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JOTI JOURNAL

(BI-MONTHLY)

OCTOBER 2024

MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

JOTI JOURNAL
OCTOBER 2024

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CONSTITUTION OF INDIA:
भारत का संविधानः

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Sections 161 and 162 – See sections 300 and 302 of the Indian Penal Code, 1860, sections 101 and 103(1) of the Bharatiya Nyaya Sanhita, 2023, sections 3, 8, 27, 106, 137, 145 and 154 of the Evidence Act, 1872, sections 2, 6, 23(2), 109, 142, 148 and 157 of the Bharatiya Sakshya Adhiniyam, 2023 and sections 180 and 181 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

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(ii) Easement of necessity – Available only when it is necessary for enjoying the dominant heritage.

(iii) Easement on the basis of sale deed – Legal requirement – Sale deed alone cannot grant rights that the seller did not have.

(iv) Power of Attorney Holder – Evidentiary value.

धाराएं 13 एवं 15 – (i) सुखाधिकार – चिरभोग द्वारा अर्जन – वादपत्र में ''अंतिम कई वर्ष'' शब्द का उपयोग यह अर्थावयन करने के लिए पर्याप्त नहीं है कि अंतिम बीस वर्ष या अधिक अवधि से वे उपभोग कर रहे है।

(ii) आवश्यकता का सुखाधिकार – केवल तब उपलब्ध जब यह अधिष्ठायी संपत्ति के उपभोग के लिए आवश्यक है।

(iii) विक्रय विलेख के आधार पर सुखाधिकार – विधिक आवश्यकता – मात्र विक्रय विलेख से वे अधिकार प्रदान नहीं किये जा सकते, जो विक्रेता को प्राप्त नहीं थे।

(iv) मुख्तारनामा धारक – साक्षिक मूल्य। **220 414**

EVIDENCE ACT, 1872

साक्ष्य अधिनियम, 1872

Section 3 – See sections 376D, 376(2)(g) and 506 of the Indian Penal Code, 1860, sections 70(1), 64 and 351(2) & (3) of the Bharatiya Nyaya Sanhita, 2023 and section 2 of the Bharatiya Sakshya Adhiniyam, 2023.

धारा 3 – देखें भारतीय दण्ड संहिता, 1860 की धाराएं 376घ, 376(2)(छ) एवं 506, भारतीय न्याय संहिता, 2023 की धाराएं 70(1), 64 एवं 351(2) और (3) एवं भारतीय साक्ष्य अधिनियम, 2023 की धारा 2। **232 445**

Section 3 – Suit for recovery of money equivalent to *stridhan* property – Standard of proof in matrimonial cases will be preponderance of probability.

धारा 3 – स्त्रीधन संपत्ति के समतुल्य धन की वसूली के लिए वाद – वैवाहिक मामलों में सबूत का मानक संभावना की प्रबलता होगी। **222(i) 417**

Sections 3, 8, 27, 106, 137, 145 and 154 – Burden of proof – Under illustration (a) of section 106 of the Act of 1872, it would be assumed that the accused had that intention unless he proves the contrary.

Hostile witness – Procedure to be followed for cross-examination of such witness – Role of Public Prosecutor and of trial court – Explained.

धाराएं 3, 8, 27, 106, 137, 145 एवं 154 – सबूत का भार – धारा 106 के दृश्टांत (क) के अंतर्गत यह समझा जायेगा कि अभियुक्त का आशय घटना कारित करने का था जब तक कि वह इसके विपरीत साबित न करे।

– पक्षद्रोही साक्षी – साक्षी से प्रतिपरीक्षण हेतु पालन की जाने वाली प्रक्रिया – विचारण न्यायालय एवं लोक अभियोजक की भूमिका – समझाई गई। **227(ii)&(iii) 428**

Section 14(1) – (i) Right of a female Hindu – For establishing full ownership on such property u/s 14(1) of Succession Act, a female Hindu must not only be in possession of the property but she must have acquired the property.

(ii) Right to partition – Suit for partition claiming absolute ownership u/s 14(1) of the Hindu Succession Act could not be maintained by her adopted son by virtue of inheritance.

धारा 14(1) – (i) हिन्दू महिला का अधिकार – उक्त संपत्ति पर अपना पूर्ण स्वामित्व धारा 14(1) उत्तराधिकार अधिनियम के अंतर्गत स्थापित करने के लिए हिन्दू महिला का संपत्ति पर अपना आधिपत्य ही नहीं वरन् उक्त संपत्ति को अर्जित करना भी होगा।

(ii) विभाजन का अधिकार – हिन्दु उत्तराधिकार अधिनियम की धारा 14 (1) के अंतर्गत पूर्ण स्वामित्व का दावा करते हुये उसके पुत्र द्वारा विरासत के आधार पर प्रस्तुत विभाजन का वाद प्रचलन योग्य नहीं है। **225** **425**

INDIAN PENAL CODE, 1860

भारतीय दण्ड संहिता, 1860

Section 195-A – See section 195-A of the Criminal Procedure Code, 1973.

धारा 195-क – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 195-क।

216 **406**

Sections 201, 302, 363, 364, 366 and 376 (2) (f) – (i) Rape and Murder – Circumstantial evidence – Last Seen Theory.

(ii) Interested witness – Their testimony should not be discarded merely because they are relatives – However, their testimony should be scrutinised by Court with a little care and caution for its credibility as a rule of prudence and not one of law.

धाराएं 201, 302, 366, 364, 366 एवं 376 (2)(च) – (i) बलात्संग एवं हत्या – परिस्थितिजन्य साक्ष्य – अंतिम बार देखे जाने का सिद्धांत।

(ii) हितबद्ध साक्षी – केवल इस कारण कि वे संबंधी है, उनकी परिसाक्ष्य को त्यागा नहीं जायेगा – तथापि उनकी विश्वसनीयता के लिए न्यायालय द्वारा उनकी परिसाक्ष्य का कुछ सावधानी एवं सर्तकता से परीशीलन किया जाना होगा, जो सावधानी का नियम है, विधि का नहीं। **229** **436**

Sections 300 and 302 – Murder or culpable homicide not amounting to murder – Determination – Evidence available on record showed that accused had inflicted as many as 12 blows with a knife on her wife who was unarmed – Benefit of Exception 4 cannot be given to him.

धाराएं 300 एवं 302 – हत्या या हत्या की कोटी में न आने वाला मानव वध – निर्धारण – अभिलेख पर उपलब्ध साक्ष्य से दर्शित होता है कि अभियुक्त ने अपनी निहत्थी पत्नी पर चाकू से 12 वार किये थे – अपवाद 4 का लाभ उसे नहीं दिया जा सकता है। **227(i) 429**

Sections 300 and 302 – Murder – Proof – During trial complainant could not be traced despite best efforts as such his statements recorded in the proceeding u/s 299 were used by the trial court as a piece of substantive evidence alongwith other cogent evidence and proved circumstances.

धाराएं 300 एवं 302 – हत्या – प्रमाण – विचारण के दौरान पूर्ण प्रयास करने पर भी परिवादी नही मिल पाया तब विचारण न्यायालय ने धारा 299 के अंतर्गत कार्यवाही में लेखबद्ध उसके कथन को तात्विक साक्ष्य के रूप में अन्य सुदृढ़ साक्ष्य व प्रमाणित परिस्थितियों सहित उपयोग किया। **226 427**

Section 302 – Murder – Appreciation of evidence – Discrepancies in statement of eye witness.

धारा 302 – हत्या – साक्ष्य का मूल्यांकन – चक्षुदर्शी साक्षियों की साक्ष्य में विसंगती। **228 435**

Section 302 – See section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000, section 103(1) of the Bharatiya Nyaya Sanhita, 2023 and sections 9(2) and 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

धारा 302 – देखें किशोर न्याय (बालकों की देखभाल और संरक्षण) अधिनियम 2000 की धारा 7क, भारतीय न्याय संहिता, 2023 की धारा 103(1) एवं किशोर न्याय (बालकों की देखभाल और संरक्षण) अधिनियम 2015 की धारा 9(2) एवं 94।

236 452

Sections 302, 309 and 449 – Murder – Appreciation of circumstantial evidence.

धाराएं 302, 309 एवं 449 – हत्या – परिस्थितिजन्य साक्ष्य का मूल्यांकन।

230(i) 438

Section 376 – Rape – Appreciation of evidence.

धारा 376 – बलात्संग – साक्ष्य का मूल्यांकन। ***231 444**

Sections 376D, 376(2)(g) and 506 – Gang rape – There was sufficient corroboration to the version given by the prosecutrix in her examination-in-chief

with FIR, her statement recorded u/s 164 CrPC and of other witnesses and medical evidence which fully incriminates the accused – Evidence found sufficient to hold accused guilty.

धाराएं 376घ, 376(2)(छ) एवं 506 – सामूहिक बलात्कार – प्रथम सूचना रिपोर्ट, धारा 164 द.प्र.सं. के अंतर्गत अभियोक्त्री एवं अन्य साक्षियों के लेखबद्ध साक्ष्य तथा चिकित्सीय साक्ष्य की पुष्टि साक्षी के मुख्य परीक्षण से होती है जो पूर्णतः अभियुक्त को अपराध से पूर्ण रूप से जोड़ती है – उपलब्ध साक्ष्य अभियुक्त को दोषी ठहराने के लिए पर्याप्त है। **232 445**

Sections 394 and 397 – Criminal trial – Offence of robbery with attempt to cause grievous hurt –Appreciation of evidence.

धाराएं 394 एवं 397 – आपराधिक विचारण – गंभीर चोट पहुँचाने के प्रयास के साथ लूट का अपराध – साक्ष्य का मूल्यांकन। **233 446**

Section 494 r/w/s 495 – (i) Offence relating to marriage – Appropriate sentence – Sentence till rising of the court has to be in tune with the rule of proportionality.

(ii) Sentencing policy – One of the objectives of criminal law is the imposition of adequate, just, proportionate punishment which commensurate with gravity, nature of crime and the manner in which it was committed.

धारा 494 सहपठित धारा 495 – (i) विवाह से संबंधित अपराध – समुचित दण्डादेश – न्यायालय उठने तक का दण्डादेश आनुपातिकता के सिद्धांत के अनुरूप होना चाहिए।

(ii) दण्डादेश नीति – दण्डविधि का एक यह भी सिद्धांत है कि ऐसी पर्याप्त, उचित एवं आनुपातिक सजा अधिरोपित की जाए जो कि गंभीरता, अपराध की प्रकृति एवं जिस रीति से वह किया गया, के अनुरूप हो। **234 448**

Section 498A – Matrimonial cruelty – Conduct of a spouse though may cause annoyance need not necessarily amount to cruelty.

धारा 498क – वैवाहिक क्रूरता – पति या पत्नी का व्यवहार यद्यपि क्षोभ कारित करता हो परन्तु आवश्यक नहीं कि प्रताड़ना माना जाये। **235 450**

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

किशोर न्याय (बालकों की देखभाल और संरक्षण) अधिनियम 2000

Section 7A – Claim of juvenility – Plea of juvenility raised by the appellant could not have been thrown out without conducting proper inquiry.

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2016

किशोर न्याय (बालकों की देखरेख एवं संरक्षण) नियम, 2016

Sections 10, 10A and 13 – See sections 14, 15, 17, 18, 19 and 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

धाराएं 10, 10क एवं 13 – देखें किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2015 की धाराएं 14, 15, 17, 18, 19 एवं 101। **237 454**

LAND REVENUE CODE, 1959 (M.P.)

भू–राजस्व संहिता, 1959 (म.प्र.)

Section 129 – See order 14 Rules 1 & 5 and Order 26 Rule 9 of the Civil Procedure Code, 1908 and Rule 3 of the Commission for Local Investigation Rules, 1962.

धारा 129 – देखें सिविल प्रक्रिया संहिता, 1908 के आदेश 14 नियम 1 एवं 5 एवं आदेश 26 नियम 9 एवं स्थानीय निरीक्षण हेतु आयोग नियम, 1962 (म.प्र.)।

209 390

LIMITATION ACT, 1963

परिसीमा अधिनियम, 1963

Sections 4 and 12 – See section 34(3) of the Arbitration and Conciliation Act, 1996.

धाराएं 4 एवं 12 – देखें माध्यस्थम् एवं सुलह अधिनियम, 1996 की धारा 34(3)।

201 373

Section 3 and Article 5 – Plea of limitation not set up as a defence – Even if plea of limitation is not set up as a defence, the Court has to dismiss the suit if it is barred by limitation.

धारा 3 एवं अनुच्छेद 5 – प्रतिरक्षा के रूप में परिसीमा का अभिवाक् नही किया गया – यद्यपि प्रतिरक्षा के रूप में परिसीमा का अभिवाक नही किया गया हो परन्तु यदि दावा परिसीमा से बाधित है तो न्यायालय को वाद को खारिज करना होगा।

244(ii) 469

MOTOR VEHICLES ACT, 1988

मोटरयान अधिनियम, 1988

Section 149 (2)(a)(ii) – Assessment of compensation – Enhancement of 10% increase would apply only when the accident takes place after 3 years of the judgment passed in case of ***National Insurance Company Limited v. Pranay Sethi, 2017 ACJ 2700 (SC)***.

धारा 149 (2)(क)(ii) – प्रतिकर का निर्धारण – 10 प्रतिशत की वृद्धि केवल तभी लागू होगी जब दुर्घटना ***नेशनल इंश्योरेंस कंपनी लिमिटेड विरूद्ध प्रणय सेठी, 2017 एसीजे 2700 (एससी)*** के मामले में पारित निर्णय के 3 वर्ष के उपरांत होती है।

238(ii) 458

Section 166 – Compensation – Income – Determination when at the time of accident, claimant was working as a teacher.

धारा 166 – प्रतिकर – आय – दुर्घटना के समय जब दावेदार एक शिक्षक के रूप में कार्यरत थी। ***239 460**

Section 173 – Driving licence – Driver of offending vehicle appeared before the Claims Tribunal and filed reply but did not produce driving licence – Adverse inference can be drawn against him to the effect that he did not possess valid and effective driving licence at the time of accident.

धारा 173 – चालन अनुज्ञप्ति – उल्लंघनकारी वाहन का चालक दावा अधिकरण के समक्ष उपस्थित हुआ एवं जबाब प्रस्तुत किया किन्तु चालन अनुज्ञप्ति प्रस्तुत नहीं की – उसके विरूद्ध यह प्रतिकूल निष्कर्ष निकाला जा सकता है कि दुर्घटना के समय उसके पास वैध और प्रभावी चालन अनुज्ञप्ति नहीं थी। **240 461**

MUNICIPAL CORPORATION ACT, 1956 (M.P.)
नगरपालिक निगम अधिनियम, 1956 (म.प्र.)

Section 401 – See sections 80, 80(2), Order 6 Rule 2 (3) and Order 7 Rule 11 of the Civil Procedure Code, 1908.

धारा 401 – देखें सिविल प्रक्रिया संहिता, 1908 की धाराएं 80, 80(2), आदेश 6 नियम 2 (3) एवं आदेश 7 नियम 11। **205 382**

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985
स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985

Sections 2(viiia), 8, 9, 21 and 29 – Essential narcotic drug – Codeine and its salts are included in category of essential narcotic drug u/s 9 (1) (a) (va) of NDPS Act and Rule 52A(3) of Rules of 1985.

धाराएं 2(viiiक), 8, 9, 21 एवं 29 – आवश्यक स्वापक औषधि – कोडीन और इसके लवण एन.डी.पी.एस. अधिनियम की धारा 9 (1)(क)(vक) एवं एन.डी.पी.एस. नियम, 1985 के अतंर्गत आवश्यक स्वापक औषधि की श्रेणी में सम्मिलित हैं।

241 463

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES RULES, 1985

स्वापक औषधि और मनःप्रभावी पदार्थ नियम, 1985

Rule 52A – See sections 2(viiia), 8, 9, 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

नियम 52क – देखें स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 की धाराएं 2(viiiक), 8, 9, 21 एवं 29। **241 463**

NEGOTIABLE INSTRUMENTS ACT, 1881

परक्राम्य लिखत अधिनियम, 1881

Sections 138 and 139 – (i) Dishonour of cheque – Presumption u/s 139 of the Act when arises and its effect explained.

(ii) Standard of proof to rebut the presumption – Accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt, but he must meet the standard of preponderance of probabilities, similar to defendant in a civil proceeding.

धाराएं 138 एवं 139 – (i) चैक का अनादरण – धारा 139 के अंतर्गत उपधारणा कब उत्पन्न होगी एवं उसका प्रभाव समझाया गया।

(ii) उपधारणा के खण्डन हेतु सबूत का मानक – अभियुक्त से अपेक्षित नहीं है कि वह उपधारित तथ्य के अस्तित्व में नहीं होने को युक्ति-युक्त संदेह से परे साबित करे, किन्तु उसे सिविल कार्यवाही के प्रतिवादी के समान अधिसंभावना की प्रबलता के स्तर को प्राप्त करना होगा। **242 465**

Sections 138 and 142 – Dishonour of cheque – Territorial jurisdiction – Complainant a PAN India Company having branches all over India – Whether it can file complaint for dishonour of cheque at a place of its choice, even where no transaction has taken place? Held, No.

धाराएं 138 एवं 142 – चैक का अनादरण – स्थानीय क्षेत्राधिकार – परिवादी एक पैन इंडिया कंपनी जिसकी संपूर्ण भारत में शाखाएं है – क्या वह स्वयं की इच्छा के स्थान पर चैक अनादरण का परिवाद प्रस्तुत कर सकती है, तथापि वहां कोई अंतरण नहीं हुआ? अभिनिर्धारित, नहीं। **243 467**

PARTNERSHIP ACT, 1932

साझेदारी अधिनियम, 1932

Sections 42 and 43 – Suit for dissolution of firm and rendition of accounts – Limitation – Period of limitation is three years from date of dissolution.

धाराएं 42 एवं 43 – फर्म के विघटन एवं लेखे दिये जाने के लिए दावा – परिसीमा – परिसीमा की अवधि विघटन के दिनांक से तीन वर्ष है। **244(i) 469**

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

घरेलू हिंसा से महिलाओं का सरंक्षण अधिनियम, 2005

Sections 2(f), 3 and 17 – (i) Maintenance – Entitlement of – It is sufficient if such domestic relationship subsisted at any point of time or the aggrieved had the right to live in shared household and subjected to domestic violence.

(ii) Domestic Violence – Conduct of parties even prior to the commencement of the Act, 2005 can be taken into consideration while passing order under the Act.

धाराएं 2(च), 3 एवं 17 – (i) भरण–पोषण – पात्रता – यह पर्याप्त है कि ऐसी घरेलू नातेदारी किसी एक समय पर रही हो अथवा व्यथित को साझी गृहस्थी में रहने का अधिकार था एवं उसके साथ घरेलू हिंसा कारित हुई।

(ii) घरेलू हिंसा – अधिनियम 2005 के प्रभावशील होने के पूर्व का भी पक्षकारों का आचरण विचार में लिया जा सकता है। **246 472**

REGISTRATION ACT, 1908

रजिस्ट्रीकरण अधिनियम, 1908

Section 17 – See section 52 of the Transfer of Property Act, 1882.

धारा 17 – देखें सम्पत्ति अंतरण अधिनियम, 1882 की धारा 52। **250 483**

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989

Section 14 A(2) – (i) Second criminal appeal – Maintainability – Provision u/s 14A of the Act is with *non obstante* clause and therefore, being a Special Act it has overriding effect on the provisions under the other laws.

(ii) *Non obstante clause* – Effect – It is a legislative device to give overriding effect to a particular section or the Statute as a whole, in case of any conflict or inconsistency over the provisions of the same Act or other Acts.

धारा 14 क(2) – (i) द्वितीय दांडिक अपील – पोषणीता – अधिनियम की धारा 14क के अंतर्गत प्रावधान के साथ नॉन–ऑब्स्टेंटे क्लॉज है एवं इसलिए विशेष अधिनियम होने से यह अन्य विधियों के प्रावधानों पर अध्यारोही प्रभाव रखता है।

(ii) नॉन-ऑब्स्टेंटे क्लॉज – प्रभाव – किसी भी टकराव अथवा असंगति के मामले में किसी विशिष्ट धारा अथवा संपूर्ण संविधि को उसी अधिनियम अथवा अन्य अधिनियमों के प्रावधानों पर अध्यारोही प्रभाव देने का एक विधायी उपकरण है। **247 475**

SPECIFIC RELIEF ACT, 1963

विनिर्दिष्ट अनुतोष अधिनियम, 1963

Sections 12, 16(c) and 20 – Suit for specific performance of contract – It is necessary for plaintiff to step into witness box and depose.

धाराएं 12, 16(ग) एवं 20 – संविदा के विनिर्दिष्ट अनुपालन के लिए वाद – वादी के लिए यह आवश्यक है कि वह साक्षी के कठघरे में आकर साक्ष्य दे।

***207(ii) 387**

Section 16 (c) – (i) Suit for specific performance of agreement to sell – Continuous readiness and willingness of the plaintiff is to be avered and proved – It is a condition precedent to obtain the relief of s**pecific performance**.

(ii) 'Readiness' **and 'willingness'** – Plaintiff has not taken any step in getting the suit property surveyed – No explanation offered for the delay – 'Readiness' and 'willingness' not found proved.

धारा 16 (ग) – (i) विक्रय अनुबंध के विनिर्दिष्ट अनुपालन हेतु वाद – वादी की लगातार तैयारी एवं तत्परता को अभिकथित एवं प्रमाणित किया जाना चाहिए – विनिर्दिष्ट अनुपालन का अनुतोष प्राप्त करने की यह पूर्ववर्ती शर्त है।

(ii) ''तैयारी'' एवं ''तत्परता'' – वादी ने वाद सम्पत्ति के सर्वे हेतु कोई कदम नहीं उठाया – विलंब का कोई स्पष्टीकरण नहीं दिया गया – ''तैयारी'' एवं ''तत्परता'' प्रमाणित नहीं पाई गई। **248 478**

Section 20 – Suit for specific performance of an agreement to sell – Doctrine of *'lis-pendens'* – Applicability.

धारा 20 – विक्रय के अनुबंध विनिर्दिष्ट पालन के लिये वाद – विचाराधीन वाद का सिद्धांत – प्रयोज्यता। **249 480**

TRANSFER OF PROPERTY ACT, 1882

सम्पत्ति अंतरण अधिनियम, 1882

Sections 41 and 52 – See section 20 of the Specific Relief Act, 1963.

धाराएं 41 एवं 52 – देखें विनिर्दिष्ट अनुतोष अधिनियम, 1963 की धारा 20।

249 480

Section 52 – (i) Doctrine of *lis pendens* – Whether impleadment of such a *transferee pendent lite* who undisputedly had notice of pending litigation is permissible? Held, Yes.

(ii) Registered sale deed – Whether a registered sale deed can be held to be void because it was executed during pendency of a suit in relation to suit property? Held, No.

धारा 52 – (i) लंवित वाद का सिद्धांत – क्या ऐसे वादकालीन अंतरिती को पक्षकार के रूप में संयोजित किया जाना अनुज्ञात है जिसे निर्विवादित रूप से वाद लंबन की सूचना थी? अभिनिर्धारित, हाँ।

(ii) पंजीकृत विक्रय विलेख – क्या वाद लंबन के दौरान वाद संपत्ति के संबंध में निष्पादित होने के कारण एक पंजीकृत विक्रय विलेख को शून्य अभिनिर्धारित किया जा सकता है ? अभिनिर्धारित, नहीं। **250 483**

UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

विधिविरूद्ध क्रियाकलाप (निवारण) अधिनियम, 1967

Sections 43A, 43B and 43C – See section 47 of the Criminal Procedure Code, 1973, section 44 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and section 19 of the Prevention of Money Laundering Act, 2002.

धाराएं 43क, 43ख एवं 43ग – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 47, भारतीय नागरिक सुरक्षा संहिता, 2023 की धारा 44 एवं धन शोधन निवारण अधिनियम, 2002 की धारा 19। **214 402**

Part-IIA
(GUIDELINES)

1. Guidelines issued by Hon'ble Supreme Court for effective implementation of Prohibition of Child Marriage Act, 2006. **5**

EDITORIAL

Esteemed Readers,

We recently welcomed our 28th Chief Justice, Hon'ble Shri Justice Suresh Kumar Kait, who took the oath of office on 25th September, 2024. We extend a warm welcome to His Lordship and look forward to his able guidance as we continue to uphold the principles of integrity, equity and justice in our quest of *Pursuit of Excellence.*

I would like to begin by making mention of the recently concluded two day Colloquium on Intellectual Property Rights held on 28th & 29th September, 2024 at the Brilliant Convention Centre in Indore, which marked a significant milestone in legal discourse of the Academy. Organized in collaboration with the United Kingdom Intellectual Property Office and the International Trademark Association, the event was graced by esteemed guests, including Dr. Mohan Yadav, Hon'ble Chief Minister of Madhya Pradesh and Hon'ble Shri Justice Jitendra Kumar Maheshwari, Judge, Supreme Court of India. Other distinguished attendees included Hon'ble Shri Justice Satish Chandra Sharma, Judge, Supreme Court of India, Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice, High Court of Madhya Pradesh, Hon'ble Shri Justice Sanjeev Sachdeva, Administrative Judge, High Court of Madhya Pradesh and other esteemed Judges.

This colloquium, one of the largest in the country on this subject, featured renowned speakers from India and abroad across four technical sessions. Each session stimulated thought-provoking debates on fundamental legal theories and offered insights into the dynamic field of Intellectual Property Law. We emphasize that the law is not just a set of rules but a living entity that adapts to society's evolving needs and values. Another interesting aspect was how intellectual property law was going to evolve around artificial intelligence and the challenges which lay ahead. It was also wonderful to receive insights from expert speakers from abroad as to the functioning of IP and cross-border issues. A brief report on the colloquium is included in this edition to provide readers a glimpse and an understanding of the varied dimensions of Intellectual Property Law.

Another noteworthy event was the completion of the year-long judicial training for the 2023 batch of Civil Judges. After rigorous training encompassing theoretical instruction, mentorship and real-world courtroom exposure, these officers are now prepared to administer justice with integrity and empathy. In this year long training, we laid lot of emphasis on giving practical knowledge and guiding them through

innovative teaching methodologies. Last phase also comprised of a visit to the Nanaji Deshmukh Veterinary Science University, Jabalpur to appreciate the evidence in forest cases efficiently. We also arranged for a session by revenue officials in which they demonstrated the nuances pertaining to demarcation and introduced various documents about the land records. These were some initiatives we took so as to embrace andragogy style of teaching.

On a personal note, I had seen this batch from the day they took oath and saw them reform and progress over this period of one year. As this year long training completes, I feel a sense of pride over the progress they have attained. I wish the best for them and hope they become efficient members of the judicial fraternity.

Additionally, over these two months, the Academy conducted various workshops, including Awareness programmes on the Vulnerable Witness Protection Scheme, Protection of Women from Domestic Violence Act, 2005, Maintenance under Section 125 CrPC, Refresher programmes on - "Cyber Laws & Digital Evidence" and a Symposium on Intellectual Property for High Court Advocates, in collaboration with MP SLSA.

In this edition, we also highlight guidelines issued by the Hon'ble Supreme Court in ***Society for Enlightenment and Voluntary Action & anr. v. Union of India & ors., 2024 INSC 790***. Despite efforts to combat child marriage through the Prohibition of Child Marriage Act, 2006, enforcement remains challenging due to cultural norms. These guidelines, in which a segment is also for the judiciary to follow, emphasize the need for stricter implementation. Let us commit to adopting them in our work to combat this social menace.

We have recently celebrated Diwali and as we approach the end of the year, I am reminded of Ralph Waldo Emerson's words:

> "*The purpose of life is not to be happy. It is to be useful, honourable, compassionate, and to have it make some difference that you have lived well.*"

Here is a gentle reminder that the ultimate goal of law is to enhance human dignity and collective well-being. Let us not forget the same.

Wishing prosperity, peace and fulfillment to all.

Krishnamurty Mishra
Director

WELCOME TO HON'BLE THE CHIEF JUSTICE SHRI SURESH KUMAR KAIT

Hon'ble Shri Justice Suresh Kumar Kait has been appointed as the Chief Justice of High Court of Madhya Pradesh.

His Lordship was born on 24th May, 1963 at Village Kakaut, Distt. Kaithal, Haryana. His Lordship graduated in Humanities from University College Kurukshetra. During graduation, His Lordship was selected as Unit Leader in National Service Scheme (NSS) and was awarded University Merit Certificate. His Lordship did Post-Graduation in Political Science from Kurukshetra University. During Post-Graduation, His Lordship was elected as Joint Secretary of Students' Union, Kurukshetra University. After obtaining Bachelor's Degree in Law from Campus Law Centre, University of Delhi, was enrolled as an Advocate in the year 1989. His Lordship is first in the family to become an Advocate. His Lordship had been the Panel Lawyer/Senior Counsel for U.P.S.C. and Railways. His Lordship was appointed as Standing Counsel for Central Government in the year 2004 and continued till elevation.

His Lordship was elevated as an Additional Judge of Delhi High Court on 5th September, 2008 and became a Permanent Judge on 12th April, 2013. His Lordship was transferred to High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh w.e.f. 12th April, 2016. His Lordship was transferred to Delhi High Court w.e.f. 12th October, 2018.

On appointment as 28th Chief Justice of Madhya Pradesh High Court, His Lordship was administered oath of office at Raj Bhavan, Bhopal by the Governor of Madhya Pradesh on 25th September, 2024. His Lordship was accorded welcome ovation on 26th September, 2024 in the Conference Hall of South Block of the High Court of Madhya Pradesh, Jabalpur.

We on behalf of JOTI Journal wish His Lordship a very happy and successful tenure.

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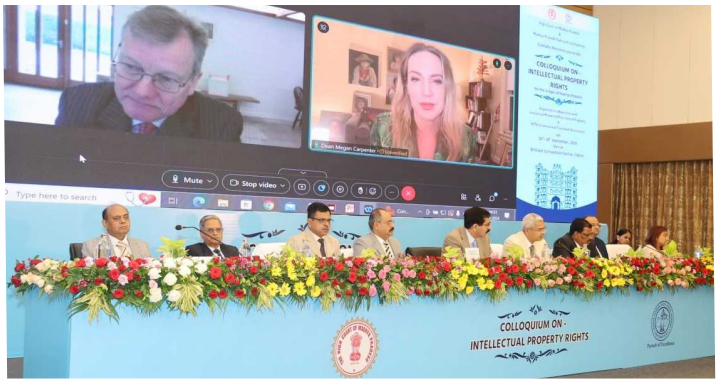
GLIMPSES OF THE COLLOQUIUM ON – INTELLECTUAL PROPERTY RIGHTS

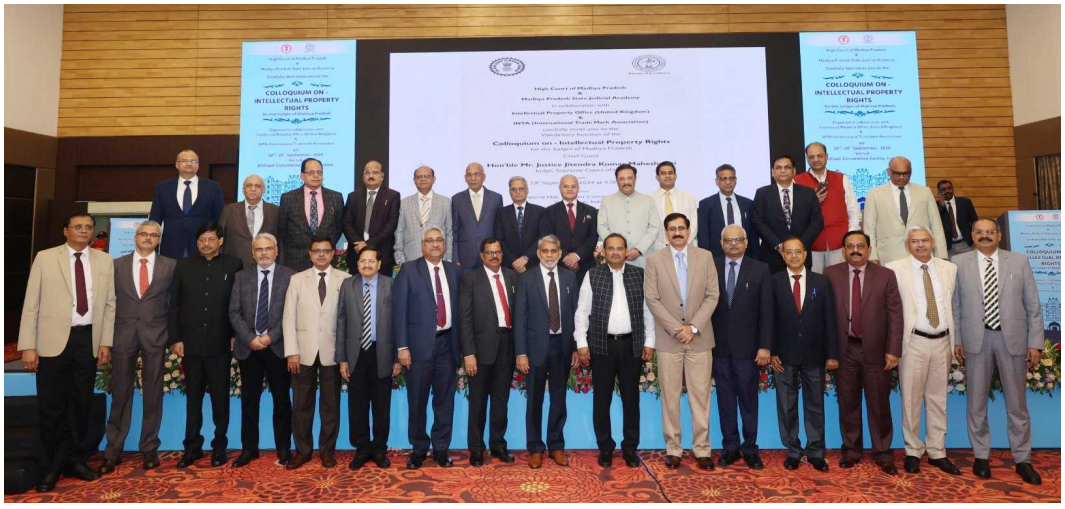
Hon'ble dignitaries addressing the august gathering at the inaugural event of the Intellectual Property Rights held on 28th September, 2024 at Brilliant Convention Centre, Indore

GLIMPSES OF THE COLLOQUIUM ON – INTELLECTUAL PROPERTY RIGHTS



Ongoing technical session

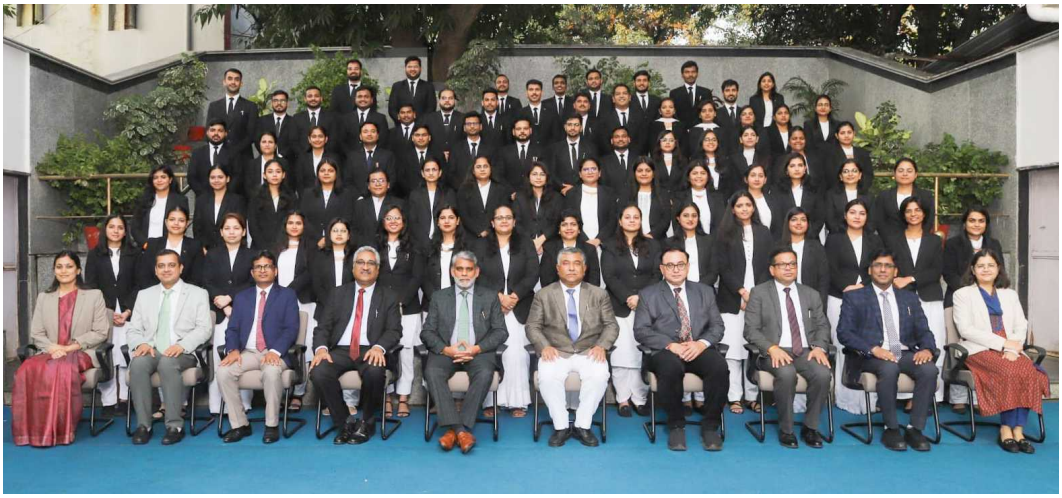
Ongoing technical session



Hon'ble Shri Justice Jitendra Kumar Maheshwari, Judge, Supreme Court with Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice, High Court of Madhya Pradesh and companion Judges gracing the valedictory event

FINAL PHASE INSTITUTIONAL INDUCTION TRAINING COURSE FOR CIVIL JUDGES (ENTRY LEVEL) BATCH, 2023 (28.08.2024 TO 05.10.2024)

Group-I



Group-II

PART – I

OUR LEGENDS

HON'BLE SHRI JUSTICE N. D. OJHA
11TH CHIEF JUSTICE OF HIGH COURT OF MADHYA PRADESH

In this series of OUR LEGENDS, we are narrating the life journey of Hon'ble Shri Justice Narendra Dev Ojha, often referred to as Justice N.D. Ojha. He was a notable figure in the Indian judiciary, serving as a Supreme Court judge during a critical phase of the nation's legal and constitutional evolution. His tenure marked a period of profound judicial decisions, reflecting a commitment to justice, constitutionalism and the rule of law.

Justice N.D. Ojha was born into a family that valued education and legal principles. His early years were marked by academic brilliance, leading him to pursue law as a career. He completed his law degree with a strong foundation in constitutional, civil, and criminal law, which laid the groundwork for his illustrious legal career.

Justice Ojha began his career as a practicing advocate, focusing on civil, criminal and constitutional law matters. His dedication, analytical skills, and ability to interpret complex legal issues earned him recognition among peers and the legal fraternity. His early years as a lawyer were marked by a deep involvement in public interest litigation, reflecting his commitment to ensuring access to justice for all, especially the underprivileged sections of society.

Justice Ojha's legal acumen did not go unnoticed and he was appointed as a Judge in the Allahabad High Court. During his tenure at the Allahabad High Court, he gained a reputation for his erudition, fairness and impartiality. He was appointed as Additional Judge of the Allahabad High Court on 3rd September, 1971 and permanent Judge of that High Court on 12th December, 1972. He was Acting Chief Justice of the Allahabad High Court from 18th August, 1986 to 30th September, 1986. His judgments often demonstrated a deep understanding of legal principles and a commitment to upholding the rule of law.

His Lordship was appointed as Chief Justice of High Court of Madhya Pradesh on 8th January, 1987. He also functioned as the Governor, Madhya Pradesh from 1st December, 1987 to 29th December, 1987 and thereafter, continued as Chief

Justice of Madhya Pradesh High Court. At the felicitation ceremony organized on 9th January, 1987 he expressed his sentiments as to onerous duties of a judge as below:

> "As you all know, dispensation of justice is a Divine attribute. It is God alone who is the ultimate dispenser of justice. Since the Judges have been assigned the role of dispensation of justice, they can perform this sacred duty only if they feel that God is all pervading is constantly watching not only their deeds but also their thoughts, howsoever subtle they may be. The Judges should always be conscious that their deeds and thoughts are under constant vigil of someone, who is omnipresent, omniscient and omnipotent. If they do so, they are bound to get the Grace of God, who is omnibenevolent too. It shall be my endeavor to constantly have this feeling in my mind while discharging my duties.
>
> At this place, however, I hasten to add that Judges too, being human beings, are imperfect. God alone is perfect. Due to their imperfection, the Judges also are likely to err. Consequently, if in spite of my best efforts, I on account of being imperfect commit any inadvertent error, you will very kindly forgive me. Even God in his Mercy forgives such an error. "To err is human, to forgive is Divine" is meant for such errors.
>
> In this connection, I assure you that I shall always welcome constructive suggestions, coming from any quarter. The purity of the stream of justice has to be maintained by us, at all cost. Let us rededicate ourselves to this noble task."

His Lordship served in the capacity of Chief Justice of this High Court for over a year. In this one year, he made a reputation for rendering verdicts in complex matters, expediting trials of old cases and resolving encouraging administrative growth of judiciary. During this time, he also functioned as the Governor, Madhya Pradesh from 1st December, 1987 to 29th December, 1987. His Lordship was appointed as Judge of the Supreme Court on 18th January, 1988.

In recognition of his judicial excellence, Justice N.D. Ojha was elevated to the Supreme Court of India, where he served as a judge from 1988 to 1991. His tenure at the Apex Court was marked by landmark judgments and a commitment to safeguarding the fundamental rights enshrined in the Indian Constitution. He was known for his ability to deliver well-reasoned and balanced judgments, often delving into the socio-economic implications of legal decisions.

Justice Ojha was part of several important judgments that had a lasting impact on Indian jurisprudence. One of his notable judgment is ***Union Carbide Corporation v. Union of India, 1992 AIR 248.*** Justice Ojha was part of the Bench that adjudicated the Bhopal Gas Tragedy case, one of India's worst industrial

disasters. The court addressed issues of jurisdiction, liability and the quantification of damages for the victims, highlighting the challenges in determining liability for industrial disasters and the complexities of seeking justice through both domestic and foreign legal avenues. His Lordship demitted the office of Judge, Supreme Court of India on 18th January, 1991.

Justice N. D. Ojha was also recognized for his calm and assertive manner of presiding over the dais. One such incident reflecting this sentiment arises from his tenure at the Allahabad High Court. One day, Justice Ojha was hearing a particularly contentious property dispute. Both parties were represented by senior counsels, who presented their arguments passionately but also aggressively. The courtroom atmosphere was tense, with each side asserting its case loudly.

Amid this charged environment, one of the lawyers became overly insistent, constantly interrupting Justice Ojha while he tried to ask questions. In a moment of calm authority, Justice Ojha paused, looked directly at the lawyer, and said with a slight smile, "Patience, learned counsel. Just as justice requires evidence, wisdom requires a moment of reflection." His gentle yet firm remark lightened the mood in the courtroom and reminded everyone of the importance of decorum and deliberation in judicial proceedings.

This episode is often cited by his former colleagues to illustrate not just Justice Ojha's deep legal wisdom but also his ability to command respect with grace. It reflects his emphasis on maintaining courtroom dignity while pursuing justice.

Justice Ojha's contributions extended beyond the courtroom as well. He was actively involved in various legal seminars, workshops and conferences contributing to the development of legal education and fostering a better understanding of constitutional law among young lawyers and judges.

Justice Ojha was known for his humility, integrity, and dedication to his work. Despite holding one of the highest judicial offices in the country, he remained approachable and committed to his principles of justice and equality. His Lordship passed away on 4th May, 2009.

Justice N.D. Ojha's tenure as a Judge of Allahabad High Court, Chief Justice of High Court of Madhya Pradesh and as a Supreme Court Judge exemplifies a commitment to upholding the highest standards of judicial integrity and fairness. His judgments continue to shape the legal discourse in India, serving as a guiding light for jurists, lawyers and students of law. As a distinguished jurist, his legacy remains a testament to the enduring values of justice, equality and constitutional governance.

●

BRIEF SUMMARY REPORT OF THE COLLOQUIUM ON – INTELLECTUAL PROPERTY RIGHTS

The Madhya Pradesh State Judicial Academy organized a two-day colloquium on Intellectual Property Rights (IPR) for the Judges of Madhya Pradesh on 28th & 29th September, 2024, in collaboration with the United Kingdom Intellectual Property Office and the International Trademark Association. This event aimed to increase judicial awareness and expertise in handling IPR related disputes.

The colloquium featured distinguished speakers, including prominent members of the judiciary, policy makers and international experts in intellectual property. The event focused on the increasing significance of IPR in today's globalized economy, addressing contemporary challenges such as the digitalization of intellectual property and its enforcement in the era of new technologies.

Inauguration

The event was inaugurated with a formal lighting of the lamp, symbolizing the removal of ignorance and the spread of knowledge. The inaugural session was presided over by the Chief Guests Dr. Mohan Yadav, Hon'ble Chief Minister of Madhya Pradesh and Hon'ble Shri Justice Jitendra Kumar Maheshwari, Judge, Supreme Court of India. The session was further graced by Hon'ble Shri Justice Satish Chandra Sharma, Judge, Supreme Court of India, Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice of the High Court of Madhya Pradesh, Hon'ble Shri Justice Sanjeev Sachdeva, Administrative Judge of the High Court of Madhya Pradesh, Shri Prashant Singh, Advocate General of Madhya Pradesh, Ms. Gauri Kumar, South Asia Representative Officer, International Trademark Association and Ms. Sarah Roberts Favell, Deputy Director of Intellectual Property Policy at the United Kingdom Intellectual Property Office. All the Hon'ble Judges of High Court of Madhya Pradesh also graced the occasion.

The inaugural session emphasized India's long-standing cultural heritage of hospitality and intellectual growth, as well as the importance of IPR in fostering innovation, safeguarding creators' rights and boosting economic development. The need for robust judicial frameworks to support businesses in protecting their intellectual property rights globally was highlighted.

Session Summaries

Session 1: Basics of Intellectual Property Law

The first technical session focused on the fundamental concepts of IPR, covering patents, trademarks, copyrights and geographical indications. The resource persons; Ms. Gillian Arend, Ms. Sarah Roberts Favell and Dr. Yogesh Pai,

provided their insights on the subject. The session aimed to deepen the understanding of the evolving landscape of Intellectual Property Rights (IPR), beginning with an overview of the foundational aspects of IPR, including trademarks, copyrights, designs and their protection.

The discussion emphasized the critical role these rights play in fostering innovation, safeguarding creativity and protecting commercial interests. International treaties, such as the Paris Convention, were underscored as foundational to global IP systems. The session illustrated how these international agreements are vital in resolving cross-border disputes and ensuring that legal interpretations align with global standards while safe guarding national interests.

Non-traditional marks, such as sound, colour and scent were discussed, with case studies like the Christian Louboutin red sole trademark illustrating the evolving nature of IP litigation. The session emphasized that judges need knowledge and analytical tools to adjudicate such cases, which are becoming increasingly prevalent.

A critical issue discussed was bad faith registrations, a growing concern threatening the integrity of IP systems. Best practices for identifying and tackling these fraudulent registrations were shared by the International Trademark Association (INTA). The importance of geographical indications and their role in protecting traditional knowledge and local industries was also highlighted.

Session 2: Enforcement Mechanisms – Challenges & Best Practices

This session explored the evolving landscape of IP enforcement, particularly in light of recent legal and procedural shifts. Esteemed speakers, including Justice Sanjeev Sachdeva and legal expert Mr. Gaurav Miglani, discussed jurisdictional challenges following the abolition of the Intellectual Property Appellate Board (IPAB). This structural change has transferred IP cancellation and enforcement matters back to the High Courts, creating complexities in jurisdiction, process and consistency of rulings.

The session underscored the necessity of enhanced judicial training and specialization in IP matters to ensure that IP cases are handled efficiently and justly. The need for the judiciary to adapt swiftly to these changes was highlighted to maintain the effectiveness and integrity of IP enforcement.

The session also addressed judicial enforcement mechanisms available to protect IP rights, focusing on civil remedies and the strategic use of injunctions.

Best practices for granting and enforcing injunctions, particularly interim and *ex parte* injunctions, were emphasized. The importance of tailored injunctions to prevent ongoing harm and safeguard IP owners' interests was discussed.

Criminal remedies in IP law were another significant topic, especially in the context of copyright and trademark infringement. The procedural challenges in criminal enforcement, including the burden of proof and the need for specialized knowledge among prosecutors, were explored. Judges were urged to approach criminal enforcement with a nuanced perspective, balancing deterrence with the broader implications of sanctions on businesses and innovation.

The session concluded with a discussion on the arbitrability of IP disputes. Speakers highlighted the increasing role of arbitration in IP cases involving cross-border transactions, licensing agreements and technology transfers. The arbitrability of IP disputes remains contentious, especially where statutory rights are concerned and judges were encouraged to carefully consider the scope of arbitration clauses and the enforceability of arbitral awards.

Session 3: Evolving Landscape of Injunctions, Damages, and Enforcement of Awards

This session provided valuable insights into the complexities of IP enforcement. Distinguished speakers, including Ms. Iris Gunther from the International Trademark Association (INTA) and Mr. M.S. Bharath, a renowned IP expert, discussed the growing importance of injunctions in cross-border disputes, the use of modern tools for assessing monetary relief, and challenges in cross-border infringement.

Dynamic blocking injunctions, anti-suit injunctions and anti-enforcement injunctions were highlighted as essential tools for protecting IP rights across jurisdictions. Case studies from Indian courts, such as *Sony Music Entertainment India Pvt. Ltd. v. Raj Television Network Ltd.*, showcased the proactive approach to curbing online infringement. The session also emphasized the importance of accurately assessing monetary relief using modern analytical tools, which offer a clearer and more precise valuation of losses.

Session 4: Intellectual Property & Technology – What Lies Ahead?

This session involved a discussion on the dynamics of Intellectual Property Rights and technology, moderated by Hon'ble Shri Justice Vishal Dhagat. Key speakers, Ms. VijiMalkhani from Hindustan Unilever, Ms. Megan Carpenter from

Franklin Pierce School of Law (virtually) and Lord Justice Colin Birss (virtually), discussed the impact of Artificial Intelligence on intellectual property.

Ms. Carpenter highlighted the growing use of AI tools and the originality of AI-generated content, emphasizing that originality remains the key test for intellectual property protection. Lord Justice Colin Birss discussed the legal complexities surrounding AI-generated inventions and the challenges of patenting such inventions.

The session also addressed the liability of e-commerce platforms and third-party sellers, as discussed by Hon'ble Shri Justice Sanjeev Sachdeva. Platforms are required to observe due diligence and cannot rely on the safe harbor principle once they are notified of counterfeiting activities.

Global trends and the need for India to align its IPR laws with international standards, such as the TRIPS Agreement and the Madrid Protocol, were highlighted. The session called for judicial reforms, including the establishment of specialized IPR courts.

Valedictory Session

The two-day colloquium concluded with a valedictory session presided over by the Chief Guest, Hon'ble Shri Justice Jitendra Kumar Maheshwari, Judge, Supreme Court of India. Other dignitaries on the dais included Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice of the High Court of Madhya Pradesh, Hon'ble Shri Justice Sanjeev Sachdeva, Administrative Judge of the High Court of Madhya Pradesh, Hon'ble Shri Justice Vivek Rusia, Hon'ble Shri Justice Vivek Agarwal, and Ms. Iris Gunther from the International Trademark Association. Gratitude was expressed to the organizers who introduced this subject to the State in great detail. Emphasis was also laid on continued Judicial training on the subject.

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KEY ISSUES RELATING TO LAW OF EASEMENTS

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The Law of Easements is a necessary adjunct to the law of property. In addition of the ordinary rights of property, the law recognizes the existence of certain other rights which may be exercised over the property of a neighbour and impose a burden upon him. These rights in the property of another (*jura in re aliena)* are known as easements, which extends from a simple right to way upto essential right to light and air.

The right of easement is the necessary consequence of the right of the ownership of land. Clause (c) of Section 6 of Transfer of Property Act, 1882 provides a restriction that an easement cannot be transferred apart from the property. It implies that even property cannot be transferred without easement, which reflects the importance of law of easement in life of a common man, especially when the law governing easements i.e. Indian Easements Act, 1882 (hereinafter referred to as 'Act') is not exhaustive, as reflected from its Preamble.

"Easement" as defined u/s 4 of the Act is a privilege which the owner of one property has a right to enjoy over the property of another. The property/land for the beneficial enjoyment of which the right exists is termed as 'dominant heritage' and the owner/occupier as 'dominant owner'. On the other hand, the property/land on which liability is imposed is termed as 'servient heritage' and its owner/occupier as 'servient owner'. These are, in fact the essentials for a valid easement right.

Right of easement is classified u/s 5 of the Act into different categories. It is classified as 'positive and negative easement' with reference to their mode of enjoyment, as they entitle the dominant owner to do some positive act on servient heritage i.e. land of servient owner (for example, legalise trespass) or in other case, prevent the servient owner from doing some act on his land (for example, prevent nuisance). It may be continuous easement without the need of act of man and discontinuous easement with the need of act of man for its natural continuity and discontinuity. Apparent easement is one which is shown by permanent sign visible, whereas non-apparent easement is one that has no sign. Further, it may be classified on the basis of its duration, locality and condition as permanent, for limited period or subject to condition or only exercisable at a certain place or time, etc. as per section 6 of the Act.

Easements are restrictive in nature as per section 7 of the Act, which implies restrictions on two types of rights *viz.* (i) rights regarding immovable property and (ii) rights in relation to natural advantages i.e. natural rights like light and air. It is

restrictive in a sense that it will not extinguish or exclude the ordinary use of the property.

Easement may be created by express grant; implied grant or implied reservation (on the ground of necessity); long user/prescription or prescriptive easements and by customary easements. These are the modes of acquiring easement. Express grant may be oral, which requires no particular format and the only necessity is conveying unequivocally the grant of easement right. Implied grant or reservation of easement rights are implied from transfer of property (eg. sale deed), where circumstances clearly show such intention of the parties.

Easement of necessity and quasi-contracts are the two terms coined u/s 13 of the Act, illustrated under Cls. (a), (c), (e) and Cls. (b), (d), (f) of section 13, respectively. The word 'necessity' in the 'easement of necessity' implies that it is not rule of convenience but a necessity without which the property cannot be used at all and not for the mere reasonable enjoyment of the property. This implies that the criterion is absolute necessity and not mere convenience. (e.g. 'easement of way' by necessity requires that there must not be another access available, otherwise such necessity extinguishes). The prominent distinction in case of 'quasi-easement' is regarding the absence of absolute necessity and presence of qualified necessity i.e. without which the property, though may be enjoyable otherwise, is not enjoyable in any way in which it was enjoyed before.

Section 15 of the Act deals with Prescriptive Easements i.e. acquiring easement by prescription or long user. If a man had enjoyed an easement for a considerable number of years uninterruptedly, a presumption would naturally arise that he had a right to it, which the servient could not legally dispute. It requires that the enjoyment must be as of right i.e. it must be *nec vi, nec claim, nec precario*. The right must be definite and certain, enjoyed independently without consent of servient owner, that too openly, peacefully, without interruption, continuously for period of 20 years in private property and 30 years in case of Government property. However, it is to be noted that certain rights cannot be acquired by prescription i.e. long use which are provided u/s 17 of the Act.

Easement extincts, suspends and revives mostly by the act of the parties. Extinction of easement is provided under section 37 to 47 of the Act, which implies that the restriction put on natural rights get extinguished and the rights of the owner are revived. An easement is suspended when the owner of either heritage becomes entitled to the possession of the other heritage for a limited interest therein. An easement revives u/s 51 of the Act.

There are certain key issues and principles involved with the law of easement which require elaborate discussion, as these issues prominently arise in civil suits filed in the Courts.

Ownership and residual rights with special reference to easement

Ownership denotes the relation between a person and an object forming the subject-matter of his ownership. It consists of complex rights, all of which are rights in *rem*, being good against all the world and not merely against specific person. One of the important features is that there is a residual nature, with regard to the concept of ownership and it is described as: If, for example, a landowner gives a lease of his property to *A*, an easement to *B* and some other right such as a profit to *C*, his ownership now consists of the residual rights i.e. the rights remaining when all these lesser rights have been given away. (***Noida v. Anand Sonbhadra, (2023) 1 SCC 724*****)**

Priority of rights

As per Section 48 of the Transfer of Property Act, where a person has created different rights in or over the same property i.e. reserving a strip of land creating interest over such land and such rights cannot be exercised to their fullest extent together, then each latter created right shall be subject to the rights previously created. The exception is, if special contract or reservation binding the earlier transferee is executed. It will mean that the exclusive right conferred on the subsequent transferee in the sale deed for example, will not be legal till such time the earlier transferee has a special contract or reservation which binds him. The maxim *Nemo dat quod non habet* applies. It means owner cannot grant exclusive rights in respect of the rights already granted as an easementary right. (***S. Kumar v. S. Ramalingam, (2020) 16 SCC 553*** may be referred.)

Claim of Adverse Possession and Easement

A claim of easementary right by prescription would be incompatible with the claim of adverse possession because under the latter a party claims title over the land of another as his own and therefore, there would be no dominant heritage claiming a right by prescription over a servient heritage. (***Chapsibhai Dhanjibhai Danad v. Purushottam, AIR 1971 SC 1878***)

Alternate plea of easement right alongwith claiming title – Suit not maintainable

Plaintiff claiming title over the servient heritage and in the alternative claiming easementary right to discharge the drain water over such land. Suit is not maintainable. It is a question of law. (***Umrah Khatoon v. Mohd. Zafir Khan and ors., (1997) 1 SCC 550*** may be referred.)

Rights created by contract of sale, whether amounts to easement?

A contract of sale does not by itself create any interest in or charge on the property. This is expressly declared in section 54 of the Transfer of Property Act. The fiduciary character of the personal obligation created by a contract for sale is recognised in section 3 of the Specific Relief Act, 1963 and in section 91 of the Trusts Act, 1882. The personal obligation created by a contract of sale is described in section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein. (***Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247*** (3 Judge Bench))

Distinction between 'easement of necessity' and 'easement by grant'

An 'easement of necessity' is one which is not merely necessary for the reasonable enjoyment of the dominant tenement, but one where the dominant tenement cannot be used at all without the easement. It is limited to the barest necessity however, inconvenient. It is irrespective of the question whether a better access could be given by the servient owner or not. When an alternate access becomes available, the legal necessity of burdening the servient owner ceases and the easement of necessity by implication of law is legally withdrawn or extinguished as statutorily recognised in section 41 of the Act.

On the other hand, 'easement by grant' does not depend upon the absolute necessity of it. It is the nature of the acquisition that is relevant. It may be absolutely necessary for the enjoyment of the dominant tenement in the sense that it cannot be enjoyed at all without it but it is always a matter of contract between the parties, where terms of the grant govern and not anything else. It may be express or even by necessary implication but in either case, it will not amount to an easement of necessity u/s 13 of the Act, even though it may also be an absolute necessity for the person in whose favour the grant is made. If the terms of the grant restrict its user subject to any condition, the parties will be governed by those conditions. If it is a permanent arrangement uncontrolled by any condition, that permanency in user must be recognised and the servient tenement will be recognised and the servient tenement will be permanently burdened with that disability. Such a right does not arise under the legal implication of section 13 nor is it extinguished by the statutory provision u/s 41 of the Act, which is applicable only to easement of necessity arising u/s 13. (**Hero Vinoth v. Seshammal, (2006) 5 SCC 545**)

Customary easement is not a customary right

'Customary rights' are saved from the operation of the Easements Act. Section 2(b) provides that the Act does not derogate from any customary or other right (not being a licensee) in or over immovable property which the Government, the public or any person may possess irrespective of other immovable property.

A 'customary easement' within the meaning of section 18 of the Act is not a customary right. A customary easement is not founded on immemorial user, or prescription or grant, but on the custom of the locality. The right to customary easement must still belong to a determinate person or persons exercisable for the more beneficial enjoyment of land belonging to or occupied by such person or persons. A customary easement, therefore, can be claimed only in respect of a dominant tenement, and not in gross.

Whereas, 'customary right' is different from a customary easement. It is a public right and arises out of the custom of the locality. It may be claimed by a fluctuating body of persons and is a part of the law of the locality and is not a private right dependant upon grant, dedication or prescription. A customary right is available for the benefit of all persons who reside in the locality or form a distinct class or have a common attribute and for whose benefit the custom in the locality prevails.

Customary easement – Mode and manner of proof

Customary easements are the most difficult to prove among easements. To establish a custom, the plaintiff will have to show that (a) the usage is ancient or from time immemorial; (b) the usage is regular and continuous; (c) the usage is certain and not varied; and (d) the usage is reasonable. If the *wajib-ul-arz* record shows the customary easement, it would make the task of the civil courts comparatively easy, as there will be no need for detailed evidence to establish the custom. Be that as it may. If the remedy for violation of a customary easement recognised and recorded in the wajib-ul-arz is by way of a civil suit, it is inconceivable that in regard to violation of a customary easement not recognised or recorded in the wajib-ul-arz, the remedy would be only by way of a summary enquiry by the Tahsildar u/s 131 of the Code, and not by a suit, before the civil court. (***Ram Kanya Bai v. Jagdish, (2011) 7 SCC 452)***

'Profit-a-prendre' v. 'profit-a-prendre in gross'

'Profit-a-prendre' means a right to enjoy the benefits arising out of the

lands, whereas 'Profit-a-prendre in gross' means a right exercisable by an indeterminate body of persons to take something from the land of others.

Term easement, may include 'profit-a-prendre' but not 'profit-a- prendre in gross' where there is no dominant heritage i.e. land for the beneficial enjoyment of which easementary right is claimed or exists in the corresponding subservient heritage. Right to profit-a-prendre must be based on a legal and valid custom. Further held, to be legal and valid, a custom must be reasonable. ***(Tulsi Ram v. Mathurasagar Pan Tatha Krishi, AIR 2003 SC 243)***

Whether a 'profit-a-prendre in gross' is an easement?

In a case, where the legal tenants of two villages claimed the right to excavate stone from land in same villages for purposes of trade. It is a profit-a-prendre in gross i.e. a right exercisable by an indeterminate body of persons to take something from the land of others but not for the more beneficial enjoyment of a dominant tenement. Therefore, it is not an easement within the meaning of the Easements Act, since section 2 of the Act expressly provides that nothing in the Act contained shall be deemed to affect, *inter alia,* to derogate from any customary or other right (not being a licence) in or over immovable property which the Government, the public or any person may possess irrespective of other immovable property. Hence, a claim in the nature of a profit-a-prendre operating in favour of an indeterminate class of persons and arising out of a local custom may be held enforceable only if it satisfies the tests of a valid custom. A right in the nature of a profit-a-prendre would ex-facie be unreasonable, if the exercise of such a right ordinarily tends to the complete destruction of the subject matter of the profit and in such situation, the customary right will not be recognised. (***State of Bihar v. Subodh Gopal Bose, AIR 1968 SC 281)***

Acquisition of right of way by prescription – Factors to be considered

Use of access by plaintiff through the property of the defendant for the required twenty years, obstruction by defendant as soon as he was aware of it and non-availability of access to the plaintiff's property except through property of defendant are the main factors to be taken into consideration. Otherwise, there is no reason why property of other persons should be permitted to be used for access.

In order to establish a right of way by prescription to the detriment of the other party, one has to show that the incumbent has been using the land as of right peacefully and openly and without any interruption for the last 20 years. There should be specific pleadings and categorical evidence in general and specifically

that since what date to which date one is using the access for the last 20 years. (***Justiniano Antao v. Bernadette B. Pereira, AIR 2005 SC 236)***

Easement of necessity in relation to a pathway

Easement of necessity necessarily involves an absolute necessity. If there exists any other way, there can be no easement of necessity. ***(Justiniano Antao v. Bernadette B. Pereira, AIR 2005 SC 236*** distinguished on facts). (***Sree Swayam Prakash Ashramam and anr. v. G. Anandavally Amma and ors., AIR 2010 SC 622***)

Right to ingress and egress reserved in a partition

When right to ingress and egress is reserved in a partition, say between two brothers, then this condition of the partition deed would bind not only the two brothers but also their successors-in-interest. The use of the door for right to ingress and egress was not a right in easement, it was a right which came into existence as a result of the partition deed itself. (***Kanhaiya Lal v. Babu Ram (Dead) by Lrs. and anr., (1999) 8 SCC 529***)

Doctrine of Public Trust

Even the State, having regard to the doctrine of "public trust", may not have any power to grant any right in relation to certain matters e.g. deep underground water. Holder of a land may have only a right of user and cannot take any action or do any deeds as a result whereof the right of others is affected. Even the right of user is confined to the purpose for which the land is held by him and not for any other purpose.

A person who holds land for agricultural purpose under no circumstances can be permitted to restrict flow of water to the neighbouring lands or discharge effluents in such a manner so as to affect the right of his neighbor to use water for his own purposes. On the same analogy, he does not have any right to contaminate the water to cause damage to the holders of neighboring agricultural fields. Large-scale defilement in the quality of water so as to make it unusable by others or as a result whereof the water is contaminated and becomes unsafe would be violative of Article 21 of the Constitution. (***State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201*** (Constitution Bench))

Common well and channel held in co-ownership and right of easement

The only restriction put by law on the common user of land by a co-owner is that it should not be so used as to prejudicially affect or put the other co-owner to a

detriment. In absence of any specific pleading regarding the prejudice or detriment to the other co-owner, co-owners have every right to irrigate their lands from their exclusive well through the common channel apart from taking water from the common well through that channel and it cannot be said that additional burden to the prejudice of the other co-owners would be put on the common land and the common channel and that this could never have been intended by the parties at the time of the partition.

It is settled that if the parties had entered into a contract regarding manner or mode of enjoyment of the common well and the common channel, then they would be governed by the terms of the contract. If plaintiff claims easementary right only as an alternative ground while claiming right of co-ownership as the main ground, Illustration (c) to section 8 of the Easements Act has no application. (***Ayyaswami Gounder v. Munnuswamy Gounder, (1984) 4 SCC 376***)

Whether lessee or mortgagee may acquire an easement of way or of flow of water over other land of his lessor or mortgagor?

Section 12 of the Act specifies the persons who can acquire easements and provides that an easement can be acquired by the owner of an immovable property or, on his behalf, by any person in occupation of the same. The words "owner ... or on his behalf by any person in occupation of the same" are very significant. They no doubt indicate that it is the owner of an immovable property or a person in occupation of such property who can acquire an easement.

It is therefore, settled that lessee or mortgagee of an immovable property cannot acquire any easement right for his own benefit. He can start prescribing for an easement only from the date of purchase of right of reversion when he became an absolute owner, not before. (***Madan Gopal Bhatnagar v. Jogya Devi and ors., 1980 (Supp) SCC 777)***

MPLRC, 1959 and Easement rights

The 1959 Code nowhere bars the jurisdiction of the civil courts to decide upon easementary rights relating to agricultural or other lands. It neither creates nor recognises any new category of private easementary rights. An easement cannot be acquired otherwise than in the manner provided in the Easements Act. Section 257 of the code relates to the exclusive jurisdiction of the Revenue Authorities. However, any statutory provision ousting the jurisdiction of the civil courts should be strictly construed. Therefore, a suit for enforcement of an easementary right or for a declaration that the defendant does not have any easementary right over the plaintiffs property or a suit for injunction to restrain a defendant from interfering

with the possession of the plaintiff or exercising any easement right over the plaintiff's property, is not barred by the 1959 Code. Such suits do not fall under any of the excluded matters enumerated in section 257.

Easement rights under Land Acquisition Act, 1894

Question arises whether person who is interested in an easement affecting land can claim compensation, in case of acquisition/ requisition? Sections 3, 9 and 31 of the Land Acquisition Act, 1894 shows that a person who is interested in an easement affecting land can claim compensation. Under both the Land Acquisition Act and the National Highways Act, such claims have to be proved in accordance with law. The difference being that under the Land Acquisition Act, 1894 actuals are payable, whereas under the National Highways Act, a fixed amount of 10% of the amount determined by the competent authority is payable. It is, therefore, wholly incorrect to state that extra amounts are payable to the owner under the National Highways Act which are not so payable under the Land Acquisition Act. Also, both Acts contemplate payment of compensation to persons whose easement rights have been affected by the acquisition. In any event, this contention cannot possibly answer non-payment of solatium and interest under the National Highways Act. (***Union of India v. Tarsem Singh, (2019) 9 SCC 304***)

Alteration in mode of enjoyment of easement – No additional burden should be imposed on servient heritage

The best illustration to understand the concept is to go through the case of ***Anguri v. Jiwan Dass, AIR 1988 SC 2024*** where dominant owner constructed six more outlets, apart from alteration of three existing outlets for outflow of dirty water, all (nine outlets) opening towards servient heritage resulting in increase of outflow of dirty water. The act was considered as the dominant owner has imposed additional burden on servient heritage contrary to section 23 of the Act and therefore, alteration was considered illegal.

Test to determine distinguishing features of Lease and Licence

"Lease" is a transfer of interest in land, whereas "licence" is a right granted to another person over immovable property to do or continue to do some act which would in the absence of such right be unlawful and which does not amount to easement nor creates any interest in the property. The real test is the intention of the parties which is to be ascertained from the terms of the document or the transaction. Substance is to be preferred than its form. If interest in the property is

transferred, it is a lease and where the intention is to grant the occupier only personal privilege with no interest in land, it is licence. (***Chandy Varghese v. K. Abdul Khader, (2003) 11 SCC 328***)

The twin principal tests by which a lease is distinguishable from a licence are – (i) the right to exclusive possession involving the transfer of an interest in the property and (ii) the rent stipulated by way of consideration for the grant. (***Rajbir Kaur v. S. Chokesiri and Co., AIR 1988 SC 1845***)

Right to use Highway

The right of the persons to use a public highway for purposes of trade is not in the nature of an easement and as such cannot be reckoned as property in law; consequently, there has been no deprivation of property, if reasonable restrictions imposed by State regarding the use of highway. (***Saghir Ahmad v. State of U.P., (1954) 2 SCC 399*** (5 Judge Bench))

Doctrine of Lost Grant

It is open to the court to infer grant from immemorial use when such user is open, as of right and without interruption but grant will not be inferred if the user can be explained otherwise. The fiction of a "lost grant" is a mere presumption from long possession and exercise of user by easement with acquiescence of the owner, that there must have been originally a grant to the claimant, which had been "lost". There can be no such presumption of a "lost grant" in favour of persons who constitute trustees in succession. ***(Braja Kishore Jagdev v. Lingraj Samantaray, AIR 2000 SC 2673)*** affirmed in ***M. Siddiq (Ram Janmabhumi Temple - 5 J.) v. Suresh Das, (2020) 1 SCC 1.***

The presumption of lost grant was extended in favor of possessor of land for considerably long period when such user is found to be in open assertion of title, exclusive and uninterrupted. However, when the use is explainable, the presumption cannot be called in aid. In the present case, the appellant traces his possession from 1954 under an unregistered perpetual lease from the erstwhile *Inamdar (Maqtedar).* (***Konda Lakshmana Bapuji v. Govt. of A.P., AIR 2002 SC 1012*** affirmed in ***M. Siddiq*** (supra)

Limits to easementary rights in case two properties owned by single owner and sold to separate buyers, when time period is too short.

If there are two adjoining properties, one of which had a portion abutting on the other and which were originally under single ownership, and one was sold to claimant and the other, two months later, to his neighbour. In such situation, no easement right could have arisen in favor of claimant within a period of two months,

where, held, no easement rights regarding drainage of water and of access to light and air, in respect of the abutting portion, could have been acquired by the claimant within the period of two months. This would not allow subsequent purchaser of property to claim the same right as easement against the previous purchaser of property that he could not construct on his property so as to prevent the flow of water. No person can have a right to have water from his property flow on to the land of his neighbour, when no such right was granted under the sale deed. No such easement right can be claimed in law. (***Saraswathi v. S. Ganapathy, (2001) 4 SCC 694*** may be resorted).

Disturbance of the easement and filing of suit

Section 33 of the Act therein provides that the owner of any interest in the dominant heritage or the occupier of such heritage may institute a suit for the disturbance of the easement provided that the disturbance has actually caused substantial damage to the plaintiff.

Under Explanation II read with Explanation I to the section, where the disturbance pertains to the right of free passage of light passing through the openings to the house, no damage is substantial unless the interference materially diminishes the value of the dominant heritage. Where the disturbance is to the right of the free passage of air, damage is substantial, if it interferes materially with the physical comfort of the plaintiff.

It is clear from Explanations II and III to section 33 that to constitute an actionable obstruction of free passage of light or air to the openings in a house, it is not enough that the light or air is less than before. There must be a substantial privation of light, enough to render the occupation of the house uncomfortable, according to the ordinary notions of mankind. (***Chapsibhai Dhanjibhai Danad v. Purushottam, AIR 1971 SC 1878***)

Prescription differs from limitation – Jurisprudence

Prescription is a mode of acquiring title to an incorporeal hereditament (an intangible right in land such as an easement) by continued user, possession and enjoyment and is a part of substantive law. Limitation, on the other hand, is a bar to a remedy and relates to procedure, as such prescription differs from limitation. In short, prescription is a right conferred, limitation is a bar to a remedy. Generally, Hindu law recognises prescription and limitation, whereas Muslim law did not recognise prescription or limitation. [***Syndicate Bank v. Prabha D. Naik, AIR 2001 SC 1968*** (3 Judge Bench)]

Right to light and air – Only unauthorized construction is to be demolished

Trial court directing defendant to remove the walls or any other structure made adjacent to the wall of plaintiff's house due to which windows and ventilators on the wall of plaintiffs' house were closed resulting in diminution of light and air. It is settled that in execution of trial court's decree only the unauthorised construction raised by defendant which prevented plaintiffs' light and air had to be demolished and his apprehension of demolition of his existing double-storeyed building was unfounded. ***(Krishna Kumar Agrawal and ors. v. Jai Kumar Jain and anr., AIR 1997 SC 300)***

Pleading and Proof – Exceptions and permissible limits

The Apex Court held in the case of ***Bachhaj Nahar v. Nilima Mandal, (2008) 17 SCC 491,*** that:

- It is a fundamental rule that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. The facts to be pleaded and proved for establishing title are different from the facts that are to be pleaded and proved for making out an easementary right.
- No amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief. Only in exceptional cases, can this general rule be deviated from if the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. Again, where neither party puts forth such a contention, the court cannot make out such a case not pleaded *suo motu*.
- It would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like *res judicata*, estoppel, acquiescence, non-joinder of causes of action or parties, etc. which require pleading and proof. Civil court cannot grant any relief ignoring the prayer.
- Any anxiety to cut the delay or further litigation, should not be a ground to flout the settled fundamental rules of CPC.

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विधिक समस्यायें एव समाधान

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

1. क्या धारा 5 परिवीक्षा अधिनियम, 1958 के अंतर्गत प्रतिकर राशि प्रदाय किये जाने पर उसके व्यतिक्रम की दशा में कारावास की सजा दी जाना अपेक्षित है?

सामान्यतः प्रतिकर राशि की अदायगी के व्यतिक्रम की दशा में कारावासीय दण्ड भुगताये जाने का आदेश दिया जाता है परन्तु जब ऐसा प्रतिकर धारा 5, परिवीक्षा अधिनियम, 1958 के अंतर्गत दिया जाना आदेशित किया जाता है तब ऐसी प्रतिकर राशि के व्यतिक्रम की दशा में कारावासीय दण्ड दिया जाना उचित नहीं होगा क्योंकि ऐसे आदेश से परिवीक्षा अधिनियम के प्रावधान विफल हो जायेंगे जो अभियुक्त को कारावास का दण्ड न देकर उसे सुधरने के लिये परिवीक्षा पर छोड़े जाने का उद्देश्य रखती है।

इस संबंध में केरल उच्च न्यायालय का न्यायदृष्टांत ***स्कारिया उर्फ करियाचेतन वि. केरल राज्य 2016 (2) क्राइम्स (एच.सी.) 89*** महत्वपूर्ण है जिसमें माननीय उच्चतम न्यायालय के न्यायदृष्टांत ***इशरदास वि. पंजाब राज्य, एआईआर 1972 एस.सी. 1295*** का अवलंब लेते हुए यह अभिनिर्धारित किया गया है कि धारा 5, परिवीक्षा अधिनियम, 1958 में प्रतिकर दिलाये जाने पर इसके व्यतिक्रम की दशा में कारावासीय दण्ड नहीं दिया जा सकता है एवं ऐसी राशि धारा 421 व 422 दण्ड प्रक्रिया संहिता, 1973 में वर्णित प्रावधानानुसार वसूल की जा सकती है।

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2. क्या किसी सिविल वाद में घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 के अंतर्गत प्रावधानित अनुतोष के संबंध में आवेदन प्रस्तुत किया जा सकता है?

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 की धारा 26 के अनुसार किसी लंबित सिविल वाद में भी इस अधिनियम में प्रावधानित अनुतोष प्रदाय किये जाने के संबंध में आवेदन प्रस्तुत किया जा सकता है। माननीय बॉम्बे उच्च न्यायालय ने इस बिंदु पर न्यायदृष्टांत ***नारायण नानी सालगांवकर वि. जयश्री उर्फ मानसी नारायण सालगांवकर, 2017 एससीसी बाम्बे 723*** में रेफरेंस निराकृत किया था। माननीय बॉम्बे उच्च न्यायालय ने इस संदर्भ में यह व्यक्त किया है कि अधिनियम की धारा 26 के अनुसार किसी सिविल न्यायालय में भी ऐसा आवेदन प्रस्तुत किया जा सकता है एवं ऐसे आवेदन को किसी अंतवर्ती आवेदन के समकक्ष ही माना जाएगा एवं जिस प्रकार कोई अनुतोष किसी अंतवर्ती सिविल आवेदन के अंतर्गत पक्षकार को प्राप्त होता है उसी प्रकार इस अधिनियम के अंतर्गत प्रस्तुत आवेदन पर भी वांछित अनुतोष पक्षकार को प्राप्त रहेगा।

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PART – II

NOTES ON IMPORTANT JUDGMENTS

201. ARBITRATION AND CONCILIATION ACT, 1996 – Section 34 (3)
LIMITATION ACT, 1963 – Sections 4 and 12

Petition against arbitration award u/s 34 of the Act of 1996 – Limitation – Period of limitation is 3 months and not 90 days – Arbitration Tribunal passed the award on 30.06.2022 – As per section 12 (1) of the Limitation Act, limitation would start running from 01.07.2022 – From the starting point of 01.07.2022, the last day of the period of three months would be 30.09.2022 – High Court was closed from 01.10.2022 to 30.10.2022 – Period of limitation expired a day prior to the commencement of vacation, therefore the benefit of section 4 of the Act was not available – As per section 34(3) of the Act, period of limitation could have extended by maximum period of 30 days, which expired on 30.10.2022 – Petition filed on 31.10.2022 was barred by limitation.

माध्यस्थम् एवं सुलह अधिनियम, 1996 – धारा 34(3)
परिसीमा अधिनियम, 1963 – धाराएं 4 एवं 12

माध्यस्थम् पंचाट के विरूद्ध अधिनियम, 1996 की धारा 34 के अंतर्गत याचिका – परिसीमा – परिसीमा अवधि 3 माह है, न कि 90 दिन – माध्यस्थम् अधिकरण ने 30.06.2022 को पंचाट पारित किया – परिसीमा अधिनियम की धारा 12(1) के अनुसार, दिनांक 01.07.2022 से परिसीमा आरंभ होगी – परिसीमा आरंभ बिन्दु दिनांक 01.07.2022 से, तीन माह की परिसीमा का अंतिम दिन दिनांक 30.09.2022 होगा – उच्च न्यायालय दिनांक 01.10.2022 से दिनांक 30.10.2022 तक बंद था – परिसीमा अवधि अवकाश शुरू होने के एक दिन पूर्व समाप्त हो गई थी अतः अधिनियम की धारा 4 का लाभ प्राप्त नहीं होगा – अधिनियम की धारा 34(3) के अतंर्गत परिसीमा बढ़ाने का लाभ अधिकतम 30 दिनों के लिए है, जो दिनांक 30.10.2022 को समाप्त हो गई – दिनांक 31.10.2022 को प्रस्तुत याचिका परिसीमा बाह्य है।

State of West Bengal represented through the Secretary and ors. v. Rajpath Contractors and Engineers Ltd.

Judgment dated 08.07.2024 passed by the Supreme Court in Civil Appeal No. 7426 of 2023, reported in AIR 2024 SC 3252

Relevant extracts from the judgment:

As per Section 12(1) of the Limitation Act, the day from which the limitation period is to be reckoned must be excluded. In this case, the period of limitation for filing a petition under Section 34 will have to be reckoned from 30.06.2022, when the appellants received the award. In view of Section 12(1) of the Limitation Act, 30.06.2022 will have to be excluded while computing the limitation period. Thus, in effect, the period of limitation, in the facts of the case, started running on 01.07.2022. The period of limitation is of three months and not ninety days. Therefore, from the starting point of 01.07.2022, the last day of the period of three months would be 30.09.2022. As noted earlier, the pooja vacation started on 01.10.2022.

We may note here that Section 43 of the Arbitration Act provides that the Limitation Act shall apply to the arbitrations as it applies to proceedings in the Court. We may note here that the consistent view taken by this Court right from the decision in ***Union of India v. Popular Construction Co., (2001) 8 SCC 470*** is that given the language used in the proviso to sub-section (3) of Section 34 of the Arbitration Act, the applicability of Section 5 of the Limitation Act to the petition under Section 34 of the Arbitration Act has been excluded.

Now, we proceed to consider whether the appellant will be entitled to the benefit of Section 4 of the Limitation Act. Section 4 of the Limitation Act reads thus:

> "4. **Expiry of prescribed period when court is closed**. – Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.
>
> *Explanation*. – A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day."

The meaning of "the prescribed period" is no longer res integra. In ***Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624***, in paras 13 and 14, the law has been laid down on the subject. The said paragraphs read thus:

> "13. The crucial words in Section 4 of the 1963 Act are "prescribed period". What is the meaning of these words?
>
> 14. Section 2(j) of the 1963 Act defines:

'**2. (*j*)** "**period of limitation**" [which] means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act;'

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside an arbitral award is three months. The period of 30 days mentioned in the proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the "period of limitation" and, therefore, not the "prescribed period" for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the "period of limitation" or, in other words, the "prescribed period", in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case."

Even in this case, this Court was dealing with the period of limitation for preferring a petition under Section 34 of the Arbitration Act. We may note that the decision in ***State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210*** which is relied upon by the appellant, follows the aforesaid decision.

In the facts of the case in hand, the three months provided by way of limitation expired a day before the commencement of the pooja vacation, which commenced on 01.10.2022. Thus, the prescribed period within the meaning of Section 4 of the Limitation Act ended on 30.9.2022. Therefore, the appellants were not entitled to take benefit of Section 4 of the Limitation Act. As per the proviso to sub-section (3) of Section 34, the period of limitation could have been extended by a maximum period of 30 days. The maximum period of 30 days expired on 30.10.2022. As noted earlier, the petition was filed on 31.10.2022.

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202. CIVIL PROCEDURE CODE, 1908 – Sections 2(2), 2(9) and 47, Order 8 Rule 10 and Order 20 Rule 4(2)

(i) Written statement – Failure to file – Scope of power of Court under Order 8 Rule 10 – Trial Court has two alternatives, either to pronounce judgment or to pass any other order in relation to suit as it considers fit – Not mandatory to pronounce judgment in all cases

– Even plaintiff is not entitled to judgment in his favour unless he adduces evidence to prove his case, wherever required – Court must record *prima facie* satisfaction about the maintainability of suit, if challenged, and its competence to decide the matter before exercising power under Order 8 Rule 10 of CPC – Judgment passed without deciding such objection, would be treated as nullity and decree drawn on the basis of it, will become inexecutable.

(ii) Judgment passed under Order 8 Rule 10 – Executability of decree drawn on the basis of such judgment – There must be such adjudication leading to determination of rights of the parties – If there is no adjudication/determination of rights, the decree drawn up cannot be said to be formal expression of adjudication within the meaning of section 2(2) of CPC– Such decree would be inexecutable and in case if it is put to execution, objection as to executability can be raised u/s 47 of the Code.

सिविल प्रक्रिया संहिता, 1908 – धाराएं 2(2), 2(9) एवं 47, आदेश 8 नियम 10 एवं आदेश 20 नियम 4 (2)

(i) लिखित कथन – प्रस्तुत करने में विफलता – आदेश 8 नियम 10 के अंतर्गत न्यायालय की शक्ति का विस्तार – विचारण न्यायालय को दो विकल्प प्राप्त है, या तो वह निर्णय सुनाएगा अथवा वाद के संबंध में ऐसा आदेश पारित करेगा जो वह ठीक समझे – सभी मामलों में निर्णय सुनाया जाना आज्ञापक नहीं है – यहां तक कि वादी स्वयं के पक्ष में निर्णय प्राप्त करने का अधिकारी नहीं है, जब तक कि, जहां आवश्यक है, वह स्वयं के मामले को साबित करने के लिए साक्ष्य प्रस्तुत नहीं करता – संहिता के आदेश 8 नियम 10 के अंतर्गत शक्ति का प्रयोग करने के पूर्व न्यायालय को, चुनौती दिये जाने पर, वाद की पोषणीयता के संबंध में एवं मामले का निराकरण करने की सक्षमता के संबंध में प्रथम दृष्टया संतुष्टि अभिलिखित करना होगी – ऐसी आपत्ति का निराकरण किये बिना पारित निर्णय अकृत माना जाएगा एवं उसके आधार पर निर्मित डिक्री निष्पादन के अयोग्य हो जाएगी।

(ii) आदेश 8 नियम 10 के अंतर्गत पारित निर्णय – ऐसे निर्णय के आधार पर निर्मित डिक्री की निष्पादन योग्यता – ऐसा न्यायनिर्णयन होना आवश्यक है जिससे पक्षकारों के अधिकारों का विनिश्चय हुआ हो – यदि कोई न्यायनिर्णयन अथवा अधिकारों का विनिश्चिय नहीं हुआ है, तब यह नहीं कहा जा सकता कि निर्मित आज्ञप्ति संहिता की धारा 2(2) के अर्थ अनुसार

न्यायनिर्णयन की औपचारिक अभिव्यक्ति है – ऐसी आज्ञप्ति निष्पादन योग्य नहीं रहेगी एवं यदि उसे निष्पादन के लिए प्रस्तुत किया जाता है, तब निष्पादन के संबंध में आपत्ति संहिता की धारा 47 के अधीन उठाई जा सकती है।

Asma Lateef and anr. v. Shabbir Ahmad and ors.

Judgment dated 12.01.2024 passed by the Supreme Court in Civil Appeal No. 9695 of 2023, reported in AIR 2024 SC 602

Relevant extracts from the judgment:

Rule 10 is permissive in nature, enabling the trial court to exercise, in a given case, either of the two alternatives open to it. Notwithstanding the alternative of proceeding to pronounce a judgment, the court still has an option not to pronounce judgment and to make such order in relation to the suit it considers fit. The verb 'shall' in Rule 10 [although substituted for the verb 'may' by the Amendment Act of 1976] does not elevate the first alternative to the status of a mandatory provision, so much so that in every case where a party from whom a written statement is invited fails to file it, the court must pronounce the judgment against him. If that were the purport, the second alternative to which 'shall' equally applies would be rendered otiose.

If indeed, in a given case, the defendant defaults in filing written statement and the first alternative were the only course to be adopted, it would tantamount to a plaintiff being altogether relieved of its obligation to prove his case to the satisfaction of the court. Generally, in order to be entitled to a judgment in his favour, what is required of a plaintiff is to prove his pleaded case by adducing evidence. Rule 10, in fact, has to be read together with Rule 5 of Order VIII and the position seems to be clear that a trial court, at its discretion, may require any fact, treated as admitted, to be so proved otherwise than by such admission. Similar is the position with section 58 of the Indian Evidence Act, 1872. It must be remembered that a plaint in a suit is not akin to a writ petition where not only the facts are to be pleaded but also the evidence in support of the pleaded facts is to be annexed, whereafter, upon exchange of affidavits, such petition can be decided on affidavit evidence. Since facts are required to be pleaded in a plaint and not the evidence, which can be adduced in course of examination of witnesses, mere failure or neglect of a defendant to file a written statement controverting the pleaded facts in the plaint, in all cases, may not entitle him to a judgment in his favour unless by adducing evidence he proves his case/claim.

Turning to the facts of the present case, Kazmi had challenged the maintainability of the Suit in the written statement filed by him before the Trial Court contending inter alia that the suit property was bhoomidhari land owing to which the Suit was barred by section 331 of UPZA & LR Act as well as it was barred under section 41(h) of the Specific Relief Act and, thus, not maintainable before the civil court. What was required of the Trial Court in such situation was to record a satisfaction, at least prima facie, that the Suit was maintainable and then proceed to pass such orders as it considered proper in the circumstances.

A decision rendered by a court on the merits of a controversy in favour of the plaintiff without first adjudicating on its competence to decide such controversy would amount to a decision being rendered on an illegal and erroneous assumption of jurisdiction and, thus, be assailable as lacking in inherent jurisdiction and be treated as a nullity in the eye of law; as a logical corollary, the order dated 5th August, 1991 is held to be ab initio void and the decree drawn up based thereon is inexecutable.

We record that examination of the order dated 5th August, 1991 does not reveal any adjudication leading to determination of the rights of the parties in relation to any of the matters in controversy in the suit and, therefore, the decree since drawn up is not a formal expression of an adjudication/determination since there has been no adjudication/determination so as to conform to the requirements of a decree within the meaning of section 2(2). In this regard, we express our concurrence with both the High Court and the Executing Court that there is no decree at all in the eye of law.

We, therefore, hold that a decree that follows a judgment or an order (of the present nature) would be inexecutable in the eyes of law and execution thereof, if sought for, would be open to objection in an application under section 47, CPC.

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203. CIVIL PROCEDURE CODE, 1908 – Section 24(5)

(i) Transfer of case – Allegation of bias against Presiding Officer of Court – If the allegations are apparently false, strict approach is the call of the day to maintain discipline in the Court – Such action is needed to protect judicial officers and maintain their self-esteem, confidence and above all the majesty of the institution of justice.

(ii) Transfer of case – Grounds – Allegation of bias of Presiding Officer – Such apprehension of bias or prejudice should be *bonafide* and reasonable – It must be proved by circumstances and material placed before Court – Mere apprehension of a party that he will not get justice, would not be sufficient to justify transfer.

सिविल प्रक्रिया संहिता, 1908 – धारा 24(5)

(i) वाद का अंतरण – न्यायालय के पीठासीन अधिकारी के विरूद्ध पक्षपात का आरोप – यदि आरोप प्रत्यक्ष रूप से मिथ्या हैं तो न्यायालय में अनुशासन बनाए रखने हेतु सख्त रवैया अपनाया जाना समय की पुकार है – न्यायिक अधिकारियों की सुरक्षा, उनके आत्मसम्मान और आत्मविश्वास को बनाए रखने एवं सबसे बढ़कर न्यायिक संस्थान की गरिमा बनाए रखने हेतु ऐसी कार्यवाही की आवश्यकता है ।

(ii) वाद का अंतरण – आधार – पीठासीन अधिकारी पर पक्षपात का आरोप – पक्षपात या पूर्वाग्रह की ऐसी आशंका सद्भावी और युक्तियुक्त होनी चाहिए – इसे न्यायालय के समक्ष प्रस्तुत सामग्री एवं परिस्थितियों से सिद्ध होना चाहिए – किसी पक्ष की मात्र यह आशंका कि उसे न्याय प्राप्त नहीं होगा, अंतरण को उचित ठहराने हेतु पर्याप्त नहीं होगा।

Mahesh Prasad Sen (Napit) v. Dhannulal Namdeo

Order dated 23.11.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 6953 of 2023, reported in ILR 2024 MP 935

Relevant extracts from the order:

The allegations of bias of Presiding Officer, if made the basis for transfer of case, before exercising power under Section 24 C.P.C., the Court must be satisfied that the apprehension of bias or prejudice is bona fide and reasonable. The expression of apprehension, must be proved/ substantiated by circumstances and material placed by such applicant before the Court. It cannot be taken as granted that mere allegation would be sufficient to justify transfer.

Mere suspicion by the party that he will not get justice would not justify transfer. There must be a reasonable apprehension to that effect. A judicial order made by a Judge legitimately cannot be made foundation for a transfer of case. Mere presumption of possible apprehension should not and ought not be the basis of transfer of any case from one case to another. It is only in very special circumstances, when such grounds are taken, the Court must find reasons exist to transfer a case, not otherwise. See ***Rajkot Cancer Society v. Municipal Corporation, Rajkot, AIR 1988 Gujarat 63; Pasupala Fakruddin and anr. v. Jamia Masque and anr., AIR 2003 AP 448;*** and ***Nandini Chatterjee v. Arup Hari Chatterjee, AIR 2001 Calcutta 26***.

Where a transfer is sought making allegations regarding integrity or influence etc. in respect of the Presiding Officer of the Court, this Court has to be very careful before passing any order of transfer.

In the matters where reckless false allegations are attempted to be made to seek some favourable order, either in a transfer application, or otherwise, the approach of Court must be strict and cautious to find out whether the allegations are bona fide, and, if treated to be true on their face, in the entirety of circumstances, can be believed to be correct, by any person of ordinary prudence in those circumstances. If the allegations are apparently false, strict approach is the call of the day so as to maintain not only discipline in the courts of law but also to protect judicial officers and maintain their self esteem, confidence and above all the majesty of institution of justice.

The justice delivery system knows no caste, religion, creed, colour etc. It is a system following principle of black and white, i.e., truth and false. Whatever is unfair, that is identified and given its due treatment and whatever is good is retained. Whoever suffers injustice is attempted to be given justice and that is called dispensation of justice. The prevailing system of dispensation of justice in Country, presently, has different tiers. At the ground level, the Courts are commonly known as "Subordinate Judiciary" and they form basis of administration of justice. Sometimes it is said that subordinate judiciary forms very backbone of administration of justice. Though there are various other kinds of adjudicatory forums and then various kinds of Tribunals etc. but firstly they are not considered to be the regular Courts for adjudication of disputes, and, secondly the kind and degree of faith, people have, in regular established Courts, is yet to be developed in other forums. In common parlance, the regular Courts, known for appropriate adjudication of disputes basically constitute subordinate judiciary, namely, the District Court; the High Courts and the Apex Court.

The hierarchy gives appellate and supervisory powers in various ways. The supervisory control of District judiciary has been conferred upon High Court, which is the highest Court at provincial level and is under constitutional obligation to see effective functioning of subordinate Courts by virtue of power conferred by Article 235 read with 227 of the Constitution of India.

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204. CIVIL PROCEDURE CODE, 1908 – Section 47

Execution – Decree for partition – In a suit for partition of agricultural land, after declaring shares of parties, Court becomes *functus officio* – If application for execution of decree is made to the Court, such application should be sent to the Revenue Authorities – Revenue Authorities will make actual execution by effecting partition and delivery of possession – Civil Court has no power to do this exercise.

सिविल प्रक्रिया संहिता, 1908 – धारा 47

निष्पादन – विभाजन हेतु डिक्री – कृषि भूमि के विभाजन हेतु वाद में पक्षकारों के हिस्सों की घोषणा करने के पश्चात, न्यायालय पदकार्य निवृत्त हो जाता है – यदि डिक्री के निष्पादन के लिये न्यायालय में आवेदन प्रस्तुत किया जाता है तो ऐसा आवेदन राजस्व अधिकारियों को भेजा जाना चाहिए – राजस्व अधिकारी प्रभावी विभाजन कर और आधिपत्य प्रदान कर वास्तविक निष्पादन करेंगे – सिविल न्यायालय के पास इस कार्यवाही को करने की शक्ति नहीं है।

Ushabai (Smt.) & anr. v. Sarubai & ors.

Order dated 07.12.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 4734 of 2023, reported in ILR 2024 MP 946

Relevant extracts from the order:

Taking into consideration the law laid down by Supreme Court in the case of ***M/s Trinity Infraventures Ltd. & ors. etc. v. M.S. Murthy & ors. etc., AIR 2023 SC 336, Shub Karan Bubna @ Shub Karan Prasad Bubna & ors. v. Sita Saran Bubna & ors., (2009) 9 SCC 689, Bikoba Deora Gaikwad & ors. v. Hirabai Marutirao Ghorgare & ors., (2008) 8 SCC 198*** and by Division Bench of this Court in the case of ***Bhagwansingh v. Babu Shiv Prasad and anr., AIR 1974 M.P. 12***, it can be said that in suit of partition of agricultural land, Civil Court has only power to declare the shares of parties and it has no other power and after exercising that power, the Court becomes *functus officio*. After declaration of shares by the Court, initial application for an order for execution has to be made in the Civil Court, who will send requisite papers to the Collector/Revenue Authority but the actual execution by effecting partition and delivery of possession is to be made only by the Collector/Revenue Authority. Hence, the Civil Court has no power to do this exercise even if the parties agree to it.

In view of aforesaid discussion, impugned order dated 07.08.2023 dismissing petitioners' application under section 47 r/w/s 151 CPC, is hereby set aside and matter is remanded to executing Court to decide the petitioners' application afresh after taking into consideration the aforesaid legal position. In case, executing Court is of the view that the objection raised by way of said application filed on behalf of the petitioners, has no merit, then it shall proceed further with the execution only in accordance with the aforesaid binding legal position.

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205. CIVIL PROCEDURE CODE, 1908 – Sections 80, 80(2), Order 6 Rule 2 (3) and Order 7 Rule 11

MUNICIPAL CORPORATION ACT, 1956 (M.P.) – Section 401

Rejection of plaint – Grounds that cannot be considered for rejection of plaint – Enunciated as under:

(a) Non-compliance of Order 6 Rule 2(3) CPC which requires expression of dates, sums and numbers into figures as well as words – However, such party would not be able to take plea of typographical error in pleadings later on.

(b) Objection regarding non-service of notice u/s 80 of CPC to the State Government, cannot be decided, as a ground under Order 7 Rule 11 of CPC in case application u/s 80(2) of CPC is pending.

(c) Want of notice u/s 401 of M.P. Municipal Corporation Act 1956, when there are some allegations against Municipal Corporation only but no relief is claimed against Municipal Corporation in the suit.

(d) Objection regarding valuation of suit and payment of court fees on the ground that valuation should have been done on the sale consideration amount, can be decided only after framing of issues and recording of evidence, especially when plaintiff has claimed to be in possession of property and is neither party to the sale deed nor is bound by the sale deed in question.

(e) Defect of non-joinder and mis-joinder of necessary parties cannot be considered for rejection of plaint.

(f) Non-filing of title documents in support of pleas taken in the plaint, cannot be a ground to reject the plaint at the stage of Order 7 Rule 11 of CPC.

सिविल प्रक्रिया संहिता, 1908 – धाराएं 80, 80(2), आदेश 6 नियम 2 (3) एवं आदेश 7 नियम 11

नगरपालिक निगम अधिनियम, 1956 (म.प्र.) – धारा 401

वाद पत्र का नामंजूर किया जाना – आधार जिन्हें वाद पत्र के नामंजूर करने के लिए विचार में नहीं लिया जा सकता – निम्नानुसार प्रतिपादित :

(क) संहिता के आदेश 6 नियम 2 (3) का पालन न किया जाना, जो अपेक्षा करता है कि दिनांक, राशि एवं अंकों को संख्या के साथ–साथ शब्दों में दर्शाया जाए – किंतु ऐसा पक्षकार अभिवचन में टंकण त्रुटि होने का आधार पश्चातवर्ती क्रम में नहीं ले सकेगा।

(ख) राज्य सरकार को संहिता की धारा 80 के अंतर्गत नोटिस की तामीली न होने संबंधी आपत्ति का निराकरण संहिता के आदेश 7 नियम 11 के अंतर्गत आधार के रूप में नहीं किया जा सकता, यदि संहिता की धारा 80 (2) के अंतर्गत आवेदन लंबित है।

(ग) धारा 401 म.प्र. नगरपालिक निगम अधिनियम, 1956 के अंतर्गत नोटिस का न दिया जाना जहाँ नगरपालिक निगम के विरूद्ध केवल कुछ आक्षेप किये गये हैं किंतु वाद में उसके विरूद्ध किसी अनुतोष की मांग नहीं की गई है।

(घ) वाद के मूल्यांकन एवं न्यायालय शुल्क की अदायगी के संबंध में इस आधार पर की गई आपत्ति कि विक्रय प्रतिफल राशि पर मूल्यांकन किया जाना चाहिए था, का निराकरण केवल वाद प्रश्न निर्मित किये जाने एवं साक्ष्य अभिलिखित करने के उपरान्त किया जा सकता है, विशेषतः जबकि वादी का दावा है कि वह संपत्ति के आधिपत्य में है एवं न तो विक्रय पत्र का पक्षकार है, न ही प्रश्नगत विक्रय विलेख से आबद्ध है।

(ङ) आवश्यक पक्षकारों के असंयोजन एवं कुसंयोजन का दोष वाद पत्र नामंजूर किये जाने के लिए विचार में नहीं लिया जा सकता।

(च) वाद पत्र में लिये गये आधार के समर्थन में स्वत्व संबंधी दस्तावेजों का प्रस्तुत न किया जाना संहिता के आदेश 7 नियम 11 के स्तर पर वाद पत्र नामंजूर किये जाने का आधार नहीं हो सकता।

Abhishek Dubey v. Pyare Lal and ors.

Order dated 29.08.2023 passed by the High Court of Madhya Pradesh in Civil Revision No. 603 of 2022, reported in ILR 2024 MP 153

Relevant extracts from the order:

By way of application under order 7 rule 11 CPC, the petitioner/defendant has raised following objections:- (i) The plaintiffs have not mentioned the numbers/figures into the words; (ii) No notice u/s 80 CPC has been given to the State Government, therefore, the suit is not maintainable; (iii) Notice u/s 401 of M.P. Municipal Corporation Act, 1956 has not been issued to the Municipal Corporation, therefore, the suit is not maintainable; (iv) The plaintiffs have not properly valued the suit and also not paid requisite Court fee. (v) There is defect of non-joinder and misjoinder of necessary parties. (vi) The plaintiffs have not valued the suit on the basis of consideration mentioned in the different sale deed and have not paid requisite Court fee thereon. (vii) The plaintiffs have not filed any document showing their title on the suit property. (viii) Plaintiffs have instituted the suit on the basis of false cause of action. (ix) The plaintiffs cannot claim any right on the basis of power of attorney.

All the said objections are being dealt with serially one by one as under:

(i) Requirement of expression of dates, sums and numbers into figures as well as in words, has been provided in order 6 rule 2(3) CPC, but for want of compliance of this provision, plaint cannot be rejected under order 7 rule 11 CPC. If the pleadings are defective, the Court should insist on their being improved and if the party does not comply the said provision, he later on, would not be able to take plea of typographical error in the pleadings.

(ii) In respect of objection about notice u/s 80 CPC, learned Court below has in its order observed that the plaintiffs have made prayer for grant of leave u/s 80(2) CPC which is still pending consideration. The objection in respect of section 80 CPC cannot be decided prior to decision of the pending application u/s 80(2) CPC.

(iii) In respect of objection about issuance of notice under section 401 of the Municipal Corporation Act, it is pertinent to mention here that although some allegations in paragraph 3 of the plaint, have been made in respect of cleaning of road by defendant 44, but no relief against the Municipal Corporation has been claimed in the suit, therefore, for want of notice to the defendant 44, plaint cannot be rejected.

(iv) Claiming themselves to be in possession of the suit property, the plaintiffs have valued the suit for declaration at Rs. 5,00,00,000/- and for injunction

have valued at Rs. 5,000/- and have paid requisite court fee. However, in the present case objection in respect of valuation and payment of court fee can be decided only after framing of issue and after recording evidence.

(v) The scheme of Order I and II CPC clearly shows that the prescriptions therein are in the realm of procedure and not in the realm of substantive law or rights. Therefore, the defect(s) of non-joinder and misjoinder of necessary parties cannot be considered for rejection of the plaint.

(vi) Undisputedly, the plaintiffs are neither party nor are bound by the sale deeds in question, therefore, in the light of decision of a coordinate Bench of this Court in the case of ***Santosh Kumar Chopra & ors. v. State of M.P. & ors., ILR 2012 MP 1852***, the plaintiffs are not required to value the suit or to pay ad-valorem court fee on the basis of sale consideration mentioned therein.

(vii) Non-filing of documents of title in support of pleas taken in the plaint, also cannot be a ground to reject the plaint at the stage of order 7 rule 11 CPC.

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206. CIVIL PROCEDURE CODE, 1908 – Section 108, Order 39 Rules 1 & 2, Order 41 and Order 43 Rule 1

PRACTICE AND PROCEDURE:

(i) Application for issuance of temporary injunction – By defendant – Maintainability – Defendant has right to move application under Order 39 Rule 1(a) of CPC for limited purpose, if any property in dispute is in danger of being wasted, damaged or alienated by any party to a suit or wrongfully sold in execution of a decree.

(ii) Applications for issuance of temporary injunction filed by both plaintiff and defendant – Both applications ought to be heard and decided analogously to avoid anomalous situation.

(iii) Whether Appellate Court while exercising powers under Order 43 of CPC, could remand the matter? Held, Yes – Section 108 of CPC makes Chapter VII apply to all appeals irrespective of whether they arise from decree or not.

सिविल प्रक्रिया संहिता, 1908 – धारा 108, आदेश 39 नियम 1 एवं 2, आदेश 41 एवं आदेश 43 नियम 1

प्रथा एवं प्रक्रियाः

(i) अस्थाई व्यादेश जारी करने हेतु आवेदन – प्रतिवादी द्वारा – पोषणीयता – प्रतिवादी को इस सीमित उद्देश्य के लिए संहिता के आदेश 39 नियम

1(क) के अंतर्गत आवेदन प्रस्तुत करने का अधिकार है यदि वादग्रस्त संपत्ति के बारे में यह खतरा है कि वाद का कोई भी पक्षकार उसका दुर्व्ययन करेगा, उसे नुकसान पहुँचाएगा या अन्य संक्रांत करेगा अथवा डिक्री के निष्पादन में उसका सदोष विक्रय कर दिया जाएगा।

(ii) वादी एवं प्रतिवादी दोनों के द्वारा अस्थाई व्यादेश जारी करने हेतु आवेदन प्रस्तुत – असंगत स्थिति से बचने के लिए दोनों आवेदन पत्रों को सदृश रूप से सुना एवं निराकृत किया जाना चाहिए।

(iii) क्या अपीलीय न्यायालय संहिता के आदेश 43 के अंतर्गत शक्तियों का प्रयोग करते समय मामले का प्रतिप्रेषण कर सकता है? अभिनिर्धारित, हाँ – संहिता की धारा 108 इस बात पर विचार किये बिना कि अपील डिक्री से उत्पन्न हुई है अथवा नहीं, सभी अपीलों पर अध्याय 7 को लागू करती है।

Ramnath and ors. v. Raghunath Singh and ors.

Order dated 01.09.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 4329 of 2023 (Gwalior Bench), reported in ILR 2024 MP 102

Relevant extracts from the order:

So far as maintainability of application for temporary injunction at the instance of defe ndant is concerned, said aspect has been considered by the Madras High Court in the matter of ***Sivakami Achi v. Narayana Chettiar, AIR 1939 Madras 495*** holding that an application under Order XXXIX Rule 1(a) of the CPC can be made on behalf of defendant. This judgment has been considered by the Division Bench of this Court in the matter ***Churamani and anr. v. Ramadhar and ors., 1991 MPLJ 311*** holding that the defendant has right to move application under Order XXXIX Rule 1 (a) of CPC if any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to a suit or wrongfully sold in execution of a decree. This analogy has been further advanced in ***Ram Narayan Singh v. Rikhraj Singh, 1997 MPWN 34***. Recently, this Court in the case of ***Nandu S/o Bhagwan Das and anr. v. Jamuna Bai and ors., (2016) 3 MPLJ 604*** has elaborately discussed this issue holding that application for temporary injunction moved on behalf of defendant is maintainable.

Therefore, defendant for limited purpose as provision mandates can move an application under XXXIX Rule 1 of CPC.

The question whether appellate Court under the miscellaneous appellate provision under Order XLIII of CPC could have remanded the matter, then it appears that in view of Division Bench judgment of this Court in the case of ***Rupinder Singh Anand v Gajinder Singh anand and ors. 2011 (1) MPLJ 646*** (supra) it has been held that Section 108 of CPC makes Chapter VII apply to all appeals irrespective of whether they arise from decree or not.

Perusal of impugned order reveals that matter has been remanded back mainly on the ground that two applications for temporary injunction were not heard analogously. One application was decided on 27-06-2022 and another was decided on 13-09-2022. This created anomalous situation. It is required that both the applications ought to be heard analogously and then would be decided accordingly by the trial Court.

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***207. CIVIL PROCEDURE CODE, 1908 – Order 3 Rules 1 and 2**
SPECIFIC RELIEF ACT, 1963 – Sections 12, 16(c) and 20

(i) Suit for specific performance – Competence of power of attorney holder to depose – If he has rendered some 'acts' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for such acts done by the principal alone – He cannot depose for principal in respect of the matter of which only the principal can have personal knowledge and in respect of which the principal is entitled to be cross-examined.

(ii) Suit for specific performance of contract – It is necessary for plaintiff to step into witness box and depose – He cannot examine in his place, his power of attorney holder, who did not have personal knowledge either of the transaction or his readiness and willingness. (Relied on - *Janki Vashdeo Bhojwani and anr. v. Indusind Bank Ltd. and ors., AIR 2005 SC 439, Vidhyadhar v. Manikrao, AIR 1999 SC 1441* and *Man Kaur v. Hartar Singh Sangha, 2010 AIR SCW 6198*)

सिविल प्रक्रिया संहिता, 1908 – आदेश 3 नियम 1 एवं 2
विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 12, 16(ग) एवं 20

(i) विनिर्दिष्ट अनुपालन के लिए वाद – मुख्तारनामा धारक की साक्ष्य देने हेतु सक्षमता – यदि मुख्तारनामा धारित करने वाले व्यक्ति ने मुख्तारनामे के अनुसरण में नियुक्तकर्ता की ओर से कुछ कार्य किया है तो वह ऐसे कार्यों

के संबंध में नियुक्तकर्ता के लिये साक्ष्य दे सकता है परन्तु वह नियुक्तकर्ता के ऐसे कार्यों की साक्ष्य नहीं दे सकता जो केवल उसके द्वारा किये गये हों – मुख्तारनामा धारक उन तथ्यों के संबधं में नियुक्तकर्ता की ओर से गवाही नहीं दे सकता है जिन तथ्यों की केवल नियुक्तकर्ता को व्यक्तिगत जानकारी हो सकती है एवं जिनके संबंध में नियुक्तकर्ता से प्रतिपरीक्षण का अधिकार है।

(ii) संविदा के विनिर्दिष्ट अनुपालन के लिए वाद – वादी के लिए यह आवश्यक है कि वह साक्षी के कठघरे में आकर साक्ष्य दे – वह अपने स्थान पर, अपनी ओर से ऐसे मुख्तारनामा धारित करने वाले को परीक्षित नहीं करा सकता है जिसे संव्यवहार या उसके तैयार और तत्पर होने के बारे में व्यक्तिगत जानकारी नहीं थी। (*जानकी वाशदेव भोजवानी एवं अन्य बनाम इंडसइंड बैंक लिमिटेड एवं अन्य, एआईआर 2005 एससी 439, विद्याधर बनाम माणिकराव, एआईआर 1999 एससी 1441* और *मान कौर बनाम हरतार सिंह संघा, 2010 एआईआर एससीडब्ल्यू 6198* अवलंबित)

Rajesh Kumar v. Anand Kumar and ors.

Judgment dated 17.05.2024 passed by the Supreme Court in Civil Appeal No. 7840 of 2023, reported in AIR 2024 SC 3017

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208. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17

(i) Amendment – Seeking new relief in plaint, when does not amount to change in nature of suit? Suit was filed for declaration and injunction with specific averments in plaint that plaintiff is having share over the property and that partition is not done – Under such circumstances, seeking new relief of partition and possession by amendment does not amount to changing the nature of suit, as no new facts are inserted – Question of due diligence does not arise – Amendment rightly allowed to achieve the basic object of amendment i.e. to avoid multiplicity of suits.

(ii) Amendment – Commencement of trial – Whether proviso to Order 6 Rule 17 of CPC is conclusive, mandatory and putting bar against allowing application after commencement of trial? Held, No – It is directory and Court may allow the proposed amendment on being satisfied that it is necessary for proper adjudication of case and to resolve the dispute between the parties.

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17

(i) संशोधन – वादपत्र में नवीन अनुतोष की माँग करना कब वाद की प्रकृति में परिवर्तन नहीं माना जाएगा? वाद घोषणा एवं व्यादेश के लिए प्रस्तुत किया गया एवं वाद पत्र में विशिष्ट अभिवचन किये गये कि वादी का संपत्ति में अंश निहित है एवं बंटवारा नहीं हुआ है – ऐसी परिस्थितियों में संशोधन द्वारा बंटवारे एवं आधिपत्य के नये अनुतोष की माँग करना वाद की प्रकृति में परिवर्तन नहीं माना जाएगा, क्योंकि कोई नये तथ्य समाविष्ट नहीं किये गये – सम्यक् तत्परता का प्रश्न उत्पन्न नहीं होता – संशोधन के मूल उददेश्य की प्राप्ति अर्थात् वाद बाहुल्यता को रोकने के लिए संशोधन सही स्वीकार किया गया।

(ii) संशोधन – विचारण का प्रारंभ होना – क्या संहिता के आदेश 6 नियम 17 का परन्तुक निश्चायक, आज्ञापक एवं विचारण प्रारंभ होने के उपरान्त आवेदन स्वीकार करने के विरूद्ध रोक लगाता है? अभिनिर्धारित, नहीं – यह निदेशात्मक है एवं न्यायालय प्रस्तावित संशोधन को स्वीकार कर सकेगा, यदि वह संतुष्ट होता है कि मामले के उचित न्यायनिर्णयन एवं पक्षकारों के मध्य विवाद के निपटारे के लिए वह आवश्यक है।

Devendra Sadho v. Smt. Pramila Kumar & ors.

Order dated 27.07.2023 passed by the High Court of Madhya Pradesh in Writ Petition No. 13985 of 2021, reported in ILR 2024 MP 54

Relevant extracts from the order:

Initially the suit was filed for declaration and permanent injunction. The plaintiff in the plaint has claimed her share in the property and also claimed that no partition took place, but relief of partition and possession was not claimed by her and, therefore, she moved an application for amendment.

From perusal of plaint, it is clear that there were specific averments made in the plaint by the plaintiff/respondent No.1 that she is also having share over the property and also mentioned that no partition got done because the demand was made by the plaintiff to the defendant to get the settlement done and the suit property be partitioned according to the share of the parties, but the defendant denied to do so.

Under such circumstances when specific pleadings are there in the plaint, the relief of partition and possession not claimed, can be claimed by the

plaintiff/respondent No.1 by making amendment in the prayer clause and allowing the amendment does not change the nature of suit because the existing facts have not been disturbed and no new fact was inserted. The relief of possession is a consequential relief and as per the existing pleadings, the same should have been claimed, but not claimed under some misconception and if suit is allowed and decreed in favour of the plaintiff and possession is not claimed, the plaintiff would be required to file another suit claiming possession and as such, the basic object of amendment to avoid multiplicity of suit would have been defeated if application would have been rejected.

The proviso appended with the respective provision provides that the application for amendment shall not be allowed after commencement of trial unless the Court is satisfied that instead of due diligence party could not have raised the matter before commencement of trial, but in number of cases it is observed and held even by the Supreme Court that said proviso is not conclusive, mandatory and puts specific bar for allowing the application after commencement of trial whereas the Court has observed that it is directory and if the Court is satisfied that the amendment is necessary for proper adjudication of the case and also to resolve the dispute between the parties, the same can be allowed.

In this case, the pleadings have not been sought to be amended and only on the basis of pleadings, the relief clause has been amended and as such, the question of due diligence does not arise. Even otherwise, the Supreme Court in number of cases has observed that if amendment is relevant and necessary for proper adjudication and also sought to avoid multiplicity of litigation, the same can be allowed.

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209. CIVIL PROCEDURE CODE, 1908 – Order 14 Rules 1 & 5 and Order 26 Rule 9

COMMISSION FOR LOCAL INVESTIGATION RULES, 1962 (M.P.) – Rule 3

LAND REVENUE CODE, 1959 (M.P.) – Section 129

(i) Appointment of Commissioner – Where dispute is in respect of encroachment / demarcation / boundary, Court must appoint Commissioner for obtaining Commission Report – Such an order can be made even without any application being preferred by the

parties. [*Shreepat v. Rajendra Prasad & ors., 2000 (6) Supreme 389* and *Haryana Waqf Board v. Shanti Sarup & ors., (2008) 8 SCC 671* relied]

(ii) Boundary dispute – Appointment of Commissioner – Application under Order 26 Rule 9 was filed by plaintiff for appointing Revenue Officer as Commissioner for conducting demarcation – Trial Court rejected the application on the ground that Revenue Officer cannot be appointed as Commissioner – Whether the order was justified? Held, No – Trial Court has failed to consider the purpose of Order 26 Rule 9 and also ignored the rules framed by the State Government titled as "Madhya Pradesh Commission for Local Investigation, Rules, 1962" – Under Rule 3 of these Rules, Revenue Officer is an appropriate person to whom writ of Commission may be issued for conducting demarcation.

सिविल प्रक्रिया संहिता, 1908 – आदेश 14 नियम 1 एवं 5 एवं आदेश 26 नियम 9

स्थानीय निरीक्षण हेतु आयोग नियम, 1962 (म.प्र.) – नियम 3

भू–राजस्व संहिता, 1959 (म.प्र.) – धारा 129

(i) आयुक्त की नियुक्ति – जहां विवाद अतिक्रमण/सीमांकन/सीमा विवाद इत्यादि से संबंधित है, वहां न्यायालय को आयोग का प्रतिवेदन प्राप्त करने हेतु आयुक्त की नियुक्ति करनी चाहिए – यहां तक कि ऐसा आदेश पक्षकारों द्वारा कोई आवेदन प्रस्तुत न करने पर भी दिया जा सकता है। (*श्रीपत वि. राजेन्द्र प्रसाद एवं अन्य, 2000 (6) सुप्रीम 389 एवं हरियाणा वक्फ बोर्ड वि. शांति सरूप एवं अन्य, (2008) 8 एससीसी 671* अवलंबित)

(ii) सीमा विवाद – आयुक्त की नियुक्ति – वादी द्वारा आदेश 26 नियम 9 के अंतर्गत राजस्व अधिकारी को सीमांकन करने हेतु आयुक्त नियुक्त करने के लिए आवेदन प्रस्तुत किया गया – विचारण न्यायालय ने इस आधार पर आवेदन निरस्त कर दिया कि राजस्व अधिकारी को आयुक्त के रूप में नियुक्त नहीं किया जा सकता – क्या आदेश न्यायोचित था? अभिनिर्धारित, नहीं – विचारण न्यायालय आदेश 26 नियम 9 के उद्देश्यों पर विचार करने में असफल रहा साथ ही राज्य सरकार द्वारा ''मध्यप्रदेश स्थानीय निरीक्षण हेतु आयोग नियम, 1962'' शीर्षक के अंतर्गत निर्मित नियमों की भी अनदेखी की – इन नियमों के नियम 3 के अंतर्गत राजस्व अधिकारी ऐसा उपयुक्त अधिकारी है जिसे सीमांकन करने हेतु रिट आफ कमीशन जारी किया जा सकता है।

Uma Bhardwaj (Smt.) v. Maniram & ors.

Order dated 29.11.2023 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 3535 of 2018, reported in ILR 2024 MP 940

Relevant extracts from the order:

Rules are in place and Rule-III specifically deals in respect of exigency arises out of Rule 9 of Order XXVI of CPC. It has a laudable purpose also because by issuing a commission to any Revenue Officer and /or any officer other than a Revenue Officer to undertake such investigation makes available level playing field to the parties. Revenue Officer has procedural and technical know how with the Total Station Machine and /or Thorax Machine. Through this method Scientific Investigation about a place can be ascertained. In fact Order XXVI Rule 10A of CPC (Commission for Scientific Investigation) also contemplated such type of investigation and said approach is need of the hour. A poor litigant, if files a suit for boundary dispute or demarcation or related reliefs, then it is difficult for him to bring documents in support of his submission because, as such, he does not have proper documents. Similarly, when he is asked to bring oral evidence in support of his assertion, then it is very difficult for him to bring that evidence/witnesses.

The Hon'ble Apex Court in the case of ***Sangram Singh v. Election Tribunal, Kotah, AIR 1955 SC 425*** has discussed in detail about the plight of witnesses. Therefore, when rules are in place and Revenue Officers are equipped with advanced machines which are linked to satellites can bring exact "Coordinates" to facilitate the truth then ignoring such valuable evidence and resorting to witnesses (who may or may not be trustworthy) would not be in the interest of justice. In the litigation, Truth must be the ultimate Victor and Justice should be the ultimate Goal. Therefore, if Truth comes from plaintiff's evidence or from the neutral player like Commissioner/Revenue Officer, it is immaterial. Truth should not be a casualty in over reliance over procedural/legal formalities yielding delay and confusion.

Even otherwise, Section 129 of M.P.L.R.C.,1959 talks about demarcation of boundaries of survey number or sub-division of survey number or block number or plot number and Tehsildar has been entrusted the job of demarcation with the help of Revenue Inspector or Patwari. Therefore, it is all the more imperative that demarcation of land must be delineated. For that Madhya Pradesh Bhu-Rajasva Sanhita (Seemankan) Niyam, 2018 have been framed in exercise of powers

conferred under Section 258 read with Section 129 of the Code 1955. Therefore, Revenue Officers are also duty bound to adhere to these provisions and quickly decide the demarcation applications to avoid frivolous litigation.

In the cases of ***Shreepat v. Rajendra Prasad & ors., 2000 (6) Supreme 389*** and ***Haryana Waqf Board v. Shanti Sarup & ors., (2008) 8 SCC 671***, Hon'ble Apex Court has discussed the aspect of appointment of Commissioner in cases of encroachment / demarcation / boundary dispute etc.

In fact trial Court can appoint Commissioner without application being preferred by the parties therefore, trial Court in such facts and circumstances where dispute is in respect of encroachment/demarcation/boundary dispute etc. must appoint Commissioner/ Revenue Officer for obtaining commission report.

In the cumulative analysis, trial Court erred in passing the impugned order while rejecting the application under Order XXVI Rule 9 of CPC. Therefore, impugned order dated 11.04.2018 is hereby set-aside. Trial Court is directed to appoint a Commissioner/Revenue Officer to undertake commission and after conducting the inspection/commission, appropriate report shall be filed and parties shall proceed thereafter in accordance with law.

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210. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 54(1) and 66

(i) Execution of decree – Attachment and sale of immovable property – Whenever attached property is to be sold in public auction, the value thereof is required to be estimated and the sale proclamation should mention such value.

(ii) Execution of a decree – Sale of immovable property – In an auction sale only such portion of judgment debtor's property should be sold as would satisfy the decree – Entire property need not be sold – Court's power to auction any property or part thereof is not a discretion but an obligation – Sale not in confirmity with this requirement, would be illegal and without jurisdiction.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 54(1) एवं 66

(i) आज्ञप्ति का निष्पादन – अचल संपत्ति की कुर्की एवं विक्रय – जब भी कुर्क संपत्ति सार्वजनिक नीलामी में विक्रय की जानी हो तब उसके मूल्य का प्राक्कलन करना अपेक्षित है और विक्रय की उद्घोषणा में मूल्य का उल्लेख होना चाहिए।

(ii) आज्ञप्ति का निष्पादन – अचल संपत्ति का विक्रय – नीलामी में निर्णीत ऋणी की संपत्ति का केवल उतना भाग विक्रय करना चाहिए जिससे आज्ञप्ति की पुष्टि हो जाए – उसकी संपूर्ण संपत्ति को विक्रय करने की आवश्यकता नही है – संपत्ति या उसके अंश की नीलामी करने का न्यायालय का अधिकार मात्र एक वैवेकीय अधिकार नहीं है बल्कि न्यायालय पर एक बाध्यता है – विक्रय जो उक्त अपेक्षा के अनुरूप नही है, वह अवैध एवं अधिकारातीत होगा।

Bhikchand (D) through LRs. v. Shamabai Dhanraj Gugale (D) through LRs.

Judgment dated 14.05.2024 passed by the Supreme Court in Civil Appeal No. 5026 of 2023, reported in AIR 2024 SC 2903

Relevant extracts from the judgment:

The provisions contained in sub-rule (2) of Rule 66 of Order XXI CPC clearly mandates that the sale proclamation should mention the estimated value can also be given under Rule 54 Order XXI CPC. The fact that the Court is also entitled to enter in the proclamation of sale its own estimate of the value of the property clearly demonstrates that whenever the attached immovable property is to be sold in public auction the value thereof is required to be estimated. In between Rule 54 to Rule 66 of Order XXI CPC, there is no other provision requiring assessment of value of the property to be sold in auction.

It is also important to bear in mind the provisions contained in Rule 54(1) Order XXI read with Rule 66 of Order XXI Code of Civil Procedure wherein it is provided that either whole of the attached property or such portion thereof as may seem necessary to satisfy the decree shall be sold in auction. If there is no valuation of the property in the attachment Panchanama and there being no separate provision for valuation of the property put to auction, it is to be understood that the valuation of the property mentioned in attachment Panchanama prepared Under Rule 54 can always provide the estimated value of the property otherwise the provisions enabling the court to auction only a part of the property which would be sufficient to satisfy the decree would be unworkable or redundant. In the case in hand, the assessed value of all the attached properties is Rs. 1,05,700/- whereas the original decretal sum was Rs. 27,694/- which is about 26.2% of the total value of the property. Therefore, when only one of the attached properties was sufficient to

satisfy the decree there was no requirement for effecting the sale of the entire attached properties.

In ***Ambati Narasayya v. M. Subba Rao MANU/SC/0025/1990: 1989: INSC:309: 1989 supp (2) SCC 693*** this Court has held that in auction sale this is obligatory on Court that only such portion of property as would satisfy decree is sold and not the entire property.

> It is of importance to note from this provision that in all execution proceedings, the court has to first decide whether it is necessary to bring the entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the court must bring only such portion of the property, the proceeds of which would be sufficient to satisfy the claim of the decree holder. It is immaterial whether the property is one, or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold.

It is, thus, settled principle of law that court's power to auction any property or part thereof is not just a discretion but an obligation imposed on the Court and the sale held without examining this aspect and not in conformity with this mandatory requirement would be illegal and without jurisdiction.

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211. CIVIL PROCEDURE CODE, 1908 – Order 38 Rule 5

Direction for furnishing security for production of property – When can be given to the defendant during pendency of suit? Held, Court should first arrive at a satisfaction that the defendant with an intention to obstruct or delay execution of any decree that may be passed against him, is about to dispose of his property or to remove the same from local limits of the jurisdiction of the Court – Order passed without recording such satisfaction cannot be sustained.

सिविल प्रक्रिया संहिता, 1908 – आदेश 38 नियम 5

संपत्ति पेश करने के लिए प्रतिभूति प्रस्तुत करने हेतु निर्देश – वाद लंबन की अवधि में कब प्रतिवादी को निर्देशित किया जा सकेगा? अभिनिर्धारित, न्यायालय को सर्वप्रथम इस निष्कर्ष पर पहुँचना होगा कि प्रतिवादी ऐसी किसी डिक्री के जो उसके विरूद्ध पारित की जाए, निष्पादन को बाधित या विलंबित करने के

आशय से उसकी संपत्ति को व्ययनित करने ही वाला है अथवा न्यायालय की अधिकारिता की स्थानीय सीमाओं से हटा देने ही वाला है – ऐसी संतुष्टि लेखबद्ध किए बिना पारित आदेश स्थिर नहीं रखा जा सकता।

Kirti Gupta and ors. v. Akash Potbhare

Order dated 06.07.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 4361 of 2022, reported in ILR 2024 MP 99

Relevant extracts from the order:

The Court is very much empowered to direct the defendants to furnish surety in the sum as may be specified to produce and place at the disposal of the Court when required the property or the value of the same. However, the pre-requisite for exercise of such power is that the Court should first arrive at a satisfaction that the defendant with an intention to obstruct or delay execution of any decree that may be passed against him is about to dispose of his property or to remove the same from local limits of the jurisdiction of the Court. It is only upon reaching to such satisfaction that the Court acquires jurisdiction to issue directions as may issued under the Rule. Until and unless such satisfaction is recorded by the trial Court, no directions as contemplated can be passed merely on the basis of apprehension in the mind of the Court.

In the present case, the trial Court has itself recorded a categoric finding to the effect that plaintiff has not proved that the defendants with intent to obstruct or delay the execution of the decree that may be passed against them are attempting to sell their property. It has further observed that only on the basis of apprehension attachment before judgment cannot be directed and has thereafter gone on to reject the application filed by the plaintiff. It hence had no jurisdiction whatsoever to pass any order under the provisions of Order 38 Rule 5 (1) of the CPC.

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

Commercial suit – "Pre-institution mediation" u/s 12-A inserted in the Act by amendment which came into force from 20.08.2022 – Whether such mandatory provision is binding on civil suit filed prior to the amendment? Held, No.

वाणिज्यिक न्यायालय अधिनियम, 2015 – धारा 12-क

वाणिज्यिक वाद – धारा 12-क के अंतर्गत ''संस्थित करने के पूर्व मध्यस्थता'' को अधिनियम में संशोधन कर जोड़ा गया है जो कि दिनांक 20.08.2022 से प्रभावी है – क्या ऐसा आज्ञापक प्रावधान संशोधन के पूर्व संस्थित सिविल वाद में बाध्यकारी हैं? अभिनिर्धारित, नहीं।

Pushpshree Hospitals & Research Centre & anr. v. Kothari Chemist & anr.

Order dated 04.01.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 3837 of 2022, reported in ILR 2024 MP 955 (DB)

Relevant extracts from the order:

The issue that has been raised by the petitioner in the present case is regarding non-compliance of Section 12-A of the Act before the institution of suit. Section 12-A of the Act of 2015 is reproduced as under:

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

This issue, has been dealt with in detail by the Apex Court in case of ***Patil Automation Pvt. Ltd. & ors. v. Rakheja Engineers Pvt. Ltd., (2022) 10 SCC 1***. The relevant paragraph of the aforementioned judgment is reproduced hereunder:

> "113. Having regard to all these circumstances, we would dispose of the matters in the following manner;
>
> 113.1 We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even *suo motu* by the Court as explained earlier in the judgment. We, however, make this declaration effective from 20.08.2022 so that stakeholders concerned become sufficiently informed.
>
> 113.2 Still further, we however direct that in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter rejection of the plaint has been

> acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.
>
> 113.3 Finally, if the plaint is filed violating Section 12-A after the jurisdictional High Court has declared Section 12-A mandatory also, the plaintiff will not be entitled to the relief."

The judgment in case of ***Patil Automation*** (supra) was pronounced on 17.08.2022 wherein the Apex Court has issued certain directions by which the controversy has been settled. Before answering question No. (iii), it would be appropriate to mention the chronology of events of the present case:

(i) The civil suit was filed by the plaintiffs/respondents on 26.03.2021.

(ii) In the civil suit, application under Order 7 Rule 11 of CPC was filed by the defendants/respondents on 21.12.2021.

(iii) Reply to the application under Order 7 Rule 11 of CPC was filed on 15.03.2022.

(iv) The order impugned rejecting the application under Order 7 Rule 11 was passed by the trial Court on 01.07.2022.

It is pertinent to mention here that the Coordinate Bench of this Court, while deciding similar issue regarding Section 12-A of Act of 2015 in case of ***Curewin Pharmaceuticals Pvt. Ltd. v. Curewin Hylico Pharma Pvt. Ltd.***, in M.A .No. 1269/2021 dated 01.07.2021 has held as under:

> "The provision is clear and unambiguous, which shows that a suit which does not contemplate any urgent interim relief under this Act cannot be instituted unless the plaintiff exhausts the remedy of pre- institution mediation."

This Court by way of judgment in case of ***Curewin Pharmaceuticals*** (supra) has held that pre-institution mediation under Section 12-A is mandatory before filing of a commercial suit. However, the Apex Court in case of ***Patil Automation*** (supra) has held that declaration by which Section 12-A has been made mandatory before filing any commercial suit shall be brought into effect from 20.08.2022.

In the present case, the suit was filed on 26.03.2021 and by applying the guidelines in case of ***Curewin Pharmaceuticals*** (supra), admittedly, there was no pre-institution mediation and settlement as required under Section 12-A of the Act of 2015. However, the suit filed by the plaintiffs/respondent could not have been

rejected by filing application under Order 7 Rule 11 as Section 12-A of the Act of 2015 has been made mandatory by the Apex Court in case of ***Patil Automation*** (supra) w.e.f. 20.08.2022. Therefore, this Court is of the view that the suit cannot be rejected for non-compliance of Section 12-A as the same was filed on 26.03.2021 that is prior to 20.08.2022.

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213. CONSTITUTION OF INDIA – Article 21

(i) Fair trial – Meaning of – It means that both the accused and the victim of a crime have a right to fair trial – Fair trial and investigation are concomitant to preservation of the fundamental right under Article 21 of the Constitution of India – The right to speedy trial is also an important facet of Article 21 – The period of remand and pre-conviction detention should be as short as possible so that accused is not subjected to unnecessary and unduly long incarceration prior to his conviction.

(ii) Court – Competency – Lacking competence to try any particular offence – Acquittal or conviction by such Court would not be a bar for second trial – If the objection regarding competence of the Court is raised, it must obtain a due and expeditious consideration.

भारत का संविधान – अनुच्छेद 21

(i) निष्पक्ष विचारण – अर्थ – इसका अर्थ है कि निष्पक्ष विचारण का अधिकार अभियुक्त और अपराध के पीड़ित दोनों के पास है – निष्पक्ष सुनवाई और अन्वेषण भारत के संविधान के अनुच्छेद 21 के अंतर्गत मौलिक अधिकार के संरक्षण हेतु सहवर्ती है – शीघ्र विचारण का अधिकार भी अनुच्छेद 21 का एक महत्वपूर्ण पहलू है – रिमांड एवं दोषसिद्धि पूर्व निरोध की अवधि यथासंभव कम होनी चाहिए ताकि अभियुक्त को उसकी दोषसिद्धि से पहले अनावश्यक और अनुचित रूप से लंबे समय तक निरोध में न रखा जाए।

(ii) न्यायालय – सक्षमता – किसी विशेष अपराध की सुनवाई हेतु सक्षमता का अभाव – ऐसे न्यायालय द्वारा की गई दोषमुक्ति अथवा दोषसिद्धि दूसरे विचारण हेतु बाधा नहीं होगी – यदि न्यायालय की सक्षमता के संबंध में आपत्ति उठाई गई है, तो उस पर उचित और शीघ्र विचार किया जाना होगा।

Amandeep Singh Saran v. State of Chhattisgarh

Judgment dated 29.11.2023 passed by the Supreme Court in Criminal Appeal No. 2625 of 2023, reported in (2024) 6 SCC 541

Relevant extracts from the judgment:

It is evident that though the chargesheet was laid on 15.10.2015 by now only 10 out of the 86 prosecution witnesses alone were examined and the appellant had already undergone incarceration for more than 8 years. There can be no doubt with respect to the object of penology that is to protect the society against the criminals and in other words, for imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner of its commission, in case of conviction. Having said this, we cannot be oblivious of the rights of the accused as well. In the circumstances expatiated above, the question is how long the appellant-accused should carry the tag of "accused"? But, certainly, taking into account the legal and factual circumstances the appellant has to stand the trial.

Puzzling legal issues arise for consideration in the instant case in view of the attending circumstances as also the various provisions under the IPC, Cr.PC and also in view of various relevant decisions of this Court. Before delving into those aspects, we think it only appropriate to refer to the necessity of speedy trial which is a facet of fair trial, taking into account the fact that in the case on hand by now the appellant had already undergone incarceration for more than 8 years whereas the Court before which his matter is now facing trial is not competent to impose a corporeal sentence of imprisonment beyond 7 years.

The requirement of a speedy trial assumes a new gloss with the verdict in ***Maneka Gandhi v. Union of India, AIR 1978 SC 597***. Thereafter, this Court issued guidelines in ***Abdul Rehman Antulay v. R.S. Nayak, AIR 1992 SC 1701*** for the speedy trial of cases. It was held therein that fair, just and reasonable procedure implicit in Article 21 of the Constitution of India creates a right in the accused to be tried speedily. The concern underlying the right to speedy trial from the point of view of the accused was also highlighted therein and one of the aspects of concern is as under:-

> "86. … (3) … (a) the period of remand and pre-conviction detention should be as short as possible. ….the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction."

The factual narration made hereinbefore regarding the period of incarceration underwent by the appellant and the punitive jurisdictional limit of the Court where the case of the appellant is under trial at present, would reveal the non-adherence, rather, the failure to follow the guidelines issued by this Court for the speedy trial of an accused. In view of certain relevant provisions under the CrPC and IPC, to be referred to hereafter, and the factual scenario of the case on hand, a formative analysis capable of formulating clues/guidelines to avoid recurrence of similar situations, is required.

A reference to Section 300 (1) Cr. PC, which lays down that a person once convicted or acquitted cannot be tried for the same offence, will not be inappropriate in the matter of such a formative analysis, as mentioned above. This law based on the maxim '*Nemo Debet Bis Vexari'* is founded on the condition that the initial trial must be by a Court of competent jurisdiction for the offences concerned. We are afraid, in the scenario now obtained if this Court is not passing appropriate directions, the appellant accused may have to face fresh trial or prolonged proceedings even after the conclusion of proceedings before the Court where the matter is presently pending. To know the *raison d'etre* for our remark, one may have to refer to various provisions of law, including the provisions referred infra.

Evidently, in this case, after completion of the investigation a report under Section 173 (2) CrPC was filed before the Court of Chief Judicial Magistrate, not merely by taking note of the accusation of having committed offence under Section 409 IPC, but owing to Section 9 of the Banning Act. Though the chargesheet was filed on 15.10.2015 the trial has progressed only upto the stage of examination of only a very few prosecution witnesses and in the meanwhile, the appellant had to remain in custody as an undertrial prisoner for more than 8 years which period is indisputably in excess of the maximum term of imprisonment imposable by a Court of Chief Judicial Magistrate. The disturbing fact is that even then the stage of prosecution evidence has reached only up to the examination of 10 out of 86 witnesses of the prosecution. The trial if permitted to continue in the Court where the appellant is presently under trial, may, in all the aforesaid circumstances, lead to a situation enabling either of the parties to contend that it was not a fair trial. On acquittal or conviction, either of the parties may call in question the verdict on the ground that it was conducted before a Court lacking competence to try the offence under Section 409, IPC as both the parties are ad idem on the point that the Court of Chief Judicial Magistrate is not competent to try the offence under Section 409, IPC. If ultimately, for any reason it is found that the trial was not before a Court of

competent jurisdiction the appellant may again have to face fresh trial in view of the position obtained under Section 300(1) CrPC. It is taking into account all the aforesaid circumstances that we made the initial remark.

At this juncture, we may have to make a mention about the decision of this Court in ***Hussainara Khatoon (1) v. Home Secretary, State of Bihar, (1980) 1 SCC 81*** where this Court, not only held that an accused got a right to fair trial but also that he got a fundamental right for speedy trial of his case because a speedy trial is an integral and essential part of fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India. It is equally relevant to refer to the decision of this Court in ***Nirmal Singh Kahlon v. State of Punjab and ors., (2009) 1 SCC 441***. In the said decision, this Court held that both the accused and victim of a crime have right to fair trial and that fair investigation and fair trial are concomitant to preservation of the fundamental right of an accused under Article 21 of the Constitution of India.

Certainly, standing the trial is said to be an ordeal. Hence, in the light of the provision under Section 300 (1) CrPC, we have no hesitation to hold that an accused is having a right to claim to be tried (if he were to be tried) before a Court of competent jurisdiction because acquittal or conviction by a Court lacking competence would not be a bar for a second trial. When that be the consequence of conduct of a trial before a Court lacking competence to try any particular offence, the accused concerned while facing the trial in relation to such an offence must have the right to raise the question of competence of the Court to try him for that offence and once such a question is raised it must obtain a due and expeditious consideration in accordance with law.

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214. CRIMINAL PROCEDURE CODE, 1973 – Section 47
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 44
PREVENTION OF MONEY LAUNDERING ACT, 2002 – Section 19
UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 – Sections 43A, 43B and 43C

Arrest – Communication of grounds of arrest to accused in writing – Accused has a fundamental right to be informed about reasons for arrest in writing – Specific details and grounds justifying arrest should be given – Not informing arrested person of specific reasons for arrest, renders the arrest illegal – Grounds on which liberty of a citizen is curtailed, must be communicated in writing so as to enable the individual to seek remedial action against deprivation of liberty.

दण्ड प्रक्रिया संहिता, 1973 – धारा 47
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 44
धन शोधन निवारण अधिनियम, 2002 – धारा 19
विधिविरूद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 – धाराएं 43क, 43ख एवं 43ग
गिरफ्तारी – गिरफ्तारी के आधारों का अभियुक्त को लिखित में सूचित करना – अभियुक्त का यह मौलिक अधिकार है कि उसे गिरफ्तारी के कारण लिखित में सूचित किए जाए – गिरफ्तारी को उचित ठहराने वाले विशिष्ट विवरण और आधार दिए जाने चाहिए – अभियुक्त को गिरफ्तारी के विशिष्ट कारण नहीं बताना गिरफ्तारी को अवैध कर देता है – जिस आधार पर किसी नागरिक की स्वतंत्रता अल्पीकृत होती है, उसे लिखित रूप से सूचित करना चाहिए ताकि व्यक्ति अपनी स्वतंत्रता से वंचित होने के विरूद्ध उपचार प्राप्त कर सके।

Prabir Purkayastha v. State (NCT of Delhi)

Judgment dated 15.05.2024 passed by the Supreme Court in Criminal Appeal No. 2577 of 2024, reported in AIR 2024 SC 2967

Relevant extracts from the judgment:

There is no doubt in the mind of the Court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed Under Article 22(1) of the Constitution of India.

The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the Accused and the grant of initial police custody remand to the Accused.

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215. CRIMINAL PROCEDURE CODE, 1973 – Section 125
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 144

(i) Maintenance – Subsequent application – Principle of *res judicata* – Earlier application withdrawn on fake assurance given by non-applicant – Second application is maintainable as first application was not decided on merits.

(ii) Amount of maintenance – Whether can be granted more than claimed? Held, Yes – When application for maintenance was filed, the income of the non-applicant was Rs. 8000/- which was increased to Rs. 24000/- at the time of passing of order – Such changed circumstances can be taken into consideration.

दण्ड प्रक्रिया संहिता, 1973 – धारा 125
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 144

(i) भरणपोषण – पश्चातवर्ती आवेदन – पूर्व न्याय का सिद्धांत – पूर्ववर्ती आवेदन अनावेदक द्वारा दिये गये झूठे आश्वासन के आधार पर वापस ले लिया गया था – दूसरा आवेदन पोषणीय है क्योंकि प्रथम आवेदन गुण-दोष के आधार पर निर्णीत नहीं किया गया था।

(ii) भरणपोषण की राशि – क्या दावे से ज्यादा प्रदत्त की जा सकती है? अभिनिर्धारित, हाँ – जब भरणपोषण हेतु आवेदन प्रस्तुत किया गया था उस समय अनावेदक की आय 8,000/– रूपये प्रतिमाह थी जो बढ़कर आदेश पारित करने के समय 24,000/– रूपये प्रतिमाह हो गई – इन बदली हुई परिस्थितियों को विचार में लिया जा सकता है।

Deepa (Smt.) & anr. v. Harish Railwani

Order dated 07.11.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Revision No. 1165 of 2010, reported in ILR 2024 MP 1044

Relevant extracts from the order:

Admittedly, earlier filed application u/s 125 of Cr.P.C. was withdrawn by the applicants. Therefore, it appears that the aforementioned application was not decided on merits. The application of principle of *res judicata* is although allowed for subsequent application u/s 125 of Cr.P.C., provided that the matter must be directly and substantially in issue was also in issue in the previous application between the same parties and the same previous application has been decided on merits. The Apex Court in the case of ***Prem Kishore & ors. v. Brahm Prakash &***

ors. [Civil Appeal No. 1948 of 2013] in paragraph 34, has held as under regarding the rule of application of *res judicata*, which runs as under-

> "34. The general principle of *res judicata* under Section 11 of the CPC contain rules of conclusiveness of judgment, but for *res judicata* to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality."

In the instant case, earlier application filed by the applicants u/s 125 of CrPC was dismissed as withdrawn. The aforementioned application was not decided on the merits, therefore, the principle of *res judicata* is not applicable in this case.

So far as the question that the trial court has awarded more than the claimed maintenance amount, in this respect, the applicants had filed the maintenance application on 25/04/2006, at that time, pay of non-applicant was Rs. 8,000/- per month and now (then) Rs. 24,000/- per month. In this situation the learned trial court has awarded the maintenance amount in the favour of the applicants more than the claimed amount. In this respect, coordinate bench of Punjab and Haryana High Court in the case of ***Amarjeet Singh v. Pushpa Devi, 2015 SCC online P&H 14045*** observed in paragraph 10 as under:-

> "Now the question which requires determination is whether the Magistrate is competent to award maintenance more than the amount claimed by the petitioner in the application, Section 125 Cr. P.C. provides that a Court may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Court thinks fit, and to pay the same to such person as the Court may from time to time direct. Under this provision, it is the duty of the Court to provide just maintenance to the deserted wife or destitute child. The amount of maintenance should be such that a wife is able to maintain herself decently and with dignity. If after considering the material placed before the Court, the Court thinks that a particular amount is a reasonable amount, he is required to award the said amount as maintenance, and in my opinion, he cannot refuse to grant the said amount merely because the claimant has not claimed such an amount in her application. Once the legislation has cast duty on the Court to award just and

reasonable amount of maintenance in the facts and circumstances of a case, the same cannot be denied on mere technicalities i.e. the claimants had not claimed the said amount in their application. Once discretion has been given to the Court to award an amount of maintenance, it will always be just and reasonable, in the facts and circumstances of a case. There is no specific restriction under Section 125 Cr. P.C. that the Court cannot award more than the amount claimed in the petition. Rather a duty has been imposed on the Court to award compensation which he thinks fit. In such situation, the Court is not debarred from awarding compensation exceeding the claimed amount."

In the present case, from the view taken by the learned trial court, it appears that in changed circumstances, the applicants have been rightly awarded maintenance amount, more than claimed amount.

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216. CRIMINAL PROCEDURE CODE, 1973 – Section 195-A
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 216
INDIAN PENAL CODE, 1860 – Section 195-A
BHARATIYA NYAYA SANHITA, 2023 – Section 232
First Information Report – Registration of – Offence of threatening witness – Maintainability – Whether complainant can lodge FIR in Police Station for threatening him to change his statement before the Court or only remedy is to file complaint u/s 195-A CrPC before the Court? Held, the word "may" used in section 195-A CrPC gives discretion to the complainant to file a complaint and does not bar lodging of FIR u/s 195 IPC.

दण्ड प्रक्रिया संहिता, 1973 – धारा 195-क
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 216
भारतीय दण्ड संहिता, 1860 – धारा 195-क
भारतीय न्याय संहिता, 2023 – धारा 232
प्रथम सूचना प्रतिवेदन – पंजीकरण – साक्षियों को धमकाने का अपराध – पोषणीयता – क्या परिवादी न्यायालय के समक्ष उसे कथन बदलने हेतु दी गई धमकी के लिये पुलिस स्टेशन में प्रथम सूचना रिपोर्ट दर्ज करा सकता है या एकमात्र उपचार न्यायालय के समक्ष दण्ड प्रक्रिया संहिता की धारा 195-क के अंतर्गत शिकायत प्रस्तुत करना है? अभिनिर्धारित, दण्ड प्रक्रिया संहिता की

धारा 195-क में प्रयुक्त शब्द ''कर सकता है'' परिवादी को शिकायत दर्ज करने का विवेकाधिकार प्रदान करते हैं एवं भा.दं.सं. की धारा 195 के अंतर्गत प्रथम सूचना रिपोर्ट संस्थित करने से वर्जित नहीं करते।

Abdul Razzak v. State of M.P. & anr.

Order dated 18.12.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 26575 of 2023, reported in ILR 2024 MP 1067

Relevant extracts from the order:

On reading of Section 195-A of IPC, it is found that if a person threatens another person with an injury to his person or his reputation or to his property or to any other person, in which, such person is interested and threatens him to give evidence, which is false and such person or witness believes it to be untrue or false, then such threat will be covered under Section 195-A of IPC. First part of Section 195-A of IPC does not require that such person or witness gives evidence in Court. Threat to a person to speak lies in Court to get acquittal or threat to threaten a person not to give evidence in Court will be covered under Part-I of Section 195-A of IPC and it is not necessary for making out an offence under Section 195-A of IPC that such person goes in Court and gives false evidence. Act of threatening a person with intention to give false evidence will constitute an offence under Section 195-A of IPC. Materialization of threat into giving false evidence in Court is not a requirement under First part of Section 195-A. Offence in Part-I is made punishable up to seven years of imprisonment.

Part-II of Section 195-A of IPC deals with situation when a person due to threat goes to court and gives false evidence and accused (innocent person) is sentenced to period of imprisonment more than seven years, then person giving false evidence shall be punished with same penalty which has been imposed upon innocent person due to false evidence. Part-II of Section 195-A makes act of giving false evidence in Court, which results in conviction of innocent person in offence. Second part of Section 195-A of IPC lays down that false evidence is given with intention of securing conviction but in first part of Section 195-A, false evidence may or may not be in relation to secure conviction. First part of Section 195-A makes punishable threat to a witness to give false evidence. Part-I and Part-II of Section 195-A are to be read separately as purpose and intent of each part is different. However, Supreme Court in paragraph-16 of aforesaid judgment has held that later part of Section 195-A makes it very clear that false evidence means false

evidence before Court of law. False evidence under Section 195-A should be read in context of Section 191 of Chapter XI. Section 191 stipulates that statement which a person knows or believes to be is false evidence. Thus, a threat to give false evidence is to recoil or give incorrect version, which a witness believes to be not true. In paragraph-16, it is further held that to give threat to a person to withdraw a complaint or FIR or settle the dispute did not attract Section 195-A of the Indian Penal Code. However, Supreme Court in subsequent paragraph-18 of said judgment has held that plain reading of section 195-A indicates that if a witness or any person receives threat and such threat are administered with intend to cause that person to give false evidence before the Court then such witness or person to file a complaint in relation to offence under Section 195-A of the IPC. Complaint is to be filed in accordance with Section 195-A Cr.P.C. In paragraph-19, Court further held that offence under Section 195-A IPC is cognizable offence, therefore, police has power to investigate. However, Court did not answer the question whether bar under Section 195-A Cr.P.C will come in way of lodging an FIR under Section 195-A of the IPC. As per paragraph-18, offence under Section 195-A will be made out if a person has threatened to give false evidence. What will be the remedy to such aggrieved person has not been mentioned by the Apex Court. In view of paragraphs-16 & 18 of aforesaid judgment, offence under Section 195-A of the IPC will be made out against the petitioner.

Delhi High Court in case of ***Rahul Yadav v. State & anr.*** in W.P.(Crl.) No.1120/2017 on 1st of March, 2018 has held that Section 195-A of Cr.P.C. provided an added remedy for filing complaint in relation to offence punishable under Section 195-A of IPC. I am in agreement with the said order passed by Delhi High Court. If police refuses to lodge a complaint under section 195-A of IPC, then aggrieved person can avail remedy of filing complaint as mentioned in Section 2(c) of Cr.P.C. When an aggrieved person approaches police station to lodge a complaint and police station does not lodges a complaint, then remedies under Section 200 of Cr.P.C. and under Section 156(3) is available to a party. Similar remedy is available to a party when police refuses to lodge a complaint under Section 195-A of IPC. Section 195-A of Code of Criminal Procedure does not bar lodging of FIR under Section 195-A of IPC. Section 195-A of Cr.P.C. uses the word that person may file a complaint in relation to an offence under Section 195-A of Indian Penal Code. Word 'may' used in Section 195-A only gives discretion to a party to file a complaint.

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217. CRIMINAL PROCEDURE CODE, 1973 – Sections 227 and 228
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 250 and 251
PREVENTION OF CORRUPTION ACT, 1988 – Sections 13(1)(e) and 13(2)
Criminal misconduct by public servant – Framing of charge – Legality – Exoneration under Income Tax Act is not a ground to seek discharge from a corruption case, as scope of adjudication in both proceedings are different – Proceedings under Income Tax Act relates to the assessment of income of the assesse and not to the source of income and the allegation of disproportionate assets under the Prevention of Corruption Act – Orders of Income tax authorities and Tribunal are not conclusive proof to be relied upon for discharge of accused – However, these orders, findings therein and their probative value are a matter for a full-fledged trial. [*Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581, Ashoo Surendranath Tewari v. CBI, (2020) 9 SCC 636* and *J. Sekar v. Directorate of Enforcement, (2022) 7 SCC 370* differentiated]

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 227 एवं 228
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 250 एवं 251
भ्रष्टाचार निवारण अधिनियम, 1988 – 13(1)(ड.) एवं 13(2)
लोक सेवक द्वारा आपराधिक अवचार – आरोप की विरचना – वैधानिकता – आयकर अधिनियम के अंतर्गत विमुक्ति भ्रष्टाचार के मामले से उन्मोचन की मांग का आधार नहीं है, क्योंकि दोनों कार्यवाहियों में न्यायनिर्णयन का विस्तार भिन्न है – आयकर अधिनियम के अंतर्गत कार्यवाहियां निर्धारिती की आय आकलन से संबंधित होती है, न कि आय के स्त्रोत से और न ही भ्रष्टाचार निवारण अधिनियम के अंतर्गत अनुपातहीन संपत्ति के आक्षेप से – आयकर प्राधिकारी एवं अधिकरण के आदेश निश्चायक सबूत नहीं होते जिस पर अभियुक्त के उन्मोचन के लिए विश्वास किया जा सके – किंतु ऐसे आदेश, उनमें दिये गये निष्कर्ष एवं उनका साक्षिक मूल्य पूर्ण विस्तृत विचारण की विषय–वस्तु है। [*राधेश्याम केजरीवाल बनाम पश्चिम बंगाल राज्य, (2011) 3 एससीसी 581, आशु सुरेन्द्रनाथ तिवारी बनाम सीबीआई, (2020) 9 एससीसी 636* एवं *जे. शेकर बनाम प्रत्वर्तन निदेशालय, (2022) 7 एससीसी 370* विभेदित किये गए]

Puneet Sabharwal v. CBI

Judgment dated 19.03.2024 passed by the Supreme Court in Criminal Appeal No. 1682 of 2024, reported in AIR 2024 SC 2046

Relevant extracts from the judgment:

Therefore, in the present case, the probative value of the Orders of the Income Tax Authorities, including the Order of the Income Tax Appellate Tribunal and the subsequent Assessment Orders, are not conclusive proof which can be relied upon for discharge of the accused persons. These orders, their findings, and their probative value, are a matter for a full-fledged trial. In view of the same, the High Court, in the present case, has rightly not discharged the appellants based on the Orders of the Income Tax Authorities.

In the present case, the appellants herein are being prosecuted under the provisions of the Prevention of Corruption Act while they seek to rely on an exoneration under the Income Tax Act. The scope of adjudication in both of these proceedings are vastly different. The authority which conducted the income tax proceedings and the authority conducting the prosecution is completely different (CBI).

In the present case, the proceedings under the Income Tax Act which are sought to be relied upon relate to the assessment of income of the assessee and not to the source of income and the allegation of disproportionate assets under the Prevention of Corruption Act. The said Orders cannot be the basis to abort the criminal proceeding in the present case.

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218. CRIMINAL PROCEDURE CODE, 1973 – Section 311
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 348
JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Section 94

Recall of witness – Minor prosecutrix and her mother were examined and cross-examined in the year 2021 – Date of birth of prosecutrix was proved by the prosecution producing birth certificate – After one year, application was filed to recall prosecutrix and her mother for re-examination, along with affidavit, educational certificate issued from a school and Aadhar Card bearing different date of birth – Held, Aadhar Card cannot be used as a proof of date of birth – Similarly, educational certificate and affidavits cannot be considered for age determination, as the date of birth has been proved by the prosecution by filing birth certificate, whose genuineness is not questioned – Minor prosecutrix and her mother appeared to have been won over, therefore, the application is found to be rightly rejected.

दण्ड प्रक्रिया संहिता, 1973 – धारा 311
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 348
किशोर न्याय (बालकों की देखरेख और सरंक्षण) अधिनियम, 2015 – धारा 94
साक्षी को पुनः बुलाना – अवयस्क अभियोक्त्री एवं उसकी माता का परीक्षण एवं प्रतिपरीक्षण वर्ष 2021 में हुआ था – अभियोजन द्वारा जन्म प्रमाण पत्र प्रस्तुत कर अभियोक्त्री की जन्म तिथि साबित की गई थी – एक वर्ष बाद अभियोक्त्री एवं उसकी माता को पुनः परीक्षण के लिए बुलाने हेतु आवेदन प्रस्तुत किया गया, जिसके साथ शपथ पत्र, विद्यालय से जारी शैक्षणिक प्रमाण पत्र एवं भिन्न जन्म तिथि धारित करने वाला आधार कार्ड था – अभिनिर्धारित, आधार कार्ड का जन्म तिथि के प्रमाण के रूप में उपयोग नहीं किया जा सकता – इसी प्रकार आयु निर्धारण के लिए शैक्षणिक प्रमाण पत्र एवं शपथ पत्र विचार में नहीं लिये जा सकते क्योंकि अभियोजन द्वारा जन्म प्रमाण पत्र प्रस्तुत कर जन्म तिथि को साबित किया गया है, जिसकी सत्यता प्रश्नगत नहीं की गई है – अवयस्क अभियोक्त्री एवं उसकी माता को प्रभावित कर लिया जाना दर्शित हुआ, इसलिए आवेदन का निरस्त किया जाना सही पाया गया।

Shahrukh Khan v. State of M.P. and anr.

Order dated 18.08.2023 passed by the High Court in Miscellaneous Criminal Case No. 4884 of 2023, reported in ILR 2024 MP 171

Relevant extracts from the order:

Minor prosecutrix (PW-1) was examined long back on 21.09.2021 and her mother (PW-2) was examined and fully cross-examined on 24.12.2021. In support of date of birth of the prosecutrix, birth certificate Ex.P/5 has been produced by prosecution. After more than one year of their examination and crossexamination, an application was moved by the applicant/accused on 08.12.2022 along with affidavits of minor prosecutrix and her mother stating that prosecutrix's date of birth is 10.05.2002 and so called Educational Certificate issued Adarsh Vidhya Mandir Amrawad, Kala Badi, District Raisen and one Aadhar Card is also alleged to have been produced in which the same date of birth is mentioned. As far as affidavits are concerned, it is apparent that these affidavits have been obtained under threat and coercion. The so called educational document alleged to have been obtained by the accused appears forged and suspicious as Adarsh Vidhya Mandir is situated at Amrawad kala Badi District Raisen whereas prosecutrix and her mother are resident of a village in District Sehore which is almost more than 100 kms away from the so-called school, which has issued so called educational Certificate mentioning the date of birth to be 10.05.2002.

It is a case where minor prosecutrix and her mother appears to have been win over by the accused by hook or crook. The so called educational certificate appears to have been got prepared just to get over the evidence of the witnesses who have already been examined and cross-examined fully to resile from their earlier evidence.

In this case, it also cannot be overlooked that date of birth of the prosecutrix has been proved by the prosecution by filing Ex.P/5 birth certificate issued only after two months of the birth of the prosecutrix by Registrar (births and deaths). In such situation, as per Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 such other evidence cannot be seen. "Juvenile Justice (Care and Protection of Children) Act, 2015" came into force w.e.f. 15.01.2016. The Rules also made under the aforesaid Act named, "The Juvenile Justice (Care and Protection of Children) Model Rules, 2016". Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 provide the procedure for determination of the age.

A perusal of the aforesaid section, makes it clear that if genuineness of the school certificate is not questioned, then the law gives prime importance to the date of birth certificate issued by the school. If the evidence stated in Section 94(2) is available then the Court could not place reliance upon any other documents. But it is primarily requirement of the law that the documents stated in the rule should be genuine. The document issued by the school and birth certificate Ex.P/5 showing minor prosecutrix's date of birth as 20.03.2006 is already on record and birth certificate has been duly proved by the mother of the prosecutrix whose affidavit has been filed in the light of the compromise. The copy of the Scholar Registrar showing the same date of birth which has been issued by the school. Therefore, genuineness of the documents relied on by the prosecution is not in question. In such situation, the documents filed after more than one year of the examination and crossexamination of the witnesses in the form of Aadhar Card and birth certificate issued by Adarsh Vidhya Mandir Amrawad Kala, Badi which is more than 100 kms away from the actual residence of the prosecutrix and her family are of no avail. It appears that these documents had been got manufactured for the defence purpose only. As far as the date of birth mentioned in the Aadhar Card is concerned, Aadhar Card cannot be used as a proof of date of birth. This document is only for the purpose of identification of particular person. Thus, the witnesses who have already been examined and cross-examined fully cannot be recalled to deny the evidence about the date of birth already given before the Court.

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***219. CRIMINAL PROCEDURE CODE, 1973 – Section 319**

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 358

(i) Power to summon additional accused – Degree of satisfaction required to exercise power – The evidence before the trial court should be such that if it goes unrebutted, then it should result in the conviction of person, who is sought to be summoned – As it is discretionary and an extra-ordinary power, it can be exercised only when the evidence is strong and reliable – It requires much stronger evidence than mere probability of complicity of proposed accused (Relied on – *Hardeep Singh v. State of Punjab, AIR 2014 SC 1400*).

(ii) Summoning order – Justifiability – Proposed accused persons were not named in the FIR but in the statements recorded u/s 161, the informant who was not an eye witness clarified that their names were disclosed without collecting full information and the accused persons were not involved in the murder of their son – Even in the chargesheet, they were not impleaded as accused – The informant in her deposition before the trial court once again named them, that too on the basis of suspicion due to old enmity – No other evidence available – Since informant was not an eye witness, her deposition alone was not found sufficient to invoke extra-ordinary jurisdiction u/s 319 of CrPC – Summoning order was quashed.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 358

(i) अतिरिक्त अभियुक्त को बुलाने की शक्ति – शक्ति का प्रयोग करने के लिए आवश्यक संतुष्टि का स्तर – विचारण न्यायालय के समक्ष साक्ष्य ऐसी होनी चाहिए कि अगर वह अखण्डित रहती है तो उसका परिणाम उस व्यक्ति की दोषसिद्धि होगा जिसे आहूत किया जाना है – चूंकि यह एक असाधारण एवं वैवेविक शक्ति है, इसका प्रयोग सुदृढ़ एवं विश्वसनीय साक्ष्य होने पर ही किया जा सकता है – यह प्रस्तावित अभियुक्त के अपराध में संलिप्त होने की संभावना से परे सुदृढ़ साक्ष्य की अपेक्षा करती है (*हरदीप सिंह बनाम पंजाब राज्य, एआईआर 2014 एससी 1400* अवलंबित)।

(ii) समन का आदेश – औचित्यता – प्रस्तावित अभियुक्त व्यक्तियों का नाम एफआईआर में नहीं था, परन्तु धारा 161 के कथन में ऐसे व्यक्ति द्वारा जो चक्षुदर्शी साक्षी नहीं था, ने स्पष्ट किया कि उनके नामों की प्रकटता संपूर्ण जानकारी एकत्रित किये बिना की गई थी और आरोपी व्यक्ति उसके

पुत्र की हत्या में शामिल नहीं थे – यहां तक कि आरोपपत्र में भी उन्हें आरोपी के रूप में शामिल नहीं किया गया था – विचारण न्यायालय के समक्ष सूचनाकर्ता ने अपने कथन में पुरानी रंजिश के कारण संदेह के आधार पर एक बार पुनः उनका नाम लिया – अन्य कोई साक्ष्य उपलब्ध नहीं – चूंकि सूचनाकर्ता चक्षुदर्शी साक्षी नहीं थी अतः एकमात्र उसकी साक्ष्य को द. प्र.सं. की धारा 319 के अंतर्गत असाधारण क्षेत्राधिकार का प्रयोग करने हेतु पर्याप्त नहीं पाया गया – समन का आदेश निरस्त किया गया।

Shankar v. State of Uttar Pradesh and ors.

Judgment dated 02.05.2024 passed by the Supreme Court in Criminal Appeal No. 2367 of 2024, reported in AIR 2024 SC 3085

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220. EASEMENTS ACT, 1882 – Sections 13 and 15

(i) Easementary Right – Acquisition by prescription – Plaintiff must plead in the plaint regarding peaceful enjoyment in respect of servient heritage without interruption for over 20 years – Use of the term "last many years" in the plaint is not sufficient to mean that they have been enjoying for the last 20 years or more – Legal requirement of acquiring easementary right over contested route through prescription, not fulfilled.

(ii) Easement of necessity – Entitlement – Available only when it is necessary for enjoying the dominant heritage – However, not available when there is alternative way to access property.

(iii) Easement on the basis of sale deed – Legal requirement – When it is not proved that predecessor-in-interest perfected easement over the contested route, such interest cannot be claimed through sale deed executed by such predecessor – Sale deed alone cannot grant rights that the seller did not have.

(iv) Power of Attorney Holder – Evidentiary value – Power of attorney holder may only depose about the facts within his personal knowledge and not about the facts which are not within his knowledge or are within the personal knowledge of the person who he represents or about the facts that may have transpired much before he entered the scene – Person instituting suit must depose before the Court.

सुखाचार अधिनियम, 1882 – धाराएं 13 एवं 15

(i) सुखाधिकार – चिरभोग द्वारा अर्जन – अनुसेवी संपत्ति के बीस वर्ष से अधिक अवधि तक निर्बाध शांतिपूर्वक उपभोग किये जाने के संबंध में वादी को वादपत्र में अभिवचन अवश्य करना चाहिए – वादपत्र में ''अंतिम कई वर्ष'' शब्द का उपयोग यह अर्थान्वयन करने के लिए पर्याप्त नहीं है कि अंतिम बीस वर्ष या अधिक अवधि से वे उपभोग कर रहे हैं – चिरभोग के माध्यम से वादग्रस्त मार्ग पर सुखाधिकार के अर्जन की विधिक आवश्यकता की पूर्ति नहीं हुई।

(ii) आवश्यकता का सुखाधिकार – पात्रता – केवल तब उपलब्ध जब यह अधिष्ठायी संपत्ति के उपभोग के लिए आवश्यक है – किंतु तब उपलब्ध नहीं जब संपत्ति पर पहुँच के वैकल्पिक मार्ग उपलब्ध है।

(iii) विक्रय विलेख के आधार पर सुखाधिकार – विधिक आवश्यकता – जब यह साबित नहीं हुआ कि पूर्ववर्ती हितधारी का वादग्रस्त मार्ग पर सुखाधिकार परिपक्व हो चुका था, तब ऐसे पूर्ववर्ती द्वारा निष्पादित विक्रय विलेख के माध्यम से ऐसे हित का दावा नहीं किया जा सकता – मात्र विक्रय विलेख से वे अधिकार प्रदान नहीं किये जा सकते, जो विक्रेता को प्राप्त नहीं थे।

(iv) मुख्तारनामा धारक – साक्षिक मूल्य – मुख्तारनामा धारक केवल स्वयं के ज्ञान में होने वाले तथ्यों के संबंध में कथन कर सकेगा एवं ऐसे तथ्यों के संबंध में नहीं कर सकेगा जो स्वयं उसके ज्ञान में नहीं है अथवा ऐसे व्यक्ति के व्यक्तिगत ज्ञान में है जिसका वह प्रतिनिधित्व करता है अथवा ऐसे तथ्यों के बारे में है जो उसके भूमिका में आने के पर्याप्त पहले ज्ञात हुये थे – दावा संस्थित करने वाले व्यक्ति का न्यायालय के समक्ष परीक्षण आवश्यक।

Manisha Mehendra Gala and ors. v. Shalini Bhagwan Avatramani and ors.

Judgment dated 10.04.2024 passed by the Supreme Court in Civil Appeal No. 9642 of 2010, reported in AIR 2024 SC 1947

Relevant extracts from the judgment:

Section 15 of the Act categorically provides that for acquiring any easementary right by prescription, the said right must have been peaceably enjoyed in respect of the servient heritage without any interruption for over 20 years. In the plaint, they simply alleged that they have been using and managing the same since "last many years". The use of the term "last many years" is not sufficient to mean that they have been enjoying the same for the last 20 years. Last many years would indicate use of the said *rasta* for more than a year prior to the suit or for some years but certainly would not mean a period of 20 or more years. Therefore, their pleadings fall short of meeting out the legal requirement of acquiring easementary right through prescription.

The easementary right by necessity could be acquired only in accordance with Section 13 of the Act which provides that such easementary right would arise if it is necessary for enjoying the Dominant Heritage. In the instant case, findings have been returned not only by the appellate courts but even by the trial court that there is an alternative way to access the Dominant Heritage, which may be a little far away or longer which demolishes the easement of necessity.

The said Sale Deed dated 17.09.1994 in original has not been produced in evidence. It was only the photocopy of the same which was brought on record. The photocopy of a document is inadmissible in evidence. Moreover, the said sale deed was executed by predecessor-in-interest i.e. Joki Woler Ruzer in favour of predecessor-in-interest of the present Gala's. The said sale deed would not bind the third parties who are not signatories or parties to the said sale deed. No evidence has been adduced to prove that Joki Woler Ruzer, predecessor-in interest of the Gala's, had perfected easementary rights over the disputed *rasta* and thus was legally entitled to transfer the same. He himself has not come before the Court that he had actually acquired any easementary right in the disputed *rasta*.

It is, therefore, settled in law that Power of Attorney holder can only depose about the facts within his personal knowledge and not about those facts which are not within his knowledge or are within the personal knowledge of the person who he represents or about the facts that may have transpired much before he entered the scene.

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***221. EVIDENCE ACT, 1872 – Sections 135 and 138**
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 140 and 143
Prosecution witness – Permissibility to examine as a defence witness – Whether a witness who has been shown in the prosecution list but not examined on behalf of the prosecution, can be permitted to be examined as defence witness? Held, Yes – There is no bar in law for examining such witness as defence witness – Trial Court has to consider the evidentiary value of the said witness before coming to its conclusion.
साक्ष्य अधिनियम, 1872 – धाराएं 135 एवं 138
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 140 एवं 143
अभियोजन साक्षी – बचाव साक्षी के रूप में परीक्षण करने की अनुज्ञेयता – क्या किसी साक्षी को, जिसका नाम अभियोजन की सूची में दर्शाया गया है लेकिन अभियोजन की ओर से उसको परीक्षित नहीं किया गया है, बचाव साक्षी के रूप में उसका परीक्षण करने की अनुमति दी जा सकती है? अभिनिर्धारित, हाँ – ऐसे

साक्षी का परीक्षण बचाव साक्षी के रूप में करने पर विधि की कोई रोक नहीं है – विचारण न्यायालय को अपने निष्कर्ष पर पहुँचने के पूर्व उक्त साक्षी के साक्ष्यिक मूल्य पर विचार करना होगा।

Sunder Lal v. State of Uttar Pradesh and anr.

Order dated 02.02.2024 passed by the Supreme Court in Criminal Appeal No. 551 of 2024, reported in (2024) 6 SCC 639

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222. FAMILY COURTS ACT, 1984 – Section 7

EVIDENCE ACT, 1872 – Section 3

BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 2(1)(e)

(i) Suit for recovery of money equivalent to *stridhan* property – Standard of proof – Wife pleaded that she entrusted 89 gold jewellery to husband who misappropriated them – Counter-claim of husband demanding return of gold chain and ring gifted to wife at the time of marriage as per customary practice – Strict principle of proof like criminal cases will not be attracted – Standard of proof in matrimonial cases will be preponderance of probability.

(ii) *Stridhan* – Properties gifted to women before marriage, at the time of marriage or at the time of bidding of farewell or thereafter are her *stridhan* properties – *Stridhan* property does not become a joint property of husband and wife and the husband has no title or independent dominion over property as owner thereof – Husband may use such property but he has a moral obligation to restore the same or its value to his wife.

कुटुम्ब न्यायालय अधिनियम, 1984 – धारा 7

साक्ष्य अधिनियम, 1872 – धारा 3

भारतीय साक्ष्य अधिनियम, 2023 – धारा 2(1)(ङ)

(i) स्त्रीधन संपत्ति के समतुल्य धन की वसूली के लिए वाद – सबूत का मानक – पत्नी ने अभिवचन किया कि उसने पति को 89 सोने के आभूषण सौंपे जिसका उसने दुर्विनियोग किया – पति द्वारा रूढ़ी प्रथा के अनुसार विवाह के समय पत्नी को उपहार में दी गई सोने की चेन और अंगूठी वापस करने की मांग का प्रतिदावा – आपराधिक मामलों जैसे सबूत के सख्त सिद्धांत आकृष्ट नहीं होंगे – वैवाहिक मामलों में सबूत का मानक संभावना की प्रबलता होगा।

(ii) स्त्रीधन – विवाह से पहले, विवाह के समय या विदाई के समय या उसके भी बाद महिला को उपहार में दी गई संपत्तियॉ स्त्रीधन संपत्ति है – स्त्रीधन संपत्ति पति और पत्नी की संयुक्त संपत्ति नहीं बन जाती और पति का संपत्ति पर कोई अधिकार या स्वतंत्र प्रभुत्व नहीं होता – पति ऐसी संपत्ति का उपयोग कर सकता है परंतु उसका नैतिक दायित्व है कि वह उसे वापस करे या संपत्ति के मूल्य की राशि पत्नी को अदा करे।

Maya Gopinathan v. Anoop S.B. and anr.

Judgment dated 24.04.2024 passed by the Supreme Court in Civil Appeal No. 5296 of 2024, reported in AIR 2024 SC 2454

Relevant extracts from the judgment:

The facts are clear that the appellant did not lodge any complaint of criminal breach of trust but by initiating civil proceedings, sought return of money equivalent to her stridhan property which stood lost forever. This Court in ***Rashmi Kumar v. Mahesh Kumar Bhada***, **(1997) 2 SCC 397** [a decision by a bench of three Hon'ble Judges of this Court on a reference made by a bench of two Hon'ble Judges, who considered it necessary that a fresh look at the view expressed in a previous decision of three Hon'ble Judges in ***Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370*** be had], after scrutiny of several treatises and precedents had the occasion to observe in paragraph 10 that the properties gifted to a woman before marriage, at the time of marriage or at the time of bidding of farewell or thereafter are her stridhan properties. It is her absolute property with all rights to dispose at her own pleasure. The husband has no control over her stridhan property. He may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhan property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof. It was also observed in paragraph 13 that to make out an offence under section 406 of the Indian Penal Code, 1860, what was required to be proved was entrustment of stridhan property with dominion over such property to the husband or to any member of his family as well as dishonest misappropriation of or conversion to his own use the said property by the husband or such other member of his family. Admittedly, we are not concerned with any criminal offence and, therefore, proof on balance of probabilities would be sufficient.

The High Court held the appellant's failure to lead documentary evidence to support purchase of 89 sovereign of gold, which she allegedly brought with her to

the matrimonial home, as fatal. To our mind, the approach is entirely indefensible. The version of the respondents with regard to retention of custody of jewellery by the appellant has been noticed in paragraph 10 (supra). Although we accept as probable that the jewellery had not been weighed, there is no escape from the conclusion that the respondents did admit the appellant having brought with her sufficient jewellery constituting stridhan. The dispute was raised firstly with regard to quantum and secondly, with regard to custody. How far is the version of the first respondent believable that on the night of the wedding, the appellant put her jewellery in an almirah and locked the same, with the keys being kept below the pillow? To find an answer, we pose a question to ourselves: for a person of ordinary prudence, is it reasonable to expect that a woman, who is freshly married and is intending to live in the same house and under the same roof with her husband, to keep her personal belongings like jewellery, etc. under her own lock and key, thus, showing a spirit of distrust to the husband right after the moment she gets married?. The answer cannot but be in the negative. On the contrary, the circumstance that the husband had volunteered to take custody of the jewellery for safekeeping with his mother appears to be more plausible than the rival version considering the probabilities that are associated with similar such situations. The very concept of marriage rests on the inevitable mutual trust of the spouses, which conjugality necessarily involves. To assume that the appellant from day one did not trust the first respondent is rather improbable. The High Court, thus, failed to draw the right inference from facts which appear to have been fairly established. That apart, we have neither been shown nor do we know of any binding precedent that for a claim of return of stridhan articles or money equivalent thereof to succeed, the wife has to prove the mode and manner of such acquisition. It was not a criminal trial where the chain of circumstances had to be complete and conclusively proved, without any missing link. Undisputedly, the appellant had brought to the matrimonial home sufficient quantum of jewellery, which she wore during the marriage and as is evidenced from photographs being Ext. A3 series; and, having regard thereto, the High Court committed serious error in first doubting and then disbelieving the appellant's version on the specious ground that documents proving acquisition thereof by P.W.2 had not been produced.

Besides, the High Court unfortunately failed to notice and appreciate what the counterclaim of the first respondent before the Family Court precisely was. Therein, he demanded the return of the ring and the gold chain gifted by him to the appellant, as was customary, at the time of marriage. It is well established that gifts

made to the bride by the bride's husband or her parents or by relatives from the side of her husband or parents, at the time of marriage, constitute her stridhan. It was, thus, rightly held by the Family Court that the first respondent could lay no claim over the same, since there was nothing to suggest that the jewellery was a gift merely temporary in nature, with its return being expected in future. The first respondent's rapacious conduct, as glaringly evidenced in the counterclaim filed by him, afforded sufficient ground for the Family Court to draw adverse inference against him and the High Court patently fell in error in interfering with a well-written reasoned decision of the Family Court.

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223. GUARDIANS AND WARDS ACT, 1890 – Section 17

FAMILY AND PERSONAL LAWS:

Guardians and wards – Change of custody of child – 14 year old child had never lived with her biological father since her birth – Child wished to reside with her aunt (real sister of father) appellant No. 2 with whom she was residing ever since she was 2-3 months old – Consideration must be given to the welfare of the child which may no longer be with the natural guardian – Stability and consistency in the routine of children is vital – Development of the child to the fullest potential should be the paramount consideration – Phrases "Custody" and "Guardianship" explained – Principles governing custody of minor children explained – Order of giving custody to the biological father was set aside and custody of the child was given to Appellant No. 2.

संरक्षक और प्रतिपाल्य अधिनियम, 1890 – धारा 17

परिवार एवं व्यक्तिगत विधिः

संरक्षक और प्रतिपाल्य – किशोर की अभिरक्षा का बदलाव – 14 वर्षीय किशोरी अपने जन्म से ही अपने जैविक पिता के साथ नहीं रही थी – किशोरी, अपीलार्थी क्रं.-2 यानी अपनी बुआ (पिता की सगी बहन) के साथ निवास करना चाहती थी जिनके साथ वह तब से निवास कर रही थी जब वह 2-3 माह की थी – किशोरी के कल्याण को दृष्टिगत रखना चाहिए जो अब उसके नैसर्गिक संरक्षक के साथ नहीं है – उसकी दिनचर्या में स्थिरता और अनुकूलता होना अनिवार्य है – किशोर का पूर्ण क्षमता तक विकास प्राथमिक विचार योग्य कारक होना चाहिए – शब्द ''अभिरक्षा'' एवं ''संरक्षकता'' को समझाया गया – अवयस्क किशोर की अभिरक्षा के सिद्धांतो को समझाया गया – जैविक पिता को अभिरक्षा दिलाये जाने वाले आदेश को अपास्त किया गया एवं किशोर की अभिरक्षा अपीलार्थी क्रं.-2 को दी गई।

Shazia Aman Khan and anr. v. State of Orissa and ors.

Judgment dated 04.03.2024 passed by the Supreme Court in Criminal Appeal No. 1345 of 2024, reported in (2024) 7 SCC 564

Relevant extracts from the judgment:

This Court has consistently held that welfare of the child is of paramount consideration and not personal law and statute. In ***Ashish Ranjan v. Anupam Tandon and anr., (2010) 14 SCC 274***, this Court held as under:

> "The statutory provisions dealing with the custody of the child under any personal law cannot and must not supersede the paramount consideration as to what is conducive to the welfare of the minor. In fact, no statute on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor."

This Court in ***Roxann Sharma v. Arun Sharma, (2015) 8 SCC 318***, opined that the child is not a chattel or ball that it is bounced to and fro. Welfare of the child is the focal point. Relevant lines from para-No. 18 are reproduced hereunder:

> "……There can be no cavil that when a court is confronted by conflicting claims of custody there are no rights of the parents which have to be enforced; the child is not a chattel or a ball that is bounced to and fro the parents. It is only the child's welfare which is the focal point for consideration. Parliament rightly thinks that the custody of a child less than five years of age should ordinarily be with the Mother and this expectation can be deviated from only for strong reasons"

Another principle of law which is settled with reference to custody of the child is the wish of the child, if she is capable of. Reference can be made to ***Rohith Thammana Gowda v. State of Karnataka and ors. (2022) 20 SCC 550*** case. It was held as under:

> "We have stated earlier that the question 'what is the wish/desire of the child' can be ascertained through interaction, but then, the question as to 'what would be the best interest of the child' is a matter to be decided by the court taking into account all the relevant circumstances. A careful scrutiny of the impugned judgment would, however, reveal that even after identifying the said question rightly the High Court had swayed away from the said point and entered into consideration of certain aspects not relevant for the said purpose. We will explain the raison d'etre for the said remark."

In the case in hand, vide order dated 12.12.2023, we had called the child in Court. We had interacted with the child, the appellants and respondent No. 2 individually in chamber. We found the child to be quite intelligent, who could understand her welfare. She categorically stated that she is happy with the family where she has been brought up. She has other brother and sister. She is having cordial relations with them. She does not wish to be destabilized.

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224. HINDU MARRIAGE ACT, 1955 – Section 16

HINDU SUCCESSION ACT, 1956 – Sections 6, 8, 10, 15 and 16

Child born from void or voidable marriage – Effect of conferment of legitimacy to such child u/s 16(1) and 16(2) of HMA – Such a child u/s 16(3) of HMA will have rights in the absolute and exclusive property of parents including their share in coparcenary property but not in the property of any other person – Despite conferment of legitimacy by Statute, such a child will not acquire status of coparcener in Hindu Mitakshara Joint Family – Also he cannot seek partition of the ancestral/joint family/coparcenary property in which parents have a share, during life time of parents.

हिन्दू विवाह अधिनियम, 1955 – धारा 16

हिन्दू उत्तराधिकार अधिनियम, 1956 – धाराएं 6, 8, 10, 15 एवं 16

शून्य अथवा शून्यकरणीय विवाह से उत्पन्न अपत्य – धारा 16 (1) एवं 16 (2) हिन्दू विवाह अधिनियम के अंतर्गत ऐसे अपत्य को प्रदत्त धर्मजता का प्रभाव – ऐसा अपत्य धारा 16 (3) हिन्दू विवाह अधिनियम के अंतर्गत उसके माता–पिता की संपूर्ण एवं अनन्य संपत्ति पर अधिकार रखेगा, जिसमें माता–पिता को सहदायिक संपत्ति में प्राप्त अंश भी सम्मिलित होगा, किन्तु उसे अन्य व्यक्ति की संपत्ति में कोई अधिकार नहीं होगा – विधि द्वारा धर्मजता प्रदत्त करने के बावजूद, ऐसा अपत्य हिन्दू मिताक्षरा संयुक्त परिवार में सहदायिक की हैसियत प्राप्त नहीं करेगा – साथ ही वह पैतृक/संयुक्त परिवार/सहदायिक संपत्ति, जिसमें उसके माता–पिता का अंश है, के बंटवारे की मांग माता–पिता के जीवनकाल में नहीं कर सकेगा।

Revanasiddappa and anr. v. Mallikarjun and ors.

Judgment dated 01.09.2023 passed by the Supreme Court in Civil Appeal No. 2844 of 2011, reported in (2023) 10 SCC 1

Relevant extracts from the judgment:

We formulate our conclusions in the following terms:

(i) In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether (i) such a child is born before or after the commencement of Amending Act 1976.

(ii) A decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment; (ii) In terms of sub-section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child 'begotten or conceived' before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity;

(iii) While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in sub section (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;

(iv) While construing the provisions of Section 3(1)(j) of the HSA 1956 including the proviso, the legitimacy which is conferred by Section 16 of the HMA 1955 on a child born from a void or, as the case may be, voidable marriage has to be read into the provisions of the HSA 1956. In other words, a child who is legitimate under sub-section (1) or sub-section (2) of Section 16 of the HMA would, for the purposes of Section 3(1)(j) of the HSA 1956, fall within the ambit of the explanation 'related by legitimate kinship' and cannot be regarded as an 'illegitimate child' for the purposes of the proviso;

(v) Section 6 of the HSA 1956 continues to recognize the institution of a joint Hindu family governed by the Mitakshara law and the concepts of a coparcener, the acquisition of an interest as a coparcener by birth and rights in coparcenary property. By the substitution of Section 6, equal rights have been granted to daughters, in the same manner as sons as indicated by sub-section (1) of Section 6;

(vi) Section 6 of the HSA 1956 provides for the devolution of interest in coparcenary property. Prior to the substitution of Section 6 with effect from 9 September 2005 by the Amending Act of 2005, Section 6 stipulated the devolution of interest in a Mitakshara coparcenary property of a male Hindu by survivorship on the surviving members of the coparcenary. The exception to devolution by survivorship was where the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative in Class I claiming through a female relative, in which event the interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession and not by survivorship. In terms of sub-section (3) of Section 6 as amended, on a Hindu dying after the commencement of the Amending Act of 2005 his interest in the property of a Joint Hindu family governed by the Mitakshara law will devolve by testamentary or intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a Joint Hindu family governed by Mitakshara law has been made the norm;

(vii) Section 8 of the HSA 1956 provides general rules of succession for the devolution of the property of a male Hindu dying intestate. Section 10 provides for the distribution of the property among heirs of Class I of the Schedule. Section 15 stipulates the general rules of succession in the case of female Hindus dying intestate. Section 16 provides for the order of succession and the distribution among heirs of a female Hindu;

(viii) While providing for the devolution of the interest of a Hindu in the property of a Joint Hindu family governed by Mitakshara law, dying after the commencement of the Amending Act of 2005 by testamentary or intestate succession, Section 6 (3) lays down a legal fiction namely that 'the coparcenary property shall be deemed to have been divided as if a partition had taken place'. According to the Explanation, the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property has taken place immediately before his death irrespective of whether or not he is entitled to claim partition;

(ix) For the purpose of ascertaining the interest of a deceased Hindu Mitakshara coparcener, the law mandates the assumption of a state of affairs immediately prior to the death of the coparcener namely, a partition of the coparcenary property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place immediately before his death is ascertained, his heirs including the children who have been conferred with legitimacy under Section 16 of the HMA 1955, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place; and

(x) The provisions of the HSA 1956 have to be harmonized with the mandate in Section 16(3) of the HMA 1955 which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a Joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub-section (3), as interpreted above.

Before concluding, it would be necessary to clarify that the reference to the three Judge Bench in this batch of cases is confined to Joint Hindu families governed by Mitakshara law. This Court has, therefore, dwelt on the interpretation of the provisions of the HSA 1956 in relation to Joint Hindu families of that class.

The reference shall stand answered in the above terms.

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225. HINDU SUCCESSION ACT, 1956 – Section 14(1)

(i) Right of a female Hindu – Absolute ownership in undivided joint family estate – For establishing full ownership on such property u/s 14(1) of Succession Act, a female Hindu must not only be in possession of the property but she must have acquired the property – Acquisition may be either by way of inheritance or devise, or at a partition, or 'in lieu of maintenance or arrears of maintenance', or by gift or by her own skill or exertion, or by purchase or by prescription.

(ii) Right to partition – In a suit for declaration of title and possession filed by widow, her right to maintenance from the suit property was recognized but the suit was dismissed – Widow never challenged the

said judgment and the same had attained finality – After death of widow, her adopted son filed partition suit on the basis of his mother's right of succession – Whether such suit is maintainable? Held, No – Since, widow was never in possession of the suit property, suit for partition claiming absolute ownership u/s 14(1) of the Hindu Succession Act could not be maintained by her adopted son by virtue of inheritance.

हिन्दू उत्तराधिकार अधिनियम, 1956 – धारा 14(1)

(i) हिन्दू महिला का अधिकार – अविभाजित संयुक्त पारिवारिक संपत्ति में पूर्ण स्वामित्व – उक्त संपत्ति पर अपना पूर्ण स्वामित्व धारा 14(1) उत्तराधिकार अधिनियम के अंतर्गत स्थापित करने के लिए हिन्दू महिला का संपत्ति पर आधिपत्य होना ही पर्याप्त नहीं वरन् उसे संपत्ति को अर्जित करना भी होगा – उक्त अर्जन विरासत से, या वसीयत द्वारा, या विभाजन में, या भरण पोषण के एवज् में, या बकाया भरण पोषण में प्राप्त, दान में या फिर स्वयं के कौशल या परिश्रम से, या क्रय कर, या फिर चिरभोग से प्राप्त हो सकता है।

(ii) विभाजन का अधिकार – विधवा द्वारा प्रस्तुत स्वामित्व और आधिपत्य की घोषणा के वाद में, वादग्रस्त संपत्ति से उसके भरण–पोषण के अधिकार को मान्यता दी गई थी, परन्तु वाद को निरस्त कर दिया गया था – विधवा ने कभी भी उक्त फैसले को चुनौती नहीं दी और वह अंतिम हो गया था – विधवा की मृत्यु के बाद उसके गोद लिए गए पुत्र ने अपनी माँ के उत्तराधिकार के अधिकार के आधार पर विभाजन का वाद दायर किया – क्या ऐसा वाद प्रचलन योग्य है? अभिनिर्धारित, नहीं – चूंकि, विधवा कभी भी वादग्रस्त संपत्ति के आधिपत्य में नहीं थी, इसलिए हिन्दु उत्तराधिकार अधिनियम की धारा 14 (1) के अंतर्गत पूर्ण स्वामित्व का दावा करते हुये उसके पुत्र द्वारा विरासत के आधार पर प्रस्तुत विभाजन का वाद प्रचलन योग्य नहीं।

Mukatlal v. Kailash Chand (D) through LRs. and ors.

Judgment dated 16.05.2024 passed by the Supreme Court in Civil Appeal No. 6460 of 2024, reported in AIR 2024 SC 2809

Relevant extracts from the judgment:

It is clear that for establishing full ownership on the undivided joint family estate Under Section 14(1) of the Succession Act the Hindu female must not only be possessed of the property but she must have acquired the property and such acquisition must be either by way of inheritance or devise, or at a partition or "in

lieu of maintenance or arrears of maintenance" or by gift or be her own skill or exertion, or by purchase or by prescription.

Even on going through the pleadings in the Revenue suit for partition filed by Plaintiff Kailash Chand, it is clear that there is not even a whisper in the plaint that Smt. Nandkanwarbai or the Plaintiff Kailash Chand himself were ever in possession of the suit property. As a matter of fact, the suit was filed by pleading that the suit property was a joint Hindu family property and Defendant-Mukat Lal (Appellant herein) had consented to give half share of the suit property to the Plaintiff Kailash Chand on his demand. This assertion was denied by Defendant-Mukat Lal.

In this context, when we consider the effect of the earlier civil suit instituted by Smt. Nadkanwarbai (deceased widow), it becomes clear that she was never in possession of the suit property because the civil suit was filed by her claiming the relief of title as well as possession and the same was dismissed. This finding of the civil Court was never challenged. Since, Smt. Nadkanwarbai was never in possession of the suit property, as a necessary corollary the Revenue suit for partition claiming absolute ownership Under Section 14(1) of the Hindu Succession Act could not be maintained by her adopted son, Plaintiff Kailash Chand by virtue of inheritance.

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226. INDIAN PENAL CODE, 1860 – Sections 300 and 302
BHARATIYA NYAYA SANHITA, 2023 – Sections 101 and 103(1)
CRIMINAL PROCEDURE CODE, 1973 – Section 299
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 335
Murder – Proof – Accused allegedly killed his wife by strangulation as he was suspecting her of infidelity – Despite all possible efforts by Investigating Officer, accused could not be arrested and ultimately declared as absconded and chargesheet was filed u/s 299 CrPC – Resorting to procedure u/s 299 CrPC, statement of complainant and other witnesses were recorded on oath – Accused apprehended after about 10 years of the incident and put to trial – During trial complainant could not be traced despite best efforts as such his statements recorded in the proceeding u/s 299 were used by the trial court as a piece of substantive evidence alongwith other cogent evidence and proved circumstances – Trial Court was justified in using such statements.

भारतीय दण्ड संहिता, 1860 – धाराएं 300 एवं 302
भारतीय न्याय संहिता, 2023 – धाराएं 101 एवं 103(1)
दण्ड प्रक्रिया संहिता, 1973 – धारा 299
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 335
हत्या – प्रमाण – अभियुक्त ने कथित रूप से अपनी पत्नी की हत्या गला दबाकर की क्योंकि वह पत्नी के व्यभिचारी होने का संदेह करता था – अनुसंधान अधिकारी के संपूर्ण प्रयास के बाद भी अभियुक्त को गिरफ्तार नहीं किया जा सका और अभियुक्त को अंततः फरार घोषित किया गया एवं धारा 299 दं.प्र.सं. के अंतर्गत अभियोग पत्र प्रस्तुत किया गया – धारा 299 की प्रक्रिया अनुसार परिवादी व साक्षीगण के कथन, शपथ पर लिए गए – अभियुक्त घटना के 10 वर्ष बाद गिरफ्तार हुआ और उसका विचारण प्रारंभ किया गया – विचारण के दौरान पूर्ण प्रयास करने पर भी परिवादी नही मिल पाया तब विचारण न्यायालय ने धारा 299 के अंतर्गत की गई कार्यवाही में लेखबद्ध उसके कथन को तात्विक साक्ष्य के रूप में अन्य सुदृढ़ साक्ष्य व प्रमाणित परिस्थितियों सहित उपयोग किया – विचारण न्यायालय द्वारा उक्त कथनों का उपयोग करना उचित माना गया।

Sukhpal Singh v. NCT of Delhi

Judgment dated 07.05.2024 passed by the Supreme Court in Criminal Appeal No. 55 of 2015, reported in AIR 2024 SC 2724

Relevant extracts from the judgment:

Proceedings of proclamation and attachment were undertaken under Sections 82 and 83 Code of Criminal Procedure but to no avail because the Accused Appellant had vanished after the crime and was not traceable at the crime scene or at his known address i.e. village Khatta, U.P. The fact regarding his abscondence was also published. Accordingly, a charge sheet came to be filed under Section 299 Code of Criminal Procedure showing the Accused Appellant to be an absconder.

The trial Court passed an order dated 18th March, 1991 declaring the Accused Appellant to be an absconder and permission was granted to the prosecution to proceed with the trial by resorting to the procedure under Section 299 Code of Criminal Procedure. This order was never questioned before any court of law.

The trial Judge recorded the statement of Ashok Kumar Pathak, the complainant as PW-1 under Section 299 Code of Criminal Procedure on 17th July, 1991 after administrating oath to him.

The statement of Ashok Kumar Pathak by itself provides a complete chain of circumstantial evidence sufficient to establish the guilt of the Accused Appellant. The Accused Appellant vanished from the crime scene and remained absconding

for a period of nearly 10 years. He could be apprehended on 9th August, 2000, whereafter, regular trial was conducted. During the period of abscondence of the Accused Appellant, the complainant Ashok Kumar Pathak seems to have left his house at Kartar Nagar, Delhi where he used to reside earlier. Despite ample efforts being made by the Investigating Agency to summon and examine Ashok Kumar Pathak, he could not be traced out and produced in the witness box for deposition during trial after the Accused had been arrested.

Viewed in light of the provisions of Section 299 Code of Criminal Procedure read with Section 33 of the Indian Evidence Act, 1872 as interpreted by this Court in the case of Nirmal Singh (supra) and Jayendra Vishnu Thakur (supra), the trial Court was justified in holding that the statement of Ashok Kumar Pathak recorded in these proceedings was fit to be read as a piece of substantive evidence. We concur with the findings recorded by the trial Court and affirmed by the High Court on this vital aspect of the matter.

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227. INDIAN PENAL CODE, 1860 – Sections 300 and 302
BHARATIYA NYAYA SANHITA, 2023 – Sections 101 and 103(1)
EVIDENCE ACT, 1872 – Sections 3, 8, 27, 106, 137, 145 and 154
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 2,6, 23(2), 109, 142, 148 and 157
CRIMINAL PROCEDURE CODE, 1973 – Sections 161 and 162
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 180 and 181

(i) Murder or culpable homicide not amounting to murder – Determination – Accused and deceased were not leading happy married life and used to quarrel with each other – It was argued that the incident had occurred upon sudden provocation, in the heat of passion and without any pre-meditation – It was established that accused stabbed his wife with knife all over the body resulting in her death – Whether benefit of Exception 4 of section 300 can be extended to the accused? Held, No – Evidence available on record showed that accused had inflicted as many as 12 blows with a knife on his wife who was unarmed – Accused took undue advantage and acted in a cruel manner – Benefit of Exception 4 cannot be given to him.

(ii) Burden of proof – Offence took place inside the house in between 3:30 a.m. and 4:00 a.m. – Accused along with his 5 year old daughter were present in the house – Blood stained clothes of accused matched with the blood group of deceased – Foundational facts were duly proved by prosecution – Act of the accused suggests that it was done with a particular intention – Under illustration (a) of section 106 of the Act of 1872, it would be assumed that the accused had that intention unless he proves the contrary.

(iii) Hostile witness – Procedure to be followed for cross-examination of such witness – Role of public prosecutor and of trial court – Explained.

भारतीय दण्ड संहिता, 1860 – धाराएं 300 एवं 302
भारतीय न्याय संहिता, 2023 – धाराएं 101 एवं 103(1)
साक्ष्य अधिनियम, 1872 – धाराएं 3, 8, 27, 106, 137, 145 एवं 154
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 2, 6, 23(2),109, 142, 148 एवं 157
दण्ड प्रक्रिया संहिता, 1973 – धाराएं 161 एवं 162
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 180 एवं 181

(i) हत्या या हत्या की कोटी में न आने वाला आपराधिक मानव वध – निर्धारण – अभियुक्त और मृतिका खुशहाल वैवाहिक जीवन नहीं जी रहे थे और एक दूसरे के साथ झगड़ा किया करते थे – यह तर्क दिया गया कि घटना अचानक हुए प्रकोपन, आवेश की तीव्रता में और बिना किसी पूर्व चिंतन के घटित हुई है – यह प्रमाणित पाया गया कि आरोपी ने अपनी पत्नी के पूरे शरीर पर चाकू से वार किया, जिसके परिणामस्वरूप उसकी मृत्यु हो गई – क्या धारा 300 के अपवाद 4 का लाभ अभियुक्त को दिया जा सकता है? अभिनिर्धारित, नहीं – अभिलेख पर उपलब्ध साक्ष्य से दर्शित है कि अभियुक्त ने अपनी निहत्थी पत्नी पर चाकू से 12 वार किये थे – अभियुक्त ने अनुचित लाभ उठाया और क्रूर व्यवहार किया – अपवाद 4 का लाभ उसे नहीं दिया जा सकता।

(ii) सबूत का भार – अपराध प्रातः 3:30 से 4:00 बजे के मध्य घर के अंदर हुआ – अभियुक्त अपनी 5 वर्ष की पुत्री के साथ घर में मौजूद था – अभियुक्त के रक्तरंजित वस्त्र का मिलान मृतक के रक्त समूह से हुआ – अभियोजन द्वारा बुनियादी तथ्यों को विधिवत साबित किया गया – अभियुक्त का कृत्य यह दर्शित करता है कि उसे किसी विशेष आशय से किया गया था – धारा 106 के दृष्टांत (क) के अंतर्गत यह समझा जायेगा कि अभियुक्त का आशय घटना कारित करने का था जब तक कि वह इसके विपरीत साबित न करे।

(iii) पक्षद्रोही साक्षी – साक्षी से प्रतिपरीक्षण करने हेतु पालन की जाने वाली प्रक्रिया – विचारण न्यायालय एवं लोक अभियोजक की भूमिका – समझाई गई।

Anees v. State Govt. of NCT

Judgment dated 03.05.2024 passed by the Supreme Court in Criminal Appeal No. 437 of 2015, reported AIR 2024 SC 2297

Relevant extracts from the judgment:

Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience".

If an offence takes place inside the four walls of a house and in such circumstances where the accused has all the opportunity to plan and commit the offence at a time and in the circumstances of his choice, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the accused. It is to resolve such a situation that Section 106 of the Evidence Act exists in the statute book. In the case of ***Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681*** this Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. The Court proceeded to observe that a Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence, which it is capable of leading, having regard to the facts and circumstances of the case.

We are of the view that the following foundational facts, which were duly proved, justified the courts below in invoking the principles enshrined under Section 106 of the Evidence Act:

a) The offence took place inside the four walls of the house in which the appellant, deceased and their 5-year-old daughter were living. The incident occurred in the early morning hours between 3.30 am and 4.00 am.

b) When the Investigating Officer reached the house of the appellant, he found the deceased lying in a pool of blood. The appellant was also present at his house.

c) The defence put forward by the appellant that two unidentified persons entered the house and inflicted injuries on the deceased and also on his body is found to be false.

d) The clothes worn by the appellant at the time of the incident were collected by the Investigating Officer. The clothes had blood stains. According to the Forensic Science Laboratory report, the blood stains on the clothes of the appellant matched with the blood group of the deceased i.e., AB+

e) The conduct of the appellant in leading the Investigating Officer and others to a drain nearby his house and the discovery of the knife from the drain is a relevant fact under Section 8 of the Evidence Act. In other words, the evidence of the circumstance simpliciter that the appellant pointed out to the Investigating Officer the place where he threw away the weapon of offence i.e., knife would be admissible as 'conduct' under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act.

In the case at hand, Shaheena (PW-3) was the most important witness for the prosecution, being the solitary eye witness to the incident. Shaheena (PW-3) at the relevant point of time was just five years old. Her childhood might have been very disturbed on account of the strained relations of her parents. The unfortunate incident must have had a lasting effect on her. However, when she entered the witness box, she decided to resile from her previous statement. Had she deposed as stated by her in her police statement then, probably, the prosecution would not have felt the need to invoke Section 106 of the Evidence Act. There could be innumerable reasons for a witness to resile from his/her police statement and turn hostile. Here is a case in which a five-year-old daughter might have resiled thinking

that having lost her mother, the father was the only person who may take care of her and bring her up. However, why she turned hostile is not important. What is important is the role of the public prosecutor after a prime witness, more particularly a child witness of tender age, turns hostile in a murder trial. When any prosecution witness turns hostile and the public prosecutor seeks permission of the trial court to cross-examine such witness then that witness is like any other witness. The witness no longer remains the prosecution witness.

Section 162 Cr.P.C. bars the use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated therein. The statement made by a witness before the police under Section 161(1) Cr.P.C. can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) Cr.P.C. The statements under Section 161 Cr.P.C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose: (i) of contradicting such witness by an accused under Section 145 of the Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and (iii) the re-examination of the witness if necessary.

The court cannot *suo motu* make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words 'if duly proved' used in Section 162 Cr.P.C. clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway, nor can be looked into, but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the Investigating Officer. The statement before the Investigating Officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.

Over a period of time, we have noticed, while hearing criminal appeals, that there is practically no effective and meaningful cross-examination by the Public Prosecutor of a hostile witness. All that the Public Prosecutor would do is to confront the hostile witness with his/her police statement recorded under Section 161 of the Cr.P.C. and contradict him/her with the same. The only thing that the Public Prosecutor would do is to bring the contradictions on record and thereafter prove such contradictions through the evidence of the Investigating Officer. This is not sufficient. The object of the cross-examination is to impeach the accuracy,

credibility and general value of the evidence given in-chief; to sift the facts already stated by the witness; to detect and expose the discrepancy or to elicit the suppressed facts which will support the case of the cross-examining party. What we are trying to convey is that it is the duty of the Public Prosecutor to cross-examine a hostile witness in detail and try to elucidate the truth and also establish that the witness is speaking lie and has deliberately resiled from his police statement recorded under Section 161 of the Cr.P.C. A good, seasoned and experienced Public Prosecutor will not only bring the contradictions on record, but will also cross-examine the hostile witness at length to establish that he or she had actually witnessed the incident as narrated in his/her police statement.

If the aforesaid principles, as explained by this Court, are to be applied to the facts of the present case, we have no hesitation in saying that the present case is not one of culpable homicide not amounting to murder but the same is a case of murder. We should not overlook the fact that the appellant inflicted as many as twelve blows with a knife on the deceased who was unarmed and helpless.

Where the offender takes undue advantage or has acted in a cruel or an unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is disproportionate, that circumstance must be taken into consideration to decide whether undue advantage has been taken. In ***Kikar Singh v. State of Rajasthan, AIR 1993 SC 2426***, it was held that if the accused used deadly weapons against an unarmed man and struck a blow on the head it must be held that using the blows with the knowledge that they were likely to cause death, he had taken undue advantage. A fight suddenly takes place, for which both the parties are more or less to be blamed. It might be that one of them starts it, but if the other had not aggravated it by his own conduct, it would not have taken the serious turn it did. There is then mutual provocation and aggravation and it is difficult to apportion the share of blame which attaches to each fighter. It takes two to make a fight. Assuming for the moment that it was the deceased who picked up a fight with the appellant or provoked the appellant in some manner with her conduct or behaviour, still the appellant could be said to have taken undue advantage and acted in a cruel manner.

For all the foregoing reasons, we have reached to the conclusion that the High Court committed no error in affirming the judgment and order of conviction passed by the trial court, holding the appellant guilty of the offence of murder of his wife.

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228. INDIAN PENAL CODE, 1860 – Section 302
BHARATIYA NYAYA SANHITA, 2023 – Section 103(1)
ARMS ACT, 1959 – Section 27

Murder – Appreciation of evidence – Discrepancies in statement of eye witness – 5 to 6 rounds are said to be fired during the incident but no bullets or spent cartridges found from spot – Blackening and burning was found on the entry wound which suggests a close range fire – Doctor gave an opinion that alleged injury cannot be caused from a distance – No connection of slug found in the body with that of country made pistol recovered from accused – Accused took the defense that deceased was himself carrying a pistol and while sitting down he got hit with pistol – Benefit of doubt was extended to the accused – Conviction was set-aside.

भारतीय दण्ड संहिता, 1860 – धारा 302
भारतीय न्याय संहिता, 2023 – धारा 103(1)
आयुध अधिनियम, 1959 – धारा 27

हत्या – साक्ष्य का मूल्यांकन – चक्षुदर्शी साक्षियों की साक्ष्य में विसंगति – घटना के समय 5 से 6 राऊंड गोली चलना बताया गया परन्तु स्थल से कोई भी गोली अथवा चला हुआ कारतूस नहीं मिला – प्रवेश घाव पर कालापन एवं जलाव मिला था जो नजदीक से की गई फाईरिंग को दर्शाता है – चिकित्सक ने यह मत दिया कि कथित घाव दूरी से कारित नहीं हो सकता – शरीर से मिले थक्के का कोई भी संबंध अभियुक्त से बरामद किये गये देशी कट्टे से नहीं था – अभियुक्त ने यह प्रतिरक्षा ली कि मृतक स्वयं कट्टा लिये हुए था और बैठते समय उसे कट्टे से गोली लगी – अभियुक्त को संदेह का लाभ दिया गया – दोषसिद्धि अपास्त की गई।

Surajpal Raghuvar Rajput v. State of Madhya Pradesh

Judgment dated 17.02.2024 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 200 of 2013, reported in 2024 CriLJ 1846

Relevant extracts from the judgment:

The eye witness accounts otherwise also have various discrepancies. PW-1 has stated in para 2 that he was sitting with the deceased and PW-3 on the lintel level of the roof. PW-2 was in the courtyard below and was not on the roof when shot was fired. On the other hand PW-3 in para 1 of his deposition states that he was lying down on the roof with PW-1 and the deceased. Apart

from this, PW-1 has stated that the deceased was hit by bullet, when he was sitting. On the other hand, PW-3 has stated that after hearing some abusive language, the deceased had stood up and was looking at the ground below. At that time, he was hit by gunshot. Not only this, there are serious discrepancies in the height of parapet wall and the location of Neem tree. Lal Singh (PW-4) has stated that if someone sits on the roof than his neck does not go up the parapet level. He has stated that the branches of Neem tree were 10 feet above the roof level. PW-1 in para 9 stated to the courtyard that the appellant was at 5 to 6 below the roof in the Neem tree.

The prosecution version also comes in serious doubt because 5 to 6 rounds are said to be fired during the incident in night. However, the police failed to recover any other bullet from the spot, apart from the only metal slug found in the body of the deceased. Not a single spent cartridge was recovered from the spot. Even the cartridge, from which the metal slug causing death of the deceased was fired, has not been recovered from the spot. This creates a serious gap in the prosecution version. The specific defence has been taken that it was the case of accidental firing by the country made weapon carried by the deceased himself, which got fired while the deceased was sitting or lying while carrying the weapon on his person.

Further, it is settled position of law that where two views are possible then view pointing to the innocence of the accused should be adopted. (See:- Kalyan v. State of U.P., (2001) 9 SCC 632 and Kali Ram v. State of H.P., (1973) 2 SCC 808). The impugned judgment of conviction of present appellant, when tested on the anvil of the aforesaid factual backdrop and the standard of proof required in criminal trial to hold the accused guilty of offence, cannot be given stamp of approval.

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229. INDIAN PENAL CODE, 1860 – Sections 201, 302, 363, 364, 366 and 376 (2) (f) BHARATIYA NYAYA SANHITA, 2023 – Sections 238, 103(1), 137(2), 140(1), 87 and 64

(i) Rape and Murder – Circumstantial evidence – Last Seen Theory – Specific statement by witnesses that they had seen the accused taking away the girl to the field by holding her finger – Girl was not found in the house immediately within an hour, when search was made – Time duration between missing of girl and recovery of her body

from a well is very small – Girl was not seen by anyone after she was last seen with the accused – No material contradiction in the statements of witnesses regarding last seen evidence – Conviction of accused upheld.

(ii) Interested witness – Their testimony should not be discarded merely because they are relatives – However, their testimony should be scrutinised by Court with a little care and caution for its credibility as a rule of prudence and not one of law. (*Md. Jabbar Ali and ors. v. State of Assam, 2022 SCC Online SC 1440* followed)

भारतीय दंड संहिता, 1860 – धाराएं 201, 302, 363, 364, 366 एवं 376 (2)(च)

भारतीय न्याय संहिता, 2023 – धाराएं 238, 103(1), 137(2), 140(1), 87 एवं 64

(i) बलात्संग एवं हत्या – परिस्थितिजन्य साक्ष्य – अंतिम बार देखे जाने का सिद्धांत – साक्षीगण का विशिष्ट कथन कि उन्होंने अभियुक्त को बालिका की उंगली पकड़ कर खेत पर ले जाते हुये देखा था – इसके तत्काल बाद एक घंटे की अवधि के भीतर जब तलाश की गई, तो बालिका घर पर नहीं मिली – बालिका के गुम होने एवं कुएं से उसके शरीर की बरामदगी के मध्य समय अन्तराल अत्यधिक कम है – अभियुक्त के साथ अंतिम बार देखे जाने के उपरान्त बालिका को किसी अन्य के द्वारा नहीं देखा गया – अंतिम बार देखे जाने की साक्ष्य के संबंध में साक्षीगण के कथनों में कोई सारवान विरोधाभास नहीं – अभियुक्त की दोषसिद्धि की पुष्टि की गई।

(ii) हितबद्ध साक्षी – केवल इस कारण कि वे संबंधी है, उनकी परिसाक्ष्य को त्यागा नहीं जायेगा – तथापि उनकी विश्वसनीयता के लिए न्यायालय द्वारा उनकी परिसाक्ष्य का कुछ सावधानी एवं सर्तकता से परीक्षण किया जाना होगा, जो सावधानी का नियम है, विधि का नहीं। (*मोहम्मद जब्बार अली एवं अन्य वि. असम राज्य, 2022 एससीसी ऑनलाईन एससी 1440* अनुसरित)

Gowardhan v. State of M.P.

Judgment dated 18.10.2023 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 879 of 2013, reported in ILR 2024 MP 125

Relevant extracts from the judgment:

The other argument is that the appellant as well as the deceased are the family members and there was every possibility that they may be seen together on several occasions is of no help to the appellant for the reason that a specific statement has

been given by the prosecution witnesses. PW-10 has made a specific statement that he had seen the accused/appellant taking away the girl to the field by holding her finger. He has also asked him as to where he is taking the girl. He had replied that he is taking her to the fields for collecting Chana. The approximate time, when he was last seen with the deceased is reflected from the statement of PW-10, which is about 06:40 PM in the evening while he was returning back in 15-20 minutes. The statement of Chintaman (PW-10) further shows that the girl was not found in the house at about 07:30 PM i.e. immediately within an hour, when the search was made and she was not found. The time duration between missing of the girl and recovery of her dead body is very small. There is defence taken by the accused appellant that the girl was left with somebody else or she was seen with somebody else is of no help as she was not seen by anyone after she was last seen with the accused/appellant. There is nothing on record to demonstrate the same. There are no material contradictions in the statement as far as they had last seen the deceased with the appellant.

It is a settled proposition of law that the statement of interested witness should not be discarded merely because they are relatives. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection. The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care.

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230. INDIAN PENAL CODE, 1860 – Sections 302, 309 and 449
BHARATIYA NYAYA SANHITA, 2023 – Sections 103(1) and 332(a)
EVIDENCE ACT, 1872 – Sections 3, 8 and 106
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 2, 6 and 109
CRIMINAL PROCEDURE CODE, 1973 – Section 293
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 329

(i) Murder – Appreciation of circumstantial evidence – Accused had allegedly committed murder of four persons after committing house trespass and thereafter, he himself attempted to commit suicide –

Time of death of the deceased matched with the time of entry of the accused into the house of deceased – There were parting messages written on the wall by the accused as he had decided to commit suicide – Hair strand found on the body of one of the deceased matched with that of accused – Medical evidence proved that injuries sustained by deceased were caused by weapons recovered from place of occurrence – Only accused was present in the house apart from the deceased persons – Accused failed to explain his presence in the house – Conviction was found proper.

(ii) Sentence – Modification – Accused was in jail for a period of 18 years and 4 months – Accused had committed murder with no intention of gain/profit – Accused was 28 year old at the time of incident – Report of jail authorities indicated accused was throughout having a good behaviour – Sentence was modified from 30 years to 25 years of imprisonment without remission.

(iii) FSL Report – Admissibility – Handwriting expert report regarding writings found on place of occurrence was prepared by Joint Director (Research), FSL – Joint Director is encompassed in the phrase "Director" used in Section 293(4)(e) of CrPC – The report is therefore admissible in evidence without examination of expert.

भारतीय दण्ड संहिता, 1860 – धाराएं 302, 309 एवं 449
भारतीय न्याय संहिता, 2023 – धाराएं 103(1) एवं 332 (क)
साक्ष्य अधिनियम, 1872 – धाराएं 3, 8 एवं 106
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 2, 6 एवं 109
दण्ड प्रक्रिया संहिता, 1973 – धारा 293
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 329

(i) हत्या – परिस्थितिजन्य साक्ष्य का मूल्यांकन – अभियुक्त ने कथित रूप से गृह अतिचार कारित करने के उपरांत चार व्यक्तियों की हत्या की और इसके उपरांत स्वयं भी आत्महत्या करने का प्रयास किया – मृतक की मृत्यु का समय अभियुक्त के मृतक के घर के भीतर प्रवेश करने के समय से मेल खाता है – चूंकि अभियुक्त ने आत्महत्या करने का निर्णय लिया था इसलिए उसने दीवार पर जुदाई संदेश अभिलिखित किये थे – एक मृतक के शरीर पर पाया गया बाल अभियुक्त से मेल खाता था – चिकित्सीय साक्ष्य से यह प्रमाणित हो रहा था कि मृतक को कारित हुए घाव उसी आयुध से कारित

हुए थे जो कि घटना स्थल से बरामद हुआ – मृतक व्यक्तियों के अतिरिक्त मात्र अभियुक्त ही घर में उपस्थित था – अभियुक्त घर में अपनी उपस्थिति को स्पष्ट करने में असफल रहा – दोषसिद्धि उचित पाई गई।

(ii) दण्डादेश – परिवर्तन – अभियुक्त विगत 18 वर्ष एवं 4 माह की अवधि से जेल में था – अभियुक्त ने बिना किसी लाभ/फायदे की मंशा से हत्या कारित की थी – अभियुक्त घटना के समय 28 वर्ष का था – बंदीगृह के भारसाधक अधिकारियों के प्रतिवेदन अनुसार अभियुक्त पूरे समय अच्छे व्यवहार के साथ रहा था – दण्डादेश को बिना किसी छूट के 30 वर्ष से कम कर 25 वर्ष किया गया।

(iii) एफ.एस.एल. रिपोर्ट – ग्राह्यता – घटना स्थल पर पाए गए लेखन के संबंध में हस्तलिपि विशेषज्ञ का प्रतिवेदन संयुक्त निदेशक (अनुसंधान), एफ.एस.एल. तैयार किया गया था – संहिता की धारा 293 (4)(ड) में प्रयुक्त वाक्यांश ''निदेशक'' में संयुक्त निदेशक भी सम्मिलित हैं – अतः प्रतिवेदन बिना विशेषज्ञ की साक्ष्य के भी साक्ष्य में ग्राह्य है।

Navas @ Mulanavas v. State of Kerala

Judgment dated 18.03.2024 passed by the Supreme Court in Criminal Appeal No. 1215 of 2011, reported in 2024 CriLJ 1797

Relevant extracts from the judgment:

Though the trial Court and the High Court have adverted to few other circumstances, we are satisfied that the circumstances are by themselves consistent with the sole hypothesis that the accused and the accused alone is the perpetrator of these murders which were most foul.

It is also to be noted that the law on the appreciation of circumstantial evidence is well settled and it will be an idle parade of familiar learning to deal with all the cases. We do no more than set out the holding in ***Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116,*** which dealt with the *panchsheel* or the five principles essential to be kept in mind while convicting an accused in a case based on circumstantial evidence:

> **"**A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

> It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in ***Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793: 1973 SCC (Cri) 1033: 1973 Crl LJ 1783]*** where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]
>
> "Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (3) the circumstances should be of a conclusive nature and tendency,
>
> (4) they should exclude every possible hypothesis except the one to be proved, and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.
>
> 154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

We are convinced that the circumstances presented in evidence in this case more than meets the ingredients that are required to be established. We find no reason to interfere with the concurrent conviction recorded by the trial Court and the High Court against the appellant for the offences under Section 302 (murder), 449 (house-trespass) and 309 (attempt to commit suicide) and we maintain the conviction.

What is clear is that courts, while applying ***Swamy Shraddananda*** (supra), have predominantly in cases arising out of a wide array of facts, keeping the relevant circumstances applicable to the respective cases fixed the range between

20 years and 35 years and in few cases have imposed imprisonment for the rest of the life. So much for statistics. Let us examine how the judgments guide us in terms of discerning any principle.

A journey through the cases set out hereinabove shows that the fundamental underpinning is the principle of proportionality. The aggravating and mitigating circumstances which the Court considers while deciding commutation of penalty from death to life imprisonment, have a large bearing in deciding the number of years of compulsory imprisonment without remission, too. As a judicially trained mind pores and ponders over the aggravating and mitigating circumstances and in cases where they decide to commute the death penalty they would by then have a reasonable idea as to what would be the appropriate period of sentence to be imposed under the ***Swamy Shraddananda*** (supra) principle too. Matters are not cut and dried and nicely weighed here to formulate a uniform principle. That is where the experience of the judicially trained mind comes in as pointed out in ***V. Sriharan*** (supra). Illustratively in the process of arriving at the number of years as the most appropriate for the case at hand, which the convict will have to undergo before which the remission powers could be invoked, some of the relevant factors that the courts bear in mind are:- (a) the number of deceased who are victims of that crime and their age and gender; (b) the nature of injuries including sexual assault if any; (c) the motive for which the offence was committed; (d) whether the offence was committed when the convict was on bail in another case; (e) the premeditated nature of the offence; (f) the relationship between the offender and the victim; (g) the abuse of trust if any; (h) the criminal antecedents; and whether the convict, if released, would be a menace to the society. Some of the positive factors have been, (1) age of the convict; (2) the probability of reformation of convict; (3) the convict not being a professional killer; (4) the socioeconomic condition of the accused; (5) the composition of the family of the accused and (6) conduct expressing remorse. These were some of the relevant factors that were kept in mind in the cases noticed above while weighing the pros and cons of the matter. The Court would be additionally justified in considering the conduct of the convict in jail; and the period already undergone to arrive at the number of years which the Court feels the convict should, serve as part of the sentence of life imprisonment and before which he cannot apply for remission. These are not meant to be exhaustive but illustrative and each case would depend on the facts and circumstances therein.

How do these factors apply to the case at hand? The act committed by the accused was pre-planned/premeditated; the accused brutally murdered 4 (four) persons who were unarmed and were defenseless, one of whom was a child and the other an aged lady. It is also to be noted that by the act of the accused, three generations of single family have lost their lives for no fault of theirs; Nature of injuries inflicted on ***Latha, Ramachandran*** and ***Chitra*** highlights the brutality and cold-bloodedness of the act.

The Joint Director who occupies a position above the Deputy Director and Assistant Director, is encompassed in the phrase "Director" used in Section 293(4)(e). This position is expressly settled by the judgment of this Court in ***Ammini v. State of Kerala, (1998) 2 SCC 301.*** The relevant para of which is extracted herein below:

> "…...The trial court was also wrong in holding that the report given by the Forensic Science Laboratory with respect to the contents of MO 44 was not admissible in evidence as it was signed by its Joint Director and not by the Director. On a true construction of Section 293(4) CrPC it has to be held that Joint Director is comprehended by the expression "Director". The amendment made in clause (e) of Section 293(4) now indicates that clearly. If the Joint Director was not comprehended within the expression Director then the legislature would have certainly named him while amending the clause and providing that Section 293 applies to the Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory. A Joint Director is a higher officer than a Deputy Director or an Assistant Director and, therefore, it would be unreasonable to hold that a report signed by Joint Director is not admissible in evidence though a report signed by the Deputy Director or Assistant Director is now admissible. In our opinion the High Court was right in holding that the report made by the Joint Director was admissible in evidence and that it deserved to be relied upon."

Hence, the report Ex. P-42 is admissible even without the examination of ***Dr. K. P. Jayakumar.*** (See also ***Bhupinder Singh v. State of Punjab, (1988) 3 SCC 513*** and ***State of H.P. v. Mast Ram, (2004) 8 SCC 660).***

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***231. INDIAN PENAL CODE, 1860 – Section 376**

BHARATIYA NYAYA SANHITA, 2023 – Section 64

EVIDENCE ACT, 1872 – Sections 3 and 114A

BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 2 and 120

Rape – Appreciation of evidence – One month prior to the alleged incident, accused and prosecutrix exchanged frequent Whatsapp messages – Prosecutrix informed the accused about her visit to a particular place for consulting a doctor – She travelled to that place along with accused in his car – While returning from that place along with the accused, she visited guest house where alleged incident took place – While entering the guest house, both of them posed themselves as husband and wife – While coming out of the room, the prosecutrix neither raised any protest nor made hue and cry and also did not complain – She was a married 28 year old educated lady – Offence of rape not found proved beyond reasonable doubt – Conviction was set aside.

भारतीय दण्ड संहिता, 1860 – धारा 376

भारतीय न्याय संहिता, 2023 – धारा 64

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 114क

भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 2 एवं 120

बलात्संग – साक्ष्य का मूल्यांकन – कथित घटना के एक माह पूर्व से, आरोपी और पीड़िता के मध्य बार-बार व्हाट्सएप मैसेज का आदान प्रदान होता था – पीड़िता ने अभियुक्त को सूचित किया कि वह एक विर्निदिष्ट स्थान पर चिकित्सक से परामर्श लेने जा रही है – वह अभियुक्त के साथ उसकी कार में बैठ कर उस स्थान पर गई – जब वह अभियुक्त के साथ लौट रही थी तब वह गेस्टहॉउस में गई जहॉ कथित घटना हुई – गेस्ट हाउस में प्रवेश करते समय दोनों ने स्वयं को पति-पत्नी के रूप में प्रस्तुत किया – कमरे से बाहर आते समय, पीड़िता ने न तो कोई विरोध जताया और न ही हंगामा किया और शिकायत भी नहीं की – पीड़िता एक शादीशुदा 28 वर्षीय शिक्षित महिला थी – बलात्संग का अपराध युक्तियुक्त संदेह से परे प्रमाणित होना नहीं पाया गया – दोषसिद्धि अपास्त की गई।

Pankaj Singh v. State of Haryana

Judgment dated 21.03.2024 passed by the Supreme Court in Criminal Appeal No. 1753 of 2023, reported in AIR 2024 SC 3091

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232. INDIAN PENAL CODE, 1860 – Sections 376D, 376(2)(g) and 506
BHARATIYA NYAYA SANHITA, 2023 – Sections 70(1), 64 and 351(2) & (3)
EVIDENCE ACT, 1872 – Section 3
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 2
Gang rape – Appreciation of evidence – Victim and her mother supported the prosecution version in examination-in-chief – In cross-examination, which was recorded after a gap of about 3½ months, they turned hostile and did not support the prosecution case – Evidence of doctor established forcible sexual intercourse several times by several persons and abrasions on private part of the victim – There was sufficient corroboration to the version given by the prosecutrix in her examination-in-chief with FIR, her statement recorded u/s 164 CrPC and of other witnesses and medical evidence which fully incriminates the accused – Evidence found sufficient to hold accused guilty – Conviction upheld.

भारतीय दण्ड संहिता, 1860 – धाराएं 376घ, 376(2)(छ) एवं 506
भारतीय न्याय संहिता, 2023 – धाराएं 70(1), 64 एवं 351(2) और (3)
साक्ष्य अधिनियम, 1872 – धारा 3
भारतीय साक्ष्य अधिनियम, 2023 – धारा 2
सामूहिक बलात्कार – साक्ष्य का मूल्यांकन – पीड़िता और उसकी माँ ने मुख्य परीक्षण में अभियोजन का समर्थन किया – प्रतिपरीक्षण जो साढ़े तीन माह के लंबे अंतराल के बाद हुआ, में साक्षीगण पक्षद्रोही हो गये और अभियोजन कथानक का समर्थन नहीं किया – चिकित्सक की साक्ष्य से स्थापित कि कई व्यक्तियों द्वारा कई बार बलपूर्वक यौन संबंध स्थापित किया गया और पीड़िता के गुप्तांग पर खरोंच के निशान थे – प्रथम सूचना रिपोर्ट, धारा 164 द.प्र.सं. के अंतर्गत लेखबद्ध अभियोक्त्री एवं अन्य साक्षियों के कथन तथा चिकित्सीय साक्ष्य की पुष्टि अभियोक्त्री के मुख्य परीक्षण से होती है जो अभियुक्त को अपराध से पूर्णरूपेण जोड़ते हैं – उपलब्ध साक्ष्य अभियुक्त को दोषी ठहराने के लिए पर्याप्त है – दोषसिद्धि स्थिर रखी गई।

Selvamani v. State Rep. by The Inspector of Police

Judgment dated 08.05.2024 passed by the Supreme Court in Criminal Appeal No. 906 of 2023, reported AIR 2024 SC 2273

Relevant extracts from the judgment:

No doubt that the prosecutrix and her mother and aunt in their cross-examination, which was recorded three and a half months after the recording of the examination-in-chief, have turned around and not supported the prosecution case.

9. A 3-Judge Bench of this Court in the case of ***Khujji @ Surendra Tiwari v. State of Madhya Pradesh, (1991) 3 SCC 627***, relying on the judgments of this Court in the cases of ***Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389***, ***Sri Rabindra Kuamr Dey v. State of Orissa, (1976) 4 SCC 233*** and ***Syad Akbar v. State of Karnataka, (1980) 1 SCC 30***, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief.

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233. INDIAN PENAL CODE, 1860 – Sections 394 and 397
BHARATIYA NYAYA SANHITA, 2023 – Sections 309(6) and 311
EVIDENCE ACT, 1872 – Sections 3 and 27
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 2 and 23(2)
Criminal trial – Offence of robbery with attempt to cause grievous hurt – Appreciation of evidence – Accused came from behind, closed the eyes of the complainant, assaulted her with knife and snatched her silver ornaments – Ornaments recovered from accused on the basis of disclosure statement – During cross-examination, victim admitted that Police Officer has identified her jewellery, thereupon she recognized it – No evidence that articles were sealed at the time of recovery and kept in

Malkhana till identification – Executive Magistrate who conducted identification proceedings was not examined – No other evidence produced by prosecution – Recovery of allegedly looted ornaments from accused, not found proved – Conviction set aside.

भारतीय दण्ड संहिता, 1860 – धाराएं 394 एवं 397
भारतीय न्याय संहिता, 2023 – धाराएं 309(6) एवं 311
साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 27
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 2 एवं 23(2)
आपराधिक विचारण – गंभीर चोट पहुँचाने के प्रयास के साथ लूट का अपराध – साक्ष्य का मूल्यांकन – आरोपी पीछे से आया, शिकायतकर्ता की आंखें बंद कर दीं, चाकू से हमला किया और उसके चांदी के गहने छीन लिए – प्रकटन कथन के आधार पर आरोपी से गहने बरामद किये गये – प्रतिपरीक्षण के दौरान, पीड़िता ने स्वीकार किया कि पुलिस अधिकारी ने उसके गहनों की पहचान कर ली थी, जिसके बाद उसने उन्हें पहचाना – इस बात की कोई साक्ष्य नहीं कि बरामदगी के समय सामान सीलबंद कर दिया गया था और पहचान होने तक मालखाने में रखा गया था – कार्यपालक दण्डाधिकारी जिसने शिनाख्तगी कार्यवाही की उसका परीक्षण नहीं कराया गया – अभियोजन द्वारा अन्य कोई साक्ष्य प्रस्तुत नही – कथित रूप से लूटे गये गहनों की अभियुक्त से बरामदगी साबित नहीं पाई गई – दोषसिद्धि को अपास्त किया गया।

Hansraj v. State of M.P.

Judgment dated 19.04.2024 passed by the Supreme Court in Criminal Appeal No. 2143 of 2024, reported in AIR 2024 SC 2113

Relevant extracts from the judgment:

We have no hesitation in holding that the prosecution miserably failed to prove the factum of disclosure made by the accused to the Investigating Officer (PW-12) leading to the recovery of the silver articles allegedly looted by the accused from the complainant. It is also important to note that the prosecution did not lead any evidence to show that the recovered articles were sealed at the time of recovery or that they were kept secure in the malkhana of the Police Station till the same were subjected to identification before the Executive Magistrate. In addition thereto, it is also relevant that the Executive Magistrate was not examined in evidence. The complainant Bhagu Bai (PW-3) made a categorical admission in her cross examination that she could recognize the silver articles in the test identification proceedings upon being pointed out by the police officials. Thus, the

recovery of the ornaments at the instance of the accused and the identification thereof has no sanctity in the eyes of law and cannot be relied upon. No other evidence was led by the prosecution to connect the accused appellant with the crime.

Consequently, there is no tangible or reliable evidence available on the record so as to affirm the guilt of the accused appellant as recorded by the learned trial Court and upheld by the High Court.

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234. INDIAN PENAL CODE, 1860 – Section 494 r/w/s 495
BHARATIYA NYAYA SANHITA, 2023 – Sections 82(1) r/w/s 82(2)

(i) Offence relating to marriage – Appropriate sentence – Appellant filed complaint accusing his wife (A1) of committing bigamy by marrying the second accused (A2) during the subsistence of their marriage – Trial Court convicted them for the offence u/s 494 and sentenced them to undergo 1 year R.I. and imposed a fine of ₹ 2000/- – On appeal to the Court of Sessions, conviction was set aside and the accused were acquitted – The complainant challenged the said order before High Court – High Court restored the conviction but reduced the sentence to "imprisonment till the rising of the court" and imposed a fine of ₹ 20000/- on each accused – The Supreme Court held that the offence u/s 494 IPC is serious and that the sentence imposed by the High Court was unconscionably lenient – Sentence has to be in tune with the rule of proportionality – The Court modified the sentence to six months simple imprisonment for both A1 and A2 and reduced the fine to ₹ 2000/- each.

(ii) Sentencing policy – In the matter of awarding sentence for conviction of an offence which may impact the society, it is not advisable to let off an accused after conviction with a flea-bite sentence – One of the objectives of criminal law is the imposition of adequate, just, proportionate punishment which commensurate with gravity, nature of crime and the manner in which it was committed – Consideration of undue sympathy will lead to miscarriage of justice and undermine confidence of public in the efficacy of criminal justice system.

भारतीय दण्ड संहिता, 1860 – धारा 494 सहपठित धारा 495

भारतीय न्याय संहिता, 2023 – धाराएं 82(1) सहपठित धारा 82(2)

(i) विवाह से संबंधित अपराध – समुचित दण्डादेश – अपीलार्थी ने अपनी पत्नि (अ1) के विरूद्ध यह परिवाद प्रस्तुत किया कि उसने विवाह के अस्तित्व में रहते हुए अभियुक्त (अ2) के साथ द्विविवाह कर लिया – विचारण न्यायालय ने उन्हें धारा 494 के अंतर्गत दण्डनीय अपराध हेतु दोषसिद्ध कर एक वर्ष के सश्रम कारावास एवं ₹ 2000/– रूपये के अर्थदण्ड से दण्डित किया – अपील करने पर सत्र न्यायालय ने दोषसिद्धि को अपास्त कर अभियुक्तगण को दोषमुक्त कर दिया – शिकायतकर्ता ने उक्त आदेश को उच्च न्यायालय के समक्ष चुनौती दी – उच्च न्यायालय ने पुनः अभियुक्तगण की दोषसिद्धि को बहाल किया परन्तु उनके दण्डादेश को कम कर उन्हे "न्यायालय उठने तक के कारावास" से दण्डित किया एवं प्रत्येक अभियुक्त पर ₹ 20000/– रूपये का अर्थदण्ड अधिरोपित किया – उच्चतम न्यायालय ने अभिनिर्धारित किया कि धारा 494 भा.द.सं. का अपराध गंभीर है एवं उच्च न्यायालय द्वारा अधिरोपित दण्डादेश अविवेकपूर्ण रूप से उदार था – दण्डादेश आनुपातिकता के सिद्धांत के अनुरूप होना चाहिए – न्यायालय ने अ1 एवं अ2 के दण्डादेश को प्रत्येक के लिए 6 माह के सादा कारावास एवं 2,000/– रूपये के अर्थदण्ड में परिवर्तित कर दिया।

(ii) दण्ड नीति – किसी ऐसे अपराध के लिए दण्ड अधिरोपित करने के मामले में, जो समाज पर प्रभाव डाल सकता है, दोषी ठहराए जाने के बाद अभियुक्त को फ्ली बाइट दण्ड देकर छोड़ देना उचित नहीं है – आपराधिक विधि के उद्देश्यों में से एक पर्याप्त, न्यायसंगत, आनुपातिक दण्ड अधिरोपित करना है जो अपराध की गंभीरता, उसकी प्रकृति एवं जिस रीति से उसे कारित किया गया है, के अनुरूप हो – अनुचित सहानुभूति न्याय के उद्देश्य को विफल कर देगी एवं आपराधिक न्याय प्रणाली की प्रभावोत्पादकता पर जनता का विश्वास कमजोर होगा।

Baba Natrajan Prasad v. M. Revathi

Judgment dated 15.07.2024 passed by the Supreme Court in Criminal Appeal No. 2912 of 2024, reported in (2024) 7 SCC 531

Relevant extracts from the judgment:

Whether a *flea-bite* sentence is sufficient when a conviction is entered under Section 494 I.P.C., only because no minimum sentence is prescribed thereunder. We have already noted that in the matter of awarding sentence for conviction of an offence which may impact the society, it is not advisable to let off an accused after

conviction with a flea-bite sentence. We may hasten to add that we are not oblivious of the decision of this Court in ***Adamji Umar Dalal v. State of Bombay***, ***AIR 1952 SC 14*** wherein this Court held that zeal to crush the evil should not carry the Court away from its judicial mind, and the sentence should not be so unduly harsh as to defeat the ends of justice. But then, the decision in ***State of Karnataka v. Krishna alias Raju, (1987) 1 SCC 538*** is also equally relevant. This Court, while enhancing the sentence observed, after characterizing the punishment as unconscionably lenient or a *'flea-bite'* sentence, that consideration of undue sympathy in such cases will lead to miscarriage of justice and undermine confidence of the public in the efficacy of the criminal justice system. In short, there cannot be any doubt with respect to the position that in imposing sentence the Court is to take into consideration the nature of the offence, circumstances under which it was committed, degree of deliberation shown by the offender, antecedents of the offender up to the time of sentence, etc., and, in the absence of any exceptional circumstances, impose sentence in tune with the rule of proportionality in providing punishment though it falls within the realm of judicial discretion.

Now bearing in mind all the aforesaid provisions and decisions, if the question whether accused Nos.1 and 2 are granted a proper sentence or what was granted was only a flea-bite sentence, we have no option but to hold that imposition of sentence of 'imprisonment till the rising of the court' upon conviction for an offence under Section 494 I.P.C., on them was unconscionably lenient or a flea-bite sentence.

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235. INDIAN PENAL CODE, 1860 – Section 498A
BHARATIYA NYAYA SANHITA, 2023 – Section 85
Matrimonial cruelty – What it does not amount to? Day-to-day quarrels between spouses, trivial irritations not intended to injure or cause misery to the other spouse, may not amount to cruelty – Conduct of a spouse though may cause annoyance need not necessarily amount to cruelty.

भारतीय दण्ड संहिता, 1860 – धारा 498क
भारतीय न्याय संहिता, 2023 – धारा 85
वैवाहिक क्रूरता – क्या नही माना जाएगा? पति-पत्नी के मध्य दिन-प्रतिदिन के झगड़े, तुच्छ प्रकृति के क्षोभ जो दूसरे पक्ष को क्षति या दुःख कारित करने की नीयत से नहीं किये जाते, क्रूरता नहीं माने जा सकते – पति या पत्नी का व्यवहार यद्यपि क्षोभ कारित करने वाला हो सकता है परन्तु आवश्यक नहीं कि उसे क्रूरता माना जाए।

Achin Gupta v. State of Haryana and anr.

Judgment dated 03.05.2024 passed by the Supreme Court in Criminal Appeal No. 2379 of 2024, reported in AIR 2024 SC 2548

Relevant extracts from the judgment:

Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage. In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned. The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. In all cases, where wife complains of harassment or ill-

treatment, Section 498A of the Indian Penal Code cannot be applied mechanically. No FIR is complete without Sections 506(2) and 323 of the Indian Penal Code. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.

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236. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – Section 7A

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Sections 9(2) and 94

INDIAN PENAL CODE, 1860 – Section 302

BHARATIYA NYAYA SANHITA, 2023 – Section 103(1)

Claim of juvenility – Appellant convicted for the offence of murder by the Trial Court which was confirmed in appeal – In the appeal before the Supreme Court, it was found that the appellant had moved an application u/s 7-A of Juvenile Justice Act, 2000 before the committal court claiming himself to be juvenile on the date of incident but the same was rejected – After committal, fresh application was moved before the Trial Court alongwith birth certificate but the same was rejected on the ground that such certificate was not earlier filed before the Magistrate Court – Held, plea of juvenility raised by the appellant could not have been thrown out without conducting proper inquiry – Directions were issued to the Trial Court to conduct a thorough inquiry to determine age of appellant in accordance with procedure provided under Act of 2015.

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम 2000 – धारा 7क

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम 2015 – धाराएं 9(2) एवं 94

भारतीय दण्ड संहिता, 1860 – धारा 302

भारतीय न्याय संहिता, 2023 – धारा 103(1)

किशोर होने का दावा – अपीलार्थी हत्या के अपराध हेतु विचारण न्यायालय द्वारा दोषसिद्ध ठहराया गया जिसकी पुष्टि अपील में भी हो गई – उच्चतम न्यायालय के समक्ष अपील में यह पाया गया कि अपीलार्थी ने उपार्पण न्यायालय के समक्ष यह दावा करते हुए कि घटना दिनांक को वह किशोर था, एक आवेदन धारा 7क किशोर न्याय अधिनियम, 2000 के अंतर्गत प्रस्तुत किया था जो निरस्त किया गया – उपार्पण उपरान्त विचारण न्यायालय के समक्ष पुनः एक नवीन

आवेदन जन्म प्रमाण पत्र के साथ प्रस्तुत किया गया जो इस आधार पर निरस्त कर दिया गया कि ऐसा प्रमाणपत्र मजिस्ट्रेट न्यायालय के समक्ष पूर्व में प्रस्तुत नहीं किया गया – अभिनिर्धारित, अपीलार्थी द्वारा उठाया गया किशोर होने का दावा बिना यथोचित जांच किये निरस्त नहीं किया जा सकता – विचारण न्यायालय को निर्देश जारी किए गए कि अधिनियम, 2015 में विहित प्रक्रिया अनुसार जांच कर अपीलार्थी की आयु का निर्धारण किया जावे।

Rahul Kumar Yadav v. State of Bihar

Judgment dated 25.04.2024 passed by the Supreme Court in Criminal Appeal No. 177 of 2018, reported in AIR 2024 SC 2739

Relevant extracts from the judgment:

It may be stated here that even before the case was committed, the appellant herein had moved an application under Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter, being referred to as JJ Act, 2000) before the learned Chief Judicial Magistrate claiming that he was a juvenile as on the date of the incident, i.e., 27th July, 2011. In the said application, reliance was placed by the appellant on his own horoscope. However, the Chief Judicial Magistrate proceeded to reject the said application.

When the matter was committed by the Chief Judicial Magistrate to the trial Court, a fresh petition under Section 7-A of the JJ Act, 2000 was filed by the appellant claiming himself to be a juvenile in conflict with law which was rejected vide order dated 28th November, 2011 considering the fact that earlier the Chief 3 Judicial Magistrate had rejected a similar application preferred by the appellant.

The appellant filed an application at the earliest point of time raising the claim of juvenility based on a horoscope before the learned Chief Judicial Magistrate. The said application was rejected. However, before the trail Court, the birth certificate was presented and a plea for determination of age was raised. Learned trail Court rejected the said prayer by observing that even thought the birth certificate was issued in the year 1995, the same was not presented along with the application filed earlier before the learned Chief Judicial Magistrate.

We find that proper inquiry in accordance with the provisions of the JJ Act, 2000 or the JJ Act, 2015 was not carried out so to consider the prayer made by the appellant to be treated as juvenile on the date of incident even though the plea was raised at the earliest opportunity. It can be said without a cavil of doubt that the plea of juvenility raised by the appellant could not have been thrown out without conducting proper inquiry.

In the wake of the above discussion, we hereby direct that the learned first Additional Sessions Judge, Darbhanga shall conduct a thorough inquiry to determine the age/date of birth of the appellant in accordance with the procedure provided under the JJ Act, 2015 and the rules framed thereunder.

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237. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Sections 14, 15, 17, 18, 19 and 101
JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2016 – Rules 10, 10A and 13

(i) Preliminary assessment in heinous offences – Timeline – Whether prescribed period of three months for completion of preliminary assessment u/s 15 of the Act is mandatory? Held, No – It is only directory.

(ii) Appeal under the Act – Competent court – Children's Court and Sessions Court should be read in alternative – Where Children's Court is available, even if the appeal is preferred before the Sessions Court, it has to be considered by the Children's Court – Where no Children's Court is available, the power is to be exercised by the Sessions Court.

(iii) Order passed u/s 18(3) of the Act after preliminary assessment – Limitation for filing appeal – Neither any time period has been fixed for filing the appeal nor any provision has been made for condonation of delay – In order to make the Act workable, the Supreme Court taking guidance from Section 101(1) of the Act, held that appeal u/s 101(2) of the Act can be filed within a period of 30 days – Appellate Court can entertain the appeal after the expiry of the aforesaid period, provided sufficient cause is shown – Endeavour has to be made to decide such appeal within a period of 30 days.

किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2015 – धाराएं 14, 15, 17, 18, 19 एवं 101
किशोर न्याय (बालकों की देखरेख एवं संरक्षण) नियम, 2016 – धाराएं 10, 10क एवं 13

(i) जघन्य अपराधों में प्रारंभिक निर्धारण – समयसीमा – क्या अधिनियम की धारा 15 के अंतर्गत प्रारंभिक निर्धारण को पूर्ण करने के लिए विहित तीन माह की निर्धारित अवधि आज्ञापक है? अभिनिर्धारित, नहीं – यह केवल निर्देशात्मक है।

(ii) अधिनियम के अंतर्गत अपील – सक्षम न्यायालय – बालक न्यायालय और सत्र न्यायालय को वैकल्पिक रूप में पढ़ा जाना चाहिए – जहां बालक न्यायालय उपलब्ध है, वहाँ भले ही सत्र न्यायालय के समक्ष अपील प्रस्तुत की गई हो, उस पर बालक न्यायालय द्वारा ही विचार किया जाना चाहिए – जहां कोई बालक न्यायालय उपलब्ध नहीं है वहाँ उक्त शक्ति का प्रयोग सत्र न्यायालय द्वारा किया जायेगा।

(iii) प्रारंभिक निर्धारण के बाद अधिनियम की धारा 18(3) के अंतर्गत पारित आदेश – अपील प्रस्तुत करने की परिसीमा – अपील प्रस्तुत करने के लिए न तो कोई समय अवधि तय की गई है और न ही विलम्ब की माफी के लिए कोई प्रावधान किया गया है – अधिनियम को व्यावहारिक बनाने के लिए उच्चतम न्यायालय ने अधिनियम की धारा 101(1) से मार्गदर्शन लेते हुए अभिनिर्धारित किया कि अधिनियम की धारा 101(2) के अंतर्गत अपील 30 दिवस की अवधि के भीतर प्रस्तुत की जा सकती है – अपीलीय न्यायालय उपरोक्त समयावधि के अवसान के बाद भी अपील पर विचार कर सकता है, बशर्ते कि पर्याप्त कारण दर्शाया गया हो – ऐसी अपील 30 दिवस की अवधि के भीतर निराकृत करने का प्रयास किया जाना चाहिए।

Child in Conflict with Law through his Mother v. State of Karnataka and anr.

Judgment dated 07.05.2024 passed by the Supreme Court in Criminal Appeal No. 2411 of 2024, reported in AIR 2024 SC 3191

Relevant extracts from the judgment:

The rule of *casus omissus* i.e. "what has not been provided in the statute cannot be supplied by the courts" is the strict rule of interpretation. However, there are certain exceptions thereto. Para 19 of the judgment of this Court in ***Surjit Singh Kalra v. Union of India, (1991) 2 SCC 87*** throws light thereon. The same is extracted below:

> "True it is not permissible to read words in a statute which are not there, but "*where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words*' (*Craies Statute Law*, 7th Edn., p. 109). Similar are the observations in ***Hameedia Hardware Stores v. B. Mohan Lal Sowcar*, (1988) 2 SCC 513** wherein it was observed that the court construing a provision should not easily read into it words

> which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See: ***Siraj-ul-Haq Khan* v. *Sunni Central Board of Wakf*, AIR 1959 SC 198.**"

The issue was thereafter considered by this Court in ***Rajbir Singh Dalal (Dr.)* v. *Chaudhari Devi Lal University, (2008) 9 SCC 284***. In the aforesaid case this Court observed as: "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a strict construction which leads to absurdity or deprives certain existing words of all meaning, and in this situation it is permissible to supply the words (vide *Principles of Statutory Interpretation* by Justice G.P. Singh, 9th Edn., pp. 71-76)." This Court also considered the traditional principles of interpretation known as the "Mimansa rules of interpretation". The issue under consideration in the aforesaid case was regarding requisite academic qualification for appointment to the post of Reader in the University in Public Administration. Applying the tools of interpretation, this Court opined that "relevant subject" should be inserted in the qualification required for the post of Reader after the words "at the Master's degree level" to give the rules a purposive interpretation by filling in the gap.

The same principles were followed by this Court in ***CBI v. Ramesh Gelli, (2016) 3 SCC 788***.

In our opinion, the guidance as is evident from sub-section (4) of Section 14 of the Act enabling the Chief Judicial Magistrate or Chief Metropolitan Magistrate to extend the period of inquiry as envisaged under Section 14(1), shall apply for extension of period as envisaged in sub-section (3) also. Such an extension can be granted for a limited period for the reasons to be recorded in writing. While considering the prayer for extension of time, the delay in receipt of opinion of the experts shall be a relevant factor. This shall be in the spirit of the Act and giving the same a purposive meaning.

We approve the views expressed by the High Court of Madhya Pradesh in ***Bhola v. State of M.P., 2019 SCC OnLine MP 521*** and the High Court in Delhi in ***X (Juvenile)* v. *State (NCT of Delhi), 2023 SCC OnLine Del 5063*** which while dealing with the provisions of Section 14 of the Act have held that the time period

prescribed for completion of the preliminary assessment is not mandatory but merely directory in nature. We also approve the views expressed by the High Court of Punjab and Haryana in ***Neeraj v. State of Haryana, 2005 SCC OnLine P&H 611*** and by the High Court of Delhi in ***X v. State, 2019 SCC OnLine Del 11164*** which also expressed similar views while dealing with the *pari materia* provisions of the repealed Juvenile Justice (Care and Protection of Children) Act, 2000.

In view of our aforesaid discussions, the present appeal is disposed of with the following directions:

(i) The provision of Section 14(3) of the Act, providing for the period of three months for completion of a preliminary assessment under Section 15 of the Act, is not mandatory. The same is held to be directory. The period can be extended, for the reasons to be recorded in writing, by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate.

(ii) The words "Children's Court" and "Court of Session" in the Juvenile Justice (Care and Protection of Children) Act, 2015 and the 2016 Rules shall be read interchangeably. Primarily jurisdiction vests in the Children's Court. However, in the absence of constitution of such Children's Court in the district, the power to be exercised under the Act is vested with the Court of Session.

(iii) Appeal, under Section 101(2) of the Act against an order of the Board passed under Section 15 of the Act, can be filed within a period of 30 days. The appellate court can entertain the appeal after the expiry of the aforesaid period, provided sufficient cause is shown. Endeavour has to be made to decide any such appeal filed within a period of 30 days.

(iv) There is no error in exercise of revisional jurisdiction by the High Court in the present matter.

(v) There is no error in the order dated 15.11.2023 [***Manasa Rajan v. State of Karnataka, 2023 SCC OnLine Kar 189***] passed by the High Court dealing with the procedure as provided for under the Act in terms of Section 7(4) thereof.

(vi) The order passed by the Board as signed by the Principal Magistrate on 05.04.2022 was final. However, the same is subject to right of appeal of the aggrieved party. The appellant shall have the right of appeal against the aforesaid order within a period of 10 days from today. The appellate authority shall make an endeavour to decide the same within a period of two months from the date of filing.

(vii) In all the orders passed by the courts, tribunals, boards and the quasi-judicial authorities the names of the Presiding Officer and/or the Members who sign the orders shall be mentioned. In case any identification number has been given, the same can also be added.

(viii) The Presiding Officers and/or Members while passing the order shall properly record presence of the parties and/or their counsel, the purpose for which the matter is being adjourned and the party on whose behalf the adjournment has been sought and granted.

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238. MOTOR VEHICLES ACT, 1988 – Section 149 (2)(a)(ii)
CENTRAL MOTOR VEHICLES RULES, 1989 – Rule 9

(i) Driving licence – Offending tanker was transport vehicle carrying hazardous goods – Requirement of holding a licence to drive such vehicle – Driver was holding licence to drive a transport vehicle – No endorsement on the licence that he was authorised to drive a transport vehicle carrying dangerous or hazardous goods – Driver was not holding a valid driving licence as per the requirements of Rule 9 of Central Rules, 1989 – Insurance Company is not liable – However, direction to pay and recover is issued.

(ii) Assessment of compensation – Conventional head – 10% increase in every three years – Enhancement of 10% increase would apply only when the accident takes place after 3 years of the judgment passed in case of *National Insurance Company Limited v. Pranay Sethi, 2017 ACJ 2700 (SC)*.

मोटरयान अधिनियम, 1988 – धारा 149 (2)(क)(ii)
केन्द्रीय मोटरयान नियम, 1989 – नियम 9

(i) चालन अनुज्ञप्ति – उल्लघंनकारी टैंकर खतरनाक सामान ले जाने वाला परिवहन यान था – ऐसे वाहन चालन के लिए अनुज्ञप्ति धारित करने की आवश्यकता हैं – चालक परिवहन वाहन के चालन की अनुज्ञप्ति धारित करता था – अनुज्ञप्ति पर कोई पृष्ठांकन नहीं कि वह खतरनाक एवं जोखिमपूर्ण सामान ले जाने वाले परिवहन यान के चालन हेतु अधिकृत था – चालक केंद्रीय नियम, 1989 के नियम 9 की अपेक्षाओं के अनुरूप वैध चालन अनुज्ञप्ति धारित नहीं करता था – बीमा कंपनी उत्तरदायी नहीं है – किन्तु, भुगतान करने एवं वसूली करने का निर्देश दिया गया।

(ii) प्रतिकर का निर्धारण – परंपरागत शीर्ष – हर तीन वर्ष में 10 प्रतिशत की वृद्धि – 10 प्रतिशत की वृद्धि केवल तभी लागू होगी जब दुर्घटना *नेशनल इंश्योरेंस कंपनी लिमिटेड विरूद्ध प्रणय सेठी, 2017 एसीजे 2700 (एससी)* के मामले में पारित निर्णय के 3 वर्ष उपरांत घटित हुई हो।

National Insurance Co. Ltd. v. Ashwini Sinha and ors.

Judgment dated 10.05.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 4465 of 2022, reported in 2024 ACJ 990

Relevant extracts from the judgment:

For driving a goods carriage carrying vehicles of dangerous or hazardous goods, the driver should have a driving licence to drive a transport vehicle with ability to read and write atleast Indian language out of those specified in 8th Schedule of Constitution and he should also possess a certificate of having successfully passed a course consisting of syllabus and periodicity connected with transport of such goods. The syllabus has been provided in Rule 9 of Rules, 1989 Rules itself. Similarly, Rule 131 of Rules, 1989 requires that the driver of the goods carriage is trained in handling the dangers posed during transport of such goods.

As per Section 10 of Motor Vehicles Act, 1988, a licence can be granted to drive a motor vehicle for a specified description. When certain additional qualification are required for a driver to drive a goods carriage carrying hazardous or dangerous goods, then such a vehicle would be of a specified description requiring its licence or endorsement, as required under section 11 of Motor Vehicles Act, 1988.

There is nothing on record to show that the driver of the offending Tanker was having all the qualifications and training as required under Rule 9 of Central Motor Vehicles Rules, 1989. The driving licence has been filed as Ex.NA 1. According to this licence, the Driver was having the driving licence to drive transport vehicles. There is no endorsement that he had a licence of driving goods carriage carrying dangerous or hazardous goods. The verification report of licence of the Driver is Ex.N.A.11. According to this verification report, the Driver of the vehicle was authorized to drive motorcycle, LMV, LMV (cab), transport vehicle, PSV (Public Services vehicle) badge type of vehicles only.

Thus, it is clear that non-applicant no.1 was not having driving licence to drive the goods carriage carrying hazardous or dangerous substances. However, he

was having the driving license to drive transport vehicles. Accordingly, the driver was not having valid driving licence. However, the liability of the Insurance Company shall be considered in the subsequent paragraphs.

The Supreme Court in the case of ***National Insurance Company Limited v. Pranay Sethi, 2017 ACJ 2700 (SC)*** has held as under :-

> "Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

This enhancement in conventional head relates to the date of accident, which will take place after 3 years of date of judgment passed in the case of Pranay Sethi (supra) and not if an award is passed after 3 years of the judgment passed in the case of Pranay Sethi (supra). For enhancement of conventional heads by 10% in every 3 years the date of accident is material and not the date of award passed by the Claims Tribunal. The enhancement by 10% would apply only when the accident takes place after 3 years of the judgment passed in the case of Pranay Sethi (supra).

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***239. MOTOR VEHICLES ACT, 1988 – Section 166**

Compensation – Income – Determination – At the time of accident, claimant was working as a teacher – Tribunal determined her income as ₹ 5,000/- per month – On the date of accident, minimum wages of a skilled labour was ₹ 8,735/- per month – In such a situation, monthly income of a claimant cannot be assessed less than that of skilled labour – Appellate Court determined claimant's income as ₹ 8,500/- per month for assessment of compensation.

मोटर यान अधिनियम, 1988 – धारा 166

प्रतिकर – आय – अवधारण – दुर्घटना के समय दावेदार एक शिक्षक के रूप में कार्यरत थी – अधिकरण ने उसकी आय 5000/– रूपये प्रतिमाह अवधारित की – दुर्घटना दिनांक को एक कुशल श्रमिक की न्यूनतम मजदूरी 8735/– रूपये प्रतिमाह थी – ऐसी स्थिति में दावेदार की मासिक आय कुशल श्रमिक की आय से कम निर्धारित नहीं की जा सकती – अपीलीय न्यायालय ने प्रतिकर की गणना हेतु दावेदार की आय ₹ 8500/– रूपये प्रतिमाह अवधारित की ।

Mamta Yadav (Smt.) v. Amrat Singh & ors.

Order dated 22.12.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Application No. 29 of 2019, reported in ILR 2024 MP 986

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240. MOTOR VEHICLES ACT, 1988 – Section 173
EVIDENCE ACT, 1872 – Section 106
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 109
Driving licence – Burden of proof – Driver of offending vehicle appeared before the Claims Tribunal and filed reply but did not produce driving licence – Adverse inference can be drawn against him to the effect that he did not possess valid and effective driving licence at the time of accident – Insurance Company is entitled to recover the compensation from owner of vehicle after making payment of amount to claimant.

मोटर यान अधिनियम, 1988 – धारा 173
साक्ष्य अधिनियम, 1872 – धारा 106
भारतीय साक्ष्य अधिनियम, 2023 – धारा 109
चालन अनुज्ञप्ति – सबूत का भार – उल्लंघनकारी वाहन का चालक दावा अधिकरण के समक्ष उपस्थित हुआ एवं जबाब प्रस्तुत किया किन्तु चालन अनुज्ञप्ति प्रस्तुत नहीं की – उसके विरूद्ध यह प्रतिकूल निष्कर्ष निकाला जा सकता है कि दुर्घटना के समय उसके पास वैध और प्रभावी चालन अनुज्ञप्ति नहीं थी – बीमा कम्पनी दावेदार को राशि का भुगतान करने के पश्चात् वाहन के स्वामी से प्रतिकर वसूल करने की अधिकारी है ।

New India Assurance Com. Ltd. v. Shri Punam Chandra Kesharwani & ors.

Order dated 29.11.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 1373 of 2021, reported in ILR 2024 MP 981

Relevant extracts from the order:

Learned counsel for the appellant argued that driver of the offending vehicle did not have a driving licence and police filed Challan under Section 3/181 of the Motor Vehicles Act, hence, he submitted that appellant/Insurance Company would not be liable to pay compensation. The Tribunal did not accept the said contention

of the appellant/Insurance Company and held in para 24 of the award that Insurance Company had not produced any evidence from RTO that driver of the offending vehicle had no valid and effective driving licence at the time of the accident.

It is true that it is the duty of Insurance Company to prove that owner and driver have breached the terms and conditions of the insurance policy. In present case, witness of Insurance Company, namely, E. Minj has filed affidavit by way of evidence, where he has pointed out that the driver/owner of the offending vehicle have no valid and effective licence at the time of the accident. He further stated that in criminal charge sheet, police registered a charge under Section 3/181 of Motor Vehicles Act for not having driving licence.

In present case owner/driver of the offending vehicle present before the Tribunal and filed written statement and on perusal of the Seizure Memo (Ex. P/6) police did not seize the driving licence of the driver of the offending vehicle.

Where the assured chooses to run away from the battle i.e. fails to defend the allegation of having breach the terms of insurance policy by opting not to defend the proceedings. A presumption could be drawn that he has done so because of the fact that he has no case to defend. It is trite that a party in possession of best evidence, if he withholds the same, an adverse inference can be drawn against him that had the evidence been produced, the same would have been against said person. As knowledge is personal to person possessed of the knowledge, his absence at the trial would entitle the Insurance Company to a presumption against the owner/driver.

In the present case, respondent No. 2 owner /driver of the offending vehicle who was present before the trial Court and filed his written statement, after that he proceed ex-parte, it means he ran away from the trial. Driver of the offending vehicle is best man, who had knowledge that he had a valid and effective driving licence at the time of the accident, but he withholds himself, so adverse inference can be drawn against him.

Charge sheet has been filed against the driver of offending vehicle under Section 3/181 of Motor Vehicles Act and according to the Seizure Memo Ex. P/6, no driving licence has been seized by the police from driver of the offending vehicle. So negative liability cannot be imposed upon the Insurance Company to prove that driver did not have a valid and effective licence. According to Section 106 of Evidence Act, it is the duty of driver to produce driving licence before the Tribunal

when he is present before the Tribunal and file a written statement, but he did not produce driving licence, if he had. So an adverse inference shall be drawn against him because it is the fact which is within his personal knowledge, therefore, it was for him to disclose the fact that he has a driving licence.

So as per aforesaid evidence, perusal of the charge sheet which has been filed by the police against the driver of the offending vehicle under Section 3/181 of Motor Vehicles Act and driver was present before the Tribunal, but he did not produce his driving licence before the Tribunal, so adverse inference can be drawn against the driver/owner that he had not possessed driving licence at the time of the accident.

So as per the aforesaid discussion, the appellant, therefore, proved that there is a willful and conscious breach of terms and conditions of insurance policy. Although in view of the judgment of the Supreme Court in case of ***Sohan Lal Passi v. Sesh Reddy, (1996) 5 SCC 21***; ***National Insurance Company Limited. v. Swaran Singh and ors., (2004) 3 SCC 297*** and ***United Insurance Company v. Lehru and ors., (2003) 3 SCC 338***, the appellant was under obligation to satisfy third party liability but the appellant is entitled to recovery right from the owner /driver of the offending vehicle i.e. respondent No. 2.

Hence, appeal is consequently allowed. It is directed that appellant will be entitled to recover the amount of compensation paid along with the interest from the respondent no. 2/owner. Respondent No. 2 shall deposit the compensation paid by the appellant before the Claims Tribunal with the notice to the appellant within eight weeks, failing which the appellant shall be entitled to pay interest at the rate of 9 per cent per annum from the date of deposit of payment made by the appellant. Appellant shall be entitled to recover amount in execution by its judgment without any recourse to independent civil proceeding.

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241. NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 2(viiia), 8, 9, 21 and 29
NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES RULES, 1985 – Rule 52A
Essential narcotic drug – Cough syrups – 90 boxes of Onerex cough syrup containing codeine were seized from the possession of accused persons – Codeine and its salts are included in the category of essential

narcotic drug u/s 9 (1) (a) (va) of NDPS Act and Rule 52A(3) of the Rules of 1985 – Dealing in such narcotic drug even for medical and scientific purpose must be in the manner provided by provisions of the Act and Rules made thereunder – Rule 52 A prohibits any person from possessing any essential narcotic drug and its violation is punishable under the Act. [*Union of India and anr. v. Sanjeev V. Deshphande, (2014) 13 SCC 1* followed]

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 2(viiiक), 8, 9, 21 एवं 29

स्वापक औषधि और मनःप्रभावी पदार्थ नियम, 1985 – नियम 52क

आवश्यक स्वापक औषधि – कफ सिरप – अभियुक्त व्यक्तियों के आधिपत्य से कोडीन युक्त ओनेरेक्स कफ सिरप के 90 डिब्बे जब्त किये गये – कोडीन और इसके लवण एन.डी.पी.एस. अधिनियम की धारा 9 (1) (d) (vd) एवं एन.डी.पी.एस. नियम, 1985 के नियम 52क(3) के अतंर्गत आवश्यक स्वापक औषधि की श्रेणी में सम्मिलित हैं – चिकित्सीय और वैज्ञानिक उद्देश्यों हेतु भी ऐसी स्वापक औषधि का उपयोग अधिनियम और उसके अंतर्गत बनाये गये नियमों में वर्णित प्रावधानों द्वारा बताई गई रीति से होना चाहिए – नियम 52क किसी भी व्यक्ति को किसी भी आवश्यक स्वापक औषधि को रखना प्रतिबंधित करता है एवं इसका उल्लंघन करना अधिनियम के अंर्तगत दण्डनीय है।

[*यूनियन ऑफ इण्डिया एवं अन्य विरूद्ध संजीव वी. देशपाण्डेय, (2014) 13 एससीसी 1* अनुसरित]

Dubraj Singh Patel & anr. v. State of M.P.

Order dated 03.01.2024 passed by the High Court of Madhya Pradesh in Criminal Revision No. 1738 of 2023, reported in ILR 2024 MP 1053

Relevant extracts from the order:

Rule 52A sub-rule 3 mentions codeine and its salts as essential narcotic drugs. Entry 35 in notification of 14.11.1985 was titled 'manufactured narcotic drug'. By notification of 2014, codeine and its salts are included in category of essential narcotic drugs under Section 9(1)(a) (va) of N.D.P.S. Act, 1985. Therefore, Rule 52A regulates the manner of possession and related activities in respect of said salts under Entry No.35. Section 21 of N.D.P.S. Act provides for prosecution for contravention of any provision of N.D.P.S. Act or any rule made thereunder. Rule 52A prohibits any person from possessing any essential narcotic drug. Salts

contained in Rule 52A will be considered as essential narcotic drug, though they may also be covered under Drug and Cosmetic Act including cough syrup containing codeine phosphate.

Supreme Court in case of ***Union of India and another v. Sanjeev V. Deshphande, (2014) 13 SCC 1*** has held that dealing in narcotic drugs and psychotropic substances is for medical and scientific purpose does not by itself lift the embargo created under Section 8(c) and such a dealing must be in manner and extent provided by provisions of Act and Rules made thereunder. In view of amended notification issued by Union of India, violations of Rule 52A will be covered under N.D.P.S. Act and penal provisions will be attracted.

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242. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 139

(i) Dishonour of cheque – Presumption u/s 139 of the Act when arises and its effect explained – Once complainant discharges the burden to prove that the cheque was issued for discharge of debt, presumption u/s 139 shifts the evidential burden on the accused to prove the contrary – Nature of evidence required to shift the evidential burden – It need not necessarily be direct evidence i.e. oral or documentary evidence or admission made by the opposite party – It may comprise of circumstantial evidence or presumption of fact or law – If the evidential burden is not discharged, presumed fact will have to be taken to be true, without expecting complainant to do anything further.

(ii) Standard of proof to rebut the presumption – Accused is not expected to prove the non- existence of the presumed fact beyond reasonable doubt, but he must meet the standard of preponderance of probabilities, similar to defendant in a civil proceeding.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 139

(i) चैक का अनादरण – धारा 139 के अंतर्गत उपधारणा कब उत्पन्न होगी एवं उसका प्रभाव समझाया गया – एक बार परिवादी जब यह साबित करने के भार से उन्मुक्त हो जाता है कि ऋण के उन्मोचन हेतु चैक जारी किया गया था तब धारा 139 के अंतर्गत वर्णित उपधारणा अन्यथा साबित करने

का साक्षिक भार अभियुक्त पर अंतरित कर देती है – साक्षिक भार को अंतरित करने के लिए आवश्यक, साक्ष्य की प्रकृति – उसका प्रत्यक्ष साक्ष्य होना आवश्यक नहीं है, जैसे कि मौखिक अथवा दस्तावेजी साक्ष्य अथवा विपक्षी पक्षकार द्वारा की गई स्वीकृति – वह परिस्थितिजन्य साक्ष्य अथवा विधि या तथ्य की उपधारणा हो सकती है – यदि साक्षिक भार उन्मोचित नहीं किया गया, तब परिवादी से कुछ अतिरिक्त किये जाने की अपेक्षा किये बिना उपधारित तथ्य को सत्य माना जाएगा।

(ii) उपधारणा के खण्डन हेतु सबूत का मानक – अभियुक्त से अपेक्षित नहीं है कि वह उपधारित तथ्य के अस्तित्व में नहीं होने को युक्ति-युक्त संदेह से परे साबित करे, किन्तु उसे सिविल कार्यवाही के प्रतिवादी के समान अधिसंभावना की प्रबलता के स्तर को प्राप्त करना होगा।

Rajesh Jain v. Ajay Singh

Judgment dated 09.10.2023 passed by the Supreme Court in Criminal Appeal No. 3126 of 2023 referred in 10 SCC 148

Relevant extracts from the judgment:

The five (5) acts as set out in ***K Bhaskaran v. Sankaran Vaidhyan Balan and anr., AIR 1999 SC 3762*** are, generally speaking, matters of record and would be available in the form of documentary evidence as early as, at the stage of filing the complaint and initiating prosecution. Apart from the above acts, it is also to be proved that cheque was issued in discharge of a debt or liability (Ingredient no. (ii) in ***M/S Gimplex Private Limited v. Manoj Goel AIRONLINE 2021 SC 865***). The burden of proving this fact, like the other facts, would have ordinarily fallen upon the complainant. However, through the introduction of a presumptive device in Section 139 of the NI Act, the Parliament has sought to overcome the general norm as stated in Section 102 of the Evidence Act and has, thereby fixed the onus of proving the same on the accused. Section 139, in that sense, is an example of a reverse onus clause and requires the accused to prove the non-existence of the presumed fact, i.e., that cheque was not issued in discharge of a debt/liability.

There are two senses in which the phrase 'burden of proof' is used in the Indian Evidence Act, 1872 (Evidence Act, hereinafter). One is the burden of proof arising as a matter of pleading and the other is the one which deals with the question as to who has first to prove a particular fact. The former is called the 'legal burden' and it never shifts, the latter is called the 'evidential burden' and it shifts from one side to the other.

As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shifting the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The accused must meet the standard of 'preponderance of probabilities', similar to a defendant in a civil proceeding.

The accused may adduce direct evidence to prove that the instrument was not issued in discharge of a debt/liability and, if he adduces acceptable evidence, the burden again shifts to the complainant. At the same time, the accused may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling the burden may likewise shift to the complainant. It is open for him to also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the Evidence Act. The burden of proof may shift by presumptions of law or fact. In ***Kundanlal v. Custodian Evacuee Property AIR 1961 SC 1316*** when the creditor had failed to produce his account books, this Court raised a presumption of fact under Section 114, that the evidence, if produced would have shown the non-existence of consideration. Though, in that case, this Court was dealing with the presumptive clause in Section 118 NI Act, since the nature of the presumptive clauses in Section 118 and 139 is the same, the analogy can be extended and applied in the context of Section 139 as well.

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243. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 142 Dishonour of cheque – Territorial jurisdiction – Complainant is a PAN India Company having branches all over India – Whether it can file complaint for dishonour of cheque at a place of its choice, even where no transaction has taken place? Held, No – PAN India Companies are not free to file cases at places of their will, causing difficulty to accused in

defending their case, just by presenting the cheque at a particular place creating cause of action – Legally and technically, the complaint can be filed at any such place but considering larger interest of justice, such liberty cannot be given and it would have been proper to present the cheque at place where transaction has taken place between the parties or in place where accused is residing so that matter can be resolved speedily.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 142

चैक का अनादरण – स्थानीय क्षेत्राधिकार – परिवादी एक पैन इंडिया कंपनी है जिसकी संपूर्ण भारत में शाखाएं है – क्या वह स्वयं के इच्छित स्थान पर चैक अनादरण का परिवाद प्रस्तुत कर सकती है, जबकि वहाँ कोई संव्यवहार नहीं हुआ? अभिनिर्धारित, नहीं – केवल एक निश्चित स्थान पर चैक प्रस्तुत कर वाद कारण उत्पन्न कर पैन इंडिया कंपनियॉ उनकी इच्छानुसार स्थानों पर मामला प्रस्तुत करने के लिए स्वत्रंत नहीं है, क्योंकि इससे अभियुक्त को उनके मामले में प्रतिरक्षा करने में कठिनाई होगी – कानूनी एवं तकनीकी दृष्टि से ऐसे किसी भी स्थान पर परिवाद प्रस्तुत किया जा सकता है किंतु न्याय के वृहद हित में ऐसी स्वत्रंता नहीं दी जा सकती एवं यह उचित होगा कि चैक उस स्थान पर प्रस्तुत किया जाए जहां पक्षकारों के मध्य संव्यवहार हुआ था अथवा उस स्थान पर जहां अभियुक्त निवास करता है जिससे मामले का निराकरण त्वरित गति से हो सकेगा।

Mahindra & Mahindra Financial Services Ltd. (M/s.) v. Kamdhenu Company Pvt. Ltd. & ors.

Order dated 28.08.2023 passed by the High Court in Miscellaneous Criminal Case No. 12136 of 2012, reported in ILR 2024 MP 180

Relevant extracts from the order:

Petitioner is a PAN India company having its branches all over India. It's headquarter is at Mumbai. Respondent company was made dealer of petitioner company at Kolkata. Agreement and other documents were also signed at Kolkata and trade and other transactions were done at Kolkata or in Assam. Respondent company is having it's office in Assam at Dibrugarh. Petitioner company has filed complaint at Bhopal as cheque has been presented at Bhopal by regional office of the company. PAN Indian companies are not free to file cases at places of their will. PAN Indian companies cannot present cheques at distant places on their will so that respondent/accused may have difficulty in defending it's case and order can be obtained from Court easily unopposed. No transaction of petitioner company has

taken place at Bhopal. Only cheque has been presented at Bhopal to create cause of action. Legally and technically, petitioner company can file complaint case at Bhopal as cheque has been presented at Bhopal and information has also been received at regional office at Bhopal regarding bouncing of cheque. But, considering larger interest of justice, it would have been proper for PAN Indian companies to present the cheque at place where transaction has taken place between the parties or in place where respondent is residing so that matter can be resolved speedily, as service of summons and contesting of case will be easy and smooth for the parties where parties had done their transactions. PAN Indian company cannot be given liberty to present cheques at any place in India according to their will and get arrest warrants or summons issued to respondent, who will have great difficulty in approaching said place to contest the case.

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244. PARTNERSHIP ACT, 1932 – Sections 42 and 43
LIMITATION ACT, 1963 – Section 3 and Article 5

(i) Suit for dissolution of firm and rendition of accounts – Limitation – Period of limitation is three years from the date of dissolution – Partnership was a partnership at will and one of the partners died in the year 1984 – Partnership stands dissolved automatically on the date of death of partner – Suit was filed in the year 1996 i.e. after three years of dissolution – It is apparently barred by limitation.

(ii) Plea of limitation not set up as a defence – Even if plea of limitation is not set up as a defence, the Court has to dismiss the suit if it is barred by limitation.

भागीदारी अधिनियम, 1932 – धाराएं 42 एवं 43
परिसीमा अधिनियम, 1963 – धारा 3 एवं अनुच्छेद 5

(i) फर्म के विघटन एवं लेखे दिये जाने के लिए दावा – परिसीमा – परिसीमा की अवधि विघटन के दिनांक से तीन वर्ष है – साझेदारी एक इच्छानुसार साझेदारी थी जिसमें एक भागीदार की मृत्यु वर्ष 1984 में हो गई – भागीदार के मृत्यु दिनांक को साझेदारी स्वतः विघटित हो जाती है – दावा वर्ष 1996 में प्रस्तुत हुआ अर्थात विघटन के तीन वर्ष उपरांत – दावा स्पष्टतः अवधि बाह्य है।

(ii) प्रतिरक्षा के रूप में परिसीमा का अभिवाक् नही किया गया – यद्यपि प्रतिरक्षा के रूप में परिसीमा का अभिवाक् नही किया गया हो परन्तु यदि

दावा परिसीमा से बाधित है तो न्यायालय को वाद को खारिज करना होगा।

S. Shivraj Reddy (D) through His LRs. and anr. v. S. Raghuraj Reddy and ors.

Judgment dated 16.05.2024 passed by the Supreme Court in Civil Appeal No. 6459 of 2024, reported in AIR 2024 SC 2897

Relevant extracts from the judgment:

A fervent plea was raised by learned Counsel for the Respondents that the firm continued to exist even after the death of Shri M. Balraj Reddy, and the business activities were continued by the firm. Even if it is assumed for the sake of argument that the partners were carrying on the business activities after the death of Shri M. Balraj Reddy, there cannot be any doubt that the firm stood dissolved automatically in the year 1984 as mandated Under Section 42(c) of the Act unless and until there was a contract between the remaining partners of the firm to the contrary. There is of course, no such averment by the Respondents. The business activities even if carried on by the remaining partners of the firm after the death of Shri M. Balraj Reddy, would be deemed to be carried in their individual capacity in the circumstances noted above.

The period of limitation for filing a suit for rendition of account is three years from the date of dissolution. In the present case, the firm dissolved in year 1984 by virtue of death of Shri M. Balraj Reddy and thus, the suit could only have been instituted within a period of three years from that event. Indisputably, the suit came to be filed in the year 1996 and was clearly time-barred, therefore, learned Single Judge was justified in accepting the C.C.C. Appeal No. 35 of 1999 and rejecting the suit as being hopelessly barred by limitation.

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245. PREVENTION OF MONEY LAUNDERING ACT, 2002 – Section 19

(i) Money Laundering – Section 19 of the Act provides for the phrase "as soon as may be" to inform grounds of arrest – Meaning and connotation of phrase explained.

(ii) Information of ground of arrest – If accused is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished a written communication about the grounds of arrest as

soon as may be i.e. as early as possible that would be sufficient compliance of section 19 of the Act – The arrestee should be informed of ground of arrest within 24 hours of arrest (*Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1* followed)

धन-शोधन निवारण अधिनियम, 2002 – धारा 19

(i) धन-शोधन – गिरफ्तारी के आधार की सूचना देने हेतु अधिनियम की धारा 19 ''यथासंभव शीघ्र'' के वाक्यांश का उपयोग करती है – वाक्यांश के अर्थ एवं तात्पर्य को समझाया गया।

(ii) गिरफ्तारी के आधार की सूचना – यदि गिरफ्तारी के समय अभियुक्त को मौखिक रूप से गिरफ्तारी के आधार की सूचना दे दी गई है या उसे अवगत करा दिया है और यथाशीघ्र उसे लिखित में गिरफ्तारी के आधार बताए जाते है तो वह अधिनियम की धारा 19 की पर्याप्त पालना होगी – गिरफ्तार किये गये व्यक्ति को गिरफ्तारी के 24 घंटे की अवधि के भीतर गिरफ्तारी के आधार बताना होंगे। (*विजय मदनलाल चौधरी विरूद्ध यूनियन ऑफ इंडिया (2023) 12 एस.सी.सी. 1* अनुसरित)

Ram Kishor Arora v. Directorate of Enforcement

Judgment dated 15.12.2023 passed by the Supreme Court in Criminal Appeal No. 3865 of 2023, reported in (2024) 7 SCC 599

Relevant extracts from the judgment:

The expression "as soon as may be" contained in Section 19 PMLA is required to be construed as – "as early as possible without avoidable delay" or "within reasonably convenient" or "reasonably requisite" period of time. Since by way of safeguard a duty is cast upon the officer concerned to forward a copy of the order along with the material in his possession to the adjudicating authority immediately after the arrest of the person, and to take the person arrested to the court concerned within 24 hours of the arrest, in our opinion, the reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be twenty-four hours of the arrest.

In ***Vijay Madanlal Choudhary v. Union of India, (2023)12 SCC 1***, it has been categorically held that so long as the person has been informed about the grounds of his arrest, that is sufficient compliance with mandate of Article 22(1) of the Constitution. It is also observed that the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on

each occasion, the Court is free to look into the relevant records made available by the authority about the involvement of the arrested person in the offence of money-laundering. Therefore, in our opinion the person arrested, if he is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished a written communication about the grounds of arrest as soon as may be i.e. as early as possible and within reasonably convenient and requisite time of twenty-four hours of his arrest, that would be sufficient compliance of not only Section 19 PMLA but also of Article 22(1) of the Constitution of India.

As discernible from the judgment in ***Pankaj Bansal v. Union of India, (2024) 7 SCC 576*** also noticing the inconsistent practice being followed by the officers arresting the persons under Section 19 PMLA, directed to furnish the grounds of arrest in writing as a matter of course, "henceforth", meaning thereby from the date of the pronouncement of the judgment. The very use of the word "henceforth" implied that the said requirement of furnishing grounds of arrest in writing to the arrested person as soon as after his arrest was not mandatory or obligatory till the date of the said judgment. The submission of the learned Senior Counsel Mr Singhvi for the appellant that the said judgment was required to be given effect retrospectively cannot be accepted when the judgment itself states that it would be necessary "henceforth" that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. Hence, non-furnishing of grounds of arrest in writing till the date of pronouncement of judgment in ***Pankaj Bansal*** (supra) case could neither be held to be illegal nor the action of the officer concerned in not furnishing the same in writing could be faulted with. As such, the action of informing the person arrested about the grounds of his arrest is a sufficient compliance of Section 19 PMLA as also Article 22(1) of the Constitution of India, as held in ***Vijay Madanlal*** (supra).

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246. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 2(f), 3 and 17

(i) Maintenance – Entitlement of – It is not mandatory for aggrieved to actually reside with the respondent at the time of commission of domestic violence and merely entitlement to reside in the shared household u/s 17 of Act is sufficient to seek relief under the Act – It is not necessary that domestic relationship with respondent should

subsist at the time of filing of application – It is sufficient if such domestic relationship subsisted at any point of time or the aggrieved had the right to live in shared household and subjected to domestic violence. (*Prabha Tyagi v. Kamlesh Devi, AIR 2022 SC 2331* followed)

(ii) Domestic Violence – Economic abuse – Aggrieved was compelled to live separately, payment of monthly maintenance was stopped for the last three years and was deprived from getting insurance money of her husband after his death – This *Prima facie* establishes the fact of economic abuse constituting domestic violence – Conduct of parties even prior to the commencement of the Act, 2005 can be taken into consideration while passing order under the Act. (*Saraswatty v. Babu, 2014 (3) SCC 712* followed).

घरेलू हिंसा से महिलाओं का सरंक्षण अधिनियम, 2005 – धाराएं 2(च), 3 एवं 17

(i) भरण–पोषण – पात्रता – व्यथित के लिए यह आज्ञापक नहीं है कि घरेलू हिंसा कारित होते समय वह प्रत्यर्थी के साथ वास्तविक रूप से निवास करे एवं अधिनियम की धारा 17 के अंतर्गत साझी गृहस्थी में निवास करने का अधिकारी होना मात्र ही अधिनियम के अधीन अनुतोष मांगने के लिए पर्याप्त है – आवेदन प्रस्तुत करते समय प्रत्यर्थी के साथ घरेलू नातेदारी का बना रहना आवश्यक नहीं है – यह पर्याप्त है कि ऐसी घरेलू नातेदारी किसी एक समय पर रही हो अथवा व्यथित को साझी गृहस्थी में रहने का अधिकार था एवं उसके साथ घरेलू हिंसा कारित हुई। (*प्रभा त्यागी वि. कमलेश देवी, एआईआर 2022 एससी 2331* अनुसरित)

(ii) घरेलू हिंसा – आर्थिक दुरूपयोग – व्यथित को पृथक निवास के लिए बाध्य किया गया, विगत 3 वर्ष से मासिक भरण-पोषण का भुगतान रोक दिया गया एवं उसके पति की मृत्यु उपरान्त बीमा राशि प्राप्त करने से उसे वंचित किया गया – यह प्रथम दृष्टया आर्थिक दुरूपयोग का तथ्य स्थापित करता है जिससे घरेलू हिंसा गठित होती है – अधिनियम, 2005 के प्रभावशील होने के पूर्व का भी पक्षकारों का आचरण विचार में लिया जा सकता है। (*सरस्वती वि. बाबू, 2014 (3) एससीसी 712* अनुसरित)

Manohar Lal Jain and anr. v. Smt. Urmila

Order dated 19.07.2023 passed by the High Court of Madhya Pradesh in Criminal Revision No. 325 of 2021 (Indore Bench), reported in ILR 2024 MP 159

Relevant extracts from the order:

Since the petitioners are coming in relationship with respondent and before 2006, they lived together in a shared household, the stand regarding non existence of domestic relationship is found without leg. On this aspect, the law laid down by Hon'ble Supreme Court in judgment rendered in ***Prabha Tyagi v. Kamlesh Devi, AIR 2022 SC 2331***, is condign to quote here:-

> "(ii) Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levied at the point of commission of violence?"
>
> It is held that it is not mandatory for the aggrieved person, when she is related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family, to actually reside with those persons against whom the allegations have been levelled at the time of commission of domestic violence. If a woman has the right to reside in the shared household under Section 17 of the D.V. Act and such a woman becomes an aggrieved person or victim of domestic violence, she can seek reliefs under the provisions of D.V. Act including enforcement of her right to live in a shared household.
>
> (iii) Whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed?"
>
> It is held that there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-avis allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. In other words, even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application under Section 12 of the D.V. Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application under Section 12 of the D.V. Act.

In this case, it is undisputed that the respondent is sister-in-law of petitioner No. 1, therefore, she has relationship with petitioners. She would be regarded in domestic relationship with petitioners.

The definition clause mandates that domestic violence has the same meaning as assigned in Section 3. As per Section 3 of D.V. Act, domestic violence includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.

It is established from the record that respondent was compelled to live separately. It is admitted fact that earlier Rs.10,000/-was being given to the respondent per month as maintenance and now it is stopped since the year 2012. As per allegations made by the respondent, the petitioners had also deprived her for getting insurance money of her husband after his death. As such the fact of economic abuse is prima-facie evinced in favour of respondent. In this regard, the law laid down by Hon'ble Supreme Court in judgment ***Saraswatty v. Babu, 2014 (3) SCC 712*** provides the guidelines. Hon'ble Supreme Court has also held that the conduct of parties even prior to commencement of Domestic Violence Act, 2005 can be taken into consideration while passing the order under the provisions of Domestic Violence Act. Under these guidelines, it can be ascertained that since the respondent was subjected to domestic violence before the year 2015, she cannot be debarred from getting protection under D.V. Act, 2005 in later years.

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247. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 14 A(2)

(i) Second criminal appeal – Maintainability – Provision contained in section 14A of the Act is with *non obstante* clause and therefore, being a Special Act it has an overriding effect on the provisions under the other laws – Appeal shall lie to the High Court against an order of the Special Court or the exclusive Special Court granting or refusing bail – No bar is put u/s 14A to challenge the fresh order by filing an appeal under Sub-section (2) – Thus, appeal u/s 14A(2) of the Act is maintainable against a fresh order passed by the Special Court rejecting the subsequent application for grant of bail.

(ii) *Non obstante clause* – Effect – It is a legislative device to give overriding effect to a particular section or the Statute as a whole, in

case of any conflict or inconsistency over the provisions of the same Act or other Acts – Purpose is to provide full operation of enacting provision without any obstruction.

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धारा 14 क(2)

(i) द्वितीय दांडिक अपील – पोषणीयता – अधिनियम की धारा 14क मे वर्णित प्रावधान के साथ नॉन–ऑब्स्टेंटे क्लॉज है और इसलिए विशेष अधिनियम होने से यह अन्य विधियों के प्रावधानों पर अध्यारोही प्रभाव रखता है – विशेष न्यायालय अथवा अनन्य विशेष न्यायालय द्वारा जमानत प्रदान करने अथवा अस्वीकार करने के आदेश के विरूद्ध अपील उच्च न्यायालय के समक्ष होगी – धारा 14क के अंतर्गत नवीन आदेश को चुनौती देने के लिए उपधारा (2) के अंतर्गत अपील प्रस्तुत करने के संबंध में कोई रोक नहीं रखी गई है – अतः विशेष न्यायालय द्वारा जमानत प्रदान करने के संबंध में प्रस्तुत पश्चातवर्ती आवेदन निरस्त करने के नवीन आदेश के विरूद्ध धारा 14क(2) के अंतर्गत प्रस्तुत अपील पोषणीय है।

(ii) नॉन–ऑब्स्टेंटे क्लॉज – प्रभाव – किसी भी टकराव अथवा असंगति के मामले में किसी विशिष्ट धारा अथवा संपूर्ण संविधि को उसी अधिनियम अथवा अन्य अधिनियमों के प्रावधानों पर अध्यारोही प्रभाव देने का एक विधायी उपकरण है – इसका उद्देश्य अधिनियमित प्रावधानों को बिना व्यवधान पूर्ण प्रभावी बनाना है।

Ketan v. State of M.P. & ors.

Order dated 31.08.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 7453 of 2023, reported in ILR 2024 MP 118

Relevant extracts from the order:

A *non obstante clause* is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. The meaning of' *non obstante clause*' has been explained in the Advanced Law Lexicon by P. Ramnath Aiyar as follows: -

> "*Non obstante clause*. A clause in a statute which overrides all provisions of the statute. It is usually worded:
>
> 'Notwithstanding anything in....' Need not always have effect of cutting down clear terms of enactment. Enacting part when clear can Control *non obstante clause.*

> A clause used in public and private instruments intended to preclude, in advance, any interpretation contrary to certain declared objects or purposes.
>
> A clause beginning with 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force', is sometimes appended to a section in the beginning, with a view to give the enacting part of the section in case of conflict an overriding effect over the provision or Act mentioned in the *non obstante clause*. It is equivalent to saying that in spite of the provision or Act mentioned in the *non obstante clause*, the enactment following it will have its full operation or that the provisions embraced in the *non obstante clause* will not be an impediment for the operation of the enactment. Thus a *non obstante clause* may be used as a legislative device to modify the ambit of the provision or law mentioned in the *non obstante clause* or to override it in specified circumstances. (See page 364 of Principles of Statutory Interpretation by Justice G.P. Singh, 12th Edition 2010.)

Thus, it is quite vivid that a *non obstante clause* is a legislative device which is employed by the competent Legislature to give overriding effect in case of any conflict or inconsistency over the provisions of the same Act or other Acts. The purpose of *non obstante clause* is to provide the way for full operation of enacting provision without any impediment of obstruction of any provisions of the same Act or any other Act. The main object is to provide full operation of the Act.

The appellant has applied before the Special Court by filing application with changed circumstances for grant of bail and the said application has been dismissed by the impugned order. From reading the entire provisions of Section 14-A of the Act and as herein-above discussed, the provision is with non obstante clause and being a special Act has overriding effect on the provisions under the other law. It has been provided under Sub-Section (2) of Section 14-A that an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail. There is no bar by the legislature under Section 14-A to challenge the fresh order by filing an appeal under Sub-section (2).

Considering the provisions of Section 14-A(2) of the Act that Criminal Appeal is maintainable against an order of the Special Court or the Exclusive Special Court granting or refusing bail, it is an apparent that after rejection or withdrawal of Criminal Appeal before this Court and approaching the Special Court for grant of bail with the changed circumstances, the order passed by the trial Court is fresh order on merit and, therefore, the same can be challenged under Section 14-A(2) by filing an appeal. Thus, an appeal under Section 14-A(2) of the Act is maintainable against a fresh order passed by the Special Court rejecting the subsequent application for grant of bail irrespective of the fact whether the appeals are mentioned as second, third or fourth. The mere mentioning of Criminal Appeal as second, third or fourth would not change the right of the applicant to challenge the fresh order. The same has to be treated to be first Criminal Appeal and the impugned order can be examined on its own merit.

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248. SPECIFIC RELIEF ACT, 1963 – Section 16 (c)

(i) Suit for specific performance of agreement to sell – "Readiness" and "willingness" – Continuous readiness and willingness of the plaintiff is to be averred and proved – It is a condition precedent to obtain the relief of specific performance – Distinction between both the terms explained.

(ii) 'Readiness' and 'willingness' – Agreement to sell was executed on 07.06.1993 – Defendant agreed to execute sale deed in favour of plaintiff within one year after getting the suit property surveyed – Plaintiff has not taken any step in getting the suit property surveyed – After lapse of a period of 3 years from the date of agreement, legal notice was issued for the first time on 30.05.1996 – Suit was filed on 09.06.1997 at the fag end of the expiration of limitation – No explanation offered for the delay – 'Readiness' and 'willingness' not found proved – Plaintiff is not entitled to an equitable relief of specific performance.

विनिर्दिष्ट अनुतोष अधिनियम,1963 – धारा 16 (ग)

(i) विक्रय अनुबंध के विनिर्दिष्ट अनुपालन हेतु वाद – ''तैयारी'' एवं ''तत्परता'' – वादी की लगातार तैयारी एवं तत्परता को अभिकथित एवं प्रमाणित किया

जाना चाहिए – विनिर्दिष्ट अनुपालन का अनुतोष प्राप्त करने की यह पूर्ववर्ती शर्त है – दोनो शब्दों का अंतर समझाया गया।

(ii) ''तैयारी'' एवं ''तत्परता'' – विक्रय अनुबंध दिनांक 07.06.1993 को निष्पादित हुआ था – प्रतिवादी ने वादी के पक्ष में वाद सम्पत्ति का सर्वे होने के बाद एक वर्ष के भीतर विक्रय पत्र निष्पादित करना तय किया था – वादी ने वाद सम्पत्ति का सर्वे कराने हेतु कोई कदम नहीं उठाया – अनुबंध दिनांक के 3 वर्ष उपरांत प्रथम बार दिनांक 30.05.1996 को विधिक नोटिस दिया गया – परिसीमा काल के अवसान समय पर वाद दिनांक 09.06.1997 को प्रस्तुत किया गया – विलंब का कोई स्पष्टीकरण नहीं दिया गया – ''तैयारी'' एवं ''तत्परता'' प्रमाणित नहीं पाई गई – वादी विनिर्दिष्ट अनुपालन के न्यायसंगत अनुतोष का अधिकारी नहीं।

Pydi Ramana @ Ramulu v. Davarasety Manmadha Rao

Judgment dated 10.07.2024 passed by the Supreme Court in Civil Appeal No. 434 of 2013, reported in (2024) 7 SCC 515

Relevant extracts from the judgment:

There is a distinction between the terms 'readiness' and 'willingness'. 'Readiness' is the capacity of the plaintiff to perform the contract which includes his financial position to pay the sale consideration. 'Willingness' is the conduct of the party. In the instant case, even according to the concurrent findings recorded by the courts below, it would emerge that the plaintiff had been able to successfully prove the sale agreement dated 07.06.1993 Ex. A1 on which date ₹ 2,005/- was paid by the plaintiff to the defendant. The evidence on record tendered by plaintiff came to be accepted by all the courts and judgments of courts below would also indicate that further amount towards sales consideration in a sum of ₹ 17,000/- was paid by plaintiff to defendant on 23.06.1993 and same was endorsed by him.

As rightly pointed out by the trial court, the respondent-plaintiff has not produced any satisfactory evidence to prove his readiness and willingness. As regards 'willingness' of the plaintiff to perform his part of the contract, the conduct of the plaintiff warranting the performance has to be looked into. The following conduct of the plaintiff warrants consideration:

(a) Plaintiff got issued legal notice nearly after two years after the expiry of one year period as prescribed in the agreement.

(b) Plaintiff has not brought anything on record to prove that he contacted the Defendant after the expiry of one year period and was interested in finalising the deed.

(c) There was total inaction of the Plaintiff from 06/06/1994 (expiry of one year period) to 30/05/1996 (Date of issuance of legal notice)

(d) Suit was filed on 09/06/1997 i.e. after a period of more than one year from the date of issuing of legal notice. Said delay has not been sufficiently explained by the Plaintiff.

The continuous readiness and willingness is a condition precedent to grant the relief of specific performance. The trial Court has rightly held that plaintiff has not sufficiently explained and proved that he was always ready and willing to perform his part of the contract.

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249. SPECIFIC RELIEF ACT, 1963 – Section 20
TRANSFER OF PROPERTY ACT, 1882 – Sections 41 and 52
Suit for specific performance of an agreement to sell – Doctrine of *'lis pendens'* – Applicability – Plaintiff and defendant No. 3 entered into an agreement to sell the suit property – Since defendant No. 3 was likely to alienate the property, plaintiff filed suit for injunction against alienation –Temporary injunction was granted in his favour – On the same day defendant No. 3 executed release deed with respect to suit property in favour of his son defendant No. 4 – During the pendency of suit, he transferred the land through sale deed to defendant nos. 1 and 2 – Plaintiff filed suit for specific performance – Defendant nos. 1 and 2 claimed themselves to be *bona fide* purchasers u/s 41 of the Specific Relief Act – Sale deed executed by defendant nos. 3 and 4 are illegal due to doctrine of *'lis pendens'* – Therefore, defendant nos. 1 and 2 cannot claim themselves to be *bona fide* purchaser for valuable consideration and no protection u/s 41 of 1882 Act would be available to them – Release deed executed by D-3 in favour of D-4 and sale deed executed by D-4 in favour of D-1 and D-2 held to be without any legal sanctity – Defendant No. 3 directed to receive remaining amount of sale consideration and to execute the sale deed.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20
सम्पत्ति अंतरण अधिनियम, 1882 – धाराएं 41 एवं 52
विक्रय अनुबंध के विनिर्दिष्ट अनुपालन के लिये वाद – विचाराधीन वाद का सिद्धांत – प्रयोज्यता – वादी और प्रतिवादी क्रमांक 3 ने वादग्रस्त संपत्ति के विक्रय के लिए एक अनुबंध किया – चूंकि प्रतिवादी क्रमांक 3 द्वारा संपत्ति को अंतरित करने की संभावना थी, वादी ने अंतरण के विरूद्ध निषेधाज्ञा के लिए वाद प्रस्तुत किया – उसके पक्ष में अस्थायी निषेधाज्ञा प्रदान की गई – उसी दिन प्रतिवादी क्रमांक 3 ने उसके पुत्र प्रतिवादी क्रमांक 4 के पक्ष में विवादित संपत्ति के संबंध में विमोचन विलेख निष्पादित किया – वाद के लंबित रहने के दौरान, उसने विक्रय विलेख के माध्यम से प्रतिवादी क्रमांक 1 और 2 को भूमि हस्तांतरित कर दी – वादी द्वारा विनिर्दिष्ट पालन के लिये वाद प्रस्तुत किया गया – प्रतिवादी क्रमांक 1 व 2 ने स्वयं को विनिर्दिष्ट अनुतोष अधिनियम की धारा 41 के अंतर्गत सद्भाविक क्रेता होना बताया – प्रतिवादी क्रमांक 3 और 4 द्वारा निष्पादित विक्रय विलेख विचाराधीन वाद के सिद्धांत के कारण अवैध है – इसलिए, प्रतिवादी क्रमांक 1 और 2 स्वयं को सप्रतिफल सद्भाविक क्रेता होने का दावा नहीं कर सकते एवं उन्हें अधिनियम, 1882 की धारा 41 के अंतर्गत कोई सुरक्षा उपलब्ध नहीं होगी – डी–4 के पक्ष में डी–3 द्वारा निष्पादित निर्मोचन विलेख और डी–1 और डी–2 के पक्ष में डी–4 द्वारा निष्पादित विमोचन विलेख को बिना विधिक मान्यता के होना अभिनिर्धारित किया गया – प्रतिवादी क्रमांक 3 को शेष प्रतिफल की राशि प्राप्त करने एवं विक्रय विलेख निष्पादित करने हेतु निर्देशित किया गया।

Chander Bhan (D) through LR. Sher Singh v. Mukhtiar Singh and ors.

Judgment dated 03.05.2024 passed by the Supreme Court in Civil Appeal No. 2991 of 2024, reported AIR 2024 SC 2267

Relevant extracts from the judgment:

The object underlying the doctrine of *lis pendens* is for maintaining *status quo* that cannot be affected by an act of any party in a pending litigation. The objective is also to prevent multiple proceedings by parties in different forums. The principle is based on equity and good conscience. This Court has clarified this position in a catena of cases. Reference may be made here of some, such as: ***Rajendra Singh v. Santa Singh, AIR 1973 SC 2537***, ***Dev Raj Dogra v. Gyan Chand Jain, (1981) 2 SCC 675*** and ***Sunita Jugalkishore Gilda v. Ramanlal Udhoji Tanna, (2013) 10 SCC 258***.

Keeping this in mind, the explanation to Section 52 which was inserted by the Act No. XX of 1929, clarifies that pendency of a suit shall be deemed to have commenced from the date on which the plaintiff presents the suit. Further, such pendency would extend till a final decree is passed and such decree is realised.

In the facts of the present case, the suit for permanent injunction was filed on 21.07.2003 which is prior to the execution of release deed, i.e., 28.07.2003. Thus, since the release deed is executed after the suit for temporary injunction was filed by the appellant, the alienation made by respondent no. 3 in favour of respondent no. 4 would be covered by the doctrine of lis pendens.

In other words, the appellant filed a suit for permanent injunction on 21.07.2003 and obtained an order of temporary injunction on 28.07.2003. As on 21.07.2003 the doctrine of lis pendens would take its effect. The release deed executed by respondent no. 3 in favour of respondent no. 4 was of 28.07.2003, which is subsequent to the filing of the suit. Respondent no. 4 executed the registered sale deed in favour of respondents 1-2 on 16.06.2004 which is during the operation of the temporary injunction order. Thus, the alienation made by respondents, cannot operate against the interests of the appellant considering he had obtained an order of temporary injunction in his favour. The same position has been held by this Court in a recent decision of ***Shivshankara and anr. v. H.P. Vedavyasa Char, 2023 SCC OnLine SC 358*** which has similar facts in the context of an injunction order.

Once it has been held that the transactions executed by the respondents are illegal due to the doctrine of lis pendens the defence of the respondents 1-2 that they are bonafide purchasers for valuable consideration and thus, entitled to protection under Section 41 of the Act of 1882 is liable to be rejected.

Consequently, the Release Deed dated 28.07.2003 executed by respondent no. 3 in favour of respondent no. 4 and the Sale Deed dated 16.06.2004 executed by respondent no. 4 in favour of respondents 1-2 is held to be without any legal sanctity. There was an order of temporary injunction operating at the time when these transactions were made and the alienation made by the respondents cannot operate to the disadvantage of the appellant. Since the parties to these proceedings are bound by the doctrine of lis pendens the respondents 1-2 cannot take the protection of bonafide purchasers for valuable consideration.

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250. TRANSFER OF PROPERTY ACT, 1882 – Section 52
REGISTRATION ACT, 1908 – Section 17

(i) Doctrine of *lis pendens* – Whether impleadment of such a *transferee pendent lite* who undisputedly had notice of pending litigation is permissible? Held, Yes – Subsequent transferees, who acquired interest in the property through sale deed, would be able to protect his interest in the capacity of party to the suit.

(ii) Registered sale deed – Whether a registered sale deed can be held to be void because it was executed during pendency of a suit in relation to suit property? Held, No – It merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction that the Court may pass thereunder.

सम्पत्ति अंतरण अधिनियम, 1882 – धारा 52
रजिस्ट्रीकरण अधिनियम, 1908 – धारा 17

(i) लंबित वाद का सिद्धांत – क्या ऐसे वादकालीन अंतरिती को पक्षकार के रूप में संयोजित किया जाना अनुज्ञात है जिसे निर्विवादित रूप से वाद लंबन की सूचना थी ? अभिनिर्धारित, हाँ – पश्चात्वर्ती अंतरिती जिसने सम्पत्ति में विक्रय विलेख के द्वारा हित अर्जित किया, वह वाद के पक्षकार के रूप में अपने हित का बचाव कर सकेगा।

(ii) पंजीकृत विक्रय विलेख – क्या वाद लंबन के दौरान वाद संपत्ति के संबंध में निष्पादित एक पंजीकृत विक्रय विलेख को शून्य ठहराया जा सकता है? अभिनिर्धारित, नहीं – यह मात्र ऐसे अंतरण से उद्भूत अधिकारों को लम्बित वाद में पक्षकारों के अधिकारों एवं न्यायालय द्वारा पारित निर्देश के अधीन रखता है।

Yogesh Goyanka v. Govind and ors.

Judgment dated 10.07.2024 passed by the Supreme Court in Civil Appeal No. 7305 of 2024, reported in (2024) 7 SCC 524

Relevant extracts from the judgment:

The fulcrum of the dispute herein concerns the impleadment of a transferee pendente lite who undisputedly had notice of the pending litigation. At the outset, it appears pertinent to reiterate the settled position that the doctrine of *lis pendens* as provided under Section 52 of the Act does not render all transfers pendente lite to be *void ab-initio*, it merely renders rights arising from such transfers as subservient to

the rights of the parties to the pending litigation and subject to any direction that the Court may pass thereunder.

The mere fact that the RSD was executed during the pendency of the Underlying Suit does not automatically render it null and void. On this ground alone, we find the Impugned Order to be wholly erroneous as it employs Section 52 of the Act to nullify the RSD and on that basis, concludes that the impleadment application is untenable.

Contrary to this approach of the High Court, the law on impleadment of subsequent transferees, as established by this Court has evolved in a manner that liberally enables subsequent transferees to protect their interests in recognition of the possibility that the transferor pendente lite may not defend the title or may collude with the plaintiff therein [See the decision of this Court in ***Amit Kumar Shaw v. Farida Khatoon, (2005) 11 SCC 403*** **and** ***A. Nawab John v. V. N. Subramaniyam, (2012) 7 SCC 738***].

Similarly, we also find fault with the order of the ADJ and its misplaced reliance on ***Bibi Zubaida Khatoon v. Nabi Hassan Saheb, (2004) 1 SCC 191***. The only principle emerging from the judgment of this Court in ***Bibi Zubaida*** *(supra)* is that transferees pendente lite cannot seek impleadment as a matter of right and to that extent, we agree with the ADJ. However, *Bibi Zubaida* (*supra*) does not place a bar on impleadment of transferees who purchase property without seeking leave of the Court.

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Nothing is better than reading and gaining more and more knowledge

– *Stephen Hawking*

PART – IIA

GUIDELINES ISSUED BY HON'BLE SUPREME COURT FOR EFFECTIVE IMPLEMENTATION OF PROHIBITION OF CHILD MARRIAGE ACT, 2006

The Hon'ble Supreme Court in ***Society for Enlightenment and Voluntary Action & anr. v. Union of India & ors., 2024 INSC 790*** held that despite the enactment of the Prohibition of Child Marriage Act, 2006, the rate of child marriages in our country continues to remain alarmingly high. Acknowledging the same, the Hon'ble Supreme Court has issued guidelines thereby encouraging stronger enforcement mechanisms, promoting awareness programmes, providing for appointment of Child Marriage Prohibition Officers and having a comprehensive support system for child brides – including education, healthcare and compensation and also, to ensure the protection and welfare of vulnerable minors.

There are various heads in which guidelines have been issued namely, Legal enforcement, judicial measures, community involvement, awareness campaigns, training/capacity building, educational and social support, monitoring and accountability, technology-driven mechanisms for reporting child marriages and funding and resources. The guidelines pertaining to the head of Judicial measures are reproduced below:

B. Judicial Measures

1. Empowering Magistrates to take *Suo Motu* Action and Issue Preventive Injunctions

    1.1. All Magistrates vested with authority under Section 13 of the Prohibition of Child Marriage Act, 2006, are directed to take proactive measures, including issuing *suo motu* injunctions to prevent the solemnization of child marriages; and

    1.2. Magistrates are encouraged to particularly focus on "auspicious days" known for mass weddings, when the occurrence of child marriages is notably high. Upon receiving credible information or even upon suspicion, Magistrates should use their judicial powers to halt such marriages and ensure child protection.

2. Exploration of Special Fast-Track Courts for Child Marriage Cases

2.1. The Union Government, in coordination with State Governments, is directed to assess the feasibility of establishing special fast-track courts exclusively to handle cases under the PCMA. These courts will expedite case proceedings, thereby preventing prolonged delays that often lead to additional harm for the affected children; and

2.2. A status report on the establishment, resource allocation, and potential effectiveness of these fast-track courts shall be submitted to this Court within a year from now onwards.

3. Mandatory Action Against Neglectful Public Servants

3.1. It is directed that strict disciplinary and legal action be taken against any public servant found to be in deliberate neglect of duty concerning child marriage cases within their jurisdiction. As stipulated under Section 199(c) of the Bharatiya Nyaya Sanhita (BNS), 2023, public officials who fail to act in child marriage cases, particularly, those with knowledge of imminent marriages, shall be subject to stringent punishment. This direction is aimed at reinforcing accountability among public officials and ensuring that child marriage cases receive immediate and appropriate action at all administrative and enforcement levels.

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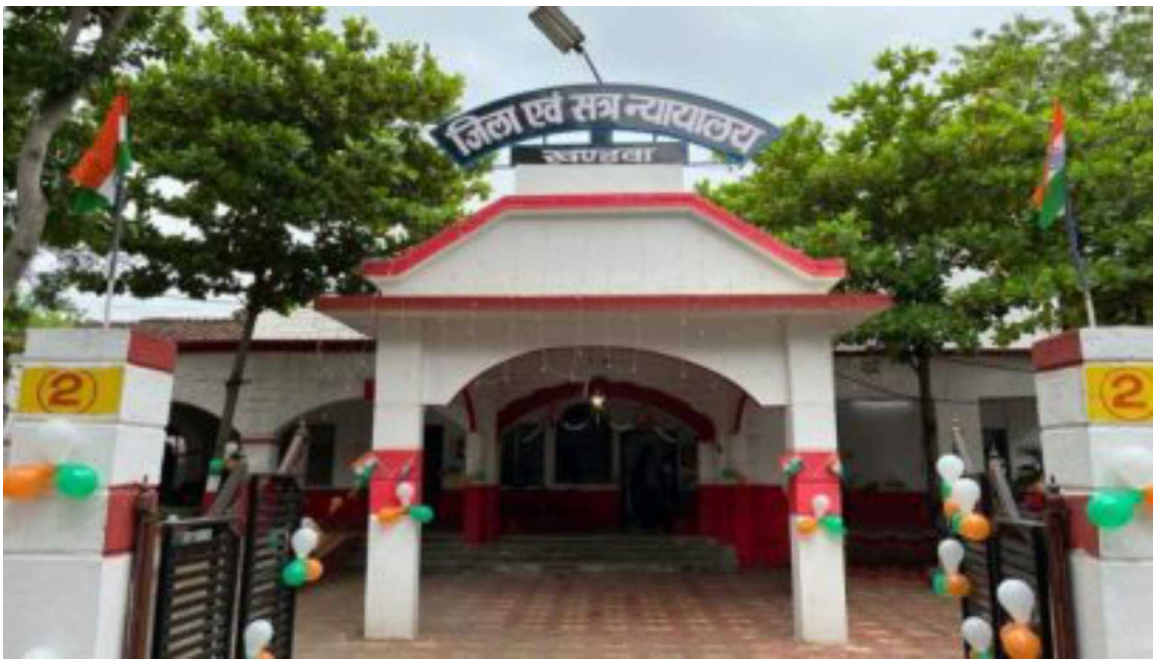
Life should be great rather than long

– Dr. B.R. Ambedkar



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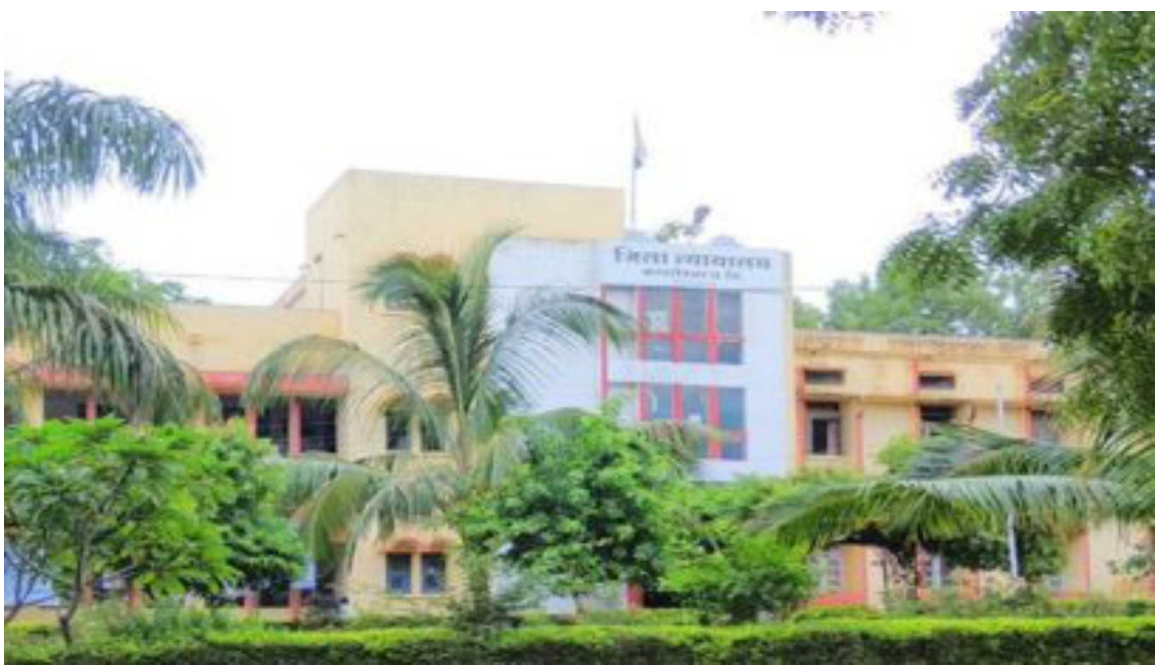

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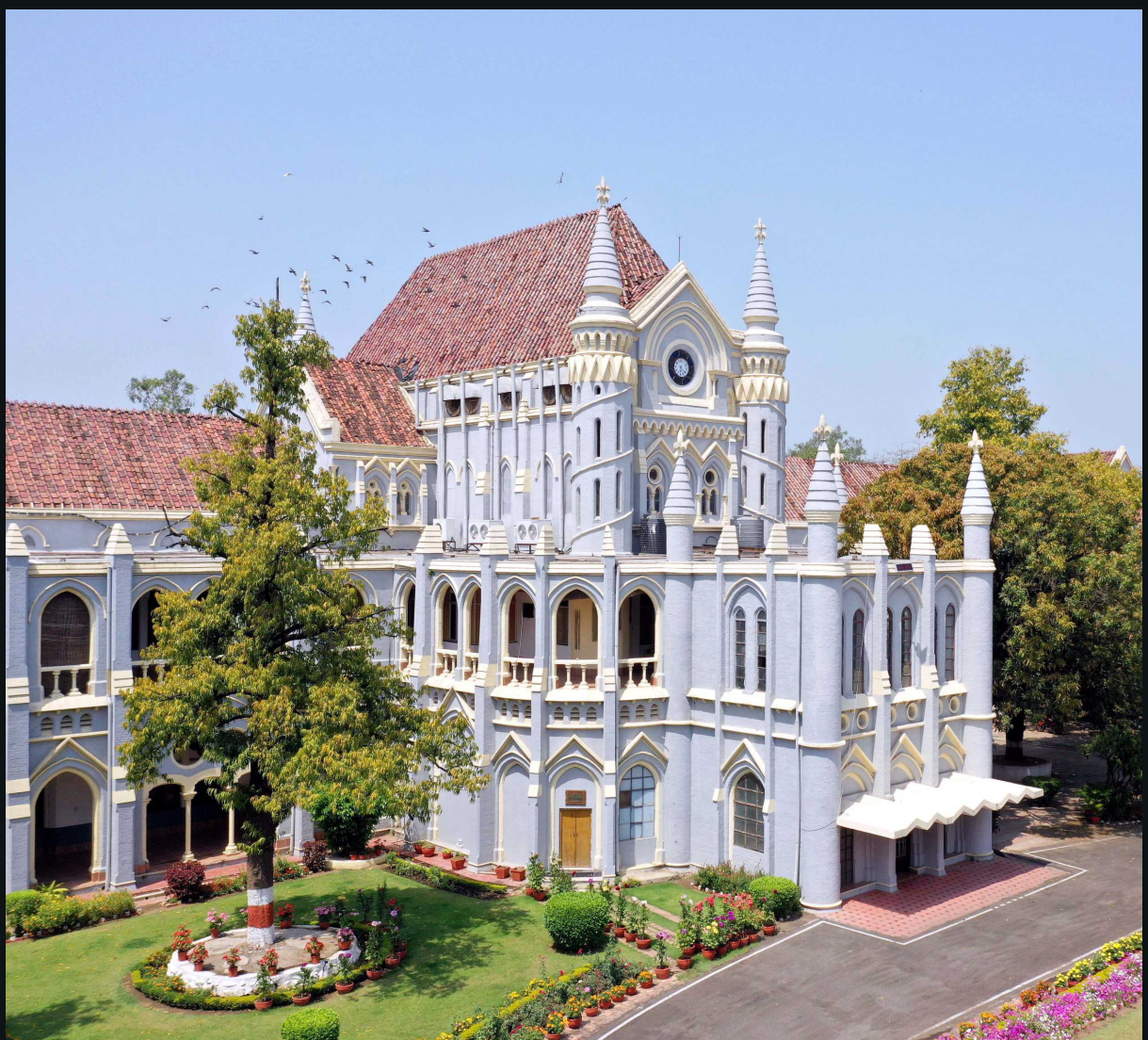

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