the same view. Paragraphs 11 & 12 of the judgment passed by the Division Bench is reproduced below:-

> "In the case at hand, plaintiff No. 1 was admittedly an executant of the sale deed sought to be declared as void. The sale deed also bears his thumb impression and the sale consideration is clearly mentioned therein. The plaintiffs in their suit for declaration have prayed that the sale deed be declared as void by alleging that it was executed by playing fraud and misrepresentation. The relief claimed implies a relief for cancellation of sale deed because plaintiff No. 1 (now dead) was an executant of the same. The sale deed, in our considered opinion, is voidable as the apparent state of affairs is a real state of affairs and the plaintiffs, who have alleged otherwise, are obliged to prove it as void. The plaintiffs, therefore, have to pay ad valorem Court fee on the consideration stated in the sale deed. As held by the Supreme Court in Suhrid Singh (supra), had plaintiff No. 1 been a non-executant the plaintiffs could have merely paid a fixed Court fee provided in Entry 17 (iii) of Second Schedule of the Act. 12. It is true that in Sunil Radhelia (supra), the Full Bench has held that ad valorem Court fee is not payable when the plaintif makes an allegation that (he instrument is void and not binding on him even if he be the executant of the document. But it is equally true that the decision of the Supreme Court in Suhrid Singh (supra), was not placed before the Full Bench and, therefore, it is not referred therein. Had the decision of Suhrid Singh been brought to the notice of the Judges of Full Bench, in all probability they too would have taken the same view which we have taken."

In view of the aforesaid dictum of Apex Court as well as Division Bench of this Court in ***Suhrid Singh & Sunil Radhelia*** (supra) respectively, the impugned order dated 19.01.2021 is set aside. The trial Court is directed to value the suit and direct the plaintiffs to pay the ad valorem fee, before proceeding further in the suit.

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268. CRIMINAL PROCEDURE CODE, 1973 – Section 125
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 144
Muslim woman – Maintenance – Applicable law – Provision of maintenance u/s 125 CrPC is a measure for social justice to protect the weaker sections, irrespective of applicable personal laws of the parties – There is no express extinguishment of the rights u/s 125 CrPC in Muslim Women (Protection of Rights on Divorce) Act – Petition filed by muslim woman u/s 125 CrPC is maintainable – Amount fixed under such petition cannot be restricted for the *iddat* period only.

दण्ड प्रक्रिया संहिता, 1973 – धारा 125

भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 144

मुस्लिम महिला – भरण–पोषण – प्रयोज्य विधि – दण्ड प्रक्रिया संहिता की धारा 125 के अंतर्गत भरण–पोषण का प्रावधान कमजोर वर्ग की सुरक्षा करने हेतु सामाजिक न्याय करने का एक उपाय है, भले ही पक्षकारों पर लागू स्वीय विधि कोई भी हो – मुस्लिम महिला (तलाक पर अधिकारों का संरक्षण) अधिनियम में दण्ड प्रक्रिया संहिता की धारा 125 के अधिकारों का कोई स्पष्ट निर्वापन नहीं है – मुस्लिम महिला द्वारा दण्ड प्रक्रिया संहिता की धारा 125 के अंतर्गत दायर याचिका पोषणीय है – ऐसी याचिका के अंतर्गत नियत की गई राशि को केवल इदद्त अवधि हेतु सीमित नहीं किया जा सकता।

Mohd. Abdul Samad v. The State of Telangana and anr.

Judgment dated 10.07.2024 passed by the Supreme Court in Criminal Appeal No. 2842 of 2024, reported in 2024 (3) Crimes 57 (SC)

Relevant extracts from the judgment:

Before perusing the submissions made by the Counsel, it is paramount to also consider the bare text of the concerned provisions *vis-à-vis* their comparative dissection. Under Section 3 of the 1986 Act, the entitlements or rights of a divorced Muslim woman, wider than the ambit of maintenance, arise as against the obligations of her former husband emanating from their divorce. Per contra, under Section 125 of CrPC 1973, a woman seeking maintenance has to establish that she is unable to maintain herself. The right to seek maintenance under Section 125 of CrPC 1973 is invokable even during the sustenance of marriage and, thereby is not contingent upon divorce.

Another distinction vis-à-vis the aforementioned provisions, relates to the time period within which proceedings initiated thereunder are to be decided. While a petition moved under Section 3(2) of the 1986 Act is to be decided in regard to a husband's liability under Section 3(1) of the 1986 Act within a period of one month, there is no such statutory time frame prescribed under Section 125 of CrPC 1973. However, there is an obligation to determine the interim maintenance within a period of 60 days while dealing with a petition under Section 125 of CrPC 1973. Moreover, failure to comply with such order passed under Section 3(2) of the 1986 Act may lead to issuance of a warrant for levying the amount of maintenance as directed under the said order and may also sentence him to imprisonment till the payment is made or for a term which may extend to one year. On the other hand, equivalent non- compliance of an order

passed under Section 125 of CrPC 1973 may result in imprisonment for a term of one month or until the payment is made.

After the advent of the decision in ***Danial Latifi v. Union of India, (2001) 7 SCC 740,*** numerous High Courts also went on to contemplate and analyse the instant question of law. A quick examination of the said judgment by various High Courts allows us to categorise the decisions rendered therein into two sets of views. The first view in certain judgments so rendered held that the remedy is to be exclusively exercised under Section 3 of the 1986 Act, impliedly holding that the rights under the secular provisions stood extinguished. Another view in certain other judgments allowed a divorced Muslim woman to seek the remedy of maintenance under Section 125 of CrPC 1973 while explicit existence of Section 3 of the 1986 Act was recognised.

The set of judgments, that went on to hold that the rights of a divorced Muslim woman are to be exercised through the provisions of the 1986 Act and specifically under Section 3 therein, and, not through the secular provision of Section 125 of CrPC 1973. One decision by a Single Judge of the High Court of Allahabad in ***Shahid Jamal Ansari v. State of Uttar Pradesh***, ***2008 SCC OnLine All 1077*** is brought to our attention by the learned amicus curiae whereby the Court opined that a divorced Muslim woman cannot claim maintenance from her former husband by virtue of secular provision of Section 125 of CrPC 1973 and the 1986 Act, being a complete code in itself on the subject matter of maintenance, prevails.

Deviating from the aforesaid approach, certain High Courts adopted a beneficial interpretation, that is to say, that the non-obstante clause in the 1986 Act, in no manner bars the remedy under Section 125 CrPC 1973. In this regard, a reference has been made to a decision of Single Judge of High Court of Gujarat in ***Mumtazben Jusabbhai Sipahi v. Mahebubkhan Usmankhan Pathan, 1998 SCC OnLine Guj 279***, a decision of High Court of Kerala in ***Kunhimohammed v. Ayishakutty, 2010 SCC OnLine Ker 567***, the decisions of High Court of Allahabad in ***Mrs. Humera Khatoon and ors. v. Mohd. Yaqoob, 2010 SCC OnLine All 202, Sazid v. State of Uttar Pradesh and ors., 2011 SC OnLine All 1059, Jubair Ahmad v. Ishrat Bano***, ***2019 SCC OnLine All 4065*** and ***Shakila Khatun v. State of Uttar Pradesh and anr., 2023 SCC OnLine All 75*** and also the decision of a Single Judge of High Court of Bombay in ***Khalil Abbas Fakir v. Tabbasum Khalil Fakir and anr., 2024 SCC OnLine Bom 23***.

Amongst these set of decisions, the one rendered by a Division Bench of the High Court of Kerala in ***Kunhimohammed v. Ayishakutty 2010 SCC, OnLine Ker 567,*** has significantly occupied the field in regard to the limited question of law before us. A perusal of the instant judgment showcases the same to be in line with the ratio decidendi rendered by this Court in the decision in *Danial Latifi* (supra) by holding that there is no express extinguishment of the rights under Section 125 CrPC 1973 and neither the same was intended or conceived by the legislature while enacting the 1986 Act. It was observed that the domains occupied by the two provisions are entirely different as the secular provision stipulates an inability to maintain oneself for invoking the said rights while Section 3 of the 1986 Act stands independent of one's ability or inability to maintain. Thereby, adopting a harmonious and purposive approach amidst the two alleged conflicting legislative protections.

In consideration of the aforesaid well-established positions of law, as well as the submissions of the learned Senior Advocate and the learned amicus curiae, it is apposite to accordingly decide the fate of the instant petition moved before us. To begin with the contention in regard to the existence of non-obstante clause in Sections 3 and 4 of the 1986 Act, it is undoubtedly clarified by the Constitution Benches of this Court that the same cannot promptly be deemed to override any other rights so provided by the enactments of the legislature. We are, accordingly, also bound by the Doctrine of stare decisis contemplated through Article 141 of the Constitution of India to accept the said observations. Furthermore, a bare perusal of Section 7 of the 1986 Act, reflects the same to be transitionary in nature and the interpretations in respect of Section 5 of the 1986 Act, as highlighted above through numerous decisions, reflect our inability to accept the passionate contentions of the learned Senior Advocate on behalf of the Appellant.

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***269.CRIMINAL PROCEDURE CODE, 1973 – Section 156 (3)**

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 175 (3)

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Sections 3(1)(r), 3(1)(s), 4 and 18A

(i) Application for registration of FIR u/s 156 (3) of CrPC when it discloses a cognizable offence – It is the duty of concerned Magistrate to direct registration of the FIR – When application does not*prima facie* disclose the commission of a cognizable offence, but indicates the necessity for inquiry – Preliminary inquiry may

be conducted to ascertain whether the information received reveals a cognizable offence or not – The purpose of enquiry is not to verify the veracity or otherwise of the information received. (*Priyanka Srivastava and anr. v. State of Uttar Pradesh and ors., AIR 2015 SC 1758* and *Khalid Khan and anr. v. State of U.P. and anr., (2023) SCC OnLine All 2277* relied on)

(ii) Offence of racial abuse – *Prima facie* case – Registration of FIR – It was alleged that accused persons insulted the complainant using caste based words and such humiliation continued for two years – Allegation appeared to be omnibus and ambiguous – Abuses referred to in the complaint could not be said to have been made in any place within the public view – No offence is made out.

(iii) Offence punishable u/s 4 of the Act of 1989 – Regarding public servant wilfully neglecting duties required to be performed by him under the Act – Cognizance – Recommendation of administrative enquiry is a *sine qua non* for taking cognizance of the offence – Purpose of the enquiry is to find out as to whether the act complained of was *bonafide* or *wilful* – Order of cognizance without calling for an administrative enquiry report, found to be unsustainable.

दण्ड प्रक्रिया संहिता, 1973 – धारा 156 (3)
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 175(3)
अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धाराएं 3(1)(द), 3(1)(ध), 4 एवं 18क

(i) दण्ड प्रक्रिया संहिता की धारा 156(3) के अंतर्गत प्रथम सूचना रिपोर्ट पंजीबद्ध करने के लिए आवेदन – जब वह किसी संज्ञेय अपराध का किया जाना प्रकट करता है, तब संबंधित मजिस्ट्रेट का यह कर्तव्य है कि वह प्रथम सूचना रिपोर्ट पंजीबद्ध करने का निर्देश दे – जब आवेदन प्रथम दृष्टया संज्ञेय अपराध का किया जाना प्रकट नहीं करता, किन्तु जांच की आवश्यकता को इंगित करता है – प्रारंभिक जांच यह सुनिश्चित करने के लिए की जा सकती है कि क्या प्राप्त सूचना से संज्ञेय अपराध का पता चलता है या नहीं – जांच का उद्देश्य प्राप्त संसूचना की अथवा अन्यथा उसकी सत्यता को सत्यापित करना नहीं है। (*प्रियंका श्रीवास्तव एवं अन्य बनाम उत्तर प्रदेश राज्य एवं अन्य, एआईआर 2015 एससी 1758* एवं*खालिद खान एवं अन्य बनाम उत्तर प्रदेश राज्य एवं अन्य, (2023) एससीसी ऑनलाइन इला 2277* अवलंबित)

(ii) नस्लीय दुव्यवहार का अपराध – प्रथम दृष्टया मामला – प्रथम सूचना रिपोर्ट का दर्ज किया जाना – यह आक्षेप लगाया गया था कि अभियुक्त व्यक्तियों ने जाति आधारित शब्दों का उपयोग करते हुए परिवादी को अपमानित किया और ऐसा अपमान दो वर्ष तक जारी रहा – आरोप बहुप्रयोजनीय और संदिग्धार्थ प्रतीत हुए – परिवाद में उल्लिखित अपशब्द लोक दृष्टि में आने वाले किसी स्थान पर कहे गये हों, नहीं कहा जा सकता – कोई अपराध गठित नहीं होता।

(iii) धारा 4 के अंतर्गत दंडनीय अपराध – लोक सेवक द्वारा अधिनियम के अंतर्गत उसके द्वारा किए जाने वाले अपेक्षित कर्तव्यों की जानबूझकर उपेक्षा करने के संबंध में – संज्ञान – प्रशासनिक जांच की सिफारिश अपराध का संज्ञान लेने के लिए अनिवार्य शर्त है – जांच का उद्देश्य यह पता लगाना है कि परिवादी द्वारा किया गया कार्य, जिसकी शिकायत हुई, वह सदभावपूर्वक हुआ या जानबूझकर किया गया – प्रशासनिक जांच रिपोर्ट को आहूत किये बिना संज्ञान का आदेश स्थिर नहीं रखे जाने योग्य पाया गया।

Priti Agarwalla and ors. v. State of GNCT of Delhi and ors.

Judgment dated 17.05.2024 passed by the Supreme Court in Criminal Appeal No. 348 of 2021, reported in AIR 2024 SC 3097

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270. CRIMINAL PROCEDURE CODE, 1973 – Section 313
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 351
INDIAN PENAL CODE, 1860 – Sections 300 and 302
BHARATIYA NYAYA SANHITA, 2023 – Sections 101 and 103(1)

(i) Examination of accused – Non-questioning or inadequate questioning of an accused on incriminating circumstances – When and under what circumstances would vitiate the trial? Law explained.

(ii) Examination of accused – Offence of murder – Allegation against the accused was that at the time of incident, he exhorted the co-accused to kill the deceased and thereafter he caught hold of the deceased which enabled the co-accused to repeatedly stab knife blows on his chest – Charge was also framed against the accused for the offence punishable u/s 302 r/w/s 34 of IPC for having committed the offence in furtherance of common intention – The aforesaid twin circumstances were found proved against the

accused and therefore his conviction was recorded for the offence u/s 302/34 IPC – But the said twin circumstances which were the foundation for his conviction with the aid of section 34, were not put to him during his examination u/s 313 of CrPC – Whether non-questioning of such incriminating circumstances had caused material prejudice to accused? Held, Yes – It is a patent illegality vitiating the trial *qua* the accused/appellant – Conviction set aside and accused acquitted.

दण्ड प्रक्रिया संहिता, 1973 – धारा 313
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 351
भारतीय दण्ड संहिता, 1860 – धाराएं 300 एवं 302
भारतीय न्याय संहिता, 2023 – धाराएं 101 एवं 103(1)

(i) अभियुक्त का परीक्षण – प्रश्न का न पूछा जाना या अपराध में संलिप्तता दर्शित करने वाली परिस्थितियों के संबंध में अपर्याप्त प्रश्न पूछा जाना – कब और किन परिस्थितियों में विचारण को दूषित करेगा? विधि स्पष्ट की गई।

(ii) अभियुक्त का परीक्षण – हत्या का अपराध – अभियुक्त के विरुद्ध आरोप यह था कि घटना के समय उसने सहअभियुक्त को मृतक की हत्या करने के लिये उकसाया और उसके बाद मृतक को पकड़ लिया जिससे सहअभियुक्त उसके सीने पर बार-बार चाकू से वार करने के लिए सशक्त हुआ – अभियुक्त के विरूद्ध सामान्य आशय के अग्रसरण में भा.दं.सं. की धारा 302 सहपठित धारा 34 के अंतर्गत दंडनीय अपराध का आरोप भी लगाया गया था – उपरोक्त दोनों परिस्थितियों को अभियुक्त के विरूद्ध साबित पाया गया और इसलिए उसे भा.दं.सं. की धारा 302/34 के अंतर्गत दोषसिद्ध किया गया – किन्तु उक्त दोनों परिस्थितियां, जो धारा 34 की सहायता से उसकी दोषसिद्धि का आधार थीं, दं.प्र.सं. की धारा 313 के अंतर्गत परीक्षण के दौरान उसके समक्ष नहीं रखी गई थीं – क्या अपराध में संलिप्तता दर्शाने वाली उक्त परिस्थितियों के संबंध में प्रश्न न पूछे जाने से अभियुक्त पर सारवान रूप से प्रतिकूल प्रभाव पड़ा था? अभिनिर्धारित, हॉ – यह एक स्पष्ट अवैधानिकता है जो कि अभियुक्त/अपीलकर्ता के संबंध में विचारण को दूषित करती है – दोषसिद्धि निरस्त एवं अभियुक्त दोषमुक्त।

Naresh Kumar v. State of Delhi

Judgment dated 08.07.2024 passed by the Supreme Court in Criminal Appeal No. 1751 of 2017, reported in AIR 2024 SC 3233

Relevant extracts from the judgment:

The position takes us to the question as to whether in the circumstances the contention based on non-examination/inadequate examination under Section 313 CrPC, causing material prejudice *qua* the appellant can be maintained at this stage. In this context, it is only appropriate to refer to the decision of this Court in ***Shobit Chamar v. State of Bihar, AIR 1998 SC 1693***. It was held therein that where the plea as to non-compliance of the provisions of Section 313 CrPC, was raised for the first time before the Supreme Court, in case no prejudice had resulted to the accused was proved, the trial could not be held as vitiated. In that case, though the non-compliance was taken for the first time before the Supreme Court, the records showed that the relevant portion of the statement of witnesses were put to the accused in examination under Section 313 CrPC, and, thereupon, the plea was rejected. It is to be noted that was also a case of murder.

In this context, the maxim "*actus curiae neminem gravabit*" - "the act of court shall prejudice no one", has also to be looked into. In the decision in ***Oil and Natural Gas Company Limited v. Modern Construction and Company, AIR 2014 SC 83***, this Court held that the court has to correct the mistake it has done, rather than to ask the affected party to seek his remedy elsewhere. In the context of the decisions referred above, there can be no doubt that in a charge for commission of a serious offence where extreme penalty alone is imposable in case the accused is found guilty, procedural safeguards ensuring protection of right(s) of accused must be followed and at any rate, in such cases when non-compliance of the mandatory procedure capable of vitiating trial qua the convict concerned is raised and revealed from records, irrespective of the fact it was not raised appropriately, it must be considered lest the byproduct of consideration of the case would result in miscarriage of justice. Being the Court existing for dispensation of justice, this Court is bound to consider and correct the mistake committed by the Court by looking into the question whether non-examination or inadequate examination of accused concerned caused material prejudice or miscarriage of justice. We may hasten to add here, that we shall not be understood to have held that always such a mistake has to be corrected by this Court by examining the question whether material prejudice or miscarriage of justice had been caused. In this context, the summarization of law on the subject of consequence of omission to make questioning on incriminating circumstances appearing in the prosecution evidence and the ways of curing the same, if it is

called for, by this Court in the decision in ***Raj Kumar @ Suman v. State (NCT of Delhi), AIR 2023 SC 3113***, assumes relevance.

In the case on hand, the appellant was convicted for the offence under Section 300 IPC, punishable under Section 302 IPC, with the aid of Section 34 IPC. In other words, the conviction was not under Section 302 IPC, simpliciter. Upon finding guilty for commission of murder only one of two extreme penalties viz., death or imprisonment for life could be imposed on the convict. When this be the consequence of finding an accused to have committed murder or in any other serious offence where extreme punishment of like nature alone is imposable, the failure to comply with the mandatory questioning on incriminating circumstance(s) appearing in the prosecution case, if made out, the plea of non-examination or inadequate examination under Section 313 CrPC, whether resulted in material prejudice to the accused or total miscarriage of justice, shall not be ignored or declined to be taken into account by the Court.

We have already noted that crucial incriminating circumstances viz., (1) pertaining to the exhortation of the appellant to kill Arun Kumar and others in his family (2) he had caught hold of the deceased to enable Mahinder Kumar to stab on his chest repeatedly, were not allegedly put to the appellant while being examined under Section 313 CrPC. The first among the twin incriminating circumstances not to put to the appellant was virtually the charge framed against him to the effect that in furtherance of the common intention of Mohinder Kumar and the appellant caught hold of deceased Arun Kumar and the other accused Mohinder Kumar inflicted knife blows on deceased Arun Kumar and murdered him. The former incriminating circumstance relating to exhortation by the appellant did not form part of the charge against the appellant. There can be no doubt with respect to the position that the question whether the aforementioned twin incriminating circumstances appeared in the prosecution evidence and whether they were put to the appellant while being examined under Section 313 CrPC, to enable him an opportunity to offer explanation are not matters of argument as a bare perusal of the materials on record viz., the oral testimonies of the eyewitnesses and Section 313 CrPC, examination of the appellant would reveal the verity or otherwise of the said contentions. The oral testimonies of Anil Kumar (PW-7), Smt. Prem Devi (PW-8), Mrs. Madhu (PW-19) and Anand Kumar (PW-22) would reveal that they have deposed regarding the exhortation from the appellant though in slightly different manner, and also about the fact that he had caught hold of the deceased to enable Mohinder Kumar

to stab on the chest of the deceased repeatedly. The examination of the appellant under Section 313 CrPC, which is available on record, would reveal that both the incriminating circumstances were not directly or even indirectly put to the appellant while being examined under Section 313 CrPC The learned counsel appearing for the respondent would fairly admit that the said material on record would reveal the correctness of the contentions of the appellant.

We have already held that whether non-questioning or inadequate questioning on incriminating circumstances to an accused by itself would not vitiate the trial *qua* the accused concerned and to hold the trial *qua* him is vitiated it is to be established further that it resulted in material prejudice to the accused. True that the onus to establish the prejudice or miscarriage on account of non-questioning or inadequate questioning on any incriminating circumstance (s), during the examination under Section 313 CrPC, is on the convict concerned. We say so, because if an accused is ultimately acquitted, he could not have a case that he was prejudiced or miscarriage of justice had occurred owing to such non-questioning or inadequate questioning.

In the light of the above view of the matter, we are inclined to consider the further question whether the non-questioning on the aforesaid twin incriminating circumstances to the appellant during his examination under Section 313 CrPC, had caused material prejudice to him. The decision of this Court in ***State of Punjab v. Swaran Singh, AIR 2005 SC 3114***, constrain us to consider one another factor while considering the question of prejudice. In ***Swaran Singh's***case (supra), this Court held that where the evidence of the witnesses is recorded in the presence of the accused who had the opportunity to cross examine them but did not cross examine them in respect of facts deposed, then, omission to put question to the accused regarding the evidence of such witnesses would not cause prejudice to such an accused and, therefore, could not be held as grounds vitiating the trial *qua* the convict concerned. We have already found that Anil Kumar (PW-7), Smt. Prem Devi (PW-8), Mrs. Madhu (PW-19) and Anand Kumar (PW-22) have deposed about the said circumstances. A scanning of their oral testimonies, available on record, would undoubtedly reveal that on both the points, on behalf of the appellants they were cross examined.

It is evident from the afore-extracted paragraph from the judgment of the Trial Court that the said conclusion that appellant had shared the common intention to commit murder of the deceased Arun Kumar was based only on the aforesaid two incriminating circumstances which were not put to the appellant

while being questioned under Section 313 CrPC When the very charge framed against him, as referred as above, would reveal that there was no charge of commission of an offence under Section 300 IPC, punishable under Section 302 IPC, simplicitor against the appellant whereas the said charge thereunder with the aid of Section 34 IPC. In such circumstances, when the finding of common intention was based on the twin incriminating circumstances and when they were not put to the appellant while he was being questioned under Section 313 CrPC, and when they ultimately culminated in his conviction under Section 302 IPC, with the aid of Section 34 IPC, and when he was awarded with the life imprisonment consequently, it can only be held that the appellant was materially prejudiced and it had resulted in blatant miscarriage of justice. The failure as above is not a curable defect and it is nothing but a patent illegality vitiating the trial qua the appellant.

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271. CRIMINAL PROCEDURE CODE, 1973 – Section 319
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 358
PREVENTION OF CORRUPTION ACT, 1988 – Sections 13 and 19
Offence under Prevention of Corruption Act – Summoning of public servant as additional accused – Omission to obtain prior sanction – Court cannot take cognizance against any public servant for offence under PC Act – Correct procedure for prosecution is to first obtain sanction from the appropriate Government u/s 19 of the Act before formally moving an application u/s 319 of the Code before the court – Summoning of public servant without obtaining prior sanction would be erroneous.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 358
भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 13 एवं 19
भ्रष्टाचार निवारण अधिनियम के अंतर्गत अपराध – लोक सेवक को अतिरिक्त अभियुक्त के रूप में समन करना – पूर्व स्वीकृति प्राप्त करने का लोप – न्यायालय भ्रष्टाचार निवारण अधिनियम के अंतर्गत अपराध के लिए किसी भी लोक सेवक के विरूद्ध संज्ञान नहीं ले सकता – अभियोजन के लिए उचित प्रक्रिया यह है कि न्यायालय के समक्ष संहिता की धारा 319 के अंतर्गत औपचारिक रूप से आवेदन प्रस्तुत करने से पूर्व अधिनियम की धारा 19 के अंतर्गत समुचित सरकार से स्वीकृति प्राप्त की जाए – पूर्व स्वीकृति प्राप्त किए बिना लोक सेवक को समन करना त्रुटिपूर्ण होगा।

State of Punjab v. Partap Singh Verka

Judgment dated 08.07.2024 passed by the Supreme Court in Criminal Appeal No. 1943 of 2024, reported in AIR 2024 SC 3299

Relevant extracts from the judgment:

While allowing the Section 319 (CrPC) application moved by the Public Prosecutor, the Trial Court did not consider the question of sanction. Before this Court the stand of the State of Punjab is that there was no need for this sanction as cognizance was taken in the Court itself under Section 319 of the CrPC.

In ***Dilawar Singh v. Parvinder Singh, (2005) 12 SCC 709***, this Court while explaining the provisions of Section 19 of the Prevention of Corruption Act and also the provisions under Section 319 CrPC, said as under:

> "This section creates a complete bar on the power of the court to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority enumerated in clauses (a) to (c) of this sub-section. If the sub-section is read as a whole, it will clearly show that the sanction for prosecution has to be granted with respect to a specific accused and only after sanction has been granted that the court gets the competence to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by such public servant…"

Further, in regard to the relation between Section 19 of Prevention of Corruption Act and the provisions of cognizance under CrPC, this Court laid down the law in the following words:

> "The provisions of Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190 or 319 CrPC. A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 CrPC if no sanction has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is sine qua non for taking cognizance of the offence qua that person."

In ***Paul Varghese v. State of Kerala, (2007) 14 SCC 783***, this Court again reiterated this provision and held:

> "As has been rightly held by the High Court in view of what has been stated in ***Dilawar Singh case*** (supra) the trial court was not justified in holding that Section 319 of the Code has to get preference/primacy over Section 19 of the Act, and that matter stands concluded."

The words and phrases used in Section 19(1) of the Prevention of Corruption Act itself make it evident that the provision is mandatory in nature. In ***Surinderjit Singh Mand v. State of Punjab, (2016) 8 SCC 722***, although this court was dealing with the issue of sanction under Section 197 of CrPC but while doing so it referred to various judgments including the two cases discussed above and emphasized the provision of prior sanction:

> "The law declared by this Court emerging from the judgments referred to hereinabove, leaves no room for any doubt that under Section 197 of the Code and/or sanction mandated under a special statute (as postulated under Section 19 of the Prevention of Corruption Act) would be a necessary prerequisite before a court of competent jurisdiction takes cognizance of an offence (whether under the Penal Code, or under the special statutory enactment concerned). The procedure for obtaining sanction would be governed by the provisions of the Code and/or as mandated under the special enactment. The words engaged in Section 197 of the Code are, "… no court shall take cognizance of such offence except with previous sanction…".

It is a well settled position of law that courts cannot take cognizance against any public servant for offences committed under Sections 7,11,13 & 15 of the Prevention of Corruption Act, even on an application under section 319 of the CrPC, without first following the requirements of Section 19 of the Prevention of Corruption Act. Here, the correct procedure should have been for the prosecution to obtain sanction under Section 19 of the Prevention of Corruption Act from the appropriate Government, before formally moving an application before the Court under Section 319 of CrPC. In fact, the Trial Court too should have insisted on the prior sanction, which it did not. In absence of the sanction the entire procedure remains flawed. We are completely in agreement by the decision of the High Court and therefore are not inclined to interfere with the impugned order passed by the High Court and accordingly this appeal is hereby dismissed.

Pending application(s), if any, shall also stand disposed of.

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272. CRIMINAL PROCEDURE CODE, 1973 – Section 438
BHRATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 482
INTERPRETATION OF STATUTES:

(i) Pre-arrest bail – High Court while granting anticipatory bail to appellant, imposed a pre-condition to file an affidavit that he would fulfill all physical as well as financial requirements of his wife so that she could lead a dignified life without interference of any of her family members – Held, imposing such onerous conditions, especially, in matrimonial matters, result in discordance – Law pertaining to conditions that may be imposed in pre-arrest bails clarified.

(ii) *Lex non cogit ad impossibilia* – Meaning of – Law does not compel a man to do what he cannot perform.

दण्ड प्रक्रिया संहिता, 1973 – धारा 438
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 482
संविधियों का निर्वचनः

(i) गिरफ्तारी पूर्व जमानत – उच्च न्यायालय द्वारा अपीलार्थी को अग्रिम जमानत देते समय यह पूर्ववर्ती शर्त अधिरोपित की गई कि वह यह शपथ पत्र प्रस्तुत करे कि वह अपनी पत्नि की शारीरिक एवं आर्थिक आवश्यकताओं की पूर्ति करेगा जिससे कि वह उसके पारिवारिक सदस्यों के हस्तक्षेप के बिना गरिमापूर्ण जीवन जी सके – अभिनिर्धारित, इस प्रकार की अधिरोपित दुर्भर शर्तें, विशेषकर वैवाहिक मामलों में, मतभेद में परिणित होती हैं – गिरफ्तारी पूर्व जमानत में अधिरोपित की जाने वाली शर्तों के संबंध में विधि स्पष्ट की गई।

(ii) लेक्स नॉन कोगिट एड इम्पॉसिबिलिया – अर्थ – विधि किसी व्यक्ति को वह करने के लिए बाध्य नहीं करता जो वह नहीं कर सकता।

Sudeep Chatterjee v. State of Bihar and anr.

Judgment dated 02.08.2024 passed by the Supreme Court in Criminal Appeal No. 3210 of 2024, reported in (2024) 9 SCC 88

Relevant extracts from the judgment:

Imposing very onerous conditions, especially in cases which are nothing but an off-shoot of matrimonial discordance, we would reiterate the view that courts have to be very cautious in imposing conditions while granting bail upon finding pre-arrest bail to be grantable. This is to be done warily, especially when the couple concerned who are litigating in divorce proceedings, jointly though lukewarmly, agreed to attempt to reconcile and re-unite. The impugned order

itself would reveal that the parties who were about to part company, rethought and expressed their readiness to bury the hatchet and to re- unite and the appellant has also agreed to withdraw the divorce case.

One should not be oblivious of the fact that a boy or girl, will be bonded to kith and kins besides parents and siblings and such bonded relationships cannot be severed solely due to affine and affinity towards the affinal as also cognate relationships has to be taken forward with same cordialness. Relation through marriage sans support from both the families may not flourish but may perish.

Viewed from any angle, putting conditions as has been done in this case, requiring a person to give an affidavit carrying a specific statement in the form of an undertaking that he would fulfill all physical as well as financial requirements of the other spouse so that she could lead a dignified life without interference of any of the family members of the appellant, can only be described as an absolutely improbable and impracticable condition. The second respondent may not misuse such a condition. However, giving such a carte blanche, is nothing but making one dominant over the other, which in no way act as a catalyst to create a comely situation in domesticity. On the contrary, such conditions will only be counter-productive.

There can be no doubt that a re-union after a marital discord is possible only if the parties are put to a conducive situation to regain the mutual respect, mutual love and affection. No doubt putting a condition that one of the parties should undertake to fulfil all physical as well as financial requirements of the other party could not bring about such a situation. It may compel one among the couple to be susceptive and turn the other supercilious. When the couple who are trying to bridge their emotional differences putting one among them under such an onerous condition would deprive a dignified life not only to the grantee but to both. It is to be noted that with the said conditions the appellant was granted only a provisional bail.

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273. CRIMINAL PROCEDURE CODE, 1973 – Section 439
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 483
CONSTITUTION OF INDIA – Article 21
NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 8, 22, 23, 29 and 37
Grant of bail – Imposition of conditions – Right to life and personal liberty guaranteed under Article 21 of the Constitution of India – Bail

conditions cannot be fanciful, arbitrary or freakish – Similarly, conditions cannot be so onerous as to frustrate the order of bail itself – Imposing any bail condition which enables the police/investigation agency to track every movement of the accused released on bail by using any technology would undoubtedly violate the right to privacy guaranteed under Article 21 of the Constitution.

दण्ड प्रक्रिया संहिता, 1973 – धारा 439
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 483
भारत का संविधान – अनुच्छेद 21
स्वापक औषधि एवं मनः प्रभावी पदार्थ अधिनियम, 1985 – धाराएं 8, 22, 23, 29 एवं 37
जमानत प्रदान किया जाना – शर्तों का अधिरोपण – भारतीय संविधान के अनुच्छेद 21 के अंतर्गत जीवन एवं व्यक्तिगत स्वतंत्रता का अधिकार गारंटीकृत – जमानत की शर्तें काल्पनिक, मनमानी अथवा विचित्र नहीं हो सकती – इसी तरह शर्तें इतनी दुर्भर नहीं हो सकतीं कि वे जमानत के आदेश को ही विफल कर दें – ऐसी कोई भी जमानत की शर्त अधिरोपित करना जो पुलिस/अनुसंधान एजेंसी को किसी भी तकनीक का उपयोग कर जमानत पर रिहा किए गए अभियुक्त की प्रत्येक गतिविधि का पता करने में सक्षम बनाता है, निस्संदेह अनुच्छेद 21 के अंतर्गत गारंटीकृत निजता के अधिकार का उल्लंघन होगा।

Frank Vitus v. Narcotics Control Bureau and ors.

Order dated 08.07.2024 passed by the Supreme Court in Criminal Appeal No. 2814 of 2024, reported in AIR 2024 SC 3418

Relevant extracts from the order:

Under Section 37 of the NDPS Act, the Court's power to grant bail is constrained by sub-section (1)(*b*)(*ii*). However, once a case is made out for a grant of bail in accordance with Section 37, the conditions of bail will have to be in terms of Section 437(3) of the CrPC. The reason is that because of Section 52 of the NDPS Act, the provisions of CrPC apply to the arrests made under the NDPS Act insofar as they are not inconsistent with the NDPS Act.

Apart from Conditions (*a*) to (*c*) in Section 437(3) CrPC, there is a power to impose additional conditions "in the interest of justice". The scope of the concept of "interest of justice" in Section 437(3) CrPC has been considered by this Court in ***Kunal Kumar Tiwari v. State of Bihar, (2018) 16 SCC 74***. In para 9, this Court held thus:

> "There is no dispute that clause (c) of Section 437(3) allows courts to impose such conditions in the interest of justice. We are aware that palpably such wordings are capable of accepting broader meaning. But such conditions cannot be arbitrary, fanciful or extend beyond the ends of the provision. The phrase "interest of justice" as used under the clause (c) of Section 437(3) means "good administration of justice" or "advancing the trial process" and inclusion of broader meaning should be shunned because of purposive interpretation."

The bail conditions cannot be fanciful, arbitrary or freakish. The object of imposing conditions of bail is to ensure that the accused does not interfere or obstruct the investigation in any manner, remains available for the investigation, does not tamper with or destroy evidence, does not commit any offence, remains regularly present before the trial court, and does not create obstacles in the expeditious conclusion of the trial. The conditions incorporated in the order granting bail must be within the four corners of Section 437(3). The bail conditions must be consistent with the object of imposing conditions.

Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that right.

We are dealing with a case of the accused whose guilt is yet to be established. So long as he is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21. The courts must show restraint while imposing bail conditions. Therefore, while granting bail, the courts can curtail the freedom of the accused only to the extent required for imposing the bail conditions warranted by law. Bail conditions cannot be so onerous as to frustrate the order of bail itself. But the court cannot impose a condition on the accused to keep the police constantly informed about his movement from one place to another. The object of the bail condition cannot be to keep a constant vigil on the movements of the accused enlarged on bail. The investigating agency cannot be permitted to continuously peep into the private life of the accused enlarged on bail, by imposing arbitrary conditions since that will violate the right of privacy of the accused, as guaranteed by Article 21. If a constant vigil is kept on every movement of the accused released on bail by the use of technology or otherwise, it will infringe the rights of the accused guaranteed under Article 21, including the right to privacy. The reason is that the effect of keeping such constant vigil on the accused by imposing drastic bail

conditions will amount to keeping the accused in some kind of confinement even after he is released on bail. Such a condition cannot be a condition of bail.

Imposing any bail condition which enables the police/investigating agency to track every movement of the accused released on bail by using any technology or otherwise would undoubtedly violate the right to privacy guaranteed under Article 21.

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274. EVIDENCE ACT, 1872 – Section 9

BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 7

Test identification parade – Relevance – It is only a part of police investigation and not a substantive piece of evidence – Non-conduction of a TIP may not prejudice the case of the prosecution or affect the identification of the accused – It would all depend upon the facts of the case – However, in cases where accused is stranger to a witness and there has been no TIP, Court should remain very cautious while accepting the dock identification by such a witness. *[Kunjumon v. State of Kerala, (2012) 13 SCC 750* relied upon]

साक्ष्य अधिनियम, 1872 – धारा 9

भारतीय साक्ष्य अधिनियम, 2023 – धारा 7

परीक्षण पहचान परेड – सुसंगता – यह केवल पुलिस अन्वेषण का भाग है एवं तात्विक साक्ष्य नहीं है – परीक्षण पहचान परेड का नहीं कराया जाना अभियोजन के मामले को अथवा अभियुक्त की पहचान को विपरीत रूप से प्रभावित नहीं करेगा – यह पूर्णतः मामलें के तथ्यों पर निर्भर करेगा – किन्तु ऐसे मामलें जिनमें अभियुक्त साक्षी से अपरिचित है एवं परीक्षण पहचान परेड नहीं हुई, वहॉ न्यायालय को ऐसे साक्षी द्वारा न्यायालय में की गयी अभियुक्त की पहचान को स्वीकार करते समय बहुत सतर्क रहना चाहिए। *[कुन्जुमोन वि. केरल राज्य, (2012) 13 एससीसी 750* अवलंबित]

P. Sasikumar v. State Represented by the Inspector of Police

Judgment dated 08.07.2024 passed by the Supreme Court in Criminal Appeal No. 1473 of 2024, reported in (2024) 8 SCC 600

Relevant extracts from the judgment:

It is well settled that TIP is only a part of Police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence is only dock identification that is identification made by witness in Court during trial.

In cases where accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (See: ***Kunjumon v. State of Kerala,(2012) 13 SCC 750***).

The relevance of a TIP, is well-settled. It depends on the fact of a case. In a given case, TIP may not be necessary. The non conduct of a TIP may not prejudice the case of the prosecution or affect the identification of the accused. would all depend upon the facts of the case. It is possible that the evidence of prosecution witness who has identified the accused in a court is of a sterling nature, as held by this Court in the case of ***Rajesh v. State of Haryana (2021) 1 SCC 118*** and therefore TIP may not be necessary. It is the task of the investigation team to see the relevance of a TIP in a given case. Not conducting TIP in a given case may prove fatal for the prosecution.

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275. EVIDENCE ACT, 1872 – Section 112

BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 116

(i) Legitimacy of child – Strong presumption as to legitimacy – Even result of a genuine DNA test cannot escape from the conclusiveness of the presumption u/s 112 of the Evidence Act – Even if DNA test reveals that the child was not born to the husband, the said conclusiveness in law would still remain irrebutable, if a husband and wife were found living together during the time of conception – It would only prove adultery on the part of wife.

(ii) DNA test of a minor child – Circumstances – Principles regarding circumstances under which a DNA test of a minor child may be directed, summarized.

साक्ष्य अधिनियम, 1872 – धारा 112

भारतीय साक्ष्य अधिनियम, 2023 – धारा 116

(i) बालक की धर्मजता – धर्मजता के संबंध में मजबूत उपधारणा – एक वास्तविक डीएनए परीक्षण का परिणाम भी साक्ष्य अधिनियम की धारा 112 के अंतर्गत उपधारणा की निश्चायकता से बच नहीं सकता – यद्यपि डीएनए परीक्षण से ज्ञात होता है कि बालक का जन्म पति से नहीं हुआ, तब भी विधि की उक्त निश्चायकता अखंडनीय रहेगी, यदि पति एवं पत्नी गर्भधारण के समय साथ रहते हुए पाये गये – यह केवल पत्नी के द्वारा व्यभिचार किये जाने को साबित करेगा।

(ii) अवयस्क बालक का डीएनए परीक्षण – परिस्थितियां – अवयस्क बालक का डीएनए परीक्षण जिन परिस्थितियों में निर्देशित किया जा सकता है, के संबंध में सिद्धांत सारांशित किए गये।

Aparna Ajinkya Firodia v. Ajinkya Arun Firodia

Judgment dated 20.02.2023 passed by the Supreme Court in Civil Appeal No. 1308 of 2023, reported in (2024) 7 SCC 773

Relevant extracts from the judgment:

Section 112 was enacted at a time when modern scientific tests such as DNA tests, as well as Ribonucleic acid tests ('RNA', for short), were not in contemplation of the legislature.However, even the result of a genuine DNA test cannot escape from the conclusiveness of the presumption under Section 112 of the Evidence Act. If a husband and wife were living together during the time of conception but the DNA test reveals that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. What would be proved, is adultery on the part of the wife, however, the legitimacy of the child would still be conclusive in law. In other words, the conclusive presumption of paternity of a child born during the subsistence of a valid marriage is that the child is that of the husband and it cannot be rebutted by a mere DNA testreport. What is necessary to rebut is the proof of non-access at the time when the child could have been begotten, that is, at the time of its conception vide ***Kamti Devi v. Poshi Ram, (2001) 5 SCC 311.***

The following principles could be culled out as to the circumstances under which a DNA test of a minor child may be directed to be conducted:

i. That a DNA test of a minor child is not to be ordered routinely, in matrimonial disputes. Proof by way of DNA profiling is to be directed in matrimonial disputes involving allegations of infidelity, only in matters where there is no other mode of proving such assertions.

ii. DNA tests of children born during the subsistence of a valid marriage may be directed, only when there is sufficient prima-facie material to dislodge the presumption under Section 112 of the Evidence Act. Further, if no plea has been raised as to non-access, in order to rebut the presumption under Section 112 of the Evidence Act, a DNA test may not be directed.

iii. A Court would not be justified in mechanically directing a DNA test of a child, in a case where the paternity of a child is not directly in issue, but is merely collateral to the proceeding.

iv. Merely because either of the parties have disputed a factum of paternity, it does not mean that the Court should direct DNA test or such other test to resolve the controversy. The parties should be directed to lead evidence to prove or disprove the factum of paternity and only if the Court finds it impossible to draw an inference based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct DNA test and not otherwise. In other words, only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy the Court can direct such test.

v. While directing DNA tests as a means to prove adultery, the Court is to be mindful of the consequences thereof on the children born out of adultery, including inheritance-related consequences, social stigma, etc.

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276. HINDU MARRIAGE ACT, 1955 – Sections 7 and 19

Petition for divorce – Territorial jurisdiction – Petition for divorce can be filed at the place where marriage was solemnized, in case where respondent is residing in any other place than the residence of opposite party to marriage and thirdly, where the parties of the marriage last resided together – Petitioner/husband filed divorce petition at Bhopal (MP) – Saptapadi performed in Ajamgarh (UP) – Prior or subsequent ceremonies performed at Bhopal (MP) are not material to decide solemnization of marriage – As per section 19 of the Act, marriage was solemnized at Ajamgarh (UP) – Not stated by the appellant that lastly both parties resided at Bhopal – As per averments in the petition, parties lastly resided at Bangalore – Held, Bhopal Court has no jurisdiction – Order passed by the Family Court, Bhopal dismissing the petition for want of jurisdiction was upheld.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 7 एवं 19

विवाह विच्छेद की याचिका – प्रादेशिक क्षेत्राधिकार – विवाह विच्छेद की याचिका उस स्थान पर प्रस्तुत की जा सकती है जहॉ विवाह संपन्न हुआ था, जब प्रत्यर्थी अन्य स्थान पर निवासरत् है तब उस पक्षकार के निवास स्थान पर एवं तीसरा, जहॉ विवाह के पक्षकार आखिरी बार साथ निवासरत् रहे – याचिकाकर्ता/पति ने विवाह विच्छेद याचिका भोपाल (म.प्र.) में प्रस्तुत की – सप्तपदी आजमगढ़ (उ.प्र.) में संपन्न हुई – पूर्व के या पश्चातवर्ती समारोह भोपाल (म.प्र.) में संपन्न हुए जो कि विवाह सम्पन्न होने को निश्चित करने के लिए महत्वपूर्ण नहीं है – अधिनियम की धारा 19 के अनुसार विवाह आजमगढ़

(उ.प्र.) में संपन्न हुआ – याचिकाकर्ता ने यह अभिकथित नहीं किया है कि दोनों पक्षकार साथ में आखिरी बार भोपाल में निवासरत् रहे – याचिका के अभिवचन अनुसार पक्षकार आखिरी बार बैंगलौर में निवासरत् रहे – अभिनिर्धारित, भोपाल न्यायालय को क्षेत्राधिकारिता नहीं है – कुटुम्ब न्यायालय, भोपाल द्वारा क्षेत्राधिकार के अभाव में याचिका को निरस्त करने के आदेश की पुष्टि की गई।

Niklesh Barwe v. Sudha w/o Niklesh Barwe

Order dated 11.12.2023 passed by the High Court of Madhya Pradesh in First Appeal No. 2251 of 2023, reported in 2024(3) MPLJ 192 (DB)

Relevant extracts from the order:

It is clear from the appellant's arguments that saptapadi was performed at Ajamgarh (U.P.). Thus, the marriage was actually solemnized at Ajamgarh (U.P.) and the prior or subsequent to ceremonies performed at Bhopal (M.P.) are not material to decide the solemnization of the marriage. For the purpose of Section 19 of the Act, the marriage between the parties was actually solemnized at Ajamgarh (U.P.).

It is not the case of appellant that lastly both the parties resided at Bhopal. As per the plaint averment, the appellant lastly resided with the respondent in her parental home situated in Bangalore. Thus, Bhopal Court has no jurisdiction as per the law prescribed under Section 19 of the Hindu Marriage Act, 1955.

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277. INDIAN PENAL CODE, 1860 – Sections 34 and 302
BHARATIYA NYAYA SANHITA, 2023 – Sections 3(5) and 103(1)
CRIMINAL PROCEDURE CODE, 1973 – Sections 154 and 161
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 173 and 180

(i) Criminal trial – Murder – Contradiction in the testimony of eyewitnesses and I.O. regarding particular name of the place of occurrence – Mere omission on the part of the investigating officer in marking a spot by the particular name on the site plan would be immaterial – Site plan merely denotes the location of the incident without implying further details – Due weightage must be given to the first-hand version of eyewitnesses.

(ii) FIR – Failure of police to read out or apprise the informant about the contents – Effect – Held, such requirement is procedural in nature and not obligatory – Such omission has not caused any prejudice to the accused, especially when a copy of FIR and chargesheet were duly supplied to the accused and on his behalf effective cross-examination of the informant was also done.

(iii) Recovery of weapon – Non-explanation of human blood on the weapon – Effect – It is a circumstance against the accused and therefore it is incumbent upon the accused to provide an explanation in this regard – However, it may not be a decisive factor to determine the guilt, but still a conspicuous silence does lend support to the prosecution case.

(iv) Dying declaration – Statement to police officer – Deceased person's statement to police officer u/s 161 CrPC regarding cause of death can be considered as dying declaration, even if IO had not taken certification from doctor regarding the assessment of mental fitness of deceased – It is a matter of mere prudence, however, court ought to be extremely careful and cautious in placing reliance thereupon.

भारतीय दंड संहिता, 1860 – धाराएं 34 एवं 302
भारतीय न्याय संहिता, 2023 – धाराएं 3(5) एवं 103(1)
दंड प्रक्रिया संहिता, 1973 – धाराएं 154 एवं 161
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 173 एवं 180

(i) दांडिक विचारण – हत्या – घटना स्थल के विशिष्ट नाम के संबंध में चक्षुदर्शी साक्षीगण एवं अन्वेषण अधिकारी की साक्ष्य में विरोधाभास – अन्वेषण अधिकारी द्वारा केवल नक्शा मौका में घटना स्थल को विशिष्ट नाम से चिन्हित करने में हुआ लोप सारहीन होगा – नक्शा मौका बिना अतिरिक्त विवरण दिये केवल घटना के स्थान को दर्शित करता है – चक्षुदर्शी साक्षीगण से प्रथमतः प्राप्त घटना के विवरण को पर्याप्त महत्व दिया जाना चाहिए।

(ii) प्रथम सूचना रिपोर्ट – सूचनाकर्ता को प्रथम सूचना रिपोर्ट पढ़कर सुनाने अथवा उसकी अर्न्तवस्तु से अवगत कराने में पुलिस की विफलता – प्रभाव – अभिनिर्धारित, उक्त आवश्यकता प्रक्रियात्मक प्रकृति की है एवं अनिवार्य नहीं है – ऐसे लोप से अभियुक्त को कोई प्रतिकूल प्रभाव कारित नहीं हुआ, विशेषतः तब जबकि अभियुक्त को प्रथम सूचना रिपोर्ट

एवं अभियोग पत्र की प्रति उचित रूप से प्रदान की गई एवं उसकी ओर से सूचनाकर्ता का प्रभावी प्रतिपरीक्षण भी किया गया।

(iii) आयुध की जब्ती – आयुध पर मानव रक्त होने का स्पष्टीकरण नहीं दिया जाना – प्रभाव – यह अभियुक्त के विरूद्ध एक परिस्थिति है एवं इसलिए अभियुक्त के लिए यह आवश्यक है कि वह इस संबंध में स्पष्टीकरण उपलब्ध कराये – तथापि यह अपराध की दोषिता ज्ञात करने के लिए एक निर्णायक कारक नहीं है, किन्तु इस संबंध में एक विशिष्ट मौन अभियोजन के मामले का समर्थन करेगा।

(iv) मृत्युकालिक कथन – पुलिस अधिकारी को कथन – दं.प्र.सं. की धारा 161 के अंतर्गत मृत्यु के कारण के संबंध में मृतक व्यक्ति का कथन मृत्युकालिक कथन के रूप में विचार में लिया जा सकता है, यद्यपि अन्वेषण अधिकारी ने मृतक के मानसिक रूप से स्वस्थ होने के संबंध में चिकित्सक से कोई प्रमाण पत्र प्राप्त नहीं किया – यह केवल प्रज्ञा का विषय है, तथापि न्यायालय को उस पर निर्भरता व्यक्त करने में अत्यधिक सचेत एवं सावधान रहना होगा।

Dharmendra Kumar alias Dhamma v. State of Madhya Pradesh

Judgment dated 08.07.2024 passed by the Supreme Court in Criminal Appeal No. 2806 of 2024, reported in (2024) 8 SCC 60

Relevant extracts from the judgment:

A mere omission on the part of the Investigating Officer in marking a spot on the site plan does not deflect the prosecution's case. It is well established that the site plan merely denotes the location of the incident without implying further details. In light of the fact that the persons who had seen that to which they have testified, due weightage must be given to their first-hand version. Their evidence cannot be jettisoned merely because the IO forgot to describe.

Assuming that the Police failed to read out or apprise the informant about the contents of the FIR, the question that falls for consideration is whether such omission has caused any prejudice to the Appellant? In our considered opinion, the answer has to be in the negative. This is not a case where the Appellant was not provided with a copy of the FIR or the charge sheet, which could have hindered his ability to effectively cross-examine the Informant.

We have also gone through the Appellant's own statement recorded under Section 313 CrPC. The Appellant has failed to demonstrate any prejudice

resulting from the alleged non-reading of the contents of the FIR to the Informant. The contention raised in this regard is entirely misconceived.

The stipulations outlined in Section 154 CrPC concerning the reading over of the information after it is written down, the signing of the said information by the informant, and the entry of its substance in the prescribed manner are not obligatory. These requirements are procedural in nature, and the omission of any of them does not impact the legal consequences resulting from the information provided under the section.

Upon a thorough examination of the FSL report, it stands confirmed that the blood group classification test conducted on the recovered knife yielded inconclusive results. However, it is crucial to note that human blood was detected on the knife recovered at the instance of the appellant.

The non-explanation of human blood on the weapon of crime constitutes a circumstance against the accused. It is incumbent upon the accused to provide an explanation regarding the presence of human blood on the weapon.

While it may not be a decisive factor to determine the guilt, but a conspicuous silence does lend support to the prosecution case.

Section 161 CrPC empowers the Police to examine orally any person who is acquainted with the facts and circumstances of the case under investigation. The Police may reduce such statement into writing also. Section 162(1) CrPC, nonetheless, mandates that no statement made by any person to a Police Officer, if reduced to writing, be signed by the person making it, nor shall such statement be used in evidence except to contradict a witness in the manner provided by Section 145 of the IEA. However, Sub-Section (2) of Section 162 CrPC carves out an exception to Sub-Section (1) as it explicitly provides that nothing in Section 162 shall be deemed to apply to any statement falling within the ambit of clause (1) of Section 32 of the IEA. In other words, a statement made by a person who is dead, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a Police Officer and which has been recorded under Section 161 CrPC, shall be relevant and admissible, notwithstanding the express bar against use of such statement in evidence contained therein. In such eventuality, the statement recorded under Section 161 CrPC assumes the character of a dying declaration. Since extraordinary credence has been given to such dying declaration, the court ought to be extremely careful and cautious in placing reliance thereupon.

As regard to the assessment of mental fitness of the person making a dying declaration, it is indubitably the responsibility of the court to ensure that the declarant was in a sound state of mind. This is because there are no rigid procedures mandated for recording a dying declaration. If an eyewitness asserts that the deceased was conscious and capable of making the declaration, the medical opinion cannot override such affirmation, nor can the dying declaration be disregarded solely for want of a doctor's fitness certification. The requirement for a dying declaration to be recorded in the presence of a doctor, following certification of the declarant's mental fitness, is merely a matter of prudence.

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278. INDIAN PENAL CODE, 1860 – Sections 100, 300, 302 and 307
BHARATIYA NYAYA SANHITA, 2023 – Sections 38, 101, 103(1) and 109
EVIDENCE ACT, 1872 – Sections 3 and 8
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 2 and 6

(i) Murder or culpable homicide not amounting to murder – Determination – Accused/appellant who was a police guard, shot dead the deceased inside the police station while on duty – Evidence available on record showed that the deceased had illicit relations with wife of accused and therefore he had a motive to kill the deceased – Accused fired multiple shots and continued to spray bullets on deceased even when he was trying to escape – Deceased had received 8 to 9 shots from the carbine which are spread all over his body – Nature of weapon used; number of gunshots fired at the deceased; part of the body where gunshots were fired and other proved circumstances goes to show that accused was determined to kill the deceased – Case is not covered under any of the exceptions to Section 300 of IPC – Conviction for the offence of murder found proper.

(ii) Cross-examination of witness – Deferment of – As far as possible, the defence should be asked to cross-examine the witness the same day or the following day – Only in exceptional cases and for reasons to be recorded, it should be deferred and a short adjournment can be given after taking precautions and care for the witness – Practice of deferring cross-examination of witness in a routine manner strongly condemned.

भारतीय दण्ड संहिता, 1860 – धाराएं 100, 300, 302 एवं 307
भारतीय न्याय संहिता, 2023 – धाराएं 38, 101, 103(1) एवं 109
साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 8
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 2 एवं 6

(i) हत्या या हत्या की कोटि में न आने वाला आपराधिक मानव वध – निर्धारण – अभियुक्त/अपीलकर्ता जो एक पुलिस गार्ड था, ने कर्तव्य के दौरान आरक्षी केन्द्र के अंदर मृतक को गोली मारकर मार डाला – अभिलेख पर उपलब्ध साक्ष्य से यह दर्शित कि मृतक के अभियुक्त की पत्नी के साथ अवैध संबंध थे और इसलिए अभियुक्त के पास मृतक को मारने का हेतु था – अभियुक्त ने कई गोलियां चलाईं और मृतक पर तब भी गोलियां बरसाना जारी रखा, जब वह भागने की कोशिश कर रहा था – मृतक को बंदूक की 8 से 9 गोलियां लगी थी, जो उसके पूरे शरीर पर फैली हुई थीं – प्रयुक्त किये गये आयुध की प्रकृति, मृतक पर चलाई गई गोलियों की संख्या, मृतक के शरीर के वे स्थान जहां गोलियां चलाई गईं एवं अन्य प्रमाणित परिस्थितियॉ यह दर्शित करते हैं कि अभियुक्त का मृतक को मारने का दृढ़ आशय था – मामला धारा 300 भा.दं.स. के किसी अपवाद के अन्तर्गत नहीं आता है – हत्या के अपराध के लिए दोषसिद्धि उचित पाई गई।

(ii) साक्षी का प्रतिपरीक्षण – स्थगन – बचाव पक्ष को जहां तक संभव हो साक्षी का प्रतिपरीक्षण उसी दिन या अगले दिन करने के लिए कहा जाना चाहिए – केवल अपवादिक मामलों में, और लेखबद्ध कारणों से उचित सतर्कता तथा साक्षी का ध्यान रखते हुए सावधानीपूर्वक संक्षिप्त स्थगन दिया जाना चाहिए – साक्षी के प्रतिपरीक्षण को सामान्य रूप से स्थगित करने की प्रथा की गंभीर निंदा की गई।

Surender Singh v. State (NCT of Delhi)

Judgment dated 03.07.2024 passed by the Supreme Court in Criminal Appeal No. 597 of 2012, reported in AIR 2024 SC 3220

Relevant extracts from judgment:

The defence did not cross-examine this witness immediately after her examination-in-chief, but sought that the cross-examination be deferred, which was done and she was cross-examined only on 30.11.2004, which is more than two months after her examination-in-chief. We may just stop here for a while only to sound a note of caution. Such long adjournment as was given in this case after examination-in-chief, should never have been given. Reasons for this are many, but to our mind the main reason would be that this may affect the fairness of the trial and may even endanger, in a given case, the safety of the witness. As far as possible, the defence should be asked to cross-examine the witness the same day

or the following day. Only in very exceptional cases, and for reasons to be recorded, the cross-examination should be deferred and a short adjournment can be given after taking precautions and care, for the witness, if it is required. We are constrained to make this observation as we have noticed in case after case that cross-examinations are being adjourned routinely which can seriously prejudice a fair trial.

This Court had, on more than one occasion, condemned this practice of the trial court where examinations are deferred without sufficient reasons. We may refer here to some cases, which are ***State of U.P. v. Shambhu Nath Singh*, (2001) 4 SCC 667, *Ambika Prasad v. State (NCT of Delhi), (2000) 2 SCC 646***and ***Mohd. Khalid v. State of W.B., (2002) 7 SCC 334***.

As we have said, cross-examination can be deferred in exceptional cases and for reasons to be recorded by the court, such as under sub-section (2) of Section 231CrPC but even here the adjournment is not to be given as a matter of right and ultimately it is the discretion of the court. In ***State of Kerala v. Rasheed, (2019) 13 SCC 297***, this Court has set certain guidelines under which such an adjournment can be given. The emphasis again is on the fact that a request for deferral must be premised on sufficient reasons, justifying the deferral of cross-examination of the witness.

As we could see from the records in the present case the cross-examination of PW 2 was deferred precisely on grounds referred in sub-section (2) of Section 231CrPC. The defence requested to examine PW 2 with another prosecution witness (Vinod PW 17). Yet the records of the case also reveal that though the cross-examination was deferred yet the other witness (PW 17) was examined much later, nearly a year after the cross-examination of PW 2. We only wanted to record this cautionary note to make our point that this practice is not a healthy practice and the courts should be slow in deferring these matters. The mandate of Section 231CrPC and the law laid down on the subject referred above must be followed in its letter and spirit.

Thankfully, in the case at hand, the deferred cross-examination of PW 2 has not affected the course of the trial. This witness has remained consistent.

Under Section 105 of the Evidence Act, the burden of proof that the accused's case falls within the general exception is upon the accused himself. This Court in ***State of M.P. v. Ramesh, (2005) 9 SCC 705*** observed that:

> "Under Section 105 of the Indian Evidence Act, 1872 (in short "the Evidence Act"), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not

> possible for the court to presume the truth of the plea of self-defence. The court shall presume the absence of such circumstances. … Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused."

This burden of proof though is not as onerous as the burden of proof beyond all reasonable doubts which is on the prosecution, nevertheless some degree of reasonable satisfaction has to be established by the defence, when this plea is taken. (See ***Salim Zia v. State of U.P., (1979) 2 SCC 648***)

The appellant would argue that the act attributable to him would fall under Exception 1 to Section 300 IPC.

This Court has reiterated in more than one cases right from ***K.M. Nanavati v. State of Maharashtra, 1961 SCC OnLine SC 69*** onwards that provocation itself is not enough to reduce the crime from murder to culpable homicide not amounting to murder. In order to convert a case of murder to a case of culpable homicide not amounting to murder, provocation must be such that would temporarily deprive the power of self-control of a "reasonable person". What has also to be seen is the time-gap between this alleged provocation and the act of homicide; the kind of weapon used; the number of blows, etc. These are again all questions of facts. There is no standard or test as to what reasonableness should be in these circumstances as this would again be a question of fact to be determined by a court. ***Nanavati*** (supra) answers this question as follows :

> "Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values, etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision : it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self-control momentarily or even

temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

The Indian law, relevant to the present enquiry, may be stated thus: (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the First Exception to Section 300 of the Penal Code, 1860. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation."

In the present case on every possible count the case is nothing but a case of murder. The nature of weapon used; the number of gunshots fired at the deceased; the part of the body where gunshots are fired, all point towards the fact that the appellant was determined to kill the deceased. Ultimately, he achieved his task and made sure that the deceased is dead. By no stretch of logic is it a case of any lesser magnitude, and definitely not culpable homicide not amounting to murder.

The facts of the present case do not even remotely make out any case under Exception 1 to Section 300 IPC, or under any other Exception(s) to Section 300 IPC.

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279. INDIAN PENAL CODE, 1860 – Sections 107 and 306
BHARATIYA NYAYA SANHITA, 2023 – Sections 45 and 108
Instigation – During lunch break at school, an incident of bursting of fire crackers took place – School management took action and identified three students including the deceased as the ones who committed the mischief – They were admonished by Principal and directed to bring parents to school the following day – After going home, deceased committed suicide by hanging himself – Case was registered against the petitioners who are Principal, Vice Principal and teacher of school for the offence punishable u/s 306/34 IPC – The

alleged act of scolding and reprimanding a student by a teacher is an attempt of course correction and would not constitute any offence – *Mens rea* is a necessary ingredient of instigation and the abetment to suicide would be constituted only when such abetment is found intentional – No offence made out – FIR was quashed.

भारतीय दण्ड संहिता, 1860 – धाराएं 107 एवं 306
भारतीय न्याय संहिता, 2023 – धाराएं 45 एवं 108
उकसाना – दोपहर के भोजनावकाश के दौरान विद्यालय में पटाखे फटने की घटना घटी – स्कूल प्रबंधन ने कार्यवाही किया एवं मृतक सहित 3 विद्यार्थियों की पहचान की जिन्होंने यह शरारत की थी – प्राचार्य ने उन्हें डॉटा और अगले दिन उनके अभिभावकों को विद्यालय लाने हेतु निर्देशित किया – घर पहुंचने के उपरांत मृतक ने स्वयं को फांसी लगाकर आत्महत्या कर ली – याचिकाकर्ता जो कि विद्यालय के प्राचार्य, उप–प्राचार्य एवं शिक्षक थे, के विरूद्ध भा.दं.सं. की धारा 306/34 के अंतर्गत दण्डनीय अपराध हेतु प्रकरण दर्ज किया गया – विद्यार्थी को शिक्षक द्वारा डॉटने एवं दण्डित करने का कथित कृत्य सुधारने का प्रयास है एवं यह अपराध गठित नहीं करता – आपराधिक दुराशय उकसाने का आवश्यक घटक है एवं आत्महत्या का दुष्प्रेरण तभी गठित होगा जब दुष्प्रेरण साशय किया जाना पाया जाए – कोई अपराध गठित नहीं – प्रथम सूचना रिर्पोट अभिखण्डित की गई।

Virendra Singh Rana and ors. v. State of M.P. and anr.

Order dated 24.01.2024 passed by the High Court of Madhya Pradesh (Bench Gwalior) Miscellaneous Criminal Case No. 10745 of 2023, reported in ILR 2024 MP 1458

Relevant extracts from the order:

The essential three conditions that are necessarily required to be present individually in the sequence leading to the commissioning of suicide by a person are as below:

a. Instigation to commit suicide

b. Conspiracy leading to person committing suicide

c. Intentionally aiding by an act or omission to commit suicide

If any of the conditions is found present against the person sought to be prosecuted u/s 306 IPC, such person shall be held responsible for abetting commissioning of suicide. Per contra in the absence of the any of the above three conditions, a person cannot be held responsible for committing crime u/s 305 IPC.

In all three cases of instigation, conspiracy or aid, direct and active involvement of the accused is essential to convict him for abetment of suicide. The term 'instigation' is not defined in IPC. The instigation on the part of the accused should be active and proximate to the incident. It has been held in number of cases that to constitute "instigation", the person who instigates another person has to provoke, incite, urge or encourage doing of an act by the other by "goading" or "urging forward". A mere statement of suggesting the deceased to end his life without any *mens-rea* would not come under the purview of abetment to suicide. *Mens-rea* is a necessary ingredient of instigation and the abetment to suicide would be constituted only when such abetment is found intentional.

Supreme Court in ***Geo Varghese v. State of Rajasthan and anr., (2021) 19 SCC 144*** while dealing with the matter wherein a 9th standard student committed suicide and left a note alleging that his PTI teacher harassed and insulted him in front of everyone, the Court emphasised two essentials for conviction u/s 306. First, there should be a direct or indirect act of incitement. A mere allegation of harassment of the deceased by another would not be sufficient. Secondly, there must be reasonableness. If the deceased was hypersensitive and if the allegations imposed upon the accused are not otherwise sufficient to induce another person in similar circumstances to commit suicide, it would not be fair to hold the accused guilty for abetment of suicide. Thus, Supreme Court quashed the FIR in the lack of any specific allegation and material on record as the essentials to prove the allegation u/s 306 were not satisfied. Here is the present case, three students were scolded but deceased appeared to be over sensitive, therefore, committed suicide, whereas other two students remained grounded. Therefore, it appears that the deceased was sensitive and being afraid of consequences of his misconducts, took such drastic and painful decision.

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280. INDIAN PENAL CODE, 1860 – Sections 120B and 302
BHARATIYA NYAYA SANHITA, 2023 – Sections 61(2) and 103(1)
CRIMINAL PROCEDURE CODE, 1973 – Sections 154, 161 and 162
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 173, 180 and 181

(i) Murder – FIR – Incident of assault which resulted in death of one person and injury to other, occurred at 8.30 p.m. – FIR was lodged at 11.00 p.m. on the basis of statement given by the injured –

Police constable (PW-12), who claimed to have seen the incident, has stated that he picked up two weapons from the spot and presented them at the police station at around 9.15 p.m. – However, neither his statement was recorded nor any entry was made in the *rojnamcha* regarding the factum of presentation of weapons in the police station – Initial version given by the eyewitness when not recorded by the police as FIR, amounts to concealment of the initial version from the Court – Non production of daily diary is found to be a serious omission on the part of the prosecution – FIR prepared after reaching the spot after due deliberations, consultation and discussion, cannot be treated as FIR – It would be a statement made during investigation of a case and is hit by section 162 of CrPC – Adverse inference would be drawn against the prosecution on this count.

(ii) Recovery of blood stained weapon – FSL report – It concludes that the blood group found on the weapon recovered at the instance of the accused matched with the blood group of the deceased – However, it cannot form the sole basis of conviction unless the same was connected with the murder of the deceased by the accused.

भारतीय दंड संहिता, 1860 – धाराएं 120ख एवं 302
भारतीय न्याय संहिता, 2023 – धाराएं 61(2) एवं 103(1)
दंड प्रकिया संहिता, 1973 – धाराएं 154, 161 एवं 162
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 173, 180 एवं 181

(i) हत्या – प्रथम सूचना रिपोर्ट – हमले की घटना अपराह्न 8:30 बजे कारित हुई, जिसमें एक व्यक्ति की मृत्यु एवं अन्य को चोट कारित हुई – प्रथम सूचना रिपोर्ट आहत द्वारा दिये गये कथन के आधार पर अपराह्न 11:00 बजे लेखबद्ध हुई – पुलिस आरक्षक (अ.सा.12) जिसने घटना देखने का दावा किया, का कथन है कि उसने घटना स्थल से दो आयुध उठाये और अपराह्न 09:15 बजे के लगभग उन्हें आरक्षी केन्द्र पर प्रस्तुत किया था – परंतु न तो उसके कथन लेखबद्ध हुये न ही आरक्षी केन्द्र में आयुध प्रस्तुत करने के तथ्य के संबंध में रोजनामचा में कोई इंन्द्राज किया गया – चक्षुदर्शी साक्षी द्वारा दिये गये घटना के प्रांरभिक विवरण को पुलिस द्वारा प्रथम सूचना रिपोर्ट की तरह लेखबद्ध नहीं किया जाना, न्यायालय से प्रांरभिक विवरण को छिपाना माना जायेगा – दैनिक डायरी का प्रस्तुत

न किया जाना अभियोजन के भाग पर एक गंभीर लोप पाया गया – घटनास्थल पर पहुँचने के उपरान्त विचार–विमर्श एवं चर्चा के उपरान्त तैयार प्रथम सूचना रिपोर्ट को प्रथम सूचना रिपोर्ट की तरह नहीं माना जा सकता – वह मामले के अन्वेषण के दौरान दिया गया कथन होगा एवं दण्ड प्रकिया संहिता की धारा 162 से प्रभावित होगा – इस आधार पर अभियोजन के विरूद्ध प्रतिकूल अनुमान लिया जाएगा।

(ii) रक्तरंजित आयुध की जब्ती – एफएसएल रिपोर्ट – उसमें यह निष्कर्ष अंकित है कि अभियुक्त की सूचना पर जब्त आयुध पर पाया गया रक्त समूह मृतक के रक्त समूह से मिलता है – परंतु यह दोषसिद्धि का एकमात्र आधार नहीं हो सकता जब तक कि वह अभियुक्त द्वारा मृतक की हत्या करने से संबंधित न हो।

Allarakha Habib Memon and ors. v. State of Gujarat

Judgment dated 08.08.2024 passed by the Supreme Court in Criminal Appeal No. 2828 of 2023, reported in (2024) 9 SCC 546

Relevant extracts from the judgment:

We find it improbable and totally unacceptable that a police constable had seen the incident and had also brought the crime weapons to the police station and yet his statement would not be recorded and the factum of presentation of weapons would not be entered in the daily diary (roznamcha) of the police station.

A reasonable doubt is created in the mind of the Court that the statement of Demistalkumar (PW-12) would definitely have been recorded in the daily diary (roznamcha) but his version may not have suited the prosecution case and that is why, the daily diary entry was never brought on record. Non-production of the daily diary is a serious omission on part of the prosecution.

There cannot be any doubt that the first version of the incident as narrated by the Police Constable, Demistalkumar (PW-12) would be required to be treated as the FIR and the complaint lodged by Mohammad Arif Memon (PW-11) would be relegated to the category of a statement under Section 161 CrPC and nothing beyond that. The same could not have been treated to be the FIR as it would be hit by Section 162 CrPC. Evidently thus, the prosecution is guilty of concealing the initial version from the Court and hence, an adverse inference deserves to be drawn against the prosecution on this count.

When the police officer does not deliberately record the FIR on receipt of information about cognizable offence and the FIR is prepared after reaching the spot after due deliberations, consultations and discussion, such a complaint cannot

be treated as FIR and it would be a statement made during the investigation of a case and is hit by Section 162 of Code of Criminal Procedure.

Thus, even presuming that the FSL reports (Exhibits 111-115) conclude that the blood group found on the weapons recovered at the instance of the accused matched with the blood group of the deceased, this circumstance in isolation, cannot be considered sufficient so as to link the accused with the crime.

Sole circumstance of recovery of blood-stained weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused.

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281. INDIAN PENAL CODE, 1860 – Section 302
BHARATIYA NYAYA SANHITA, 2023 – Section 103(1)

(i) Criminal trial – Appreciation of evidence – Credibility of witness – Witness may be disbelieved only on the basis of material discrepancy and inconsistency which renders the account narrated by the witnesses so highly improbable that the same maysafely be discarded altogether from consideration – Otherwise, minor discrepancies do not discredit overall reliability.

(ii) Murder or culpable homicide not amounting to murder – Determination – Deceased tried to flee away when he saw theaccused persons including appellant approaching him armedwith deadly weapons – Appellant grabbed the deceased and pulled him to the ground and stabbed him with the dagger on his chest which resulted in his death – Submission of the appellant was that only one of the eight injuries sustained by the deceased is grievous and the rest are simple and hence, there was no intention to cause death – Whether such argument can be accepted? Held, No – Weapon used by the appellant for the pre-meditated attack was dagger which is a deadly weapon – The said weapon was carried by the appellant to the place of incident and not picked up from the spot – Deceased was stabbed on his chest which is a vital organ – There was no provocation from the side of the deceased – Stab injury on the chest was found sufficient in the ordinary course of nature to cause death – Act of the appellant is covered by both clauses Firstly and Thirdly of Section 300 of the Code – Conviction for the offence of murder, found proper.

भारतीय दंड संहिता, 1860 – धारा302
भारतीय न्याय संहिता, 2023 – धारा 103(1)

(i) दांडिक विचारण – साक्ष्य का मूल्यांकन – साक्षी की विश्वसनीयता – साक्षी पर केवल तात्विक भिन्नता एवं विसंगति के आधार पर अविश्वास किया जा सकता है जिसके कारण साक्षी द्वारा दिया गया अभिकथन इतना अधिक असंभाव्य हो जाता है कि उसे सुरक्षित रूप से विचार में लेने से पूर्णतः पृथक किया जा सकता है – अन्यथा सूक्ष्म विसंगति, सम्पूर्ण विश्वसनीयता पर अविश्वास उत्पन्न नहीं करती।

(ii) हत्या अथवा हत्या की कोटि में न आने वाला आपराधिक मानव वध – निर्धारण – मृतक ने दूर भागने की कोशिश की जब उसने अपीलार्थी सहित अभियुक्त व्यक्तियों को स्वयं की ओर घातक आयुधों से सुसज्जित आते हुए देखा – अपीलार्थी ने मृतक को पकड़ा एवं उसे जमीन पर गिरा दिया एवं उसकी छाती पर कटार घोप दी जिसके परिणामस्वरूप उसकी मृत्यु हुई – अपीलार्थी का तर्क यह था कि मृतक को कारित आठ चोटों में से केवल एक गंभीर तथा अन्य साधारण थी, अतः मृत्यु कारित करने का कोई आशय नहीं था – क्या ऐसा तर्क स्वीकार किया जा सकता है? अभिनिर्धारित, नहीं – अपीलार्थी द्वारा पूर्व नियोजित हमला करने के लिए उपयोग में लाया गया आयुध कटार था जो कि घातक आयुध है – उक्त आयुध अपीलार्थी द्वारा घटना स्थल तक लाया गया था एवं मौके से नहीं उठाया गया था – मृतक की छाती पर घोपा गया था जो मार्मिक अंग है – मृतक की ओर से कोई उकसावा नहीं था – छाती पर घोपा हुआ घाव प्रकृति के सामान्य अनुक्रम में मृत्यु कारित करने के लिए पर्याप्त पाया गया – अपीलार्थी का आचरण संहिता की धारा 300 के दोनों खण्ड पहले एवं तीसरे में समाविष्ट होता है – हत्या के अपराध के लिए दोषसिद्धि उचित पायी गयी।

Joy Devaraj v. State of Kerala

Judgment dated 08.07.2024 passed by the Supreme Court in Criminal Appeal No. 32 of 2013, reported in (2024) 8 SCC 102

Relevant extracts from the judgment:

This Court in ***Rammi v. State of M.P., (1999) 8 SCC 649*** held that when an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the

credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

We find it expedient to excerpt a passage from ***Tahsildar Singh v. State of U.P., 1959 SCC OnLine SC 17*** which lays down the standard for "contradicting" a witness in the following words. Section 145 of the Evidence Act indicates the manner in which contradiction is brought out. The cross-examining counsel shall put the part or parts of the statement which affirms the contrary to what is stated in evidence. This indicates that there is something in writing which can be set against another statement made in evidence. If the statement before the police officer in the sense we have indicated and the statement in the evidence before the court are so inconsistent or irreconcilable with each other that both of them cannot coexist, it may be said that one contradicts the other. The threshold for disbelieving a witness is not mere discrepancy or inconsistency but material discrepancy and inconsistency, which renders the account narrated by the witnesses so highly improbable that the same may safely be discarded altogether from consideration.

Applying the rubric provided in ***Pulicherla Nagaraju v. State of Andhra Pradesh, (2006) 11 SCC 444*** to the present case, we find that the weapon used for the premeditated attack was a dagger, which is considered a deadly weapon. The weapon was carried by the appellant to the scene of the incident and not picked up from the spot. The victim was stabbed in his chest, which houses multiple vital organs of the body. There was no provocation from the side of the victim. The appellant and other co-accused had reached the place of occurrence with the premeditated intention to cause hurt to the victim, which can be seen from the fact that they formed an unlawful assembly armed with deadly weapons with the common intention to attack the victim and thereby put an end to the movement triggered by him to stop trade in illicit liquor.

The post mortem examination of the victim revealed the cause of death of the appellant to be haemorrhage due to an incised wound on the apex of the heart. The apex of the heart is the lowest tip of the heart located on the lower left side of the chest. In his cross examination, PW8 (who conducted the post-mortem examination) noted that such an injury can cause death within 5 (five) minutes of infliction. Needless to observe, the heart is one of several vital organs of the body,

and the appellant caused such bodily injury, which in the ordinary course of nature was sufficient to cause death.

The appellant's submission that only one of the eight injuries sustained by the victim is grievous and the rest are simple and hence there is no intention to cause death, cannot be accepted after examining the facts of the case. In Stalin v. State20, this Court held that death caused by a single stab wound can also be considered murder if the requirements of section 300 IPC are fulfilled.

To summarise, the appellant participated in a premeditated attack on the victim, armed with a deadly weapon and stabbed the unarmed victim on a vital organ causing his death. The conduct of the appellant is covered by both clauses (1) and (3) of section 300, IPC. The intention to cause death can easily be discerned from the conduct of the appellant and the nature of fatal injury inflicted, which in the ordinary course of nature was sufficient to cause death. Fulfilment of any one condition of section 300, IPC is enough to convict the appellant under section 302 thereof, but in the present case not one but two conditions have clearly been shown to exist to nail the appellant for murder.

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282. INDIAN PENAL CODE, 1860 – Section 302
BHARATIYA NYAYA SANHITA, 2023 – Section 103(1)
EVIDENCE ACT, 1872 – Sections 3, 24 and 114(g)
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 2, 22 and 119 (g)

(i) Extra-judicial confession – Evidentiary value – It is considered as a weak type of evidence and is generally used as a corroborative link to lend credibility to the other evidence on record – Prosecution has alleged that accused had confessed before village officer that he had killed his step mother – Testimony of village officer with respect to such confession was not found trustworthy – Moreover there was nothing on record to show that the accused had a close acquaintance with the village officer and that he has implicit faith in him – Extra judicial confession was not reliable.

(ii) Offence of murder – Circumstantial evidence – Adverse inference against prosecution – Accused had allegedly dragged his stepmother up to the village pond and put her head inside the pond due to which she suffocated to death – Evidence available on record showed that there was a road and ridge of pond between house of deceased and pond – Accused must have dragged

deceased for a considerable distance – Post-mortem report did not show marks of injury on body of deceased – Doctor deposed that cause of death was drowning but he was unable to state whether death was homicidal or accidental – Post-mortem report stated that an expert's opinion should be sough but expert's opinion was not sought – Material witnesses including person who had allegedly seen the accused dragging deceased with her hair were not examined – Adverse inference was drawn against prosecution – Charge was not found proved beyond reasonable doubt – Conviction set aside.

भारतीय दण्ड संहिता, 1860 – धारा 302
भारतीय न्याय संहिता, 2023 – धारा 103(1)
साक्ष्य अधिनियम, 1872 – धाराएं 3, 24 एवं 114(छ)
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 2, 22 एवं 119(छ)

(i) न्यायिकेत्तर संस्वीकृति – साक्षिक मूल्य – यह कमजोर प्रकृति की साक्ष्य है और सामान्यतः इसका उपयोग समर्थनकारी कड़ी के रूप में अभिलेख पर आई अन्य साक्ष्य को विश्वसनीयता प्रदान करने हेतु किया जायेगा – अभियोजन पक्ष का यह आरोप है कि अभियुक्त ने ग्राम अधिकारी के समक्ष संस्वीकृत किया था कि उसने अपनी सौतेली मां की हत्या कर दी है – इस संस्वीकृति के संबंध में ग्राम अधिकारी की साक्ष्य विश्वसनीय नहीं पाई गई – इसके अलावा अभिलेख पर ऐसा कुछ भी नहीं था जिससे पता चले कि अभियुक्त का ग्राम अधिकारी से करीबी परिचय था एवं वह उस पर पूर्ण विश्वास करता था – न्यायिकेत्तर संस्वीकृति विश्वसनीय नहीं थी।

(ii) हत्या का अपराध – परिस्थितिजन्य साक्ष्य – अभियोजन के विरूद्ध प्रतिकूल अनुमान – अभियुक्त ने कथित रूप से अपनी सौतेली माँ को घसीटकर गाँव के तालाब तक खींचा था और उसका सिर तालाब के अंदर डाल दिया था जिसके कारण दम घुटने से उसकी मृत्यु हो गई थी – अभिलेख पर उपलब्ध साक्ष्य से पता चला कि मृतक के घर और तालाब के बीच, एक सड़क और तालाब की मेड़ थी – अभियुक्त ने मृतक को काफी दूरी तक घसीटा होगा – पोस्टमॉर्टम रिपोर्ट में मृतक के शरीर पर चोट के निशान नहीं दर्शाये गए थे – चिकित्सक ने साक्ष्य दी कि मृत्यु का कारण डूबना था लेकिन वह यह बताने में असमर्थ रहा था कि मृत्यु मानववध थी या दुर्घटनात्मक थी – पोस्टमार्टम रिपोर्ट में कहा गया था कि विशेषज्ञ की राय मांगी जानी चाहिए लेकिन विशेषज्ञ की राय नहीं मांगी गई थी – महत्वपूर्ण साक्षियों सहित उस व्यक्ति की परीक्षा नहीं की

गई जिसने कथित तौर पर मृतक को अभियुक्त द्वारा बालों से घसीटते हुए देखा था – अभियोजन के विरूद्ध प्रतिकूल अनुमान निकाला गया – आरोप युक्तियुक्त संदेह से परे प्रमाणित नहीं पाया गया – दोषसिद्धि अपास्त।

Ratnu Yadav v. State of Chhattisgarh

Judgment dated 09.07.2024 passed by the Supreme Court in Criminal Appeal No. 1635 of 2018, reported in AIR 2024 SC 3314

Relevant extracts from the judgment:

As regards the evidentiary value of an extra-judicial confession, a bench of three Hon'ble Judges of this Court in the case of ***Devi Lal v. State of Rajasthan, (2019) 19 SCC 447***, in Paragraph 11, this Court held thus:

> "It is true that an extra-judicial confession is used against its maker but as a matter of caution, advisable for the court to look for a corroboration with the other evidence on record. In ***Gopal Sah v. State of Bihar, (2008) 17 SCC 128***, this Court while dealing with extra-judicial confession held that extra-judicial confession is, on the face of it, a weak evidence and the Court is reluctant, in the absence of a chain of cogent circumstances, to rely on it, for the purpose of recording a conviction. In the instant case, it may be noticed that there are no additional cogent circumstances on record to rely on it. At the same time, Shambhu Singh (PW 3), while recording his statement under Section 164 CrPC, has not made such statement of extra-judicial confession (Ext. D-5) made by accused Babu Lal. In addition, no other circumstances are on record to support it."

In paragraph 16 of the decision of this Court in the case of ***Nikhil Chandra Mondal v. State of West Bengal, (2023) 6 SCC 605***, this Court held thus:

> "It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence."

The normal rule of human conduct is that if a person wants to confess to the crime committed by him, he will do so before the person in whom he has implicit faith. It is not the case of the prosecution that the appellant had a close acquaintance with PW-1 for a certain length of time before the incident. Moreover, the version of the witness in examination-in-chief and cross-examination is entirely different. Therefore, in our considered view the testimony of PW-1 is not reliable. Hence, the case of extra-judicial confession cannot be accepted.

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283. INDIAN PENAL CODE, 1860 – Section 302
BHARATIYA NYAYA SANHITA, 2023 – Section 103(1)

Murder – Extra-judicial confession – Probative value – Accused allegedly confessed his crime before the witness on telephone – Witness has not disclosed the said telephone number from which he received a call from the accused to the police and no investigation was made in this respect – Similarly, so called presence of police Sub-Inspector during confession creates doubt, when prosecution has not examined him as a witness – Hence, prosecution evidence regarding extra-judicial confession cannot be believed.

भारतीय दंड संहिता, 1860 – धारा 302
भारतीय न्याय संहिता, 2023 – धारा 103(1)

हत्या – न्यायिकेत्तर संस्वीकृति – साक्षिक मूल्य – अभियुक्त ने कथित रूप से साक्षी के समक्ष टेलीफोन पर अपना अपराध स्वीकार किया – साक्षी ने पुलिस को उक्त टेलीफोन नंबर नहीं बताया जिससे उसे अभियुक्त से कॉल आया था एवं इस संबंध में अन्वेषण नहीं किया गया – इसी प्रकार संस्वीकृति के समय पुलिस उपनिरीक्षक की कथित उपस्थिति संदेह उत्पन्न करती है, जब कि अभियोजन ने उसका साक्षी की तरह परीक्षण नहीं कराया हो – अतः न्यायिकेत्तर संस्वीकृति के संबंध में अभियोजन साक्ष्य पर विश्वास नहीं किया जा सकता।

Lal Mohammad Manjur Ansari v. State of Gujarat

Judgment dated 08.07.2024 passed by the Supreme Court in Criminal Appeal No. 3524 of 2023, reported in (2024) 7 SCC 733

Relevant extracts from the judgment:

The normal rule of human conduct is that a person would confess the commission of a serious crime to a person in whom he has implicit faith. The

appellant had worked in PW19's shop only for five months in 2004. The appellant was otherwise not known to PW19. Therefore, it is unnatural that the appellant would call the deceased on the phone and confess.

Furthermore, PW19 admittedly did not disclose to the police the telephone number from which he allegedly received a call from the appellant. As can be seen from the testimony of PW25, Investigating Officer, no investigation was made to ascertain the phone number on which PW19 received a call from the appellant and the phone number from which PW19 called PSI Mishra. It was necessary for the prosecution to collect evidence on these aspects and place it before the Court.

Though PW 19 stated that the appellant again made extra judicial confession at the Central Bus station in the presence of PSI Mishra, the prosecution has not examined PSI Mishra as a witness.

Hence, the prosecution's evidence regarding extra-judicial confession cannot be believed.

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284. INDIAN PENAL CODE, 1860 – Sections 302 and 149
BHARATIYA NYAYA SANHITA, 2023 – Sections 103 and 190
Offence of murder – Unlawful assembly – Four co-accused persons assaulted the deceased by means of *danda, kanta* and knives causing him injuries which resulted in his death – Allegation against the appellant was that he fired a shot in the air from his country made pistol in order to frighten the persons who came to rescue the deceased – Liability of appellant – Held, factum of causing injury or not causing injury, not material where the accused is sought to be roped in with the aid of section 149 – Infliction of fatal injury or any injury by all the members of the assembly is not necessary – Appellant was one of the members of the unlawful assembly therefore his mere presence was sufficient to render him vicariously liable u/s 149 for causing death of the victim of attack –Conviction of the appellant was upheld.

भारतीय दण्ड संहिता, 1860 — धाराएं 302 एवं 149
भारतीय न्याय संहिता, 2023 — धाराएं 103 एवं 190
हत्या का अपराध — विधिविरूद्ध जमाव — चार सहअभियुक्तगण ने डण्डा, कांटा एवं चाकुओं से मृतक पर हमला कर घाव कारित किये जिसके परिणामस्वरूप उसकी मृत्यु हो गई — अपीलार्थी के विरूद्ध यह आरोप था कि

उसने मृतक को बचाने आए व्यक्तियों में भय कारित करने हेतु हवा में देशी कट्टों से फायर किया – अपीलार्थी का दायित्व – अभिनिर्धारित, घाव कारित करने अथवा न करने का तथ्य तब महत्वपूर्ण नहीं रह जाता है जब अभियुक्त को धारा 149 की सहायता से सम्मिलित किया गया हो – जमाव के समस्त सदस्यों द्वारा प्राणघातक घाव अथवा कोई भी घाव कारित करना आवश्यक नहीं है – अपीलार्थी विधि विरूद्ध जमाव का सदस्य था इसलिए उसकी उपस्थिति मात्र ही प्रतिनिधिक रूप से उसे धारा 149 के अंतर्गत हमले के पीड़ित की हत्या करने हेतु दायित्वाधीन बनाती है – अपीलार्थी की दोषसिद्धि की पुष्टि की गई।

Nitya Nand v. State of Uttar Pradesh and anr.

Judgment dated 04.09.2024 passed by the Supreme Court in Criminal Appeal No. 1348 of 2014, reported in (2024) 9 SCC 314

Relevant extracts from the judgment:

Section 149 IPC says that every member of an unlawful assembly shall be guilty of the offence committed in prosecution of the common object. Section 149 IPC is quite categorical. It says that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing of that offence, is a member of the said assembly; is guilty of that offence. Thus, if it is a case of murder under Section 302 IPC, each member of the unlawful assembly would be guilty of committing the offence under Section 302 IPC.

As a matter of fact, this Court in ***Vinubhai Ranchhodbhai Patel v. Rajivbhai DudabhaiPatel, (2018) 7 SCC 743*** has reiterated the position that Section 149 IPC does not create a separate offence but only declares vicarious liability of all members of the unlawful assembly for acts done in common object. This Court has held:

> "In cases where a large number of accused constituting an "unlawful assembly" are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section 149 is essential in such cases for punishing the members of such unlawful assemblies on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justifies. The mere

> presence of an accused in such an "unlawful assembly" is sufficient to render him vicariously liable under Section 149 IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicariously liable under Section 149 IPC for the offence punishable under Section 302 IPC.

Failure to appropriately invoke and apply Section 149 enables large number of offenders to get away with the crime.

* * * * *

> When a large number of people gather together (assemble) and commit an offence, it is possible that only some of the members of the assembly commit the crucial act which renders the transaction an offence and the remaining members do not take part in that "crucial act" for example in a case of murder, the infliction of the fatal injury. It is in those situations, the legislature thought it fit as a matter of legislative policy to press into service the concept of vicarious liability for the crime. Section 149 IPC is one such provision. It is a provision conceived in the larger public interest to maintain the tranquility of the society and prevent wrongdoers (who actively collaborate or assist the commission of offences) claiming impunity on the ground that their activity as members of the unlawful assembly is limited."

* * * * *

> For mulcting liability on the members of an unlawful assembly under Section 149, it is not necessary that every member of the unlawful assembly should commit the offence in prosecution of the common object of the assembly. Mere knowledge of the likelihood of commission of such an offence by the members of the assembly is sufficient. For example, if five or more members carrying AK 47 rifles collectively attack a victim and cause his death by gunshot injuries, the fact that one or two of the members of the assembly did not in fact fire their weapons does not mean that they did not have the knowledge of the fact that the offence of murder is likely to be committed.

It is true that there are certain lacunae in the prosecution. The scribe *Kuldeep* was not examined. Similarly, the younger brother *Laxmi Narain* was not examined though it has come on record that *Laxmi Narain* was killed in the year 1993 and in that case one of the accused is the appellant himself. It is also true that neither any country-made pistol was recovered nor any cartridge, empty or

otherwise, recovered. However, the appellant has been roped in with the aid of Section 149 IPC. Therefore, as held by this Court in ***Yunis alias Kariya v. State of M.P., (2003) 1 SCC 425***, no overt act is required to be imputed to a particular person when the charge is under Section 149 IPC; the presence of the accused as part of the unlawful assembly is sufficient for conviction. It is clear from the evidence of PW-1 and PW-2 that the appellant was part of the unlawful assembly which committed the murder. Though they were extensively cross-examined, their testimony in this regard could not be shaken.

In view of what we have discussed above, we have no doubt in our mind that the trial court had rightly convicted the appellant under Section 148 IPC read with Section 302/149 IPC and that the High Court was justified in confirming the same.

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285. INDIAN PENAL CODE, 1860 – Sections 306 and 498-A
BHARATIYA NYAYA SANHITA, 2023 – Sections 108 and 85
EVIDENCE ACT, 1872 – Section 113A
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 117
Abetment – Suicide committed by married lady within 7 years of her marriage on account of harassment meted out to her by in-laws – Presumption u/s 113A of the Evidence Act – Even if the above facts are established, the Court is not bound to presume that suicide had been abetted by her husband or relatives of husband – Section 113A gives discretion to the Court to raise such a presumption, having regard to all the other circumstances of the case.

भारतीय दण्ड संहिता, 1860 – धाराएं 306 एवं 498–क
भारतीय न्याय संहिता, 2023 – धाराएं 108 एवं 85
साक्ष्य अधिनियम, 1872 – धारा 113क
भारतीय साक्ष्य अधिनियम, 2023 – धारा 117
दुष्प्रेरण – विवाहित स्त्री द्वारा विवाह के 7 वर्ष के भीतर सास-ससुर द्वारा उसके प्रति की गई प्रताड़ना के कारण आत्महत्या कर ली गई – धारा 113क के अंतर्गत उपधारणा – यदि उपरोक्त तथ्य स्थापित भी हो जाते हैं तब भी न्यायालय यह उपधारित करने हेतु बाध्य नहीं है कि उसके पति अथवा पति के नातेदार ने आत्महत्या हेतु दुष्प्रेरित किया था – धारा 113क न्यायालय को प्रकरण की अन्य समस्त परिस्थितियों को विचार में लेने के उपरांत ऐसी उपधारणा करने का विवेकाधिकार प्रदान करती है।

Sumanbai @ Dattabai v. State of M.P.

Judgment dated 30.01.2024 passed by the High Court of Madhya Pradesh (Bench Indore) in Criminal Appeal No. 1636 of 1999, reported in ILR 2024 MP 1397

Relevant extracts from the judgment:

It is crystal clear that even that the deceased was a lady, committed suicide within a period of seven years from the date of her marriage and her husband or such relatives of her husband had subjected her to cruelty, the Court is not bound to presume that suicide has been abetted by her husband and such relatives of her husband. Virtually, Section 113A of Indian Evidence Act, gives wide discretion to the Court to raise such type of presumption with regard to other all such circumstances of the case.

In the case at hand, having gone through the whole dying declaration, some facts came that mother-in-law of deceased has subjected her to cruelty 12 but she never stated anything regarding abetment for committing her suicide. She never said that the deceased does not deserve to be alive or she should die. In this case, husband of deceased himself has taken her to the hospital and he along-with his parents had tried to save her life. Hence, only on the basis of presumption u/s 113A of the Indian Evidence Act, the appellant cannot be convicted for the offence u/s 306 of IPC. Certainly, since she has committed cruelty with the deceased, she is liable to be convicted u/s 498A of IPC. Here, it is pertinent to mention that there is no charge framed against the appellant u/s 498A of IPC but in view of settled legal position, the appellant may be convicted for the offence u/s 498A of IPC without framing charge.

In this regard, another judgment in ***M. Shrinivasulu v. State of Andhra Pradesh, (2007) 12 SCC 443***, wherein Hon'ble Apex Court ordained as under:-

> "a person charged and acquitted u/s 304B of IPC can be convicted u/s 498A without that charge being there, if such a case is made out"

Hence, even the charge has not been framed for the offence punishable u/s 498A of IPC, if the offence is made out against the appellant, she may be convicted u/s 498A of IPC instead of Section 306 of IPC.

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286. INDIAN PENAL CODE, 1860 – Section 307
BHARATIYA NYAYA SANHITA, 2023 – Section 109
CRIMINAL PROCEDURE CODE, 1973 – Section 386
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 427

(i) Attempt to murder – Essential ingredients to attract offence u/s 307 IPC – Victim need not suffer any kind of bodily injury – Offence is constituted by the concurrence of *mens rea* followed by *actus reus* – If a person commits an act with such intention or knowledge and under such circumstances that if death has been caused, offence would have amounted to murder or act itself is of such a nature as would have caused death in the usual course of an event, but something beyond his control prevented that result, his act would constitute the offence of attempt to murder.

(ii) Offence of attempt to murder – Accused was convicted for the said offence and was sentenced to 14 years of RI – Legality – Complainant became paralyzed due to a spinal injury caused by accused when he attempted to murder him – Act of accused was covered under second Part of section 307 of the Code, which prescribes punishment of either life imprisonment or punishment under first part i.e. upto 10 years – Since punishment of life imprisonment was not imposed, sentence permissible under first Part of section 307 should have been imposed – Imposition of sentence of 14 years was erroneous – Considering gravity of crime, sentence was modified to 10 years rigorous imprisonment and fine imposed was kept intact.

भारतीय दण्ड संहिता, 1860 – धारा 307
भारतीय न्याय संहिता, 2023 – धारा 109
दण्ड प्रक्रिया संहिता, 1973 – धारा 386
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 427

(i) हत्या करने का प्रयत्न – धारा 307 भा.दं.सं. के अंतर्गत अपराध को आकर्षित करने के आवश्यक तत्व – पीड़ित को किसी भी प्रकार की शारीरिक उपहति कारित होना आवश्यक नहीं – अपराध का गठन आपराधिक दुराशय एवं उसके बाद आपराधिक कार्य के मेल से होता है – यदि कोई इस आशय या ज्ञान के साथ और ऐसी परिस्थितियों में कोई कार्य करता है जिससे कि यदि मृत्यु हो जाती है तो वह हत्या का

अपराध होता या कार्य अपने आप में इस प्रकृति का है कि वह सामान्य अनुक्रम में मृत्यु कारित कर दे, किन्तु उसके नियंत्रण के बाहर, का कोई कार्य ऐसे परिणाम को रोक देता है, तो उसका यह कार्य हत्या करने के प्रयत्न का गठन करेगा।

(ii) हत्या करने के प्रयत्न का अपराध – अभियुक्त को उक्त अपराध के लिए दोषी ठहराया गया और उसे 14 वर्ष के सश्रम कारावास की सजा दी गई थी – वैधानिकता – अभियुक्त ने जब फरियादी की हत्या का प्रयत्न किया तो रीढ़ की हड्डी में चोट लगी जिसके कारण वह लकवाग्रस्त हो गया – अभियुक्त का कार्य संहिता की धारा 307 के दूसरे भाग के अंतर्गत आता है, जिसके लिए विहित दण्ड आजीवन कारावास या प्रथम भाग के तहत 10 वर्ष तक का कारावास है – चूंकि आजीवन कारावास की सजा नहीं दी गई थी अतः धारा 307 के प्रथम भाग के तहत अनुज्ञेय दण्डादेश अधिरोपित किया जाना चाहिए था – 14 वर्ष का दण्डादेश देना त्रुटिपूर्ण था – अपराध की गंभीरता को ध्यान में रखते हुए, दण्डादेश को 10 साल के सश्रम कारावास में परिवर्तित किया गया और अधिरोपित जुर्माने को यथावत् रखा गया।

Amit Rana alias Koka and anr. v. State of Haryana

Judgment dated 22.07.2024 passed by the Supreme Court in Criminal Appeal No. 700 of 2024, reported in AIR 2024 SC 3477

Relevant extracts from judgment:

Section 307 IPC, makes it clear that to attract the said offence the victim need not suffer any kind of bodily injury. The offence to commit murder punishable under Section 307 IPC is constituted by the concurrence of mens rea followed by actus reus, to commit an attempt to murder though its accomplishment or sufferance of any kind of bodily injury to the victim is not a 'sine qua non'. In other words, if a man commits an act with such intention or knowledge and under such circumstances that if death had been caused, the offence would have amounted to murder or the act itself is of such a nature as would have caused death in the usual course of an event, but something beyond his control prevented that result, his act would constitute the offence punishable as an attempt to murder under Section 307 IPC.

Now we will refer to the incident in question which led to the conviction of the appellants under Section 307 IPC. In view of the fact that we are not considering the question of conviction, it is unnecessary to deal with the

occurrence in detail. PW-5 Dr. Sahil, the then medical officer attached to PGIMS, Rohtak, deposed that the complainant (victim) was admitted in the hospital from 09.06.2016 to 02.07.2016 with history of gunshot injury. He would further depose that he along with Dr. Shubham removed the foreign body from the spine of the victim-Mangtu Ram. The indisputable fact is that the victim became paralysed due to the said spinal injury. Thus, it can be seen that the attempt to murder the complainant caused the injury and resultantly he became paralysed. When that be the consequence of the attempt to murder, the case would definitely be fallen under the second part of Section 307 IPC. On scanning the provisions under Section 307 IPC, we have already found that in case the victim suffered hurt in terms of the second part of Section 307 IPC, the convict can be sentenced to undergo imprisonment for life. In the event the court did not consider that imprisonment for life is not to be imposed the other option, going by the provision, is only to impose such punishment as is mentioned in the first part of Section 307 IPC. The first part, as noticed hereinbefore, prescribes punishment with imprisonment of either description for a term which may extend to 10 years and also to pay fine. A bare perusal of the second part of Section 307 IPC, would undoubtedly show that it did not prescribe for imposition of punishment more than what is prescribed under the first part thereof. We have already noted that the maximum imprisonment permissible under the first part of Section 307 IPC, is "imprisonment of either description for a term which may not extent to 10 years and also fine". When in unambiguous terms the legislature prescribed the maximum corporeal sentence imposable for the conviction under Section 307 IPC, under the first part and when the court concerned upon convicting the accused concerned thought it fit not to impose imprisonment for life, the punishment to be handed down to the convict concerned in any circumstance cannot exceed the punishment prescribed under the first part of Section 307 IPC. When this be the mandate under Section 307 IPC, the trial Court in view of its decision not to award the punishment of imprisonment for life could not have granted punishment to a term exceeding 10 years. It is to be noted that the respondent-State has not filed any appeal contending that the punishment imposed on the appellants is liable to be enhanced to imprisonment for life thus, we do not deem it necessary to go into the question whether the punishment is to be enhanced. Thus, the question is whether the sentence of rigorous imprisonment for 14 years is permissible in law and if not, what should be the comeuppance.

The discussion as above with reference to Section 307 IPC, would thus go to show that imposition of rigorous imprisonment for a term of 14 years for a conviction under Section 307 IPC, is impermissible in law and it is liable to be interfered with. Since the High Court had not gone into the question as to how imprisonment for a term of 14 years or the conviction under Section 307 IPC would be maintained and in view of our conclusion as above, the judgment of the High Court confirming the judgment of the trial Court awarding rigorous imprisonment for 14 years calls for interference.

Since the conviction of the appellants under Section 307 IPC, is declined to be interfered with by us, necessarily the punishment for the said offence taking note of the gravity of the crime has to be imposed. Since we are not proposing to enhance the sentence to imprisonment for life and the only option is to bring down the term of imprisonment from 14 years, there is absolutely no reason to hear the appellants in-person.

We have taken note of the fact that as a consequence of the attempt to do away with the life of the complainant, he had suffered spine injury and became paralysed in terms of the second part of the Section 307 IPC, the appellants are to be given the maximum corporeal sentence imposable under the first part of Section 307 IPC. Accordingly, the imposition of rigorous imprisonment for 14 years each to the appellants is converted to rigorous imprisonment for a period of 10 years. The order of sentence with respect to fine is kept intact. The appeal is thus allowed in part and the impugned judgment of the High Court and the judgment of the trial Court in S.T. No. 281/2016 qua the appellants stands modified as above.

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287. INDIAN PENAL CODE, 1860 – Sections 363 and 366
BHARTIYA NYAY SANHITA, 2023 – Sections 137 (2) and 87

(i) Abduction – There was neither any intention of forcing her into marriage against her will nor she was seduced for illicit intercourse – Perusal of the letter written by prosecutrix to accused clearly indicates that there was intention to elope with accused with her father's money – No external or internal injuries were found on her body – Hymen found intact indicating that no rape was committed – Evidence of prosecutrix didnot indicate that

the accused had abducted the prosecutrix with intent to marry – Two vital ingredients for upholding the conviction u/s 366 IPC not proved.

(ii) Age of prosecutrix – Medical evidence – Medical Officer stated that as per x-ray, the age of prosecutrix is between 16-18 years – Dental surgeon stated that the age of prosecutrix is not less than 17 years as none of her molars were present – If the margin of error of two years is calculated, the age of prosecutrix may be more than 18 years – In absence of any document regarding age, benefit of uncertainty must be given to the accused.

भारतीय दण्ड संहिता, 1860 – धाराएं 363 एवं 366
भारतीय न्याय संहिता, 2023 – धाराएं 137 (2) एवं 87

(i) अपहरण – न तो उसकी इच्छा के विरूद्ध उसे विवाह हेतु मजबूर करने का कोई आशय था और न ही उसे अवैध संभोग हेतु प्रलोभित किया गया – अभियोक्त्री द्वारा अभियुक्त को लिखे गये पत्र को पढ़ने से स्पष्ट रूप से संकेत मिलता है कि उसके पिता के पैसे लेकर आरोपी के साथ भाग जाने का इरादा था – उसके शरीर पर कोई आंतरिक या बाहरी चोट नहीं पाई गई – हाइमन का सुरक्षित पाया जाना दर्शाता है कि कोई बलात्कार नहीं किया गया – अभियोक्त्री की साक्ष्य से यह संकेत नहीं मिला कि आरोपी ने विवाह करने के आशय से उसका अपहरण किया – भा.द.सं. की धारा 366 के अंतर्गत दोषसिद्धि यथावत रखने हेतु दो महत्वपूर्ण तत्व साबित नहीं हुए।

(ii) अभियोक्त्री की आयु – चिकित्सीय साक्ष्य – चिकित्सा अधिकारी ने कथन किये कि एक्स-रे रिपोर्ट के अनुसार अभियोक्त्री की आयु 16 से 18 वर्ष के मध्य है – दंत शल्य चिकित्सक ने कथन किया कि अभियोक्त्री की आयु 17 वर्ष से कम नहीं थी क्योंकि उसकी कोई भी दाढ़ मौजूद नहीं थी – यदि 2 वर्ष के अंतर की त्रुटि के आधार पर गणना की जाती है तो अभियोक्त्री की आयु 18 वर्ष से अधिक हो सकती है – आयु के संबंध में किसी दस्तावेज के अभाव में अनिश्चितता का लाभ अभियुक्त को दिया जाना चाहिए।

Hiramani Singh v. State of M.P.

Judgment dated 11.01.2024 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 1209 of 2004, reported in ILR 2024 MP 1016

Relevant extracts from the judgment:

In the evidence of Doctor (PW-1) who has examined the prosecutrix, she stated that on 23.01.2004 while she was in the Hospital, the prosecutrix was brought by her father alongwith Constable- Sursari Prasad from Police Station Chorhata, for medical examination and she stated that no injury was found on the body of the prosecutrix. In her cross-examination, she stated that the prosecutrix did not have any internal or external laceration and considering the external examination of the prosecutrix, it was not advised to have sexual intercourse with her and her hymen was intact and she did not give any opinion regarding the age of the prosecutrix.

Apart from her evidence, Doctor (PW-7) stated that on 24.01.2004 while he was on duty, prosecutrix was brought by her father alongwith Sursarilal - Constable for X-ray and he examined and stated that the age of the prosecutrix is above 16 years and below 18 years. In his cross-examination, he stated that it may be more or less than two years.

Besides the above evidence, prosecution examined the Doctor (PW-9) who is the Dental Surgeon of Government Hospital, Rewa, he stated that on 24.01.2004 while he was in hospital, the prosecutrix was brought by her father Roshanlal alongwith Constable Sursarilal for medical examination and he found that none of her molars were present nor any evidence visible which proves that she was less than 17 years.

In support of medical evidence, Sunita who is the mother of the prosecutrix, examined as PW-12, she stated that her daughter was aged about 16 years. Roshanlal who is the father of the prosecutrix examined as PW-11 and he stated that her daughter was aged about 16 years.

In light of the above evidence, if the margin of arrears of two years is calculated, the age of prosecutrix may be more than 18 years at the time of incident. The Head Master of the Government Primary School has issued a certificate (Ex.P-2) showing her date of birth as 20.10.1987 but the prosecution has not examined the author of Exhibit P-2.

A decision reported in ***Phiroz v. State of Madhya Pradesh, 2022 SCC Online MP 1631,*** in para 24 are as follows:-

While dealing with a similar issue in ***Birad Mal Singhvi v. Anand Purohit, AIR 1988 SC 1796*** this Court held as under:

> "To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be

one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant. fact; and thirdly it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law.

An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded".

In the light of the above citation, the date of birth mentioned at the time of admission, on what basis the date of birth was mentioned in the school record. When the author was not examined by the prosecution, is of no value.

In the case of ***State of Karnataka v. Bantara Sudhakara,(2008) 11 SCC 38*** para 12 as follows:

"Additionally, merely because of doctor's evidence showed that the victims belong to the age group of 14-16, to conclude that the two years of age has to be added to the upper age limit is without any foundation."

In the case of ***Jyoti Prakash Rai vs. State of Bihar, (2008) 15 SCC 223*** the Apex Court also clarify that position and held after a certain age it is difficult to determine the exact age of the person concerned on the basis of ossification test or other tests because of that Apex Court in a number of judgments has held that the age determined by the doctors should be given the flexibility of two years on either side.

It transpires that there is no rule, much less an absolute one that two years have to be added to the age determined by the doctor. Whether the margin of error of two years is to be taken depends on the facts and circumstances of each case and the margin of error of two years is to be taken on the lower side or on the higher side, would also depends on the facts and circumstances of the case.

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288. LAND REVENUE CODE, 1959 (M.P.) – Section 129(5)
CIVIL PROCEDURE CODE, 1908 – Order 5 Rule 17
Demarcation proceedings – Need for proper service of notice – Revenue Inspector (*Patwari*) affixed notice for demarcation of subject land on the wall instead of affixing the same on the outer door of the house in violation of the provision contained in Order 5 Rule 17 of CPC

– Notice was not duly served on the petitioner and demarcation proceedings done behind his back – Further, notice stated that demarcation proceedings were to be held on 02.07.2021 but demarcation was done on 03.07.2021 – Held, Revenue Inspector should have given another notice to the petitioner stating date of 03.07.2021 for demarcation u/s 129(5) of the MPLRC – Demarcation done without following due procedure and without affording opportunity of hearing, is not sustainable.

भू-राजस्व संहिता, 1959 (म.प्र.) – धारा 129(5)
सिविल प्रक्रिया संहिता, 1908 – आदेश 5 नियम 17
सीमाकंन की कार्यवाही – नोटिस के उचित निर्वहन की आवश्यकता – राजस्व निरीक्षक (पटवारी) ने सिविल प्रक्रिया संहिता के आदेश 5 नियम 17 में वर्णित प्रावधान के विपरीत भवन के बाहरी द्वार पर भूमि सीमांकन का नोटिस चस्पा करने के स्थान पर दीवार पर चस्पा कर दिया – याचिकाकर्ता पर नोटिस का निर्वहन सम्यक रूप से नहीं हुआ और सीमांकन की कार्यवाही उसकी अनुपस्थिति में हुई – इसके अतिरिक्त नोटिस में सीमाकंन कार्यवाही का दिनांक 02.07.2021 लेख था, जबकि सीमांकन दिनांक 03.07.2021 को किया गया – अभिनिर्धारित, राजस्व निरीक्षक को धारा 129(5) म.प्र. भू राजस्व संहिता के अन्तर्गत याचिकाकर्ता को दिनांक 03.07.2021 को सीमांकन कार्यवाही किये जाने का एक और नोटिस देना चाहिये था – सम्यक् प्रक्रिया का पालन किए बिना एवं याचिकाकर्ता को सुनवाई का युक्तियुक्त अवसर दिए बगैर की गई सीमांकन कार्यवाही स्थिर रखे जाने योग्य नहीं।

Makundi Lal Pathak v. Bharat Lal Tiwari and ors.

Order dated 06.05.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 3088 of 2022, reported in 2024(4) MPLJ 30

Relevant extracts from the order:

The principles of natural justice not followed either by the Revenue Inspector or the Tehsildar passed the demarcation proceedings of the subject land dated 07.07.2021 and the Appellate Authority-SDO not verified the material aspects as to whether the service of notice served on the petitioner and the date mentioned in the notice 02.07.2021 demarcation takes place by the Revenue Inspector, the respondent no.3 and 4 would have to decide whether the said Revenue Inspector followed and given fair and reasonable opportunity by serving notice to the petitioner and submitted a report. Admittedly, the respondent no.4

not followed the due procedure and passed the demarcation proceeding which was affirmed by respondent no.3, which causes the prejudice to the petitioner. In absence of a notice of any kind and such reasonable opportunity, the order passed becomes wholly vitiated. Therefore, a proper notice is required u/s 129(5) of the MPRLC and the date should be mentioned on the notice for demarcation of the subject land, in the present case, demarcation not takes place on 02.07.2021, entire demarcation proceedings was taken by violating the principles of natural justice and demarcation proceedings have been finalized behind the back of the petitioner on the next date i.e. 03.07.2021.

The impugned order dated 02.06.2022 passed by the SDO and order dated 07.07.2021 passed by the Tehsildar including all the demarcation proceedings conducted by the Revenue Inspector, Tehsil-Ghuvara, District-Chhatarpur deserve to be set-aside. It is further directed that the Tehsildar shall conduct a fresh demarcation proceedings after giving proper service of notice and to give them opportunity of hearing to all the concerned, if not, it would amount to failure to adhere to the principles of natural justice, therefore, the impugned orders passed by the third and fourth respondents are not sustainable and tenable and warrant interference.

The impugned orders are *perse* illegal and are quashed and set-aside with a direction that the matter is remanded back to the Tehsildar for fresh consideration in terms of Section 129(5) of the MPLRC, 1959 and pass appropriate order in accordance with the procedure contemplated under the MPLRC, 1959 in this regard as directed supra within three months from the date of this order.

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289. MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019 – Sections 2(c) and 4

(i) Pronouncement of *talaq* – When it becomes an offence? Applicant/husband gave *talaq-e-ahsan* by registered post – As per FIR, allegations against the applicant are that he gave *talaq* to the wife on the grounds of demand of dowry and wife giving birth to girl child – *Talaq-e-ahsan* becomes operative after three menstrual cycles – Prior to *talaq* becoming operative, applicant alongwith his mother went to the parental home of his wife and gave *talaq-e-biddat* by pronouncing *Talaq* thrice – Held, as *Talaq-e-ahsan* had not become operative, the act of the applicant/husband giving

Talaq-e-Biddat **to wife constitutes an offence – FIR cannot be quashed.**

(ii) Difference between *Talaq-e-biddat* and *Talaq-e-ahsan* – *Talaq-e-biddat* comes into operation immediately whereas *Talaq-e-ahsan* becomes operative after three menstrual cycles.

मुस्लिम महिला (विवाह अधिकार संरक्षण) अधिनियम, 2019 – धारा 2(ग) एवं 4

(i) तलाक की उद्घोषणा – वह कब एक अपराध होगा? आवेदक/पति ने तलाक–ए–एहसान रजिस्टर्ड डाक के माध्यम से दिया – प्रथम सूचना रिपोर्ट के अनुसार आवेदक ने दहेज की मांग और पत्नी ने पुत्री को जन्म देने के कारण पत्नी को तलाक दिया – तलाक–ए–एहसान तीन ऋतुकाल के बाद प्रभावी होता है – तलाक के प्रभावी होने के पूर्व, आवेदक अपनी मॉ सहित पत्नी के माता पिता के घर गया और तीन बार तलाक बोलकर तलाक–ए–बिद्दत दे दिया – अभिनिर्धारित, जब तलाक–ए–एहसान प्रभावी नहीं हुआ था, तब आवेदक/पति द्वारा पत्नी को तलाक–ए–बिद्दत देने का कृत्य अपराध गठित करता है – प्रथम सूचना रिपोर्ट को अभिखण्डित नहीं किया जा सकता ।

(ii) तलाक–ए–बिद्दत एवं तलाक–ए–एहसान में विभेद – तलाक–ए–बिदद्त तत्काल प्रभावी होता है जबकि तलाक–ए–एहसान तीन ऋतुकाल के बाद प्रभावशील होगा।

Javed Naseem v. State of M.P. and anr.

Order dated 20.03.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Crimial Case No. 8056 of 2024, reported in 2024(3) MPLJ 127

Relevant extracts from the order:

The applicant has expressed his irrevocable divorce to the respondent No.2 and has made it conditional that only if respondent No.2 comes back to her matrimonial house then he would take her in kindness otherwise each of them would render Haram for other.

Thus, so far as Talaq-e-ahsan sent by the applicant is concerned, it is clear that in fact it is in the nature of instantaneous talaq by putting a pressure on the complainant to come back otherwise talaq would take its effect. Merely because the applicant has sent Talaq-e-ahsan with aforesaid condition would not take his case out of the purview of section 2(c) of the 2019 Act, because the applicant has already expressed his intention to grant irrevocable talaq to respondent No.2.

Such a Talaq-e-ahsan sent by the applicant is contrary to the reasons and objects of the 2019 Act.

Furthermore, this Talaq-e-ahsan was sent by registered post on 30.1.2023. It was to become operative after three menstrual cycles but prior thereto the applicant along with his mother went to the parental home of respondent no.2 and gave Talaq-e-biddat by pronouncing Talaq thrice.

Under these circumstances, when Talaq-e-ahsan had not become operative then giving Talaq-e-biddat to respondent No.2 clearly makes out an offence against the applicant.

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290. MOTOR VEHICLES ACT, 1988 – Section 166

Accident claim – Girl aged 10 years sustained grievous fracture in motor accident – Application rejected by Tribunal on the ground that registration number of offending vehicle mentioned in FIR is different from the one disclosed in the charge sheet and claim application – Whether order is justified? Held, No – In FIR, it was mentioned that accident was caused by TVS CHAMP MP-11BO-304 – After investigation Police found that number of offending vehicle was TVS XL MP-11 AA-304 – Accordingly, filed the charge sheet against the driver and owner of the said vehicle – There are similarities between the registration numbers and model of both the vehicles – There could be a confusion/mistake in disclosing the vehicle number while lodging FIR – No reason to doubt the investigation conducted by Police – Moreover, it was not expected from a 10 years old injured girl to give the correct registration number of the vehicle – Order rejecting claim was set aside.

मोटर यान अधिनियम, 1988 – धारा 166

दुर्घटना दावा – वाहन दुर्घटना में 10 वर्ष की लड़की को गंभीर अस्थिभंग कारित हुआ – अधिकरण द्वारा आवेदन इस आधार पर अस्वीकृत कि प्रथम सूचना रिपोर्ट में उल्लंघन करने वाले वाहन का उल्लेखित पंजीयन क्रमांक अभियोगपत्र और क्लेम आवेदन में बताए गए वाहन से अलग है – क्या आदेश न्यायानुमत है? अभिनिर्धारित, नहीं – प्रथम सूचना रिपोर्ट में यह उल्लेख किया गया था कि दुर्घटना टीवीएस चेम्प एमपी–11बीओ–304 से हुई थी – जाँच के बाद पुलिस ने पाया कि उल्लंघन करने वाले वाहन का क्रमांक टीवीएस एक्सएल एमपी–11एए-304 था और तदनुसार उसके चालक एवं मालिक के विरूद्ध अभियोग पत्र प्रस्तुत किया गया – दोनों वाहनों के पंजीकरण क्रमांक

एवं मॉडल के बीच समानताएं हैं – प्रथम सूचना रिपोर्ट दर्ज कराते समय वाहन नंबर का खुलासा करने में भ्रम/गलती हो सकती है – पुलिस द्वारा की गई जाँच पर संदेह करने का कोई कारण नहीं है – 10 साल की घायल लड़की से यह अपेक्षा नहीं की जा सकती कि वह वाहन का सही पंजीयन क्रमांक बताये – दावे को अस्वीकार करने के आदेश को अपास्त किया गया।

Laxmi d/o Ramesh v. Jagdishchandra and ors.

Judgment dated 13.02.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Appeal No. 3666 of 2007, reported in 2024(3) MPLJ 516

Relevant extracts from the judgment:

In the present case, the accident took place on 13.12.2003. After the accident, the accident was reported to the Police. First Information Report (FIR) was registered at Crime No.689 of 2003 on 14.12.2003 in which it was disclosed that the accident was caused by vehicle "TVS Champ" MP-11 BO-304. The Police started the investigation and found that the accident was actually caused by motorcycle TVS XL bearing registration number "MP-11 AA-304" owned by respondent No.2 and driven by respondent No.1. Jagdish Chandra S/o Bhiluji Khati was arrested on 04.08.2004. Pre-MLC was also carried out on 13.12.2003, which confirmed that the injuries sustained by Laxmi were caused by road accident. The Investigating Officer (I.O.) also collected the Insurance Policy (Ex. P/7) and after completing the investigation, charge sheet was filed under Sections 278, 337 and 338 of Indian Penal Code, 1860, in which the number of the offending vehicle was disclosed as "TVS XL" bearing registration number "MP-11 AA-304".

None of the respondents disclosed the status of the criminal case as to whether Jagdish Chandra S/o Bhiluji Khati has been acquitted on the ground that he did not cause any accident from his motorcycle bearing registration number "MP-11 AA-304". The accident was caused to a ten years aged girl, who sustained grievous fractures, therefore, it was not expected from her to give the correct description of the motorcycle and the number. The model and the vehicle number disclosed in the FIR and involved in the case are, as under: -

Vehicle Model	Vehicle	Number Remark
TVS XL	MP-11 AA-304	Disclosed in charge sheet & claim
TVS CHAMP	MP-11 BO-304	Disclosed in FIR

There are similarities between above two vehicles, as both are 'TVS' and its registration number is also the same i.e. 'MP-11" and '304', therefore, there could be a confusion or mistake in recording the number and model of the motorcycle.

As it is apparent from the aforesaid number and make of the vehicle, there are similarities between the number and the model, therefore, there could be a confusion/mistake in recording the number. Normally people cannot differentiate between two different models of the motorcycles manufactured by one company and all the models are commonly known by Hero Honda, TVS, Yamaha etc. Therefore, it cannot be said that the accident was not caused by the offending vehicle TVS Champ "MP-11 AA-304". The claim has wrongly been rejected, because partially wrong number was disclosed in the FIR, but after investigation, the Police found that the accident was caused by vehicle number "MP-11 AA-304" and there is no reason to doubt on the investigation conducted by the Police.

Some times, an FIR is lodged against unknown persons, but in investigation the Police finds the real culprit and files charge sheet against him. Therefore, although the make and number of the offending vehicle were wrongly recorded in the FIR, the entire claim has wrongly been rejected on that basis, without considering the final charge sheet filed by the Police.

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291. MOTOR VEHICLES ACT, 1988 – Sections 166 and 168

Motor accident claim – Claims Tribunal dismissed claim on the ground that evidence fell short of proving that deceased died in motor vehicle accident caused by rash and negligent act of driver/respondent – Marg intimation mentioned male person was crushed by an ox – Informant of Marg intimation is a ward boy of District Hospital and not an eye-witness – Intimation not by family members of deceased – Application to summon the Investigating Officer dismissed by the Tribunal – Held, Investigating Officer was a necessary witness – He could have thrown light on what basis chargesheet was filed – Without examining him, no correct finding can be recorded – Case remanded.

मोटरयान अधिनियम, 1988 – धाराएं 166 एवं 168

मोटर दुर्घटना दावा – दावा अधिकरण ने इस तथ्य को प्रमाणित करने हेतु अपर्याप्त साक्ष्य होने के आधार पर दावे को निरस्त किया कि चालक/प्रार्थी के उतावले एवं अपेक्षापूर्ण वाहन चालन के कारण हुई दुर्घटना में मृतक की मृत्यु हुई – मर्ग सूचना में यह उल्लिखित है कि मृतक बैल द्वारा कुचला गया था – मर्ग सूचना का सूचनाकर्ता जिला चिकित्सालय का वार्ड बॉय था न कि प्रत्यक्षदर्शी साक्षी – मृतक के परिवार वालों द्वारा सूचना नहीं दी गई –

अधिकरण ने अन्वेषण अधिकारी को तलब करने का आवेदन निरस्त किया था – अभिनिर्धारित, अनुसंधानकर्ता अधिकारी एक आवश्यक साक्षी था – इस संबंध में वही प्रकाश डाल सकता था कि अभियोग पत्र किस आधार पर प्रस्तुत किया गया था – उसका परीक्षण किये बगैर सही निष्कर्ष अंकित नही किया जा सकता – प्रकरण प्रतिप्रेषित।

Devkaliya @ Devkali (Must.) and ors. v. Dharmendra Singh and anr.

Order dated 11.03.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 4733 of 2019, reported in 2024(4) MPLJ 107

Relevant extracts from the order:

The important aspect is that Marg Intimation (Exhibit-P/3) was not given by the appellants/claimants or their family members but by a Ward Boy who was not the eye witness. Needless to stay that when any accident occurs and some person dies, the first priority of the family is to take steps regarding deceased and not in filing of claim or criminal case. It is pertinent to note that in charge-sheet aforesaid Ward Boy Shiv Pratap Singh has not been made a witness by the Police. It is the duty of the Court to go into the root of the matter but that effort has not been made by the learned Tribunal. The application of the appellants/claimants to summon the Investigating Officer who could have thrown light as on what basis charge-sheet was filed against the respondent No.1, who remained ex parte before the Tribunal, has erroneously been dismissed but in such circumstance adverse inference should have been drawn against the respondent No.1. Normally, when a person does not appear in the Court it is presumed that he has nothing to say regarding the claim or he does not want to oppose it. If the respondent No.1/non-applicant had any objection he should have filed some objection against lodging of false case against him, however, that is also not on record.

Thus, in the considered opinion of this Court, now at this stage Investigating Officer-Shyam Sunder is a necessary witness and without examining him no correct finding can be recorded regarding accident and on what basis charge-sheet was filed.

It is also mentioned that in the order-sheet dated 01.2.2019 the Claims Tribunal has observed that charges to summon the witnesses the Insurance Company has not been deposited but from perusal of record it is seen that the situation is otherwise as summon charges were already deposited vide Book no.636 Receipt No.7 dated 31.1.2018 and this aspect is mentioned in 'Talwana'.

Therefore, the Tribunal has erroneously closed the right of Insurance Company in this regard.

Hence, in the light of discussion made hereinabove, the award dated 05.2.2019 is set aside and matter is remanded to the Tribunal to give an opportunity to both the parties to lead their respective evidence regarding investigation. After recording of evidence, give findings on all issues. The Tribunal is further directed to dispose of the claim petition within a period of three months from the date of receipt of certified copy of this order.

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292. MOTOR VEHICLES ACT, 1988 – Section 173

(i) Award – Whether Tribunal can award more compensation than the amount claimed by the claimant? Held, Yes – There is no embargo to award compensation more than the amount claimed – Tribunal should award an amount which is just and proper.

(ii) Notional income – Appellant used to run an auto and also engaged in agricultural work – Incremental addition must be made even for self-employed individual – Notional income was fixed at Rs. 12,500/- for determination of compensation.

मोटर यान अधिनियम,1988 – धारा 173

(i) पंचाट – क्या अधिकरण याचिकाकर्ता द्वारा मांग की गई राशि से अधिक का प्रतिकर प्रदाय कर सकता है? अभिनिर्धारित, हॉ – मांग की गई राशि से अधिक प्रतिकर प्रदाय करने में कोई निर्बन्धन नहीं है – अधिकरण को वह राशि प्रदाय करना चाहिए जो कि न्यायसंगत और उचित हो।

(ii) काल्पनिक आय – अपीलार्थी ऑटो चलाता था एवं कृषि कार्य करता था – स्वनियोजित व्यक्तियों के लिए भी वेतन वृद्धि करनी चाहिए – प्रतिकर निर्धारण हेतु काल्पनिक आय 12,500/– रूपये प्रतिमाह निर्धारित की गई।

Ramesh Sahu v. Deepak Kumar Sahu and ors.

Judgment dated 25.01.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 3713 of 2022, reported in ILR 2024 MP 1351

Relevant extracts from the judgment:

When the accident occurred on 31.12.2010 has fixed a notional income of a coolie/worker in the year 2010 at Rs.7,500/- per month. In the instant case, the

injured/appellant sustained serious injuries in the accident occurred on 14.12.2020. In the absence of any documentary evidence about the notional income of the injured though he stated he was running an auto. Basing on the judgment ***Susy v. Suma Lalu Pareparambil House and ors., 2021 SCC online Ker 12658*** there would be an incremental enhancement in the case of even self-employed/individual in the unorganized sector and with respect to an unspecified job of a coolie or running auto considering the increase in cost of living an economic advancements over the years, it can be safely assumed that even a coolie would be eligible for incremental addition of at least Rs.500/- in every subsequent years. In such circumstances, the appellant is entitled to be fixed with a notional income of Rs.7,500/- in the year 2010 and on incremental basis Rs.500/- in every subsequent year i.e. 500x10=5000 (from 2011 to 2020), in the year of accident which is 2020, re-fix the notional income of the appellant is Rs.12,500/- per month.

As per the decision of the Hon'ble Supreme Court of India in the case of ***Nagappa v. Gurudayal Singh and ors., (2003) 2 SCC 274***, under the provisions of the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant in this appeal for enhancement of Rs.3,00,000/-. In an appropriate case where from the evidence brought on record, if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. There is no embargo to award compensation more than that claimed by the claimant. Rather it is obligatory for the Tribunal and Court to award "*just compensatio*n", even if it is in the excess of the amount claimed. The Tribunals are expected to make an award by determining the amount of compensation which should appear to be just and proper. In the present case, the compensation as awarded by the Claims Tribunal, against the background of the facts and circumstances of the case, is not just and reasonable and the claimant is entitled to more compensation though he might not have claimed the same at the time of filing this appeal.

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293. NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 8 (c), 22 (c), 29, 53 and 67

(i) Offence of illegal transportation of psychotropic substances – Conviction – Legality – As per prosecution, Accused No. 1 was found transporting the contraband – Allegation against the appellant/Accused No. 2 was to the effect that he had supplied

the said contraband to Accused No. 1 – There was no recovery of any prohibited material from appellant – No evidence to show that the seized contraband was delivered by or on behalf of the appellant – There was no evidence of the appellant's participation in any conspiracy – Offence punishable u/s 22(c) and 29 of the Act, found not proved – Conviction set aside.

(ii) Confessional statement – Probative value – Statement recorded u/s 67 cannot be used as a confessional statement in the trial of an offence under the Act – Not admissible in evidence and cannot be read in evidence, as the officer recording statement is invested with power u/s 53 of the Act as 'Police Officer' within the meaning of Section 25 of the Evidence Act.

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम 1985 – धाराएं 8 (ग), 22 (ग), 29, 53 एवं 67

(i) मनःप्रभावी पदार्थ के अवैध परिवहन का अपराध – दोषसिद्धि – वैधानिकता – अभियोजन के अनुसार अभियुक्त कमांक 1 प्रतिबंधित पदार्थ का परिवहन करते पाया गया – अपीलार्थी/अभियुक्त कमांक 2 के विरूद्ध आरोप था कि उसने उक्त प्रतिबंधित पदार्थ अभियुक्त कमांक 1 को उपलब्ध कराया – अपीलार्थी से किसी प्रतिबंधित पदार्थ की बरामदगी नहीं हुई – यह दर्शित करने के लिए कोई साक्ष्य नहीं कि जब्तशुदा प्रतिबंधित पदार्थ अपीलार्थी द्वारा अथवा उसकी ओर से प्रदान किया गया – अपीलार्थी के किसी षडयंत्र में सम्मिलित होने का कोई साक्ष्य नहीं – अधिनियम की धारा 22 (ग) एवं 29 के अंतर्गत दंडनीय अपराध साबित नहीं पाया गया – दोषसिद्धि अपास्त।

(ii) संस्वीकृति कथन – साक्षिक मूल्य – अधिनियम के अंतर्गत अपराध के विचारण में धारा 67 के अंतर्गत अभिलिखित कथन का संस्वीकृति कथन की तरह उपयोग नहीं किया जा सकता – साक्ष्य में ग्राह्य नहीं एवं साक्ष्य में पढ़ा नहीं जा सकता, क्योंकि कथन लेखबद्ध करने वाले अधिकारी को अधिनियम की धारा 53 के अंतर्गत शक्ति प्रदाय की गई है, जो साक्ष्य अधिनियम की धारा 25 के अर्थ में 'पुलिस अधिकारी' है।

Ajay Kumar Gupta v. Union of India

Judgment dated 22.08.2024 passed by the Supreme Court in Criminal Appeal No. 878 of 2019, reported in (2024) 9 SCC 455

Relevant extracts from the judgment:

In the facts of the case, the consignment was booked by accused no.1, and therefore, he was found to be transporting the psychotropic substance in

contravention of Section 8(c) of the NDPS Act. There is no allegation against the appellant of transporting the contraband. The consignment was booked in the name of the accused no.1 as per the prosecution case. Therefore, unless it is proved that the appellant had supplied the consignment to accused no.1 or was a part of a criminal conspiracy to commit an offence under Section 22(c), the appellant cannot be punished.

In Para 158 of the decision of this Court in ***Tofan Singh v. State of Tamilnadu, (2021) 4 SCC 1*****,** this Court held thus: We answer the reference by stating: That the officers who are invested with powers under Section 53 of the NDPS Act are 'Police Officers' within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

Therefore, the appellant's statement recorded under Section 67 of the NDPS Act is not admissible in evidence and cannot be read in evidence.

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294. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 118, 138 and 139

Dishonour of cheque – Statutory presumption and its rebuttal – Cheque was dishonoured because the account was closed – Accused challenged his conviction on the grounds that the complainant could not establish that cheque was given for settling the legally recoverable debt or other liabilities and there are material contradictions in his statement – Complainant and the accused were friends and accused had taken money from him time to time – Despite service of notice, accused neither replied nor paid the amount – Complainant has discharged the initial burden through the averments in the complaint and his testimony regarding existence of legally recoverable debt – Presumption u/s 118-A and 139 N.I. Act is attracted – Burden shifts on the accused to rebut the presumption – Accused has not disputed his signature on the cheque and also not produced any other evidence in rebuttal – Mere minor discrepancy with respect to the due amount in the statement of complainant and the complaint cannot overturn the conviction.

परक्राम्य लिखित अधिनियम, 1881 – धाराएं 118, 138 एवं 139

चैक का अनादरण – वैधानिक उपधारणा और इसका खंडन – खाता बंद होने के कारण चेक को अनादरित किया गया – अभियुक्त ने अपनी दोषसिद्धि को इस आधार पर चुनौती दी कि शिकायतकर्ता यह स्थापित नहीं कर सका कि चैक वैधानिक रूप से वसूली योग्य ऋण या अन्य देनदारियों के भुगतान के लिए जारी किया गया था, और परिवादी के कथन में तात्विक विरोधाभास हैं – परिवादी और आरोपी मित्र थे, और आरोपी ने समय–समय पर उससे पैसे लिए थे – सूचना पत्र के निर्वहन के बावजूद, आरोपी ने न तो जवाब दिया और न ही राशि का भुगतान किया – परिवादी ने परिवाद में किए गये अभिकथनों और अपनी साक्ष्य के माध्यम से वैध रूप से वसूली योग्य ऋण के अस्तित्व के बारे में प्रारंभिक भार का निर्वहन किया – धारा 118–क और 139 परक्राम्य लिखत अधिनियम के अंतर्गत उपधारणा आकर्षित होती है – आरोपी पर उपधारणा को खंडित करने का भार है – आरोपी ने चैक पर अपने हस्ताक्षर पर आपत्ति नहीं की है और खंडन में कोई अन्य साक्ष्य भी प्रस्तुत नहीं की – परिवाद में और परिवादी के कथन में देय राशि के संबंध में मामूली विरोधाभास से दोषसिद्धि अपास्त नहीं हो सकती।

Vikram Singh Aanjana v. Prakashchandra Solanki

Judgment dated 24.04.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Revision No. 2057 of 2022, reported in 2024(3) MPLJ 597

Relevant extracts from the judgment:

In regard to submission of learned counsel for applicant that complainant could not prove the transaction and the existence of legally recoverable debt or liability, the complainant (PW-1) on affidavit deposed that complainant and accused are close friends and for the purpose of upgradation of agriculture, to purchase agricultural equipments and buffaloes and to discharge the liability of debt, the accused had taken money from time to time from him. Total amount given to the applicant/accused is Rs. 12,21,000/-. The aforesaid amount was given to the applicant on his assurance that whenever the amount would be demanded by the complainant, the same shall be refunded. The complainant demanded the said amount and appellant in discharge to the aforesaid debt, issued cheque No. 002615 of Rs. 6,48,000/- and also cheque No. 002616 of Rs. 4,85,000/- of Bank of India, branch Ujjain which were signed by him and he assured that on presentation of those cheques, the payment will be made. On the assurance of applicant, he submitted those cheques in his account of Bank Paraspar Sahkari Bank Maryadit, Dewas Gate Ujjain on 12.11.2011. Both the cheques were dishonoured with a note that account has already been closed by the

applicant/accused vide memorandum dated 12.11.2011. The complainant further deposed that on 15.11.2011, through his Advocate he sent a registered notice on the address of the applicant but despite service of notice, the applicant neither replied to the said notice nor refunded the said amount. Thereafter within the limitation period he presented the complaint. In support of his case, he produced copy of aforesaid two cheques as Ex.P/1 and P/2 which bears the signature of applicant from 'A' to 'A'. The copy of notice was marked as Ex.P/3 and its registered AD is Ex.P/5. The envelope was produced as Ex.P/6 which contains note that applicant had refused to accept the notice. He further examined Purshottam Prajapati (PW-2) who deposed that he had given 85,000 bricks @ Rs. 3500/- per thousand brick to the applicant and the said amount was paid to him by the complainant. Vishal Gahlot (PW-3) also stated that complainant had given him Rs. 5 Lacs to give to the accused for preparation of Kisan Credit Card.

Counsel for the applicant referred certain paragraphs of cross-examination of the complainant to show that there is some discrepancy in the amount mentioned in the complaint and in the affidavit. He further referred certain paragraphs of PW-1, PW-2 and PW-3 to contend that there are contradictory statements which demolishes the entire case of complainant. On the basis of aforesaid, it is argued that complainant has failed to discharge his burden to prove the existence of legally recoverable debt or liability.

In the present case, admittedly the applicant neither filed any reply to the legal notice issued by the complainant nor adduced any evidence in his defence in rebuttal. It is further pertinent to note that signature of the applicant on the cheques have not been disputed. Mere minor contradictions in respect of amount in the statement of complainant in the complaint or complainant's witnesses, would not be sufficient to dismiss the complaint when he has specifically proved that the aforesaid amount was given for the purpose of purchase of agricultural equipments and buffaloes and he also got paid certain amount to the accused from his friend, Vishal Gahlot (PW-3). Thus, on the basis of averment in the complaint and testimony of complainant- P.C. Solanki (PW-1), Purshottam Prajapati (PW-2) and Vishal Gahlot (PW-3), the complainant has dicharged his initial burden regarding existence of legally recoverable debt or liability. Once the recovery of legally recoverable debt is established by the complainant, the presumption under sections 118-A and 139 of the N.I. Act attracts and the burden to rebut the presumption is on the accused/applicant. In the present case, the applicant has not disputed his signature on the cheque and also did not lead any evidence to rebut the presumption.

So far as the judgments cited by applicant in the aforesaid cases are concerned, the same would not render any assistance in the facts of the present case as in the case of ***Narendra Dhakad v. Anand Kumar, AIR 2009 1309*** it has been held that once the signature on the cheque is admitted, handwriting on the cheques is not requird to be proved. The proceedings under N.I. Act are summary in nature. In the case of ***M.S. Narayana Menon @ Mani v. State of Kerala and anr., AIR 2006 SC 3366***, that was a case where the complainant could not prove existence of legally recoverable debt. Since the transaction was not proved, therefore the conviction was set aside. In the case of ***Krishan Janardhan Bhat v. Dattatraya G. Hegde, AIR 2008 SC 1325***, the Court held that section 139 merely raises a presumption in favour of holder of cheque that said cheque was issued in discharge of legally recoverable debt. Existence of legally recoverable debt is not a matter of presumption. It is further held that attraction of principles of presumption under section 139 of N.I. Act depends on factual matrix of the each case.

In the present case, the complainant has prima facie established the presence of legally recoverable debt and both the courts below have rightly convicted the applicant. The judgment passed in the case of ***Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513*** would not apply to the facts of the present case as in the present case the complainant has discharged his initial onus to establish the existence of legally recoverable debt. The judgment passed in the case of ***Pankaj v. Anil Kumar Jain, 2009(2) DCR 730*** was a case against acquittal and appeal was dismissed as the complainant has clearly failed to prove his allegation.

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295. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138

(i) Dishonor of cheque – Defence – Accused can rely on the materials produced by complainant and ought not to adduce any further or new evidence to rebut the statutory presumption – Accused can shift the weight of the scales of justice in his favour through preponderance of probabilities.

(ii) Dishonor of cheque – Complainant was not able to prove valid existence of legally recoverable debt – Accused has inscribed his signature on white paper and not on stamp paper as produced by complainant – Accused raised the concern of financial capacity of the complainant and complainant failed to discharge it through leading cogent evidence – Accused rightly acquitted.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

(i) चैक का अनादरण – बचाव – अभियुक्त परिवादी द्वारा प्रस्तुत सामग्री पर भरोसा कर सकता है एवं उसे विधिक उपधारणा का खण्डन करने हेतु कोई अतिरिक्त अथवा नवीन साक्ष्य प्रस्तुत करने की आवश्यकता नहीं है – अभियुक्त संभावनाओं की प्रबलता के आधार पर न्याय के तराजू को अपनी ओर झुका सकता है।

(ii) चैक का अनादरण – परिवादी विधिक रूप से वसूली योग्य ऋण के वैध अस्तित्व को प्रमाणित करने में असमर्थ रहा – अभियुक्त ने अपने हस्ताक्षर सादे कागज पर किये हैं न कि स्टाम्प पेपर पर जैसा कि परिवादी ने प्रस्तुत किया – अभियुक्त ने परिवादी की आर्थिक क्षमता को प्रश्नगत किया एवं परिवादी ठोस साक्ष्य द्वारा इसे प्रमाणित करने में विफल रहा – अभियुक्त की दोषमुक्ति उचित ।

Sri Dattatraya v. Sharanappa

Judgment dated 07.08.2024 passed by the Supreme Court in Criminal Appeal No. 3257 of 2024, reported in 2024 (3) Crimes 166 (SC)

Relevant extracts from the judgment:

On the aspect of adducing evidence for rebuttal of the statutory presumption, it is pertinent to cumulatively read the decisions of this Court in ***Rangappa v. Sri Mohan1, (2010) 11 SCC 441*** and ***Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148*** which would go on to clarify that accused can undoubtedly place reliance on the materials adduced by the complainant, which would include not only the complainant's version in the original complaint, but also the case in the legal or demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his Section 313 CrPC, 1973 statement or at the trial as to the circumstances under which the promissory note or cheque was executed. The accused ought not to adduce any further or new evidence from his end in said circumstances to rebut the concerned statutory presumption.

Applying the aforementioned legal position to the present factual matrix, it is apparent that there existed a contradiction in the complaint moved by the appellant as against his cross-examination relatable to the time of presentation of the cheque by the respondent as per the statements of the appellant. This is to the effect that while the appellant claimed the cheque to have been issued at the time of advancing of the loan as a security, however, as per his statement during the cross-examination it was revealed that the same was presented when an alleged demand for repayment of alleged loan amount was raised before the respondent,

after a period of six months of advancement. Furthermore, there was no financial capacity or acknowledgement in his Income Tax Returns by the appellant to the effect of having advanced a loan to the respondent. Even further the appellant has not been able to showcase as to when the said loan was advanced in favour of the respondent nor has he been able to explain as to how a cheque issued by the respondent allegedly in favour of Mr. Mallikarjun landed in the hands of the instant holder, that is, the appellant.

Admittedly, the appellant was able to establish that the signature on the cheque in question was of the respondent and in regard to the decision of this Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197***, a presumption is to ideally arise. However, in the above referred context of the factual matrix, the inability of the appellant to put forth the details of the loan advanced, and his contradictory statements, the ratio therein would not impact the present case to the effect of giving rise to the statutory presumption under Section 139 of the NI Act, 1881. The respondent has been able to shift the weight of the scales of justice in his favour through the preponderance of probabilities.

The Trial Court had rightly observed that the appellant was not able to plead even a valid existence of a legally recoverable debt as the very issuance of cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties. Furthermore, the fact that the respondent had inscribed his signature on the agreement drawn on a white paper and not on a stamp paper as presented by the appellant, creates another set of doubt in the case. Since the accused has been able to cast a shadow of doubt on the case presented by the appellant, he has therefore successfully rebutted the presumption stipulated by Section 139 of the NI Act, 1881.

Moreover, affirming the findings of the Trial Court, the High Court observed that while the signature of the respondent on the cheque drawn by him as well as on the agreement between the parties herein stands admitted, in case where the concern of financial capacity of the creditor is raised on behalf of an accused, the same is to be discharged by the complainant through leading of cogent evidence.

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***296. PREVENTION OF CORRUPTION ACT, 1988 – Sections 7 and 13**
EVIDENCE ACT, 1872 – Sections 3 and 135
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 2 and 140
Demand and acceptance of illegal gratification – Proof of same as a fact by the prosecution is a *sine qua non* in order to establish the guilt

of the accused public servant u/s 7 and 13 (1) (d) (i) and (ii) of the Act – It was alleged by the prosecution that accused demanded illegal gratification under threat to book a case against complainant for illegal possession of teakwood in his saw mill – Trap laying Officer did not make any effort to get the factum of such demand of bribe verified – Complainant admitted that accused forgot his raxine bag allegedly containing currency notes in the coffee shop and that he picked up the same and handed it over to the accused – Possibility of planting tainted currency notes in the bag by the complainant cannot be ruled out – Wash taken from the hands of accused and the raxine bag was not chemically examined through FSL – Demand and acceptance of illegal gratification was not found proved – Conviction set aside.

भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 7 एंव 13
साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 135
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 2 एवं 140
अवैध परितोषण की मांग एवं प्रतिग्रहण – अभियोजन द्वारा अधिनियम की धारा 7 और 13 (1) (घ) (i) और (ii) के अंतर्गत अभियुक्त लोक सेवक के अपराध को स्थापित करने के लिए एक तथ्य के रूप में इसको प्रमाणित करना अनिवार्य शर्त है – अभियोजन द्वारा यह आरोप लगाया गया था कि अभियुक्त शिकायतकर्ता की आरा मिल में उसके द्वारा सागौन की लकड़ी को अवैध रूप से रखने के लिये उसके विरूद्ध मामला पंजीबद्ध करने की धमकी देकर अवैध परितोषण की मांग करता था – ट्रेप अधिकारी ने रिश्वत की मांग के तथ्य को सत्यापित करने का कोई प्रयास नहीं किया – परिवादी ने स्वीकार किया कि अभियुक्त कॉफी शॉप पर कथित तौर से करेन्सी नोटों से रेक्सिन बैग को भूल गया था और उसने उसे उठाकर अभियुक्त को सौंप दिया था – शिकायतकर्ता द्वारा बैग में दागी मुद्रा नोट रखने की संभावना से इंकार नहीं किया जा सकता – अभियुक्त के हाथों से ली गई धुलाई और रैक्सिन बैग की एफ.एस.एल. के माध्यम से रासायनिक जांच नहीं की गई थी – अवैध परितोषण की मांग और अभिस्वीकृति साबित नहीं – दोषसिद्धि अपास्त।

Mir Mustafa Ali Hasmi v. State of A.P.

Judgment dated 10.07.2024 passed by the Supreme Court in Criminal Appeal No. 2845 of 2024, reported in AIR 2024 SC 3356

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297. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 7 and 8

INDIAN PENAL CODE, 1860 – Section 354 r/w/s 34

BHARATIYA NYAYA SANHITA, 2023 – Section 74 r/w/s 3(5)

Outrage of modesty – Intention – There is major contradiction in prosecutrix examination, as the word, "bad intention" and "being trembled" stated in court, are missing in FIR and police statement – Intention to outrage the modesty of a woman is significant ingredient of offence which is not proved in the case – FIR was lodged not after the molestation but after receiving injuries by prosecutrix's father and brother in a quarrel that took place subsequently – There was every chance to make false case regarding molestation with intention to aggravate the nature of offence – Conviction set aside.

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धाराएं 7 एवं 8

भारतीय दण्ड संहिता, 1860 – धारा 354 सहपठित धारा 34

भारतीय न्याय संहिता, 2023 – धारा 74सहपठित धारा 3(5)

लज्जाभंग करना – आशय – अभियोक्त्री के परीक्षण में बड़ा विरोधाभास है क्योंकि न्यायालय में कहे गये 'बुरा आशय' एवं 'कांपते हुए' शब्द पुलिस कथन एवं प्रथम सूचना रिपोर्ट में नहीं हैं – किसी महिला की लज्जाभंग करने का आशय अपराध का एक महत्वपूर्ण घटक है जो कि इस प्रकरण में प्रमाणित नहीं हुआ है – प्रथम सूचना रिपोर्ट छेड़छाड़ के पश्चात नहीं बल्कि पश्चातवर्ती झगड़े में अभियोक्त्री के पिता और भाई को उपहति कारित होने पर दर्ज की गई – अपराध की प्रकृति को गंभीर बनाने के आशय से छेड़छाड़ का मिथ्या प्रकरण बनाने की पूरी संभावना थी – दोषसिद्धि अपास्त।

Nitesh Patidar and ors. v. State of Madhya Pradesh and ors.

Judgment dated 09.07.2024 passed by High Court of Madhya Pradesh in Criminal Appeal No. 53 of 2022, reported in 2024 (3) Crimes 76 (MP)

Relevant extracts from the judgment:

As per the case of prosecution, on 07.02.2018 at about 04:00 pm, the prosecutrix went to take tuition from her tuition teacher's house where one Nitesh Patidar was also used to come for tuition. After tuition at about 5:30 pm, when the prosecutrix was going to her home, Nitesh Patidar gave her a mobile phone and caught her hand with bad intention and asked her to talk to him. Further, the prosecutrix went to her home and told about the incident to her parents. Thereafter, her father, her brother alongwith tuition teacher went to the house of Amarsingh Gehlot where Nitesh Patidar was residing. On reaching thereon, the

tuition teacher called Nitesh Patidar. However, Gajendra Singh Gehlot and his son Laxman Gehlot came there and informed them that, Nitesh was not in the house and asked them as to why they came to his brother's house. Meanwhile, Nitesh Patidar also came on the spot and thereafter, Nitesh alongwith Gajendra and Laxman started beating the father of the prosecutrix and her brother with fists and slapping. They also abused them. During the altercation, Saurabh Bhati, tuition teacher intervened to rescue them. In the course of incident, father of prosecutrix received injuries on chicks, head and stomach. On the same day, the complainant went to police station and lodged a complaint, thereafter, offence was registered against the appellants.

At the outset, the statement of prosecutrix (PW-1) is required to be ruminated, she stated in her examination-in-chief that appellant Nitesh Patidar stopped her and gave her a mobile. Further, she narrates that mobile was given to her of spice company. Thereafter, she says that the appellant had caught her 5 CRA-53-2022 hand with bad intention and thereafter, she trembled. Further, she states that appellant Nitesh stated her to talk with him. In anxiety, she went her home. In para 14 of her cross-examination, prosecutrix clearly conceded that in her report the word "bad intention" and being trembled, has not been mentioned. She also submitted that there was no sign of injury on her hand. As such, since the word "bad intention" and "being trembled" are not available in FIR and her statement recorded under Section 161 of CrPC, the whole story of prosecution is fallen down regarding sexual intention.

On this aspect, the following ratio held by Full Bench of Hon'ble Apex Court in the case of ***State of Punjab v. Major Singh, AIR 1967 SC 6***3, is worth of quote here :-

> "The offence punishable under Section 354 is an assault on or use of criminal force to a woman with the intention of outraging her modesty or with the knowledge of the likelihood of doing so. The Code does not define "modesty". What then is a woman's modesty?
>
> The essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under Section 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as, for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping

> woman. She may be an idiot, she may be under the spell of anesthesia, she may be sleeping, she may be 6 CRA-53-2022 unable to appreciate the significance of the act; nevertheless, the offender is punishable under the section.
>
> A female of tender age stands on a somewhat different footing. Her body is immature, and her sexual powers are dormant. In this case, the victim is a baby seven and half months old. She has not yet developed a sense of shame and has no awareness of sex. Nevertheless, from her very birth she possesses the modesty which is the attribute of her sex."

In view of the aforesaid law, the intention to outrage the modesty of a woman is significant ingredient of Section 354 of IPC. In this case, there is a material contradiction on the point of "bad intention" and due to that "trembling of prosecutrix". In this way, the word "bad intention" and "trembling" are found as an exaggeration in the Court statement. The prosecution also failed to prove the fact that the said mobile given to prosecutrix was belonged to the appellant. It is also emanated from the evidence that FIR was lodged not just after the incident of molestation but rather it was lodged after receiving injury by the prosecutrix's father and brother. In these circumstances, there is a great chance to make a false case against the appellant regarding molestation with intention to aggravate the nature of offence.

It is also poignant to point out that the prosecutrix has also not received any injury in the incident. She cannot be treated as injured witness and therefore, the testimony of prosecutrix doesn't inspire confidence. Likewise, the other witnesses, the father of prosecutrix (PW-2), the cousin of prosecutrix (PW-4) have tried to support the prosecution case but their statements are also not found creditworthy. The independent witness Madam Aarti, the tuition teacher has not been produced by the prosecution, whereas she is pivotal evidence of the case. As such the culpable intention of outraging modesty has not been established against the appellant.

In view of the foregoing discussion, since the prosecution case has not been fortified by the statements of witnesses and the important ingredients as to intention of outraging the modesty of prosecutrix has not been evinced beyond reasonable doubt by the prosecution, the appellant cannot be convicted for the offence under Section 354 of IPC and Section 7/8 of POCSO Act. As such, the decision of learned trial Court regarding conviction of appellant Nitesh under Section 354 of IPC and Section 7/8 of POCSO Act, is devoid of merits and accordingly, deserves to be set aside.

In the result thereof, the present appeal filed by the appellant Nitesh is hereby allowed. Accordingly, having set aside the impugned judgment, the appellant Nitesh is acquitted from the charge under Sections 354 of IPC and Section 7/8 of POCSO Act. The appellant is on bail, hence, his bail bond and surety stand discharged. The appellant is entitled to receive back the fine amount deposited by him from the learned trial Court.

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***298. SPECIFIC RELIEF ACT, 1963 – Sections 19 and 20**
TRANSFER OF PROPERTY ACT, 1882 – Section 3

(i) Suit for specific performance – *Bonafide* purchaser – Agreement for sale of an immovable property is a compulsory registrable document in the State – In view of Explanation 1 to section 3 of TP Act, the defendants/subsequent purchaser shall be deemed to have knowledge of the sale agreement, which was duly registered – They cannot say that they had no knowledge of sale agreement – Hence, it cannot be said that they paid money in good faith to seller – Plea of defendants that they are *bonafide* purchaser for value without notice, could not be accepted.

(ii) Suit for specific performance – Failure to pray for cancellation of subsequent sale deed – Under the decree of specific performance, subsequent purchaser could be directed to execute sale deed alongwith original vendor – There was no necessity to pray for cancellation of subsequent sale deed (*Lala Durga Prasad and ors. v. Lala Deep Chand and ors., AIR 1954 SC 75* and *Rojasara Ramjibhai Dahyabhai v. Jani Narottamdas Lallubhai and anr., AIR 1986 SC 1912* relied on)

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 19 एवं 20
सम्पत्ति अंतरण अधिनियम, 1882 – धारा 3

(i) विनिर्दिष्ट अनुपालन के लिए वाद – सद्भाविक क्रेता – स्थावर संपत्ति का विक्रय अनुबंध राज्य में एक अनिवार्य पंजीकरण योग्य दस्तावेज है – सम्पत्ति अन्तरण अधिनियम की धारा 3 के स्पष्टीकरण 1 के आलोक में, प्रतिवादी/पश्चात्वर्ती क्रेता को विक्रय अनुबंध का ज्ञान होना माना जाएगा, जो विधिवत पंजीकृत था – वे यह नहीं कह सकते कि उन्हें विक्रय अनुबंध का कोई ज्ञान नहीं था – इसलिए, यह नहीं कहा जा सकता है कि उन्होंने विक्रेता को सद्भावनापूर्वक राशि का भुगतान किया

– प्रतिवादीगण का यह तक स्वीकार नहीं किया जा सकता कि वे बिना सूचना के सप्रतिफल सद्भावी क्रेता हैं।

(ii) विनिर्दिष्ट अनुपालन के लिए वाद – पश्चात्वर्ती विक्रय विलेख को रद्द करने की प्रार्थना करने में विफलता – विनिर्दिष्ट अनुपालन की आज्ञप्ति के अंतर्गत पश्चात्वर्ती क्रेता को मूल विक्रेता के साथ विक्रय विलेख निष्पादित करने का निर्देश दिया जा सकता था – पश्चात्वर्ती विक्रय विलेख को रद्द करने की प्रार्थना करने की कोई आवश्यकता नहीं थी। (*लाला दुर्गा प्रसाद एवं अन्य बनाम लाला दीप चंद एवं अन्य, एआईआर 1954 एससी 75एवंरोजासारा रामजीभाई दहयाभाई बनाम जानी नरोत्तमदास लल्लूभाई एवं अन्य, एआईआर 1986 एससी 1912*, अवलंबित)

Maharaj Singh and ors. v. Karan Singh (Dead) Thr. LRs. and ors.

Judgment dated 09.07.2024 passed by the Supreme Court in Civil Appeal No. 6782 of 2013, reported in AIR 2024 SC 3328

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***299. SPECIFIC RELIEF ACT, 1963 – Section 34**

Suit for partition – Mohammedan Law – Agreement for settlement of family property – Original owner died unmarried and was survived by sister and brothers – Agreement for settlement of family property was entered into to give a right to niece of plaintiff's sister and defendant brothers, as she had a psychiatric problem – Agreement was proved to have been duly executed – It was not the case of defendant that personal law prohibits sharing of property by agreement with a distant heir – Defendant failed to prove existence of Will or the fact that agreement was a fabricated document – Preliminary decree passed in terms of the said agreement was upheld.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34

विभाजन के लिए वाद – मुस्लिम विधि – पारिवारिक संपत्ति के व्यवस्थापन के लिये करार – मूल स्वामी की अविवाहित मृत्यु हो गई और उसके बहन व भाई शेष रहे – वादी बहन और प्रतिवादी भाइयों की भतीजी को अधिकार देने के लिए पारिवारिक संपत्ति के व्यवस्थापन हेतु करार किया गया था, क्योंकि उसे एक मनोरोग समस्या थी – समझौता विधिवत निष्पादित किया गया था – प्रतिवादी का यह मामला नहीं है कि व्यक्तिगत कानून, दूरस्थ उत्तराधिकारी के साथ समझौते द्वारा सम्पत्ति साझा करने पर रोक लगाता है – प्रतिवादी वसीयत के अस्तित्व

को या इस तथ्य को कि समझौता कूटरचित दस्तावेज था, साबित करने में विफल रहा था – उक्त समझौते के अनुरूप पारित प्रारंभिक आज्ञप्ति स्थिर रखी गई।

Naseem Kahnam and ors. v. Zaheda Begum

Judgment dated 09.07.2024 passed by the Supreme Court in Civil Appeal No. 1957 of 2011, reported in AIR 2024 SC 3454

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300. SPECIFIC RELIEF ACT, 1963 – Sections 34 and 38
LIMITATION ACT, 1963 – Articles 64 and 65
Suit for declaration of title and permanent injunction – Plaintiff claiming title by virtue of adverse possession – Disputed land is recorded in the name of both parties in land records – There has been continuous litigation between the parties – For claiming title by adverse possession, it is to be proved that possession was peaceful and uninterrupted – When the parties are litigating continuously in the revenue courts, possession of plaintiff cannot be regarded as peaceful and uninterrupted – Held, plaintiff cannot acquire title by way of adverse possession.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 34 एवं 38
परिसीमा अधिनियम, 1963 – अनुच्छेद 64 एवं 65
स्वत्व की घोषणा एवं स्थायी निषेधाज्ञा हेतु वाद – वादी द्वारा विरोधी आधिपत्य के आधार पर स्वत्व का दावा – विवादित भूमि भू-अभिलेख में दोनो पक्षकारों के नाम अंकित है – पक्षकारों के मध्य निरन्तर मुकदमेबाजी रही है – विरोधी आधिपत्य के आधार पर स्वत्व का दावा करने के लिए यह प्रमाणित करना होगा कि आधिपत्य शांतिपूर्ण एवं अबाधित था – जब पक्षकार राजस्व न्यायालय में निरंतर मुकदमेबाजी करते रहे है, तब वादी का आधिपत्य शांतिपूर्ण एवं अबाधित नहीं माना जा सकता – अभिनिर्धारित, वादी विरोधी आधिपत्य के आधार पर स्वत्व प्राप्त नहीं कर सकता।

Sirajuddin and ors. v. Saidani Begum and ors.

Judgment dated 17.01.2024 passed by the High Court of Madhya Pradesh in Second Appeal No. 247 of 2020, reported in 2024(3) MPLJ 242

Relevant extracts from the judgment:

Brief facts of the case are that appellants filed a civil suit for declaration and injunction in respect of agricultural land situated over Survey No.487/1, 487/3 & 487/4, area 0.37, 1.50 & 0.37 hectares situated in village Jainabad, District

Burhanpur (hereafter referred to as the "suit land"). The suit lands were owned by Kutubuddin and Nazmuddin, who were real brothers. Nazmuddin had given land owned by him to his brother-Kutubuddin by way of Hiba i.e. oral gift. Subsequently, the same was reduced in writing on 21.3.1980. Kutubuddin was in possession of entire land i.e. land of Nazamuddin. Therefore, Kutubuddin became absolute owner of land owned and possessed by both the brothers. Kutubuddin had submitted an application for mutation of his name before the Naib Tahsildar on the basis of oral gift and his name has been mutated. The said order of Naib Tahsildar was challenged by legal representatives of Nazamuddin before the Sub Divisional Officer who set aside the order of Naib Tahsildar. The matter travelled upto Board of Revenue and mutation of Kutubuddin has been rejected. He further submitted that plaintiffs are in continuous and peaceful possession of the suit land, therefore, plaintiffs are owner of the suit land. The plaintiffs ultimately pleaded that respondents had knowledge that plaintiffs/appellants have been in continuous and peaceful possession of more than 12 years, therefore, owner of the suit land on the ground of adverse possession. Accordingly, the appellants/plaintiffs had filed an application for declaration of title over the suit land and permanent injunction against the respondents/defendants.

Admittedly, the suit land is recorded in the name of both the parties or their ancestors. It is settled legal position that one co-owner is considered in law to be co-owner unless contrary is proved. On perusal of paragraphs 13, 14 & 15 of the impugned judgment it is clear that lower appellate Court has taken note of settled principle of law that for claiming title by way of adverse possession, it is to be proved that possession was peaceful and uninterrupted. From documents produced by plaintiff it is clear that there is continuous litigation between the parties as plaint averments reflect that defendants had filed application for partition before revenue authorities. Plaintiffs preferred second appeal in 2009 before Additional Commissioner against partition which is pending. Thus, possession of plaintiff cannot be regarded as peaceful and uninterrupted. It is also clear from Exhibits-P/18 & P/19 that some part of disputed part has been sold by Defendants to Husnaara (Defendant No.11) and mutation in this regard is Exibit-P/20. The plaintiff also pleaded in plaint with regard to dispute regarding mutation and sale in favour of Husnaara. Thus, title by way of adverse possession has not been found to be established by the court below.

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PART – IIA

GUIDELINES ISSUED BY HON'BLE SUPREME COURT FOR EXPEDITING EXECUTION OF DEATH SENTENCE

The Hon'ble Supreme Court in ***State of Maharashtra & ors. v. Pradeep Yashwant Kokade & anr., 2024 INSC 947*** has issued directions regarding curbing delay in execution of death sentence. The judgment entails guidelines for various stakeholders. The guidelines pertaining to the Sessions Court are reproduced below:

The Sessions Court shall endeavor to follow the following guidelines:

a. As soon as the order of the High Court confirming or imposing the death sentence is received by the Sessions Court, a note thereof must be taken, and the disposed of case shall be listed on the cause list. The proceedings can be numbered as Misc. Application depending upon the applicable Rules of the procedure. The Sessions Court shall immediately issue notice to the State Public Prosecutor or the investigating agency calling upon them to state whether any appeal or special leave petition has been preferred before this Court and what is the outcome of the said petition/appeal;

b. If the State Public Prosecutor or the investigating agency reports that the appeal is pending, as soon as the order of this Court confirming or restoring the death sentence is received by the Sessions Court, again, the disposed of case or miscellaneous applications should be listed on the cause list and notice be issued to the State Public Prosecutor or the investigating agency to ascertain whether any review/curative petitions or mercy petitions are pending. If information is received regarding the pendency of review/curative petitions or mercy petitions, the Sessions Court shall keep on listing the disposed of case after intervals of one month so that it gets the information about the status of the pending petitions. This will enable the Sessions Court to issue a warrant for the execution of the death sentence as soon as all the proceedings culminate;

c. However, before issuing the warrant, notice should be issued to the convict, and the directions issued by the Allahabad High Court in the case of ***People's Union for Democratic Rights (PUDR) v. Union of*** **India,** ***AIR 1982 SC 1473***, and as elaborated above, shall be implemented by the Sessions Court;

d. The Sessions Courts shall consider what is held in Paragraph 25 above; (which is reproduced hereunder)

> 25. The proceedings for issuing a warrant for executing a death sentence under Sections 413 and 414 of the CrPC do not require any judicial adjudication. Before issuing the warrant, the Sessions Court must satisfy itself that the order of death sentence has attained finality and the review/curative or mercy petitions, if filed,

have been finally rejected. Before issuing a warrant, the Sessions Court has to issue notice to the convict so that even the convict can state whether any other proceedings are pending before the Courts or Constitutional authorities. In a given case, the convict may not be interested in pursuing remedies. The Sessions Court can verify this aspect after issuing a notice to the convict. The Sessions Court, in such a case, must appraise the convict of the remedies available and, if required, provide legal aid to enable the convict to take recourse to such remedies. After the convict has been made aware of the remedies available, reasonable time be granted to the convict to consider, weigh and even consult a member of his family or friend to finally take a decision on adopting remedies as the possibility of thinking logically and rationally may be impeded or hampered because of the situation being faced by the convict. The Sessions Court can issue a warrant only after providing such reasonable time to the convict and after satisfying itself that the convict has taken a conscious decision of not pursuing the available remedies. The reasonable time can be of seven days. The Sessions Court can direct the counselling of the convict if it is not satisfied that the decision is a well-informed, considered and conscious decision. If such a procedure is followed, it enables the convict to take recourse to the available legal remedy. Moreover, if an order of issue of warrant of execution is passed after notice to the convict, it enables the convict to challenge the order of issuing a warrant of execution. But after the convict exhausts all remedies, including filing mercy petitions or after the Sessions Court is satisfied that the convict has taken a conscious decision of not availing the remedies, the execution warrant must be issued without any delay. It is the responsibility of the trial court to take up and conclude the proceedings of issuing a warrant of execution as expeditiously as possible. The trial court must give necessary out of turn priority.

e. Copies of the order issuing the warrant and the warrant shall be immediately provided to the convicts, and the Prison authorities must explain the implications thereof to the convicts. If the convict so desires, legal aid be immediately provided to the convicts by the Prison authorities for challenging the warrant. There shall be a gap of fifteen clear days between the date of the receipt of the order as well as warrant by the convict and the actual date of the execution; and,

f. It shall also be the responsibility of the concerned State Government or the Union Territory administration to apply to the Sessions Court for the issuance of a warrant immediately after the death penalty attains finality and becomes enforceable.

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PART – III

CIRCULARS/NOTIFICATIONS

NOTIFICATION DATED 19.12.2024 OF THE HIGH COURT OF MADHYA PRADESH REGARDING GUIDELINES FOR RECORDING OF EVIDENCE OF VULNERABLE WITNESSES, 2024

C/8872 - In compliance of the directions issued by Hon'ble the SupremeCourt of India in judgement passed on 07-11-2024 in Miscellaneous ApplicationNo. 1852/2019 in Criminal Appeal No. 1101/2019, ***Smruti Tukaram Badadev. The State of Maharastra & ors.,*** and in supersession of earlier NotificationNo. B/553, dated 23.01.2023, issued by the High Court of Madhya Pradesh inrespect of Guidelines for Recording of Evidence of Vulnerable Witnesses; theGuidelines for Recording of Evidences of Vulnerable Witnesses, 2024(Amended in accordance with the new criminal laws namely Bhartiya NyayaSanhita, 2023, Bhartiya Nagarik Suraksha Sanhita, 2023 and Bhartiya SakshyaAdhiniyam, 2023); as annexed, is hereby, notified by the High Court of MadhyaPradesh, today this 19th Day of December, 2024.

BY ORDER OF HONOURABLE CHIEF JUSTICE
(YUGAL RAGHUWANSHI)
REGISTRAR (W.&I.)

The QR Code for the guidelines is reproduced below. Readers can peruse the same after scanning it :

Fairness, equity and justice for all,
These are the values that we must recall,
When we think about a society that's just,
Where everyone has the chance to trust.

Distributive justice is the key,
To creating a world where we can all be free,
Free to learn, to grow and to thrive,
Free to pursue our dreams and to survive.

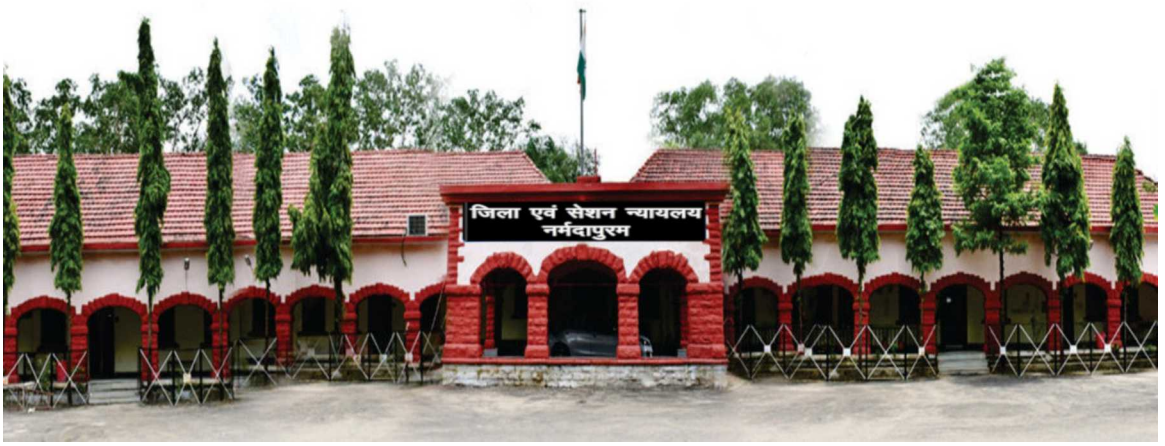
Access to resources is essential,
For all to reach their full potential,
Education, healthcare and employment too,
These are the things that we all pursue.

But when inequalities abound,
These resources are not equally found,
Some are left behind, excluded and denied,
Their dreams and hopes are pushed aside.

So let us work to make things right,
To end the struggle, to end the fight,
Let us strive to create a fairer world,
Where justice and equity are unfurled.

For when we work towards distributive justice,
We build a society that we can trust,
A society that is just and equitable,
A society that is truly formidable.

– unknown



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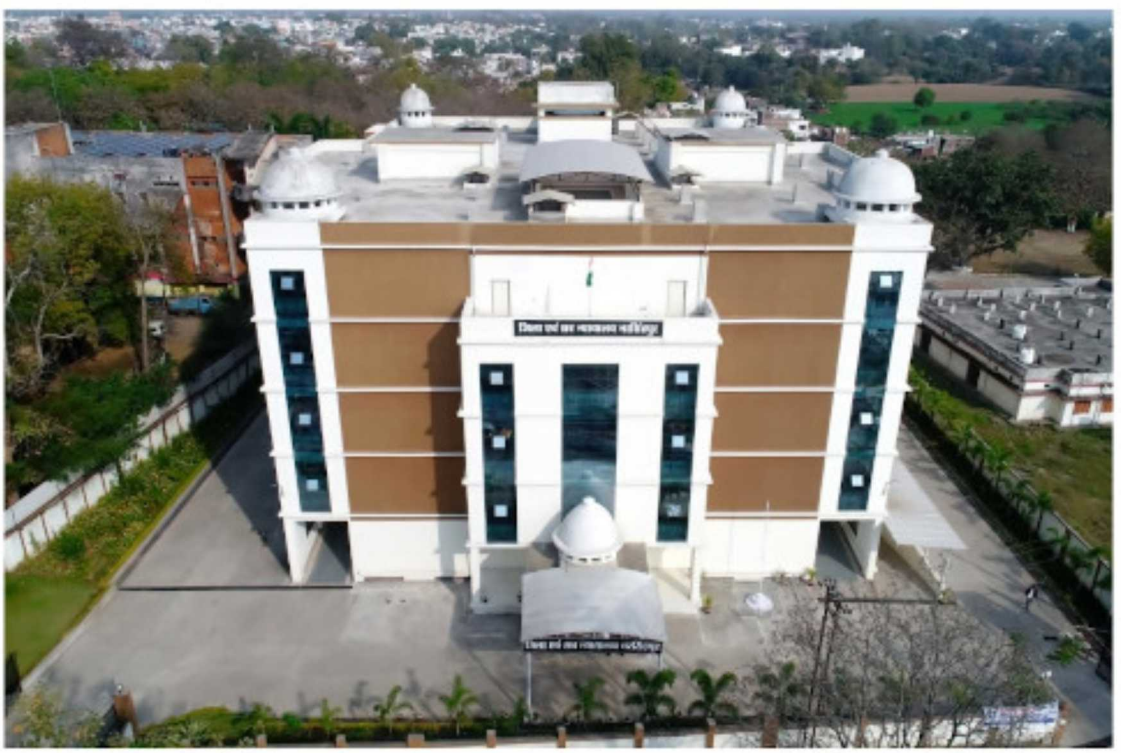

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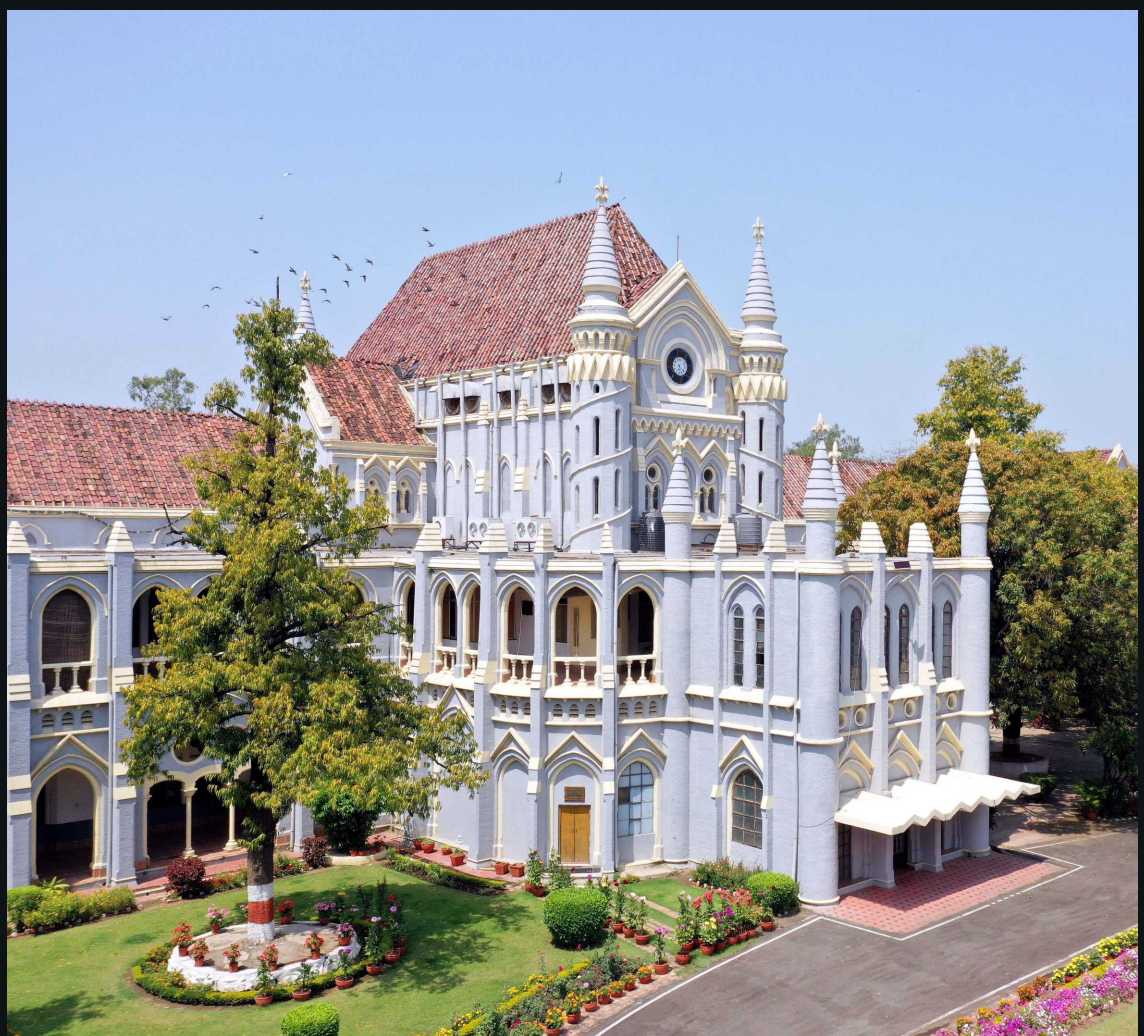

मध्यप्रदेश उच्च न्यायालय, जबलपुर

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