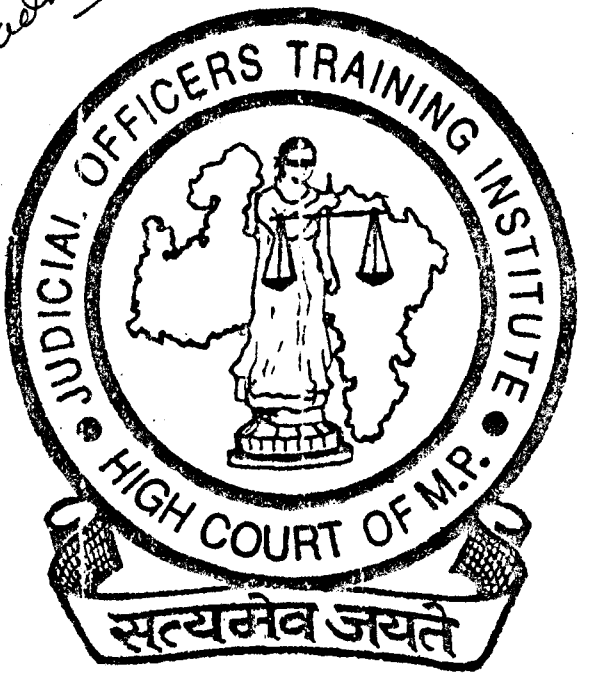
VOL. V PART-V OCTOBER 1999 (BI-MONTHLY)




# JOTI JOURNAL

## न्यायिक अधिकारी प्रशिक्षण संस्थान

उच्च न्यायालय जबलपुर 482007

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# अकर्मण्यता

कोई पुस्तक आराधना ग्रन्थ के रूप में इतनी अधिक पूज्यनीय, प्रशंसनीय अथवा आराधनीय हो जाती है कि हम उसे केवल पूजा के लिए संग्रहित कर रखते हैं। बचपन में हरेक के माता–पिता ने प्रत्येक को अवश्य कहा होगा कि पुस्तक पढ़ते क्यों नहीं हो, क्या पूजा करने के लिए लाए हो? अथवा पुस्तकें एक कैलेंडर के रूप में होती है जो वर्ष समाप्ति के पश्चात उठाकर फेंक दी जाती है या उस कैलेंडर को तब तक लटकाएं रखते हैं जब तक कोई नया कैलेंडर भेंट न मिल जावे। अपने प्रशिक्षण संस्थान की 'ज्योति' इतनी आराध्य ग्रन्थ जैसी नहीं है तथा मुझे विश्वास है कि वह कैलेंडर जैसी उठाकर फेंक देने लायक भी नहीं है। प्रसन्नता की बात है कि वर्तमान में दोनों ही स्थितियां अभी नहीं आई है। सामान्य, मध्यम अथवा औसत स्तर की यह पत्रिका अवश्य है जिसके पन्ने पलटे (ब्राउज) जा सकते हैं अथवा पढ़ा जा सकता है।

यह आवश्यक नहीं कि ज्योति पत्रिका पढ़ना चाहिए क्योंकि मनुष्य का नैसर्गिक रूप से स्वभाव यह होता है कि मुफ्त में मिलने वाली चीज उसे चाहिए ही, चाहे उसका उपयोग हो या न हो या करे या न करे। ऐसी वस्तु का संग्रह तथा आधिपत्य करने की एक मनोवैज्ञानिक मनोवृत्ति होती है। आप के पास विधि संबंधी अन्य पत्र पत्रिकाएं अथवा विधि की टेक्स्ट बुक हो तो उन्हें भी पढ़ा जा सकता है लेकिन महत्वपूर्ण मुद्दा केवल यह है कि पत्र पत्रिकाएं अथवा पुस्तकें पढ़ना नितांत आवश्यक है। वरिष्ठ जनों के अनुभव के आधार से ही प्रत्येक बार किसी तथ्य को निर्धारित करने की आवश्यकता नहीं होती। यह बात तो हमें स्वयं आत्म चिंतन से, आत्म परीक्षण से भी ज्ञात हो सकती है। हम आप में से अधिकांश जन क्या करते हैं यही हमारे कार्यक्षमता के मानक का निर्धारण करने हेतु पर्याप्त है। दावा घोषणा का हो या विनिर्दिष्ट सहायता का हो या स्थायी निषेधाज्ञा देने का हो, संविदा विषय हो या भागीदारी अथवा साक्ष्य अधिनियम संबंधी मुद्दा हो या आदेश 41 नियम 22-27-33 का हो या कोई भी विषय हो पुस्तकें खोलने की प्रवृत्ति विकसित नहीं हुई है। विपरीत इसके हमने विधि क्षेत्र में इतना लचिलापन विकसित कर लिया है कि हमारे सामने किसी भी प्रकार का प्रकरण आ जावे अविलंब उस पर निर्णय देने की क्षमता रखते हैं। चटपट तर्क फटाफट फैसला। एकदम रेडिमेड शॉप "फास्ट फुड–मेड टू यूज" ग्राहक आया नहीं कि उसके इच्छानुसार माल निकालकर दिया नहीं। हमारे पास एक उत्तम कारण होता है कि क्या करें हमारे न्यायालय में तो पुस्तकें नहीं हैं, न पत्र–पत्रिकाएं आती हैं, हम कैसे काम करें। हम अपनी आवश्यकता के अनुरूप व्यक्तिगत रूप से पुस्तकें भी क्रय नहीं करते क्योंकि हमें इसकी आवश्यकता ही नहीं होती है। इस प्रकार मूल मुद्दा शेष रह जाता है वह है पढ़ने का। पढ़ना नहीं हो पाता है। तीन जनें बातें कर रहे थे इसी विषय पर। एक ने कहा कि आर्थर हेलप्स का तो कहना है कि "जो वैचारिक रूप से श्रम नहीं करते

वे ही पढ़ने का मार्ग अपनाते हैं।" तो दूसरे ने कहा "नहा भाइ फ्रान्सिस बकन का तो कहना है कि पढ़ने से मनुष्य में पूर्णता आती है" तो तीसरा कह रहा था कि जी.सी. लिचटेनबर्ग का तो कहना है कि जो व्यक्ति विचार करने में आलसी होते हैं, वे पढ़ते हैं। मैंने भी घर आकर इन विद्वानों की सूक्तियां पढ़ी तो एक सूक्ति जुलीस रीनार्ड की यह थी कि "जब–जब हम पढ़ते हैं, हम अपना उज्ज्व भविष्य निर्माण के लिये बीज बो रहे होते हैं।"

पढ़ना न पढ़ना हम आपका काम है तथा यह जांचने वाले कि हमने उसे पढ़ा है या नहीं वे भिन्न व्यक्ति हैं। उन भिन्न व्यक्तियों ने अलग–अलग पैमाने से इस बात की जांच परख की। उनका यह अनुभव है कि कुछ न्यायिक अधिकारी उसे पढ़ते हैं, कुछ सरसरी तौर पर तो कुछ एक को पता ही नहीं होता कि पत्रिका आई भी है या नहीं। यदि पत्रिका जिला न्यायाधीश कार्यालय द्वारा प्रदान की जाती है तो उसका हश्र भी वैसा ही होता है जैसा हर वर्ष विभिन्न परिचित लोग हमें डायरी (वासरी) प्रदान करते हैं। अनेकोजनों के यहां ऐसी डायरियां पड़ी मिलेगी जिनका न तो हम उपयोग करते हैं न दूसरों के देने की इच्छा या नियत रहती है। उन्हें सम्हाल कर रखा जाता है। अतः यह पत्रिका निश्चित रूप से ऊपर उल्लेखित किसी भी वर्ग में नहीं आती इसलिए वह ठीक वैसे ही है जैसे जीवन यापन के लिए दालरोटी की न्यूनतम आवश्यकता है। जितनी सामग्री उक्त पत्रिका में आती है वह दालरोटी की कैलोरीज (उर्जा) कार्बोहाइड्रेटस् (शर्करा) प्रोटीन फैट (वसा चर्बी) आवश्यकता के बराबर तो निश्चित है जो हमें अपने न्यायिक सेवा के रूप में स्वस्थ बनाकर रखने के लिए पर्याप्त हो। लेकिन जब दाल–रोटी छोड़कर अन्य चीजें खाई जाती हैं तो धीरे–धीरे स्वास्थ्य खराब हो ही जाता है। डॉक्टर जांच रिपोर्टों के आधार से पहचान लेता है कि जनाब का शरीर कहां गड़बड़ कर रहा है। कौन क्या कितना व कैसा खा रहा है।

न्यायिक अधिकारी के रूप में हमें रोज ही अलट्रा साऊंड स्कैनिंग (निर्णय आदेश) के माध्यम से कालक्षेपित, संक्रमित होते ही हैं। हम आपकी जांच रिपोर्टों, प्रतिवेदन ये हैं कि अधिकांश एनिमिक (अरक्तक) है तो कुछ का डायजेशन (पाचन) ना दुरूस्त है तो कुछ लोग ज्यादा खा लेने से इनडायजेशन (अपच) की स्थिति में है तो कुछ कोमा (हे राम) की स्थिति तक पहुंच जाते है।

मैं तो 'ज्योति' डिस्पेंसरी के एक कंपाउन्डर (सम्मिश्रक) के रूप में हूं। मुझे यह कहा जाता है कि डिस्पेंसरी चलाने के लिए सभी इक्विपमेंटस् (साजसामान उपस्कर–उपकरण) मेडिसिन्स (दवाईयां) आदि है तो उनका उपयोग नहीं करते हो या मिलावट करके दे रहे हो? जैसे बी कॉम्पलेक्स की जगह हल्दी या कोई मेटॅलिक (रोडी मिट्टी) पदार्थ। मैं क्षमा याचना करते फिरता रहता हूं। कहता हूँ देता तो वही हूँ जो प्रिस्क्रिप्शन (प्रदेशन, नुस्खा, न्याय निर्णय) में लिखा रहता है। यह कहना पड़ता है कि पेशंट (रोगी) नियमित रूप से औषधी का सेवन नहीं करता होगा या कम–अधिक मात्रा में प्रयोग करता होता या नुस्खा समझ नहीं पाया होगा इसलिए अस्वस्थ रहता होगा।

रहा है तथा कुछ रोगियों को दवाई का कोई प्रभाव–असर नहीं हो रहा है अतः उन्हें ज्युडीशियल इन्टेन्सिव केयर यूनिट (न्यायिक गहन चिकित्सा कक्ष) अर्थात कन्टेम्प्ट ऑफ कोर्ट में लाया जाना जरूरी हो गया है।

डॉक्टर वृन्द यह भी कह रहा था कि गहन चिकित्सा कक्ष में आने जाने व इलाज का खर्च भी उन्हें ही वहन करना होगा। क्या वास्तव में हम ऐसे ही हो गए हैं? क्या हम इनक्युरेबल (असाध्य लाइलाज) अयोग्यता की बीमारी से पीड़ित हुए हैं?

कुछ पेशन्ट के विषय में डॉक्टर कह रहे थे कि वे ओव्हर स्मॉर्ट (अतितेज–फुरतीले–चतुर) बनते हैं अर्थात दिखने में वे स्वस्थ लगते हैं लेकिन अंदर से खोखले रहते हैं। उन्हें यह भ्रम रहता है कि उनका यह लुभावना व्यवहार उनका खोखला पन उजागर–जग जाहिर नहीं करने देगा। सुना है कि नशा करके कार चलाने वाले मदहोश व्यक्ति को सबसे अधिक भ्रम यह रहता है कि वह सबसे ज्यादा सुरक्षित रूप से वाहन चला रहा है।

बंधुओं डॉक्टरों के कहने के आधार से ऐसा लगता है कि योग्यता का तथा अधिकार सुख का मद (इनटॉक्सिकेशन) है जो हमें मदहोश कर रहा है एवं योग्यता के भ्रम का ओव्हरवेट (भार आधिक्य) हमें आत्म भ्रमित कर रहा है। मैं यहां यह बता दूं कि मैं स्वयं शारीरिक रूप से अति भाराधिक्य से भी पीड़ित हूं। हमारी बीमारी का वास्तविक नाम जो डॉक्टरों से हुई चर्चा से मैं अनुभव कर रहा हूं वह है **इनरशिया** (INERTIA) का हिन्दी अनुवाद मुझे स्वयं को नहीं मालूम इसलिए नहीं दे पा रहा हूं जबकि आज, जब यह संपादकीय लिख रहा हूं तब, हिन्दी दिवस 14 सितम्बर है। मैं शब्द कोश देखकर देखना जानना भी नहीं चाहता क्योंकि मुझे मिलने वाली सुविधाएं, पदीय लाभ तथा आवश्यकता से अधिक उपभोग्य वस्तुएं इतनी अधिक मिलने लगी है कि मेरे में अकर्मण्यता आ गई है। किसी ने मुझे सच ही कहा था कि आवश्यकता से एक दाना कम व आवश्यकता से एक पैसा कम मिले तो मनुष्य कर्मशील हो जाता है व विपरीत स्थिति में अकर्मण्य। अतः मैं शब्द कोश भी नहीं देख पा रहा हूं। दोस्तो क्षमा करना। मेरे लिए ही सही इतना कष्ट आप जरूर कर लेना कि आप शब्द कोश देखकर ज्ञात कर लेना कि इनरशिया नाम की बीमारी क्या होती है। यदि शब्दकोश में अर्थ सुस्पष्ट रूप से नहीं मिले तो इसी संपादकीय में जो कुछ लिखा है उसी में द्रुष्य रूप से छिपा हुआ शब्दार्थ एवं आशय मिल सकता है। डॉक्टर लोग इस बीमारी का इलाज तो कर देते हैं पर उसका नाम एवं अर्थ नहीं बताते हैं। बड़ी मुश्किल है कठिनाई है। आप अपनी तरफ से जानकारी प्राप्त करने का प्रयत्न करना। डॉक्टरों ने यह भी बताया है कि यह बीमारी ऐसी है जिसका उपचार हर कोई स्वयं प्राकृतिक चिकित्सा द्वारा एवं मनावैज्ञानिक रूप से कर सकता है। लेकिन शर्त यह है कि स्वयं को कर्मशील बनना होगा।

**पुरुषोत्तम विष्णु नामजोशी**

# श्रवण क्रिया

पुरूषोत्तम विष्णु नामजोशी

सामान्य रूप से यह मान्य धारणा है कि प्राणी, विशेषकर मानव कान मात्र से सुनता है। अर्धसत्य है। यदि केवल कानों से सुनकर समझ आ जाती तो फिर कीट जन्तु जानवर भी मनुष्य जैसे समझने लग जाते। (मैं समझ की बात कर रहा हूं, समझदारी की नहीं।) अंधा–गूंगा व्यक्ति भी सुनता है। अंधे–गूंगे के कान होते हैं लेकिन बहरा सुन नहीं सकता इसलिए बोल भी नहीं सकता। अंधा और गूंगा समझ भी सकता है व समझदार भी हो सकता है, सभी क्रिया–कलाप वह कर सकता है। भक्त श्रवण ने अपने माता पिता द्वारा कही बात केवल कानों से सुनी नहीं थी न एक कान तथा दूसरे कान के बीच सुरंग बनाकर रखी थी। उसके माता–पिता अंधे थे फिर भी सब दिखता था। श्रवण ने अपने माता पिता के लिए जीवन उत्सर्ग कर दिया था। आज के युग में कहीं ऐसा श्रवण मिल जाए तो हम उसे कहेंगे तू सुनता ही क्यों है अंधे मां–बाप क्या कर लेंगे। तू तो ऐसी बात सुनी–अनसुनी कर दे। न्याय प्राप्त करने वालों को भी श्रवण के माता पिता के अनुरूप अवसर मिले व हमें श्रवण जैसा सेवा का अवसर मिले तो अहोभाग्य। ब्लाइन्ड (अंध) का एक अर्थ बेसमझ–विवेकशून्य (फुलिश) भी है। इस प्रकार श्रवण करने की क्रिया पंचेन्द्रियों के अधिष्ठाता मन द्वारा होती है। न्यायिक अधिकारी होने के नाते यह पूछा जा सकता है कि ऐसा विधि में कहां लिखा है। विधि में लिखा हो या न हो लेकिन विवेक से समझे तो ऐसा ही है। कर्मेन्द्रियों का अधिष्ठाता मन है अतः मन से सुनने से व्यक्ति विषय में लीन हो जाता है। अतः पंचेन्द्रियों से सुनने का तात्पर्य मन (ध्यान) से सुनने से है। न्यायदेवता की आंखों पर पट्टी है फिर भी न्यायदेवता निष्पक्ष न्याय की मूर्ति है। आंखों पर पट्टी होते हुए भी स्पंदन एवं अनुभव की अनुभूति उसे है। यहां उल्लेखित कारण भी तो ऐसे प्रतीक का एक आधार हो सकता है। ऐसे कृत्य को अवधानता (एड्व्हर्टन्स) से सुनना कहते हैं। अवधानता का विलोम अनावधानता ही तो है। विधि में भी ऐसा ही लिखा है यथा, साक्ष्य अधिनियम में धारा 3 में तथ्य (फैक्ट) शब्द की परिभाषा में बताया है। अबकी बार प्रशिक्षण शिविर में जब आने का शुभ अवसर मिले तो यह प्रयोग करके देखें। ध्यान रहे न्यायालय में भी हम प्रकरण में तर्क श्रवण करते हैं, साक्ष्य श्रवण करके लिपिबद्ध करते हैं। उस श्रवण व इस श्रवण में कोई अंतर नहीं है। अतः श्रवण का यह गुण उच्च कोटि का होगा तो कितना अच्छा होगा। प्रयोगधर्मी होना कोई बुरी बात नहीं है। घर में भी माता/पत्नी खान–पान के विभिन्न प्रयोग करती ही रहती है। ऐसी प्रयोगधर्मी विदुषियों द्वारा किए गए प्रयोग से निर्मित वस्तु खाते समय हम आपका जो चेहरा बनता है उसे देखकर भी माता/पत्नी अपने उत्साह में कमी नहीं आने देती व सफलतायुक्त परिणाम सामने आते ही रहते हैं तथा बच्चे/पति उस चीज की बार–बार फर्माइश भी

करते है लेकिन माता/पत्नी दुखी न होते प्रेम से वह वस्तु बनाकर प्रस्तुत भी करती है। अतः प्रशिक्षक के रूप में प्रशिक्षण केंद्र की पाकशाला में हम प्रयोग करते ही रहेंगे व आपको डिशेश प्रस्तुत करते भी रहेंगे। प्रयोग सफल होगा। यह प्रयोग आपके लिए यहां प्रस्तुत है। एक प्रयोग इस संस्था की पत्रिका के प्रकाशन का भी चल रहा ही है। उस रेसिपि में भी आज नहीं कल टेस्ट आएगी, इसी आशा के साथ प्रयोग चल रहा है। "श्रवण" रेसिपि का प्रयोग भी फ्लाप नहीं होगा इस विश्वास के साथ इसे प्रस्तुत किया जा रहा है। एडिसन 99 बार अपने प्रयोग में असफल रहा लेकिन उसने प्रयोग करना नहीं छोड़ा व 100वीं बार वह सफल हुआ। उसे विश्वास था कि ऐसा प्रयोग करना जरूरी है। क्योंकि यदि प्रकाश की आवश्यकता मनुष्य जाति को नहीं होती तो ईश्वर हमें जानवर, जीव–जन्तु अथवा पक्षीगण बनाकर मात्र रहने देता। "ज्योति" का प्रयोग व प्रयास भी ऐसा ही तो है। "श्रवण के प्रकार", "श्रवण क्यों नहीं होता" तथा "श्रवण कैसे करें" इस विषय पर यहां अंग्रेजी में इआन फ्लेमिंग की टिप्पणियां जो टाइम मैनेजमेंट पाकेट बुक में पढ़ने मिली थीं उसका हिन्दी अनुवाद भी मैंने तैयार करने का प्रयत्न किया है उसे भी आमने सामने दे रहा हूं। कृपया पढ़े। यदि पढ़ने की इच्छा जागृत नहीं हुई तो मैं आपसे आमना सामना नहीं करूंगा, पिता भी पुत्र से आमना–सामना नहीं करता है। मैं फिर कभी आपको नई रेसिपि **'पढ़ना'** इस विषय पर लिखूंगा। प्रयत्नार्थी परमेश्वर !

## LISTENING : A WORD-SKETCH

Without commenting anything on the question of giving concentration and attention to the lectures by the Judicial Officers coming for training I am just reproducing 3 vignettes from "The Time Management Pocket Book" by Ian Fleming.

Hope these Word-sketches will make a huge distinction and the Judicial Officers while under training here for refresher's course will listen to the instructions given to them during the session. As a Judicial Officer, when (if) one 'hears' arguments one is 'listening' to the arguments. Assess with these mini articles where one stands.

### श्रवण कैसे करें

श्रवण करना एक कला है इस बात को स्वीकारना होगा तथा अधिकांश श्रोता इस कला में प्रवीण नहीं होते हैं, अतः प्रयत्न करो कि;

1. व्याख्यान के आधार से नोट, मानचित्र, सारणी, रूपरेखा तैयार करो।

### HOW TO LISTEN

Recognize it's hard work and a skill which most people are not very good at. So try to:

1. Take notes, i.e. mind maps (they aid retentioin)

2. प्रथमतः श्रवण करें तत्पश्चात प्रतिवेदन तैयार करें तथा दूसरों को बताएं कि क्या सुना है जिससे कि श्रोता को अच्छे से याद हो जाएगा।

2. Listen now ..... report later. Plan to tell someone what you heard - you will remember it better.

3. वैचारिक रूप से श्रवण हेतु उपस्थिति हो तथा दिवा स्वप्नों की ओर झुकाव की प्रवृत्ति के विषय में खबरदार रहें।

3. Be present ..... watch the tendency to daydream.

4. समष्टि रूप से पंचेन्द्रियों द्वारा श्रवण करें। अर्थात मन लगाकर। ध्यान से।

4. Be a 'whole body' listener. Listen with your ears, your eyes and your heart.

5. वक्ता की बोलने की गति के साथ संबंध बनाएं तथा उसके हावभाव का अंदाज लगाएं।

5. Build a rapport by pacing the speaker. Approximate the speaker's gesture, expressions and voice patterns to create comfortable communications.

6. संवेग–आवेश पर नियंत्रण रखें अन्यथा व्याख्यान के भावरूप को ग्रहण नहीं कर पावोगे।

6. Control your emotions - if not they will prevent you from listening effectively.

7. ध्यान भंग, अन्य बातों का चिंतन न हो।

7. Avoid distractions.

8. श्रवण करना एक कला एवं उपहार है–उदारतापूर्वक श्रवण करें।

8. Listening is a skill and a gift - give it generously.

### श्रवण के प्रकार

श्रवण करना एक प्रवीणता है, पूर्ण सक्रियता है न कि निष्क्रिय क्रिया मात्र। हम विभिन्न कारणों से श्रवण करते हैं यथा,

### DIFFERENT KINDS OF LISTENING

Listening is an active and not a passive skill

We listen for a variety of reasons e.g.

1. विनम्रता बनी रहे।

1. To be polite

2. सूक्ष्म, सुस्पष्ट जानकारी प्राप्त करना (जैसे निर्देश–अनुदेश एवं मार्गदर्शन प्राप्त करना)

2. To obtain precise information (e.g. directions or insturctions)

3. वक्ता में अथवा विषय–वस्तु में अभिरूचि अथवा दिलचस्पी होना।

3. Out of interest for the person or the topic

4. दूसरे व्यक्ति के विचार, कल्पना, परिस्थिति से स्वयं को विचारों मे सुधार करने की इच्छा।

4. To help or understanding of the other person's situation or ideas

5. नए विचार एवं दर्शन से अभिज्ञ होना।

6. For new ideas and approaches

6. वक्ता जो बात कर रहा है उसमें दोष ढूंढ़ना।

5. To find fault in what's being said

## श्रावक श्रवण क्यों नहीं करता

## WHY DON'T PEOPLE LISTEN

1. श्रवण का अभ्यास या आदत नहीं होना।

1. Not trained to listen.

2. वक्ता के विचारों पर ध्यान नहीं देना।

2. You're not attentive to the speaker.

3. विचारों की गति–(बोलने की गति से विचारों की गति तीव्र होती है।)

3. Speed of thought -(we think faster than we speaks)

4. बाह्य बातों की ओर ध्यान।

4. Outside distractions

5. अनुमान लगा लेना– बिना विचारे अपने मन से कल्पनाओं के आधार से निर्णय लेना एवं अर्थ निकालना।

5. You infer ..... make interpretations and judgements

6. श्रोता स्वयं बोलना चाहता है इस कारण वह टोका–टाकी करता है।

6. Want to speak and therefore interrupt

7. वक्ता जब बोल रहा हो तब श्रावक वक्ता के विचारों की काट ढूंढ रहा होता है।

7. You are preparing your reply whilst they are talking

8. वक्ता के विचारों से भिन्न विचार वह रखता है।

8. Hold a different view

9. वक्ता जो सुना रहा है उसका श्रवण मात्र हो रहा है न कि विचारों में निहित आशय अर्थ को समझा जा रहा है।

9. Hear what you expect to hear rather than the intended message

10. श्रावक की पृष्ठभूमि, संस्कृति, अनुभव का वैचारिक धरातल भिन्न होता है।

10. Different backgrounds, cultures, experiences

11. वक्ता की भ्रान्त (भ्रमपूर्ण) असंगत भाषा जैसे अनाप–शनाप शब्द प्रयोग।

11. Wrong/inappropriate language, e.g. jargon

12. शब्द एवं अशाब्दिक भाव–क्रिया में असामंजस्यता।

12. Inconsistency between words and (non verbal) behaviour

13. पोल खुलने या अनावृत होने का भय।

13. Fear of being exposed

14. श्रोता का यह विचार कि उसने ये बातें पूर्व में सुन ली है श्रोता सुनना नहीं चाहता।

14. Heard it all before... switch off

## अन्य कारण

## OTHER REASON

1. वक्ता विषयांतर करके बोलता है।

1. The Lecturer deviates from the subject.

2. स्वयं की प्रशंसा में अधिकांश समय व्यतीत करता है।

2. Spends most of time praising himself.

3. व्याख्यान के मुख्य विषय में आने वाले अन्य उपविषयों पर विस्तार से विचार व्यक्त करके मुख्य विषय को पटरी से उतार देता है।

3. Dwells disproportionately ancillary themes thereby derailing the main subject.

4. श्रोता स्वयं के विषय में भ्रामक कल्पना रखता है कि वक्ता क्या बताएगा उसे तो सब कुछ मालूम है।

4. The listener harbours a misconception that he has nothing to learn from the Lecturer.

(अन्य कारणों का अंग्रेजी अनुवाद : श्री सी.व्ही. सिरपुरकर, एडीशनल रजिस्ट्रार (जे) हाईकोर्ट, जबलपुर द्वारा)

**साभार** : दि टाइम मैनेजमेंट पॉकेट बुक, लेखक इवान फ्लेमिंग एवं रूपा एण्ड कंपनी तथा इस्ट–वेस्ट बुक्स (मद्रास) प्राइवेट लिमिटेड

**IT IS TRUE THAT WE LEARN BY LISTENING, YET WE DO'T LISTEN**

# उच्च मनोबल

सूर्य चंद्र एक बार आपस में बातचीत कर रहे थे कि हम पृथ्वी की ऐसी ही परिक्रमाएं कब तक करते रहेंगे? चिंतन चल रहा था। उत्तर नहीं मिल रहा था। अमावस पड़वे का समय था। साथ–साथ दोनों ही चल रहे थे तब वे भारत भूमि पर से मार्ग आक्रमित करके आगे बढ़ रहे थे। निश्चित ही आगे बढ़ना उनका लक्ष्य था इसी लिए आगे बढ़ रहे हैं। जब वे इस भू–भाग से आगे की ओर गतिमान हो रहे थे तब यहां का एक व्यक्ति "ज्योति" जनरल (पत्रिका) में "जागते रहो" स्तंभ पढ़कर निवृत्त होकर आलस त्याग कर एक संस्कृत सुभाषित को उच्चारित कर रहा था जो उनके कानों पर पड़ा। वो कह रहा था कि "यावश्चंद्र दीवा करो।" सूर्य–चंद्र दोनों प्रसन्न हो गए। उन्होंने तुरन्त एक दूसरे को कहा कि हमने आपस में एक प्रश्न पूछा था कि हम कब तक परिक्रमाएं करते रहेंगे, का उत्तर मिल गया। दोनों प्रसन्न हुए। एक दूसरे को कहने लगे कि भारत–भू के लोगों में अदम्य विश्वास है कि जब तक सूर्य–चंद्र परिक्रमा करते रहेंगे तब तक उन्हें भी सतत रूप से अविरत रूप से गतिमान होना है। इस प्रकार सभी जन सूर्य चंद्र, हम–आप सतत रूप से अनवरत रूप से कार्य कर रहे हैं। कभी भूल भी होती है तो कभी अच्छा कार्य भी हो जाता है लेकिन कभी भी क्रम टूटता नहीं है। भूलें होना स्वाभाविक है। अच्छा कार्य भी अच्छी मात्रा में होता ही है। भूलों का ज्ञान यदि होता रहता है तो गुणवत्ता में सुधार भी होता ही जाता है। इसी उपक्रम में सतत रूप से विचार विमर्शन इस स्तंभ के माध्यम से होता ही रहा है और यह क्रम कब तक चलता रहेगा इसका उत्तर आशा है, पृथक से देना शेष नहीं रहा होगा।

धारा 376 भा.द.वि. के निर्णय के विरुद्ध अपील में सुनवाई होकर निर्णय हो गया था। माननीय महोदय ने मुझे आहूत किया। उपस्थित हुआ। चर्चा हुई। पूछा तो उत्तर दिया। विषय था बलात् संग। शासकीय अधिवक्ता उपस्थित नहीं थे विचारण न्यायालय में। रहते भी नहीं। कोई नई बात भी यहां लिखने लायक नहीं। सत्र न्यायाधीश महोदय ने साक्ष्य लिपिबद्ध की। परीक्षण हुआ लेकिन लैंगिक सम्बन्ध स्थापित होने की पूर्व सीमा तक का वर्णन परीक्षण दे रूप में आने के पश्चात वास्तविक रूप से लैंगिक कार्य न्यायिक सीमा तक हुआ अथवा नहीं इस संबंध में प्रश्न ही नहीं पूछा था। अबोध बालिका थी। सत्र न्यायालय ने तो सजा दे दी। उच्च न्यायालय में स्थिति विकट थी। अंत में आरोपी को धारा 354

भा.द.वि. से दंडित किया जा सका। माननीय पूछ रहे थे कि न्याय के साथ बलात् (जबरदस्ती) कार्य किसने किया। उनकी अपेक्षा थी कि जब निर्णय लिख रहे हो अथवा आरोप तैयार कर रहे हो तब ये तो देख लिया करो कि अपराध के क्या तत्व हैं जो अभियोजन को सिद्ध करना होंगे। प्रशिक्षण शिविरों में यह बताया जाता रहा है कि भा.द.वि. की किसी भी मानक पुस्तक में 'सबूत' अथवा 'तत्व जो सिद्ध करना है', 'टू प्रूव्ह' अथवा 'एव्हिडन्स' ऐसे शब्द आते हैं जो ये बताते हैं कि अभियोजन को क्या तत्व सिद्ध करना है व किसी अपराध के क्या तत्व हैं। वास्तव में निर्णय में साक्ष्य विश्लेषण होने के पश्चात पीठासीन न्यायाधीश जब विचारणीय बिंदु पर निष्कर्ष देगा तो उसने इन्हीं तत्वों के आधार से निष्कर्ष तक पहुंचना चाहिए। माननीय का कहना था कि जब न्यायिक अधिकारी साक्ष्य लिपिबद्ध कर रहा था तब क्या उसे धारा 376 भा.द.वि. के तत्व ज्ञात नहीं थे अथवा ज्ञान में रखने की आवश्यकता नहीं थी अथवा यांत्रिकीय रूप से मात्र कथन लिपिबद्ध करवाए जा रहे थे। वातावरण की गंभीरता का टूटना आवश्यक था तो सहज भाव से मैंने कहा था कि तब वह किसी और प्रकरण में भी तो साक्ष्य करवाने में व्यस्त रहा होगा या अन्य प्रकरण में तर्क भी सुन रहा होगा। पौने छह बज रहे थे तो माननीय उठे, मैंने उन्हें अभिवादन किया उनकी गाड़ी निकल चुकी थी।

एक न्यायिक अधिकारी एक दिन अचानक कह रहा था "मैंने तो निर्णय दे दिया।" मैंने कहा आपने ऐसा क्या किया जो प्रशंसा की जावे, यह कार्य तो हम आप रोज ही करते हैं। पूछा कुछ विशेष था क्या तो उसका कहना था क्यों नहीं। क्यों नहीं। जरूर विशेष था। दावा था विनिर्दिष्ट सहायता हेतु। लगभग 20 वर्ष पुराना करार था। विचारण न्यायालय ने दावा मर्यादा बाध्य होना पाते हुए सभी वाद प्रश्न निर्णित करके दावे को खारिज कर दिया। एक पक्षीय दावा था। अपील हुई। अपील में अपील न्यायालय ने मर्यादा अधिनियम के किसी प्रावधान का खुलासा किया कि अमुक प्रावधान के आधार से दावा मर्यादा काल में होगा अतः उक्त प्रावधान का विचार करके प्रकरण में पुनः निर्णय दें व ऐसा कहकर प्रकरण प्रति प्रेषित (रिमांड) भी कर दिया। फुरसअ्अ्त! केस डिस्पोजड् ऑफ!

अब विचारण न्यायालय की फ़जीहत। क्या करे? दावा खारिज करे या डिक्री करे। अपील कोर्ट के निर्णय की भावना देखी व विचारण न्यायालय ने वही किया जो एक सामान्य व्यक्ति कर सकता था। अपीलीय निर्णय की भावना को उसने व्यावहारिक रूप दे दिया। वह भी फुरसअ्अ्त में। उसने भी प्रकरण को एकदम डिस्पोज ऑफ किया व उसाँस हो गया। अच्छा लगा। सुगम शीघ्र न्याय।

पता नहीं कि वादी ने विचारण न्यायालय में विनिर्दिष्ट सहायता हेतु दावे के मूल्यांकन के अनुसार कोर्ट फीस दी थी या नहीं तथा अपील में कितनी कोर्ट फी दी थी व कितनी देय हो सकती थी। इस बात का चिंतन भी हुआ अथवा नहीं तथा प्रकरण प्रतिप्रेषित करने पश्चात कोर्ट फी वापसी के विषय में आदेश हुआ अथवा नहीं तथा इस अपील को नियमित अपील के रूप में सुनी गई या कि विविध अपील के रूप में। लेकिन एक बात निश्चित की अपील की सुनवाई भी हुई व दावे की दो–दो बार सुनवाई हुई। पक्षकार भी खुश और न्यायालय भी खुश। मुझे याद आ गई दूरदर्शन के मध्यप्रदेश प्रसारण की जिसमें एक विज्ञापन में महिला "टीम 2000" वाशिंग पावडर के बाबत अंत में कहती है मैं भी खुश मेरी बाई भी खुश। मैं भी इतना खुश हुआ कि ऐसे खुशनुमा वातावरण में मैं यह चिंतन करना भी भूल गया कि प्रतिप्रेषण की आवश्यकता क्यों कर पड़ी थी। लेकिन यह खुशनुमा वातावरण क्षण भंगुर था। क्योंकि शाम के 4.30 बज चुके थे।

यहां 4.30 बजे के बाद वातावरण थोड़ा बोझिल, भारी–भारी सा हो जाता है। सुबह 9.45 बजे आते हैं शाम को घर जाने की पड़ती है लेकिन संदेशा भी उसी समय आता है। इंटरकॉम की घंटी बजी नहीं कि मैं पहले कोट चढ़ा लेता हूं क्योंकि मालूम है कि मुझे भी 'जागते रहो' की स्थिति से ही तो गुजरना है। टेलीफोन उठाता हूं तो पूछा जाता है कि क्या हाल है? आवाज सबकी जानी पहचानी है। मैं केवल यह कहता हूं हुकुम सर! मैं उपस्थित हो रहा हूं। खुशनुमा वातावरण में इंटरकॉम ने ध्यान भंग कर दिया था एवं मुझे जाना पड़ा। सादर अभिवादन हुआ। बैठने की अनुमति मिली बैठा। पांच मिनिट में ही सुंदर बढ़िया थर्मस में लज्जतदार कॉफी आई, पी। अच्छी लगी। स्फुरण प्राप्त हुआ। अच्छा लगा। माननीय कहने लगे कि कितनी बार बताया जा सकता है कि धारा 397 व 398 भा.द.वि. के प्रावधानों का उपयोग कैसे करना है। मैंने सोचा इस विषय में मैं क्या बता सकता हूं। जितनी बार ऐसा विषय अपीलों में आएगा उतनी बार तो बताना ही चाहिए ऐसा विनम्र विचार मेरे मन में आया था। मैं स्वयं में खो गया था। माननीय पूछने लगे क्या सोच रहे हो। कहां चार पांच बार तो 'जोति' के माध्यम से इस बात पर प्रकाश डाला गया है। उदाहरण स्वरूप मुझे यह बताया गया कि एक अतिरिक्त जिला न्यायाधीश के प्रकरण लगभग चार पांच बार अवलोकन में आए व प्रत्येक बार देखा कि धारा 394/395 सपठीत धारा 397 भा.द.वि. में सात वर्ष से कम की दंडाज्ञा दी जा रही है। इसका क्या अर्थ निकाला जा सकता है? इसका अर्थ मेरे मन में केवल यह हो सकता है कि (माननीय को नहीं कहा) पत्रिका के माध्यम से भी सबने जागृत हो जाना चाहिए कि जब जब

अन्य मुख्य धारा के साथ धारा 397 या 398 भा.द.वि. की लगाई जाती है तब उन धाराओं के प्रावधानों में उल्लेखित हिसाब से न्यूनतम दंडादेश तो देना ही है यह बात निश्चित मान ले। यह भी ध्यान रखे कि यदि अपराध धारा 394 सपठीत धारा 397 भा.द.वि. के अंतर्गत है तो धारा 394 एवं 397 में अलग–अलग दंडादेश नहीं देना है अपितु 394 सपठित धारा 397 भा.द.वि. के अंतर्गत सिद्ध दोष पाते हुए दोष सिद्ध ठहराना है व न्यूनतम दंड सात (7) वर्ष तो देना ही है उसमें स्वविवेक का कोई प्रयोग नहीं करना है। धारा 397 भा.द.वि. "इनेबलिंग" अर्थात अधिकार देने वाली सहायक धारा मात्र है सारवान अपराध वर्णित नहीं करती।

इस लेख का समापन एक मुद्दा और लेकर पूर्ण करेंगे। अपील न्यायालय में अपील लंबित थी। अंतिम तर्क पूर्ण हो गए। प्रकरण निर्णय के लिए निर्धारित हो गया। दूसरे दिन अधिवक्ता एक आवेदन पत्र आ. 41 नि 27 का तैयार कर के ले गए व लेखी बहस भी तैयार की एवं न्यायालय के सन्मुख प्रस्तुत की। न्यायालय ने कहा कि प्रकरण निर्णय के लिए निर्धारित हो चुका है अतः कोई भी आवेदन पत्र प्रस्तुत नहीं हो सकता है न लेखी तर्क प्रस्तुत हो सकते हैं। पता नहीं आगे क्या हुआ प्रश्न यह है कि ऐसा क्यों नहीं हो सकता। इसका भी तो कोई कारण होगा? यदि ऐसा कारण अपील न्यायालय उचित मानती है तो उस आवेदन पत्र को रिकार्ड पर लेकर निरस्त करने की भी तो साहस होना चाहिए। ऊपर ही ऊपर ऐसा कहकर आवेदन पत्र व अपील के निर्णय हेतु अधिवक्ता ने दिये लेखी तर्क क्यों कर लौटाए जाना चाहिए? हम यदि कोई बात सकारण कह रहे हैं तो उन कारणों का खुलासा भी होना चाहिए। आत्म विश्वास से बढ़कर और क्या बात हो सकती है ? प्रावधानों के विषय में अज्ञानता व अनभिज्ञता के कारण हम कोई निर्णय ले ही नहीं पाते हैं व चाहते हैं कि यह जिल्लत, परेशानी, झंझट, झमेला कहां पालते रहेंगे ऊपर ही ऊपर निपटाओ। लेकिन ध्यान रहे जो अधिवक्ता किसी सहायता की याचना करने हेतु आया है वह वरिष्ठ न्यायालय में चाराजोई (याचना), कार्यवाही अवश्य करेगा।

मित्रो ! आशा करना चाहिए कि हमने अपने कार्य को अच्छे से करने हेतु सतत् प्रयत्न करना चाहिए तथा यथा समय जितना अधिक संभव हो विषय से संबंधित समस्त प्रक्रिया, सारवान विधि विषय में अधिक से अधिक जानकारी, सूचनाएं एकत्र करते रहना चाहिए ताकि सुधारक्रम सतत् रूप से चलता रहे। आत्म विश्वास बुलंद होना चाहिए विचलित नहीं होने देना है।

# शपथ पत्रों का सत्यापन

**पुरूषोत्तम विष्णु नामजोशी**

सीमित साधन एवं सीमित पृष्ठों की इस पत्रिका में शपथ पत्र किस प्रकार सत्यापित किया जाना चाहिए इस विषय पर भी लिखा जावे ऐसी आवश्यकता अनुभव हुई। कारण यह था कि विधिक सहायता के कार्य में जब मैंने कुछ शपथ पत्र देखे तो लगा कि इस विषय पर भी न्यायिक अधिकारी बंधुओं को कुछ बातें, जो व्यवहारिक हो, बताई जावें। शपथ पत्र ठीक से सत्यापित नहीं हो रहे हैं। "शपथ दिलाना" एवं 'अनुप्रमाणन' में भेद है। शपथ दिलाने वाले अधिकारी द्वारा शपथ दिलाई जाती है जिसे अंग्रेजी में To Administer oath कहा जाता है। सशपथ किए गए कथनों को शपथ पर किए कथन (to sworn an affidavit) कह सकेंगे। अनुप्रमाणन का शाब्दिक अर्थ अॅटेस्टेशन (Attestation) होगा। जैसा कि धारा 3 संपत्ति अंतरण अधिनियम में संदर्भ आया है Attestation is the act of witnessing the actual execution of a paper and subscribing one's name as a witness to that fact एड्मिनिस्ट्रेशन का अर्थ दिलाना भी होता है। To administer oath में वह व्यक्ति जो शपथ दिलाता है वह administrator कहलाता है। अर्थात Administrator means a person appointed by competent authority to administer oath or affirmation as directed by law. **धारा 139 व्य.प्र.स. तथा धारा 297 दं.प्र.सं. के अंतर्गत** उन पदाधिकारियों का वर्णन है जो शपथ दिला सकते हैं तथा जिनके समक्ष शपथ ग्रहण करके शपथ पर कथन किया जा सकता है। शपथ दिलाना एवं शपथ ग्रहण करने की क्रिया एवं प्रक्रिया में अनुप्रमाणन कहीं नहीं आता।

आप यदि शपथ दिलाने के लिए अधिकृत हैं तथा कोई व्यक्ति अपना कथन शपथ पर शपथ पत्र के द्वारा करना चाहता है तो ऐसा करके एक प्रमाण पत्र आपको देना होता है। ऐसा नहीं होता कि शपथ ग्रहिता आपके सामने आवे एवं कहे कि शपथ पत्र देना है तो आपने उसे अॅटेस्ट कर दिया।

**म.प्र. "नियम एवं आदेश" सिविल में नियम 20 से 36 एवं म.प्र. "नियम एवं आदेश" अपराधिक में नियम 16 से 30 तक विस्तार से बताया है।** कृपया उसे एक बार ही सरसरी रूप से ही सही, पढ़ लेने में जरूर आनंद आएगा।

हमारे व्यवहार से घर एवं कोर्ट में दिन भर में कभी न कभी "टेन्स" वातावरण बनता ही है। जैसे हवा का दबाव बढ़ने से बादल बरसते हैं वैसे ही "टेन्स" वातावरण में कुछ पढ़ाई, पठन–पाठन हो ही जाता है।

"मेरे समक्ष आज दि. ..... माह ..... सन् .....को श्री/सौ./कु. ..... पिता/पति ..... जिसे कि मैं व्यक्तिगत रूप से जानता हूं/जिसे कि श्री ..... द्वारा अभिज्ञापित किया गया है, तथा जिसके/जिनके हस्ताक्षर इसके नीचे उपांगित है द्वारा शपथ ग्रहण की गई।

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|---|---|
| 1. शपथ ग्रहिता के | हस्ताक्षर |
| हस्ताक्षर | नाम |
| 2. अभिज्ञात करने वाले | पदनाम |
| व्यक्ति के हस्ताक्षर, नाम, पता | सक्षम अधिकारी |
| | मुद्रा |

3. सील (मुद्रा) सक्षम अधिकारी

शपथ पत्र दो प्रकार के होते हैं। एक तो न्यायालय में किसी प्रकरण में दिया जाना हो अथवा न्यायालयीन कार्य से भिन्न कार्य के लिए दिया जाना हो। दोनों ही शपथ पत्रों में शीर्षक भिन्न–भिन्न होंगे एवं स्टैम्प ड्यूटी भी भिन्न–भिन्न होगी। जैसे न्यायालय में प्रस्तुत होने हेतु जो शपथ पत्र होगा उसमें "न्यायालय श्रीमान ..... ..... के सम्मुख" लिखा जाना है तथा विषय वस्तु का खुलासा करना है। जैसे अस्थाई निषेधाज्ञा आदि तथा न्यायालय से भिन्न क्षेत्र में शपथ पत्र की आवश्यकता हो तो "..... के संदर्भित विषय में।" जैसे "गैस कनेक्शन लेने के विषय में" अथवा "गृह आवंटन हेतु आवेदन पत्र से संदर्भित विषय में।" यह भी ध्यान रखना है कि जहां न्यायालयीन कार्य हेतु शपथ पत्र होगा वहां स्टैम्प ड्यूटी कोर्ट फीस के रूप में मात्र रु. 1 (एक) लगना है अथवा यथा समय नियम व आदेश संशोधित होने पर तद्रूप। न्यायालय से भिन्न कार्य हेतु शपथ पत्र नॉन ज्युडीशियल स्टैम्प पर होगा व स्टैम्प एक्ट के परिशिष्टनुसार स्टैम्प ड्यूटी देय होगी तथा यदि किसी न्यायिक अधिकारी के माध्यम से ऐसा शपथ पत्र करवाना हो तो निर्धारित एक रुपये की कोर्ट फी भी देय होती है। यदि लोक सेवक द्वारा उसके पदीय प्राधिकार (हैसियत) से शपथ पत्र दिया है तथा न्यायालयीन कार्य हेतु है तो कोई ड्यूटी देय नहीं होती है। देखे नि. एवं आ. सिविल नि. 29 एवं नि. एवं आ. आपराधिक नि. 24। ध्यान रहे एक ही शपथ पत्र में एक से अधिक व्यक्ति सम्मिलित होकर भी एक ही शपथ पत्र दे सकते हैं।

एक बात और ध्यान रखना कि यदि किसी कारणवश आदेश 13 नि. 9 व्य.प्र.स. के अंतर्गत किसी प्रकरण के विलेख पक्षकार को लौटाना होते हैं तो शपथ पत्र लौटाया न जावे क्यों कि वह ऐसा विलेख है जो पक्षकार पचासों बार तैयार करवा सकता है तथा उसका उपयोग किसी विशेष विषय वस्तु से संबंधित प्रकरण से होने से वह शपथ पत्र अब अन्य उद्देश्यों हेतु उपयोगी नहीं रहेगा।

अंत में लेकिन अंतिम रूप से नहीं शपथ पत्र में संशोधन हेतु कोई आवेदन पत्र आ. 6 नि. 17 अथवा धारा 151 व्य.प्र.स. के अंतर्गत ग्राहय नहीं होता है क्योंकि शपथ पत्र के कथन शपथ पर सक्षम अधिकारी के सामने करने के पश्चात न्यायालय उसमें कैसा सुधार करने की अनुमति देगा? एक से अधिक बार भी तो शपथ पत्र तैयार किए जा सकते हैं अतः ऐसा करने के पूर्व सोच समझ लेना। यदि आप शपथ पत्र पर हस्ताक्षर करने के निष्पादन का प्रमाणन कर रहे हैं तो जहां–जहां काट छांट है वहां शपथ पत्र ग्रहिता व आपके हस्ताक्षर होना चाहिए ताकि बाद में उसमें कांट छांट न हो सके।

मित्रो ! अधिक विवरण हेतु आप कृपया **सरकार ऑन एव्हिडन्स ऍक्ट** का कोई भी संस्करण देखे । मेरे पास 1971 का 12वां संस्करण है उसमें परिशिष्ट दिए हैं जिसमें **शपथ पत्र** विषय पर परिशिष्ट 'ए' है **ओथ्स एक्ट** परिशिष्ट 'बी' में दिया है, **बैंकर्स बुक एव्हिडेन्स एक्ट** परिशिष्ट 'सी' में दिया है तथा **दी कमर्शियल डॉक्यूमेंन्ट्स** एव्हिडन्स एक्ट परिशिष्ट 'डी' में दिया है अवश्य देख लें। साथ ही **मोधा का लॉ ऑफ प्लीडिंग्ज 1992 का रिप्रिंट पाठ 19 पृष्ठ 406** जो शपथ पत्र से संबंधित है को भी देख लें। देखने से कल्पना आ ही जाएगी।

शपथ पत्र (affidavit) शब्द का अर्थ इस प्रकार है।

It is a declaration on oath, reduced to writing, affirmed or sworn to by an affiant before some person who has authority to administer oaths. (Bouvier L. Dict ; Wharton; Burrill)

"An affidavit is an oath in writing signed by the party deposing, sworn before and attested by him who hath authority to administer the same ". (1 Bacon's Abridgment, 124)

Affidavit is an oath in writing; and to make affidavit of a thing, is to testify it upon oath. An affidavit generally speaking, is an oath in writing, sworn before some person who has authority to administer such oath; and the true place of habitation, and true addition of every person who shall make an affidavit is to be inserted in his affidavit. Affidavits ought to set forth the matter of fact only, which the party

intends to prove by his affidavit; and not to declare the merits, of the cause, of which the Court is to judge, 21 Car. 1 B.R. (Tomlin's L. Dict.)

Must be in writing. There can be no such thing as an unwritten affidavit. An affidavit is defined to be "a written declaration under oath, made without notice to the adverse party.

अभिकथन करने वाला (डिपोनेंट) तथा शपथ पर कथन करने वाला (अफिएन्ट) की परिभाषा :–

**AFFIANT AND DEPONENT :**

Affiant is one who makes an affidavit (Cent. Dict.; Ame. Cyc.; Imp. Dict; Webs.)

Distinguished from "Deponent": In strictness "affiant" is the author or subscriber of an affidavit, "deponent" of a deposition (Abbott, L.D.)

आशा है इस लेख के माध्यम से विषय वस्तु के संदर्भ में संक्षिप्त रूप से जानकारी हो जाएगी जिससे विषय के समग्र अध्ययन में रूचि बढ़ सकेगी।

## शपथ पत्र की महत्ता एवं पवित्रता

मेरे एक वरिष्ठ अधिकारी ने सन् 1975 के आस–पास कही हुई बात यहां बता रहा हूं। शपथ पत्र में कथन की बात को शपथ पर कहना व कहने वाले ने शपथ दिलाने वाले व्यक्ति के प्रति क्या श्रद्धा व आस्था होना चाहिए इसका एक जीवंत उदाहरण है।

कहा जाता है कि किसी माननीय मुख्य न्यायाधिपति को अपने व्यक्तिगत कार्य के लिए शपथ पत्र देना था तो जिला न्यायालय से न्यायिक दंडाधिकारी को निवेदन कर के बुलाया कि शपथ पत्र दिया जाना है। न्यायिक दंडाधिकारी माननीय महोदय के चैंबर में गए तो उन्हें आदर से बैठाया। शपथ पत्र उनके सामने रखा व माननीय उठकर खड़े हुए तथा कहा कि मैंने शपथ पत्र दिया है तथा जो कथन किए हैं वे पूर्णरूप से सत्य हैं व कोई बात छुपाई नहीं है न असत्य कथन की है। फिर वे बैठ गए। औपचारिकताओं की पूर्ति बाद में होती रही।

# न्यायिक चरित्र

**पुरूषोत्तम विष्णु नामजोशी**

माननीय न्यायाधिपति श्रीमान नरेंद्र गणेश करंबेलकर महोदय ने एक बार कहा था कि इंदौर के रेलवे मजिस्ट्रेट श्री श्याम कुलकर्णी के पास अब्राहम लिंकन की एक कविता संग्रहित है उसे अवश्य पढ़ना संस्था की पत्रिका हेतु अवश्य उपयोगी रहेगी। कविता पढ़ने के बाद लगा कि नौकरी–चाकरी, व्यापार–वाणिज्य, कृषि–खेती, अथवा व्यवसाय वृत्ति केवल अर्थोपार्जन अथवा जीवन यापन या रोटी–रोजी कमाने अर्जित करने का लक्ष्य या ध्येय नहीं होकर एक साधन या माध्यम मात्र है जिसके द्वारा सेवा के लक्ष्य की ओर मार्ग क्रमित कर सकते हैं। ये सभी कार्य सेवा के लिए हैं हम–आप एक न्यायिक अधिकारी का पद विभूषित कर रहे हैं। कितनी गौरव की बात है कि हम न्यायाधीश है। ऐसा कभी सोचा? सोचना यह नहीं है कि इस पद के माध्यम से हम अपनी जिन्दगी–जीवन सुधार लेंगे या सत्ता का अहम् शांत कर लेंगे अपितु सोचना यह होगा कि अहोभाग्य, हम सर्वशक्तिमान ईश्वर के प्रतिनिधि है, मुख्तार है।

हमारे एवं ईश्वर के बीच तथा सर्व साधारण जन एवं हमारे मध्य विश्वस्त्ता के संबंध है उन्हें और अधिक पुष्ट करें दृढ़ करें। ईश्वरीय कार्यों को इस धरा पर आकार दे। आकार देने वाले कई हैं। ब्रम्हा है, प्रजापति है तो कुम्हार है तो सुतार है तो शिक्षक है तथा हम स्वयं शिक्षार्थी भी तो स्वयं को आकार दे सकते हैं। अब्राहम लिंकन की कविता पढ़ने के पश्चात प्रथम प्रतिक्रिया सहज रूप से यह हुई कि शिक्षक हो या शिक्षार्थी हो उसमें भौतिक सुख उपभोग करने का गुण मात्र हो तो वह केवल शुष्क मिट्टी मात्र है उससे कोई चीज बन ही नहीं सकती अपितु कालांतर में वह रेती–बालू बन जाएगी व अंत में कच्छ का मैदान अनुर्वरक भूमि रेगिस्थान हो जाएगा। इसलिए जब एक शिक्षक–शिक्षार्थी, न्यायाधीश का पद विभूषित करता है तो उसमें तर्कशक्ति, तत्वज्ञान, आध्यात्मिक ज्ञान, चारित्रिकगुण, चरित्र व्यवहार, नैतिकता, न्यायोकत्ता एवं तत्सम गुण प्राप्त हो जाएं तो वह वास्तव में ईश्वर का प्रतिनिधित्व कर रहा है।

अब्राहम लिंकन की यह कविता साहित्यिक दृष्टि से चिंतन करने हेतु प्रस्तुत नहीं की जा रही है न यह स्थान इसके लिए है अपितु उसमें उपरोक्त उल्लेखित तत्वों का अस्तित्व है। मिट्टी ऐसी हो जिसे एक कुम्हार आकार दे सकता है। ऐसी मिट्टी को भांड मृत्तिका अथवा कुम्हाररौटी कहा जाता है। अब्राहम लिंकन स्वयं को पिता के रूप में प्रस्तुत कर रहा है तो जनता को बेटे के रूप में। शिक्षक कौन है, इसका निर्णय आप कर सकते हैं। घटकार के रूप में स्वयं को स्थापित कर के इस कविता को हमें पढ़ना है तथा फिर चिंतन करना है, विचारों में खो जाना है कि क्या हम ऐसे हो सकते हैं या कि हम स्वयं में कोई परिवर्तन कर ही नहीं सकेंगे।

# अब्राहम लिंकन की पाती प्रधान अध्यापक के नाम

*आदरणीय गुरूजी,*
*सभी आदमी न्यायप्रिय नहीं होते*
*नहीं होते सभी सत्यनिष्ठ*
*मेरा बेटा सीखेगा यह कभी-न-कभी।*
*मगर उसे यह भी सिखाइए*
*दुनिया में हर बदमाश की तरह*
*होता है एक साधुचरित पुरूषोत्तम भी।*
*स्वार्थी राजनैतिक होते हैं दुनिया में जैसे,*
*होते हैं उसी तरह पूरी जिन्दगी निछावर करने वाले नेता भी।*
*होते हैं घात में दुश्मन अगर*
*तो सहायक मित्र भी होते हैं।*

*मैं जानता हूं*
*सभी बातें झटपट नहीं सिखाते बनतीं...*
*फिर भी, हो सके तो उसके मन में जमाइए,*
*पसीना बहाकर कमाया हुआ एक पैसा तक*
*फोकट में मिले हंडे से ज्यादा मूल्यवान है।*

*सिखाइए उसे कैसे झेलते हैं हार*
*सिखाइए, जीत की खुशी को संयम से मनाए।*
*अगर ताकत हो तो*
*उसे ईर्ष्या-द्वेष से दूर रहना सिखाइए,*
*सिखाईए उसे अपना हर्ष संयम से दिखाएं।*

*कहना, गुंडों से मत डर जाना, क्योंकि*
*उन्हें झुकाना सबसे आसान होता है।*

जितना बन पड़े दिखाया कीजिए उसे
पुस्तक-भंडार का अद्भुत वैभव,
पर साथ-ही-साथ
दीजिए उसके जी को जरा फुरसत
कि सृष्टि की सनातन सुन्दरता महसूस कर पाए।
देख पाए वह
चिड़ियों की गगन उड़ान...
सुनहली धूप में मँडराते भौंरे...
और हरीभरी पहाड़ी की ढलान पर
झूमते नन्हे-नन्हे फूल।

पाठशाला में उसे सबक मिले
बेईमानी से पाई सफलता से
सीधे-सीधे टकराई असफलता श्रेयस्कर है।

यह सिखाइए कि
अपने ख्याल, अपनी सूझ-बूझ पर
पक्का विश्वास रखे वह,
भले ही सब लोग उसे गलत ठहराएँ।
वह भलों के साथ भलाई करते और
टेढ़ों को सबक सिखाए।

अगर बेटे के दिमाग में जमाते बने तो देखिए
विजय के झंडे के नीचे खड़े होने को दौड़ती भीड़ में
शामिल न होने का साहस जुटाए।
और यह भी समझाइए उसे
कि सुने सबकी, हर एककी...
पर छान ले उसे सत्य की चलनी में,
और छिलका फेंककर
ग्रहण करे कि विशुद्ध सार।
बन पड़े तो उतारिए उसके मन में
हंसते रहो हृदय का दुख दबाकर।

*कहिए कि आंसू बहाते शरमाए नहीं वह...*
*सिखाइए उसे,*
*ओछेपन को ओछा मानना*
*और चाटुकारी से सावधान रहना।*

*उसे पक्की-पूरी तरह समझाइए कि*
*खूब कमाई करे ताकत और अक्ल की लागत से,*
*लेकिन कभी भी न बेचे अपना हृदय, अपनी आत्मा।*
*धिक्कारती हुई आती है भीड़ अगर,*
*तो अनदेखा करना सिखाइए उसे,*
*और लिखिए उसके हृदय पर*
*जो सत्य जान पड़ें, न्यायोचित लगे*
*उसकी खातिर धरती में गड़ाकर पाँव लड़ता रहे।*

*उसे ममता दीजिए मगर*
*लाड़ करके मत बिगाड़िए।*
*आग में जल-तपकर निकले बिना*
*लोहा मजबूत फौलाद नहीं बनता।*
*उसे आदत डालिए कि*
*अधीर होने का धीरज सँजोए,*
*और धीरज से काम ले वह*
*अगर दिखानी है बहादुरी...*
*हमें विश्वास चाहिए स्वयं का मज़बूत*
*तभी जमेगी उदात्त श्रद्धा मनुष्य जाति के प्रति।*

*क्षमा कीजिए गुरूजी! मैं बहुत बोल रहा हूं,*
*बहुत-कुछ मांग रहा हूँ...*
*फिर भी देखिए... जितना बने, कीजिए जरूर;*
*मेरा बेटा*
*बहुत बहुत प्यारा बच्चा है, भाई!*

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# THE ART OF JUDGMENT WRITING

## PART A-GENERAL

(1) Though the art of judgment writing is mostly a subjective matter, there are a few points which should be kept in mind by the beginners in the line or profession (because ***Judgeship*** is also a distinct ***profession***). The basic requirement of a good judgment is indeed good language. The language, whether Vernacular or English, should be grammatically cprrect amd simple yet pithy. Flowery language should be avoided except in some special context. As in most of the States in the Northern region, English is being used for judgment writing even at the grass roots level, this discussion is confined only to that script.

(2) Taking up first the basic requirement of sufficiently good command over language, the general observation is that with the over-all gradual declinein educational standards during the last about one generation, the standard in the use of English language has come down perceptibly. Consequently this general deterioration often gets reflected in the average level of delivery of judgments, submission of pleadings and advancement of arguments by the lawyers and prosecutors. Hence the persons who choose to become members of the Bench or the Bar should make special and sustained efforts to have a sufficient command over the English language. The first step in this direction would be to have some working knowledge of the basic grammar which is (or rather was) taught upto the Matriculation standard. One should not feel shy at all to learn the basics contained in a stanadard book of grammar of that level. It would not be a bad idea even to take the assistance of a good teacher in that line. But there again should be a proper choice of the book as well as the guide.The generally accepted standard book of grammar in this context would be one by Wren and Martin. Well, the choice and selection should be yours, keeping in mint that you should learn correct principles and have proper guidance in the matter.

(3) By acquiring a working knowledge of the basics of grammar, one's language would automatically get polished. For instance many of us do not know the proper use of the articles (a, the) resulting in minor infirmities in writing. It would not be difficult to remember at least that 'a' is used in a general sense while the should be used in a particular sense: "A culprit was intercepted by a police party holding a picket at a canal bridge. However, when a member of the police party subjected the culprit to a personal search, it revealed that the was carrying an illicit weapon." Similarly, the presence of an accused can be noted in different manners "The accused did not appear in the Court." Or, "the accused did not come in the court". Or, "the accused failed to turn up in the court." Obviously, the last sentence sounds better and its use would result in brushing up the language. But it does require some knowledge about the correct use of words, clauses and prepositions as explained in a systematic manner in any

standard book of grammar. At the same time, a proper and idiomatic use of phrases would make the language still better though its application should be quite selective in order to avoid the language becoming bombastic.

(4) Another point worth notice in this context is to divide the writing into paragraphs and sub-paragraphs. Usually a point or a sub-point should be discussed in paragraph keeping in view its over-all length. Ordinarily a paragraph should not go beyond a page, though no hard and fast rule could be laid down. But a discussion divided into paras and sub-paras does give a good form to the writing besides giving an impression of clarity of thought. It also results in avoiding repetition of ideas or points. The paras should be given serial number.

(5) Some judgements have been observed to contain repetition of words in the same sentence. It should be avoided, if possible. A conscious effort should be made in this direction even if some times some correction and retyping is required. With practice it would become a habit resulting in a suitably good style.

(6) In case you have made some special effort in writing a judgement containing some good points of discussion on a particular legal matter, it would be a good idea to keep a record of that pronouncement for future reference in the same context. After sometime you can have sufficient stock of such legal discussions which can be utilised suo motu, if a counsel of the party concerned fails to make a special reference to the point or citation. Such exigencies are likely to occur not only at moffusil stations but also at District headquarters.

(7) Last but not the least, total length of a judgment should be minimum keeping in view the matter for discussion and its adjudication. Again, no specific rule can be laid down on this point. But lengthy and repetitive judgements are not appreciated while short and pithy writing covering all points in brief should be the general rule. It saves time and energy of the Judge as well as the Steno-typist, both of whom are generally under pressure of extra-heavy work load in the courts.

## PART B-CIVIL JUDGMENTS

(1) As already noticed in the discussion at para 7 in Part A, brevity should be the motto or general policy in writing of judgments (or Orders), keeping in view the fact that the resultant labour should not be branded or classified as a telegraphic judgment.

(2) A judgment in a civil case should usually set out the brief case of the rival parties. For that matter please avoid a reprehensible practice of reproducing the plaint and the written statement almost in its entirety. On the other hand, the opening para or two should suffice for this task followed by the issues in question. (Incidentally, the issues must be framed by the Judge himself instead of leaving the task to the counsel, as is the practice

in some courts.) Unless the pleadings are lengthy and complicated only a brief reference to the stand of the parties should be made. For instance, if the defendant has raised quite a few legal objections, they need not be reproduced in full. The purpose could be served by noting down after the main plea in defence, that legal objections were also raised pertaining to maintainability, notice, limitation or multifariousness etc.

(3) The next pitfall to be avoided concerns a widely prevalent style of giving a brief resume of the evidence of the parties with particular reference to the deposition of various oral witnesses as well as the particulars of supporting documents. This part of discussion can be (and should be) totally avoided. Instead we should directly jump on to the discussion of the issues which may be grouped together (where-ever possible) to avoid repetition of points. In this regard when a particular issue (or issues) is (or are) being discussed, then only that particular portion of the deposition of a witness should be referred which is relevant to the discussion. Even at the risk of repetition, it is reiterated that we should avoid making a general reference to the entire oral evidence of a party enumerating what a particular witness had stated in examination-in chief or in cross-examination. On the other hand, if the case of the plaintiff is being discussed, usually a brief reference need be made to his oral evidence (unless details are required for a specific purpose) while more stress should be laid on the admissions (if any) made by the witness or witnesses of the defendant besides other short-comings in his evidence, so far as the same is helpful in bolstering up the case of the plaintiff and vice versa. The underlying idea is that more attention should be given to the cross- examination of the witnesses of the parties in the discussion because generally the examinations-in chief are depositions in consonance with the pleadings or stand of the parties. As such, infirmities, strong points or admission would have to be picked out of the statements of the witnesses at the stage of their cross- examination to fortify the discussion on a particular point or issue.

(4) No standard mode could be prescribed regarding the stage for the discussion of the documents; whether these should be taken up before or after oral evidence or their discussion should be interspersed with that of the oral witnesses. As a matter of fact, these factors would vary from case to case. For instance, if the case of a party (plaintiff or defendant) is very strongly based on documents, then it would be better to commence the discussion with reference to the documents relegating to background the oral evidence in the case. But we should never lose sight of the basic aim of judgment writing- brevity.

(5) Adverting to the length of a judgment, opinions again differ. Some judges opine that a judgement should be fairly lengthy in order to contain discussion of every aspect of the case. On the other hand, there are quite a few votaries of the opposite view- that a pronouncement should be brief though

without leaving any point of controversy untouched. personally speaking, I am of the view that one should rather err on the side of brevity, because the subordinate courts are flooded with pretty old as well as urgent matters. Hence at the grass- roots level the judgments and orders generally should be briefest possible though without doing injustice to the problem under discussion. Of course, there are some matters which are complicated and require lengthy discussion. But those are few in number and should be dealt with accordingly without much procrastination.

(6) During the writing of a judgment some times quite a few citations referred by the parties are to be discussed. A few points should be kept in view in that context. First, all the rulings of at least the unsuccessful party (i.e. against whom the verdict is being given) should be accounted for. In case you feel that some or most of them are irrelevant of not applicable to the facts of the case in hand, then simply enumerate and dispose them of by branding them as such. However, the helpful citations should be utilised in a judicious manner. Lengthy excerpts out of rulings are not advised unless the same is specifically required to elucidate some legal point. The judgments reproduced at the end of the Hand Book contain some good points besides some glaringly bad points in this regard. (Incidentally, the discussion contained therein and conclusions drawn therefrom should not be considered as guidelines because their correctness is not vouchsafed for want of information about their fate at appellate stage. Hence those are mere instances of some legal problems and the manner in which they were tackled by a particular Judge. As such, every beginner should discuss those adjudications with his senior colleagues before finally assessing their worth as a safe illustration). Second, whenever a ruling is cited, it should be underlined giving the particulars of the case title e.g., AIR 1930 Lahore 44, Mohan Lal versus Sohan Lal etc. Third, if some lines or a paragraph out of a ruling is being quoted, the quotation should be typed with a distinct margin and within inverted commas. At the same time, as far as possible it should be mentioned whether the excerpt is from a particular paragraph or a head note.

(7) A distinction between the terms head note and heading of the plaint should be kept in mind. A head note usually means an index note given by the Editor as the heading of a judgment reported in a journal. Normally the head note or index note correctly conveys the legal point in question. But some times these headnotes are quite mis-leading. It is therefore always advisable to go through either the entire ruling or at least the relevant para (or paras) to which the said headnote related.

A heading of the plaint generally denotes that portion of a plaint (or petition) which exists just under the title or particulars of parties. The heading of the plaint should contain brief particulars of the relief claimed as well as the subject matter of the suit. Hence there is no term known as head note of the plaint. The use of such a misnomer should be avoided.

(8) In a Judgment or Order, the presence of the counsel for parties should be noted by name and not merely as "Counsel for parties" as is the general practice. At the same time, heading of the judgment should contain the following details:

(i) full particulars of the parties,

(ii) full particulars of the subject matter of suit, and

(iii) valuation of the suit for the purposes of court fee and jurisdiction.

Similarly, the last or operative para of the judgment should contain full particulars of the relief granted with details of the property etc. if possible. For instance, in a suit for permanent injunction following could be the two types of final orders:-

**(a) Incorrect form**

"On the basis of the decision on various issues, the suit of the plaintiff stands decreed with costs for permanent injunction as prayed for..."

**(b) Correct form**

"On the basis of the decision on various issues, the suit of the plaintiff Ram Singh is decreed with costs permanently restraining the defendant Sham Singh from forcibly dispossessing the plaintiff from 24 kanals of area comprised in khasra no. 32/7,9,12, and 15 situated in Village khadag Pur, except in due course of law..."

(9) A Conference of senior Judicial Officers of the States of Punjab and Haryana was held at Chandigrah in the year 1988. One of the items of discussion there pertained to the problem in hand.

The final consensus of opinion was almost to the effect:-

There is no denying the fact that brevity is the cardinal quality of a good judgment, but brevity should not be at the cost of material facts of the case and necessary discussion of the relevant evidence. Such a judgement should satisfy the following criteria:

(i) It should be couched in simple language.

(ii) A summary of contentious facts should be recorded with properly reasoned and clear-cut findings on all the issues involved in the case.

(iii) The rulings cited by the parties should not be copiously reproduced; only the ratio decidendi should be alluded to.

(iv) The relief granted should be clearly and succinctly recorded.

(v) While discussing the evidence and conduct of witnesses, temperate language should be used. The tendency to make adverse, comments on witnesses or judgments of trial courts should be avoided.

**In this context it was further advised that no omnibus issue should be framed while separate and distinct finding on all the issues is essential.**

(10) Quite frequently some lines or excerpt out of a ruling or statement of a witness is reproduced in judgment. Some times it becomes necessary to underline some word, clause or sentence/sentences in that excerpt in order to emphasize some fact or point. Such an excerpt should usually be reproduced within inverted commas while at the end of the entire excerpt, a clause (emphasis supplied) should be added out of inverted commas to indicate that the underlining had been done by the writer.

(11) In money suits, some times the final relief granted is less than the claim made by the suitor. In such cases the suit should normally be decreed with proportionate costs.

Similarly in case of money suits filed by Banks, the relief sought through sale of mortgaged/hypothecated property should not be ignored. Normally such mortgaged/hypothected properties should be ordered to be kept intact till final settlement of accounts on payment of decretal amount, so that the same could be put to sale during execution of the decree, if so warranted.

## PART C- CRIMINAL JUDGMENTS

(1) As most of the criminal work in junior District Courts comprises police challans, this discussion is restricted to the same.

(2) A judgment should contain full particulars of the accused with approximate age, details of FIR, Police Station and offences. The presence of the Prosecutor and defence counsel should be marked by name.

(3) The opening paragraph should contain brief case of the prosecution while the next para could allude, again briefly, to the charge and the particulars of the witnesses of the prosecution, the stand of accused in his statement u/s 313 Cr. P.C. and defence evidence, if any.

A reference to supplying of copies of documents to the accused can be dispensed with being a minor procedural detail. Nor is it necessary to give details of the offence the accused is (or are) charged with except enumerating the same because the same would be included in the main discussion.

(4) The next para may refer to the final arguments containing in brief the points of attack on the prosecution case followed by their discussion-pointwise. The necessity of dividing the writing into paras or sub-paras in reiterated because a judgment without proper paras gives the appearance of jumbled up ideas and conclusions. The numbering of paras is essential.

(5) The rulings cited by the parties must be referred to though their disposal might be restricted to a few lines, if so warranted.

A practice of not mentioning any in convenient ruling which does not fit in with the discussion and conclusion drawn in the judgment, must be avoided as it can result in an avoidable grouse besides being down right dishon-

esty. In this context it is essential that a Judge should know the relevant law comprised in Divison Bench or Full Bench rulings of the High Court besides the pronouncements of the Supreme Court (which can be pressed into service to distinguish single Bench citations even if neither party has referred to it. Obviously, it is the basic duty of a Judge to apply the correct law to the facts of the case in hand. And for that task the Courts are not to feel handicapped in case the Prosecutor or the defence counsel does not care to submit the law required for the proper and effective adjudication of the point. (Incidentally, for that purpose an attempt has been made to tabulate some basic rulings under various topics in this Hand Book. Each beginner should make efforts to verify the correctness of that tabulation with original rulings and try to make the collection up to date by referring to the relevant Digests and Journals besides adding to the collection in his own manner in the blank spaces left for notes in the Hand book.

(6) It is a general advice by the senior judges that at the trial Court level a verdict of acquittal should not be announced on flimsy or trivial grounds. Nor should usually much importance be always attached to the absence of independent corroboration to the testimony of official witnesses whose evidence should normally be assessed like any other witness. In this context the attention of the Young Judges is specially drawn to the basic law of assessment of evidence tabulated in the Hand Book under the following topics:-

(i) Basic approach or duty of a Judge in a Criminal Trial.

(ii) Duty of Court to separate "chaff from the grain"

(iii) Basic Legal yard stick for assessing Prosecution version.

(iv) Number of witnesses required to prove a case of Prosecution.

(v) Discrepancies in statements of Eye-witnesses.

(vi) Police and other Official witnesses.

(vii) Corroboration from independent source to the evidence of private or official witnesses- Legal requirement there of.

This information coupled with some specimens of judgments in criminal cases attached at the end of the Hand Book could perhaps provide some practical guidelines to the new and raw hands in the profession.

(7) In a case where a sentence of imprisonment and fine is to be awarded, I am of the personal view that deterrent punishment should be the general policy at our level. Secondly, in cases involving offences against person, some compensation out of the fine imposed should be awarded to the vicitim in order to obviate any necessity of separate litigation under the law of Tort, as laid down in Sec. 357 Cr. P.C. Thirdly, it should be made a habit to consult, I.P.C. Cr. P.C. or any Special Act in question whenever any Order or Judgment of conviction is be pronounced or dictated in a criminal case. In this connection special mention may be made to certain

offences wherein a sentence of [illegible] of imprisonment, e.g., Sections 325 and 326 I.P.C. Fourthly, in case of an order of maintenance u/s 125 Cr. P.C., it is the duty of the Court to supply a copy of judgment free of cost to the successful party as directed by Section 128 Cr. P.C. Similarly, please note Sec. 363 Cr.P.C.

Fifthly, the salutary provisions of Sec. 340, 344 & 345 Cr. P.C. should be kept in view to be invoked in apposite cases. However, in Sec. 345 Cr. P.C. special note be made of the clause- "at any time before the rising of the Court on the same day". Sixthly, the provisions of Sec. 309 Cr. P.C. pertaining to adjournment of proceedings should be noted with particular regard to the third proviso under sub-section (2) there of. Seventhly, the provisions of sections, 3,4 & 6 of the Probation of Offenders Act coupled with Sections 360 & 361. Cr.P.C. should not be lost sight of. Eighthly, on the analogy of civil cases, costs of adjournment can be ordered even in criminal cases against defaulting party or accused. Please also note provisions of compensation u/s 250, 359 Cr. P.C. Ninthly, an accused can be examined on oath as a defence witness u/s 315 Cr. P.C.- but at his specific application.

Tenthly, the personal presence of an accused can be exempted by the Court u/s 205 and 317 Cr.P.C. Eleventhly, at the conclusion of a trial of a case involving some property, an appropriate order of disposal must be passed u/s 452 Cr. P.C. In cases pertaining to stolen property, a specific question should be put to the accused whether he claims the property or not- either u/s 313 Cr. P.C. or even at any earlier stage, if so warranted. Twelfthly, in case of sentence of imprisonment the accused has to be awarded the benefit of set-off pertaining to his under-trial detention u/s 428 Cr. P.C. So that calculation work should be got completed forthwith as the same is to be incorporated in the relevant warrant of conviction to be issued by the court soon after the pronouncement of sentence. It is further advisable that no such pronouncement should be made before the dictation of the judgment which should then be typed by the Steno forthwith on a priority basis even if the remaining court work has to be temporarily suspended. The fact should be kept in view that according to an Instruction issued by our High Court, the required copy of judgment (free of cost) has to be provided personally to the accused. For that purpose his signatures or thumb-impression should be obtained by the steno-typist attached with the court in the relevant register maintained by him for issuance of copies. Thirteenthly, the penal provision of Sec. 345 Cr. P.C. is to be invoked rarely and as a last resort, like the brahamastra in the Mahabharta.

**Courtesy :** A hand Book for young judges, fresh prosecutors and Budding Law years (volume). Published by Hari Har Kripal publishers ND-130 Bikrampura Mai Hiran gate. Jalandhar city Punjab.

# PERSONAL PAY

**P.K. TIWARI, ADVOCATE,**
Retd. Senior Audit Officer A.G. M.P.,
Gwalior & Ex-Accounts Officers, High Court of M.P., Jabalpur.

There is a general belief that personal pay cannot be decreased or reduced. If grant of personal pay is governed by some special orders which say that personal pay shall not be reduced by increase of pay, personal pay shall remain in tact. Otherwise under the ordinary rules as contained in the Fundamental Rules, the position is the converse.

Now personal pay has been defined as under in F.R. 9 (23):- **"Personal pay"** means additional pay granted to a Government Servant-

(a) to save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to a revision of pay or to reduction of such substantive pay other wise than as a disciplinary measure; or

(b) in exceptional circumstances, on other considerations

Further F.R. 37 stipulates as follows:-

**"PERSONAL PAY-** Except when the authority sactioning it orders otherwise personal pay shall be reduced by any amounts by which the recipient's pay may be increased, and shall cases as soon as the pay is increased by an amount equal to his personal pay.

It is thus quite obvious that if pay rises due to increments or fixation of pay on account of promotion, the personal pay has got to be reduced by such amounts or increase of pay.

In this way personal pay can be protected only if the sanctioning authority has exempted personal pay from the operation of F.R. 37. Otherwise it is prone to erosion by increments and also any increase of pay due to promotion or other cause. Personal pay for loss of substantive pay can also not be protected if pay reduction is due to punishment in disciplinary proceedings.

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**WORK**

Nature does not thrust power and accomplishments upon us. In her infinite wisdom she has left us work to do ourselves. Into every man's hands she puts incipient powers and latent forces, leaving it to man himself to develop them or not, as he may chose.

Remember that it is only through your work that you can grow to your full height.

Execute your resolutions immediately. Thoughts are but dreams till their effects be tried.

**Orison Swett Mardem**

**HARDWORK**

The Commonest form, one most often neglected, and the safest opportunity for the average man to seize, is HARD WORK

**Arthur Brisbane.**

# ATTENTION

# ANTICIPATORY BAIL PROCEDURE FOR FILING OF THE SAME LAID DOWN

## M. Cr. C. NO. 4633/99 AND ANOTHER CASE. B.P. SHRIVASTAVA Vs. STATE OF M.P. ORDER PASSED BY HON'BLE SHRI JUSTICE DIPAK MISRA AT MAIN SEAT, JABALPUR, DATED 10.8.1999.

It is incumbent on the person who seeks to obtain the privilege of anticipatory bail to satisfy the court that there is apprehension for his arrest. This is a condition-precedent to invoke the jurisdiction of the Court under Section 438 Cr. P.C. ***Gurbaksh Singh Vs. State of Punjab, AIR 1980 SC 1632*** referred and relied.

A heavy onus is cast on the applicant seeking the privilege enshrined under Section 438 of Cr.P.C. to satisfy the Court, that he is entitled under law to obtain the said concession.

It is to be borne in mind that an application under Section 438 (1) of Cr. P.C. has to be applied by the person who has reasons to believe that he may be arrested of an accusation of having committed of a non-bailable offence. The language used by the Parliament is "HE MAY APPLY TO THE COURT". Thus, an application by the accused is mandatory. Existence of the reasons of belief has to be based on BONAFIDE reasons of belief, and it is the SINE QUA NON. It is to be noted that a BONAFIDE reason of belief is not a colourable belief. The accused has the special knowledge with regard to his apprehension. The Court has the obligation to scrutinise the same with objectivity of approach to find out that there is proof of his apprehension. **Hence, the application has to be supported by an affidavit of the applicant or by a family member or a friend or a pairokar who has been duly authorised by the applicant. The authorisation should be filed along with the affidavit. This would subserve the cause of justice and strike a balance between the individual liberty and the concept of COMPOSITE RESTRAINT'.**

It is to be noted here that an application under Section 438 Cr. P.C. can be made to the Court of Sessions. IT IS HEREBY MADE CLEAR THAT EVERY APPLICATION UNDER SECTION 438 Cr. P.C. FILED BEFORE ANY COURT OF LAW SHOULD BE SUPPORTED BY AN AFFIDAVIT AS HAS BEEN INDICATED ABOVE.

Liberty, the priceless treasure of human soul, is not an absolute abstract concept. True, it is, individual liberty is the most important aspect of human existence but it has to be guided and governed by law. The individuality and the power to exercise free will cannot be given total freedom. Liberty is to be achieved by rule of law which includes the procedural law. Procedures are to be followed as they are the hallmark of authenticity and exposit sacrosanctity. Sometimes procedure is evolved to curb want on moves of the unscrupulous litigants and to curtail the unwarranted passion of an unethical and unprinci-

pled minds and further to nip the unnecessary and uncalled for problems in the bud.

The directions contained in this order as far as it relates to filing of an affidavit while preferring an application under Section 438 of Cr. P.C. **SHALL BECOME EFFECTIVE FROM 1ST SEPTEMBER, 1999. LET A COPY OF THIS ORDER BE SENT TO ALL THE SESSIONS JUDGES OF THE STATE.**

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## CR.P.C. SECTION 438, ANTICIPATORY BAIL IN CASE OF A WARRANT ISSUED TO AN ACCUSED WHO IS ALREADY ON BAIL : (NOT TO BE GRANTED)

### M.CR. C. NO 592/99 AND ANOTHER CONNECTED CASE
### *YOGENDRA SINGH Vs. STATE*

This case was decided on 6.9. 1999 by Hon'ble Shri Justice Dipak Misra, Judge, High Court of M.P. at Jabalpur, Main Seat.

Facts of the Case:-

Yogendra, the applicant in M.Cr.C. No 5921/99 was arrested for an offence punishable u/s 394 of the India Penal Code (in short the 'IPC'). He was admitted to bail and thereafter, he faced trial in criminal case No. 397/88 before the Judicial Magistrate First Class, Nagod in the Distt. of Satna. As averred in the petition he used to appear on each date when the case was posted for hearing. However, due to his ill health he could not appear on 4-7-1988 and through his counsel an application for condonation of his absence and for representation was filed. The said application was rejected and a nonbailable warrant of arrest was issued. In this backdrop he moved the learned Additional Sessions Judge for grant of anticipatory bail who negatived the prayer. Being dissatisfied he has approached this court for grant of said relief.

In M.Cr.C. No 6061/99 Shankarlal was taken into custody for the offences punishable u/s 7 read with Section 16 (1) (a) of Prevention of Food Adulteration Act, 1954. He was facing trial before the Chief Judicial Magistrate, Betul in criminal case No. 417/91. The petitioner remained absent on 12.4.1996 and he instructed his counsel to file an application for exemption from appearance. As the impugned order of rejection would show, a non-bailable warrant of arrest was issued on 12.4.1996. It is averred that the petitioner had met with an accident and was in a state of coma for nine days. It is also putforth that his wife was ailing for the last four years and hence, the petitioner could not attend the Court. In this background he filed applications u/s 438 of the Code on two occasions which have been rejected by the learned Second Additional Sessions Judge, Betul. His prayer for grant of anticipatory bail having been negatived he has visited this court for grant of said privilege.

Learned counsel for the petitioners/applicants have contended that there are no fetters in exercising jurisdiction u/s 438 of the Code and this Court should interpret the said provision in 'favour of liberty'. They have placed

strong reliance on the decision rendered by Full Bench of this Court in the case of ***Nirbhay Singh and another Vs. State of Madhya Pradesh, 1995 MPLJ 296.***

The heart of the matter is whether at the instance of an accused who has jumped bail an application u/s 438 of the Code is maintainable?

Referring to the provisions of Section 438 of the Cr.P.C. the Court quoted in paragraph 6 that scanning the anatomy of the aforesaid provision, it is submitted by the learned counsel for the petitioner that the power conferred on the High Court or the competent Court of Session is unbriddled and unfettered and therefore, nothing should be added to the same except the obligation on the Court to decide the application on objective assessment of the factual scenario. Emphasis is laid on the silence of the language employed by the Legislature with regard to any rider or qualifier. It is canvassed by them that if narrow interpretation is given to Section 438 of the Code, it would cause violence to the language and there is no justification to infuse conditions which are not patent in Section 438 of the Code.

7. To substantiate the aforesaid submissions heavy reliance is placed on paragraph 15 of the decision rendered in the case of Nirbhay singh (supra), I may profitable refer to the relevant portion of the said paragraph:

> "15. In view of what we have indicated above, we are in respectful agreement with the view taken by the High Court of Punjab and Haryana that an application under section 438, Criminal Procedure Code would be maintainable even after the Magistrate issued process under section 204 or at the state of committal of the case to the sessions court or even at a subsequent stage, if circumstances justify the invocation on of the provision." -

Enormous emphasis is laid on the words "or even at a subsequent stage". It is submitted by the learned counsel for the petitioners that subsequent stage would encompass any stage or any circumstance under which a non-bailable warrant of arrest is issued and there is reasonable apprehension in the mind of the accused that he would be arrested and taken into custody.

## (JUDGEMENT TO BE READ IN ENTIRETY)

8. It is well settled in law that a decision is regarded as a precedent for what it decides and not what can be inferred from it. In the case of **Nirbhay Singh (supra)** their Lordships were dealing with the proposition whether an application for anticipatory bail is maintainable after the Magistrate has issued process u/s 204 of the Code. In that factual backdrop their Lordships laid down as has been spoken in paragraph 15 of the judgment. It is also settled law that a judgment has to be read in entirety and a line from here or there should not be read out of context to deduce a proposition of law. Purpose of stating so is that the above quoted portion of paragraph 15 of Nirbhay Singh (supra) cannot be read in isolation. In fact, the ratiocination finds place in paragraph 11 of the decision. It is

appropriate to reproduce in entirety paragraph 11. It is as under:

> "11. Section 438 speaks of a person having reason to believe that he may be arrested on an 'accusation'. There may be an accusation even before a case is registered by police. After the registration of the case, filing of charge-sheet or filing of the complaint or taking cognizance or issuance of warrant, the accusation will not cease to be an accusation. At the later stage, there may be stronger accusation or move evidence. Nevertheless, the accusation survives or continues. Section 438 Speaks of apprehension and belief that he may be 'arrested'. There is no limitation in the language employed the legislature indicating that the arrest contemplated is an arrest by the police of their own accord or that arrest by the police on a warrant issued by the court will not attract section 438. The language. used is clear and unambiguous, namely, apprehension of "arrest on an accusation". Considering the legislative purpose underlying the provision and the clarity of the language used in the section, we do not find any justification to import anything extraneous into the interpretation so as to restrict the scope or vitality of the provision. It is not as if circumstances justifying an application under section 438 would disappear once a Magistrate takes cognizance of the offence or even after he passes an order committing the case to the sessions court. Even at such stages, there may be circumstances warranting invocation of the special jurisdiction under section 438. A person may file a private complaint and produce before the Magistrate a few witnesses who will provide a consistent version of an imaginary occurrence. At that stage, the Magistrate will not be in a position to appreciate the evidence or go being the same. If the material is such that he is satisfied that there is sufficient ground for proceeding he is bound to take cognizance and issue process. This may happen even if the story putforth by the complainant is more imaginary than real or may be hopelessly exaggerated. Such a situation may arise at the stage of committal where the Magistrate is concerned only with one aspect,namely, whether the material disclosed commission of the offence exclusively triable by the Court of Session. At neither stage is he required to go into the truth or otherwise of the material before him. It cannot, therefore, be said that at such stages the justification for invocation of section 438, Criminal Procedure Code no longer exists. In this view, the scope of section 438 should not be restricted by reading into it words to the effect- "when any person has reason to believe that he may be arrested solely at the instance of the police and not as per warrant issued by a competent Magistrate". The clear purpose underlying the language employed by the legislature precludes any justification for reading such words into the statute."

9. On a fair and proper reading of the reasonings given in the aforesaid decision, it is luminously clear that their Lordships were dealing with stage relating to issue of process, stage of committal or the stage after the

matter is committed to the Court of Session. It is hereby made clear ... am not deciding the issue whether in case of conversion of an offence to a graver one by the police or by the Magistrate, the accused who has been given the privilege of anticipatory bail or concession of regular bail in respect of lesser offence, would be entitled to maintain an application u/s 438 of the Code; or whether an application u/s 438 of the code would be maintainable by a person when he is impleaded as an accused u/s 319 of the code and sought to be arrested pursuant to issuance of a non-bailable warrant of arrest, as those issues do not arise in the present petition. The present factual matrix is quite different. The accused persons were released on bail. They appeared in the Court and as per the conditions in the bail bond they were required to appear before the Court which was in seisin of the matter.

Referring to provisions of Section 441 of Cr. P.C. the Court held that the aforesaid provision contemplates that an accused is required to appear before the Court to answer charge levelled against him. It is imperative for the accused to do so. When an order of bail is passed the accused gets back his liberty from the custody on a condition that he would be present during trial. He is not totally free. His liberty is conditional. I am conscious of the fact that the Full Bench has used the words subsequent stages; but I have already indicated that the same should be read in context of paragraph 11 of the judgment.

The court referred to ***Natturasu and others Vs. The State,*** **1998 Cr LJ 1762** and quoted as under:

"91. When apprehension of arrest arises? The apprehension of arrest for a non-bailable offence, one can have at different stages, nemely.

(a) during the period of investigsation by the police after registration of FIR and before filing of the final report under section 173, Cr PC:

(b) during further investigation under section 173 (8) Cr PC even after filing of the charge-sheet under Section 173 Cr PC:

(c) after taking cognizance by the Magistrate, summoning the accused under section 204 CrPC through warrant;

(d) while the Magistrate committing the Sessions case to the Court of Session under 209 CrPC and remanding the accused to custody ;

(e) during the enquiry or trial, if the Court, on the basis of the evidence let in, impleads a person as an accused under section 319 CrPC for the purpose of summoning or dataining him under section 319 (2) and (3) Cr PC"

I am in respectful agreement that these are the stages wherein an accused can apprehend arrest. These would conceptually engulf 'subsequent stages' but would not cover a stage where an accused who has availed the privilege of anticipatory bail or regular bail and fails to appear before the Court on the dates fixed for trial and in a way abuses his liberty. The learned

Single Judge in the case of **Natturasu (supra)** has further held as under:

> "92. The above five contingencies involve different stages. As seen earlier, once the person accused of is released on anticipatory bail or on bail at one stage, the operation of the bail continues till the conclusion of the trial. Therefore, the person, who is already on bail or anticipatory bail, cannot be entitled to apply for a fresh anticipatory bail in respect of the same accusation, in other stages.
>
> 93. For instance if a person, who is already on bail, did not appear before the trial Court and that, therefore, the Court issues warrant of arrest, then the said person will certainly have the apprehension of arrest.
>
> 94. But, in such a situation, the accused is not entitled to file an application for anticipatory bail, because he is already on bail or anticipatory bail in respect of the accusation of non-bailable offence. He shall, in such circumstance, have to take steps to recall the warrant.
>
> 95. Therefore, the application for anticipatory bail would not deal with the situation, wherein the accused had appeared before the court, in relation to the case in which he already obtained the bail.
>
> 96. In other words, the application under section 438 CrPC, being dealt with only relates to the apprehension of arrest for the accusation of non-bailable offence only one."

10. In para 10 the Court held that I have quoted in extenso from the aforesaid decision, as I am in respectful agreement in the law laid down therein. I may hastan to add that emphasis has to be given not only on stage but also **on self same accusation.** To elaborate if initially the accused is being sought to be arrested for an offence punishable u/s 326 of IPC and has been granted anticipatory bail but later on section 307 of IPC is added and the Magistrate issues summons to him and he has an apprehansion that he may be arrested once he surrenders before the court an application u/s 438 of the code at his instance may stand in a different footing but supposing an accused who has been granted benefit of anticipatory bail after a warrant of arrest has been issued u/s 319 of the Code and he after availing the privilege and obtaining the concession of bail does not appear during trial and jumps bail and the court issues a non-bailable warrant of arrest for his production, in that case the apprehension may ensue but that will not give him right to approach the Court for grant of anticipatory bail for the simple reason, at his behest an application for anticipatory bail would not lied. The concept of 'Ex paritate rationis' will not be attracted inasmuch as the first limb, the apprehension of arrest exists, but the second limb 'self-same accusations' is not amputated. No accused should forget the basic principle that he who seeks liberty must conduct himself with propriety as liberty blossoms in an atmosphere of composite restraint and collective good. Section 438 of the Code can not be given an interpretation to guillotin other provisions of the code. It is hereby made

clear that it would be open to him to take appropriate steps [illegible] 70 (2) of the code for recall/cancellation of the warrant so issued against him or, he may, if he so chooses, assail the order issuing warrant as illegal or improper by perfering appropriate application before the higher courts, wherein the propriety of issuance of warrant may be gone into. The justifiability or the defensibility of the order would be a matter of scrutiny by the Court exercising power and that is a different arena alltogether.

In view of the above the bail applications under Section 438 were rejected.

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## NDPS JURISDICTION OF COURTS :- REFERENCE ANSWRED

### CR. R. NO. 437/98 AND TWO OTHERS. BARJI VS. STATE. M.P. HIGH COURT DTD. 10.8.99 BY HON'BLE SHRI DEEPAK VARMA AND HON'BLE SHRI N.K. JAIN J. JUDGMENT REPRODUCED VERBATIM

1. Pursuant to the Order of Reference, passed on 5.11.95 by learned Single Judge (Hon'nle Shri R.D. Vyas, J.), these revisions, by the order of Hon'ble Chief Justice, have been placed before us for resolving the question as extracted in para 4 below.

2. Facts are in narrow campass. The State Government by a notification dated 13th February, 1997, issued under Section 36 of the Narcotic Drugs and psychotropic Substances Act, 1985 (for short 'the Act') constituted nine special Courts in the State at Indore, Ujjain, Gwalior Rewa, Jabalpur, Bhopal, Raipur, Mandsaur and Sagar for the areas indicated therein, The area indicated for each special Court, included 4 to 5 Sessions Divisions. The area assigned to the Special Court Ujjain consisted of Sessions Divisions Ujjain, Dawas, Ratlam and Shajapur, Later on by a subsequent notification dated 2nd April, 1998 the State Government in suppression of the earlier notifcation dated 13.2.97, constituted 45 special Courts in the State, thus, providing one special court for each of the 45 Sessions Divisions. Obviously, like any other special Court, the jurisdiction of Spl. Court. Ujjain was limited to the Sessions Division Ujjain only. However, the cases giving rise to the present revisions amongst others, were pending in the Ujjain Court on the date when the subsequent notification dated 2.4.98 came into force. The court it appears, had already taken cognizance and framed charge in these cases. Admittedly, these cases arose the area which now falls within the jurisdiction of special court Ratlam. The accused persons of these cases, therefore, moved applications for transfer of their cases to special court Ratlam, on the ground that by virtue of this second notification, the court at Ujjain ceased tc have jurisdiction to try these cases. The learned special Judge however by the orders impugned, dismissed all the applications. The learned Judge was of the view that the notification dated 2.4.98 had to retrospective effect and the cases in which cognizance had already been taken, shall be continued to

be tried by the Ujjain court. The accused-petitioners thus approached this court in revision.

3. When these revisions came up before the learned Single Judge, he felt bound by a decision dated 14.10.98, passed by another single Judge (Hon'ble Shri S.P. Khare, J) of this Court at Jabalpur in Misc. case No. 5591/98, but at the same time entertained doubt as to/its correctness. The learned Single Judge observed (vide para-6):-

> "Prima facie I agree with the submission by the learned Advocate. Since I am bound by the single Judge Judgment dated 14.10.98 in the aforesaid Misc. Cr. Case, with which I do not agree prima facie, I would refer the matter to the Division Bench for considering the aforesaid points."

The learned single Judge has posed the controversy in following terms (Para-3):-

> "The controversy arises whether, in the cumstances, the Court at Ujjain having the jurisdiction over the aforesaid four Districts having taken cognizence and frame charges, would still continue to exercise the jurisdiction over the Districts other than Ujjain after supersession of the Notification under which that Court was constituted whereas by subsequent Notification another Court is constituted for different areas and the jurisdiction of Ujjain Court is limited to Ujjain city only."

4. The inbred question is whether on coming into force of second notification dated 2.4.98, the special Courts constituted under the previous notification dated 13.2.97 were divested of the jurisdiction to try the cases already pending before those Courts on and before 2.4.98.

5. We have heard Shri C.R. Joshi, learned counsel for the petitioners and Shir Girish Desai, learned Government Advocate for the respondent-State.

6. Section 36 of the Act, as amended by the Amendment Act of 1989, provides for constitution of Special Court and appointment of Special Judges by the State Government with the concurrence of the Chief Justice of the High Court, This Section, insofar as relevant for our purpose reads thus:-

> "36, Constitution of Special Courts - (1) The Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the official Gazette, constitute as many special Courts as may be necessary for such areas as may be specified in the notification.
>
> (2) A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court."

Only a Sessions Judge or an Additional Sessions Judge can be appointed a Special Judge. Section 36-A confers exclusive jurisdiction to the Special Court constituted for a particular area, to try all offences under the Act, arising from that area. Section 36-B provides for appeals and revisions to

High Court from the judgments & orders passed by the Special Courts. Section 36-C provides for application of the provisions of the criminal procedure code, 1973 to the proceedings before the Special Court as if the Special Court is a Court of Sessions. This brings us to Section 36-D which may usefully be re-produced at this stage. It reads:-

> "36-D. Transitional Provisions.- (1) Any offence committed under this Act on or after the commencement of the Narcotic Drugs and psychotropic Substances (Amendment) Act, 1988, until Special Court is constituted under Section 36, shall, notwithstanding anything contatined in the code of Criminal Procedure, 1973 (2 of 1974), be tried by a Court of Session:
>
> Provided that offences punishable under Sections 26, 27 and 32 may be tried summarily. (2) Nothing in sub-section (1) shall be construed to require the transfer to a Special Court of any proceedings in relation to an offence taken cognizance of by a Court of Session under the said sub-section (1) and the same shall be heard and disposed of by the Court of Session."

7. A reading of the aforesaid provisions, makes it clear that although Section 36-A confers exclusive jurisdiction on a Special Court to try all the offences under the Act arising from the area for which the Court is constituted, the cases pending in Sessions court on the date of constitution of the Special Court and of which the cognizance had already taken by such other court, shall remain unaffected, and continued to be tried by that Court.

8. Although sub-section (2) of section 36-D refers to the cases pending in a court of session on and before the date of constitution of a Special Court, the underlying principle remains the same and would obviously apply to the cases pending in a Special Court before constitution of another Special Court for the same area.

9. Shri Joshi, learned counsel for the petitioners has laid much emphasis on the word 'supersession' used in the notification dated 2.4.98. According to him, by this notification not only the earlier notification dated 13.2.97 was totally obliterated, the jurisdiction of the Special Court constituted under the previous notification in respect of the area which now fell outside its jurisdiction was also taken away even in respect to the pending cases arising out of that area we are however, unable to acceed to the contention.

10. The Notification in question is obviously issued by the State Government under the delegated powers conferred by Section 36 of the Act. Generally speaking, such power may be conferred to make subordinate legislation in the shape of a Rule, a Bye-law or a Notification, which have retrospective operation. However, in the absence of an express or necessarily implied power to that effect, subordinate legislation be it a Rule, a bye-law or a Notification, cannot have retrospective operation (See Principles

of Statutory Interpretation by Justice G.P. Singh, 6th Edition,1996, Chap, 12, Syn.6). In the instant case Section. 36 of the Act does not seem to have given any such power either expressly or by necessary implication to the State Government to issue a notification having retrospective operation. The notification dated 2.4.98 also does not give even slightest indication of being retrospective in operation.

11. The Supreme Court in ***State of Orissa & Ors. v/s Titaghur Paper Mills*** (AIR 1985 SC 1293) while construing the similar word **'Supersession'** used in a Orissa Government Notification, issued under the Orissa Sales Tax Act, held:

> "The word 'supersession' in the Orissa Govt. Notification SRO Nos. 900/77 and 901/77 dated Dec. 29, 1977, is used in the same sense as the words 'repeal and replacement' and, therefore, does not have the effect of wiping out the tax liability under the previous notifications, All that was done by using the words in supersession of all previous notification' in the Notifications dated Dec. 29. 1977, was to repeal and replace previous notifications and not to wipe out any liability incurred under the previous notifications"

12. The word **'supersession'** used in the M.P. Govt. notification dated 2.4.98 has to be construed similarly. that is to say it will not have the effect of wiping down the acts done or action taken under the previous notification dated 13.2.97. Sections 6 of the General Clauses Act, 1897 also lays down the rule of construction.

13. The order dated 14.10.98 passed by brother Khare, J. does not as such lay down any preposition of law on the point. By the said order, certain pending cases were ordered to be transferred from one Special Court to another on the ground of convenience. Obviously, the order was passed in exercise of the power of High Court to transfer cases under Sec. 407 Cr. P.C.

14. It is pertinent to mention here that the High Court through a memorandum dated 9th July, 1998 has clarified that the only cases in which cognizance has not been taken by the Special Court on or before the date of issuance of notification dated 2.4.98 shall be transferred to the newly constituted Special Court. This memorandum, we find, is in tune with the legal position already stated herein-before.

15. **We, thus, conclude that the notification No. 1.6.89/XXI-B (1) dated 2.4.98 shall not affect the special cases pending on 2.4.98 and in which cognizance had already been taken by the Special Courts already constituted under the previous Notification dated 13.2.97. Such cases shall be continued to be tried by the courts in which they are pending on that date. The cases in which cognizance has not been taken shall alone stand transferred courts constituted under the subsequent notification dated 2.4.98 for the respective areas.**

16. The question as to when cognizance is understood to have been taken, is

fairly well settled by a catena of decisions of Hon'ble the Supreme Court as also of this court. The latest decision on the point was made by this Court in criminal Revision No. 223/97 on 14.7.97 and it was held that the Sessions Court trying offences under the NDPS Act can be said to have taken cognizance thereof only when it has applied its mind for the purpose of framing of charge. In the instant cases also the Special Court Ujjain has framed charges and it can be thus said that the Court has taken cognizance of the offence in all these cases.

17. We thus answer the reference as aforesaid and direct that these revisions be now placed before the learned Single Judge for further orders.

(Please refer to J.O.T.I. Journal Vol II Pt V October 1996 "Trial when commences" and Vol. No. IV. PT VI December 1998 page 32 for Judgment Hon'ble S.P. Khare in M. Cr. C.No. 5591/98 Dtd. 14.10.98

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## S.428 CR. P.C. STATEMENT OF DETENTION

### MOHAMMAD KHALIL. Vs. STATE. Cr.A. NO. 699/96

### JUDGMENT DELIVERED BY HON'BLE JUSTICE SHRI R.S. GARG, JUDGE, M.P. HIGH COURT AT JABALPUR MAIN SEAT ON 18.9.1999.

Paragraph Nos. 20 to 24 are reproduced at verbatin.

20. Before parting with the case I feel it my duty to inform the lower Courts about the provisions of Section 428 Cr. P.C. Section 428 Cr. P.C. reads as under:-

'Where an accused person has, on conviction, been sentenced to imprisonment for a term, (not being imprisonment in default of payment of fine), the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set-off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

21. Section 428 clearly provides that the period of detention, if any, undergone by the accused during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set-off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed upon him. In the present case, the learned trial Court has failed to pass any order in accordance with the provisions of Section 428 Cr. P.C. The trial Court has simply ordered that the period of detention shall be given as a set-off to the accused. I am unable to find anything in the judgment of the Court below which could show that for what period the accused was in detention. After going through the remand papers I could find that the accused was arrested on 1.6.94. It is duty of every Judge be he is a

Magistrate, Additional Session Judge or Session Judge to clearly record in its Judgment that for what period the accused remained in detention. Non-mention of the period in the judgment is likely to create number of confusions. Once the period of detentionis mentioned in the judgment itself, it would apprise the appellante Court that the accused remained in jail for a particular period as an under trial prisoner. On basis of such a statement, the Jail Authorities can also calculate the period for which the accused who is required to be kept in jail. In absence of these details the accused may have to remain in jail for a period larger than authorised by the judgment.

22. The attention of the Judges of the Lower Court is again invited to the provisions of Section 428 Cr. P.C. which provides that such a detention can be given as a set-off against the term of imprisonment imposed on the accused but such a term of detention cannot be set-off against the imprisonment which the accused has to undergo in default of payment of fine. The law requires that the benefit of provisions of Section 428 Cr. P.C. should be given to the person convicted of any offence. In order to claim benefit of set-off under section 428 two essential conditions are required to be fulfilled. (i) The accused has on conviction being sentenced to imprisonment for a term, and (ii) the accused has suffered detention during the investigation, inquiry or trial before the date of conviction. Once the above referred conditions are fulfilled then an accused is entitled to claim the statutory benefit. Any Judge who does not take into consideration the provisions of Section 428 Cr.P.C. is infact committing an illegality and is shirking his responsibility on some clerical or ministerial staff. Such an act on the part of the Trial Judge cannot be excused. It is the duty of the Judge to see that benefit under section 428 Cr.P.C. is given to the accused. It is the duty of every Judge who convicts an accused and awards jail sentence to the accused to record in his judgment the period for which the accused was in detention before the date of his conviction.

23. Though the point which now I wish to press is not relating to the present case but is again of importance. Of late while sitting in the criminal roster I am finding that the Presiding Judge simply records that he is a Special Judge, the trial Judge does not care to records in his judgment that if he is a Special Judge then for what particular cases he has been appointed as a Special Judge. The High Court and the State Government are authorising the particular Judges to try particular cases as a Special Judges. In our system we have a Special Judge (Atrocities), Special Judge (Narcotic Drugs and Psychotropic Substances), Special Judge (Essential Commodities), Special Judge (C.B.I.) and so on. Unless the trial Judge records in his judgment that he has been authorised to decide the cases as a Special Judge under a particular Act, it is likely to create confusion because the Appellate Court would not know that the Special Judge was appointed under a particular Act. The Sessions Judge is authorised to transfer regular Session Trial to these Special Judges; when that Special Judge is trying the regular Session trial he is trying the same not as a

Special Judge but as an additional Session Judge. If the particular Judge wants to say that he is an Additional Session Judge and Special Judge then in his judgment he must show that he was holding the office of the Special Judge in the Particular Act and an Additional Session Judge. By simply writing that he is a Special Judge without further giving the details that under what particular Act he was appointed as a Special Judge, the confusion would go on mounting. The Judges are required to give their proper designations and described themselves properly so that at the first glance it is made known to the appellate Court and others that the case was tried by a particular Judge.

24. Registry is directed to circulate paragraphs 20 to 23 to all the Judges, so that in future the Judges of the Lower Courts act in accordance with law, give details of the set-off in their judgments and described themselves properly.

NOTE:- Judgicial officers are requested to please refer to J.O.T.I. Vol. III PT. V, OCTOBER 1997 page 18 and J.O.T.I. Vol. No. IV. PT VI page 16 where profarma is given.

## टिप्पणी :

माननीय न्यायाधिपति महोदय ने उपरोक्त उल्लेखित निर्णय में किसी प्रकरण के निर्णय/आदेश के शीर्षक में न्यायालय का जो नाम लिखा जाना है उस विषय में जो निर्देश दिए हैं उनका पालन किया जाना है। पालन क्यों व कैसे किया जाना है इसकी पूर्व पीठिका समझ लेना आवश्यक है। हमारे में दोष यह है कि हम सिद्धांत को जानते नहीं है इसलिए हर समय प्रयोग धर्मी बनकर काम नहीं चलेगा न ही भेड़िया धसान की गति हमें लक्ष्य की ओर ले जाएगी। यदि हमें कारण स्पष्ट हो जाएंगे तो हम निश्चित रूप से स्वाभाविक रूप से पालन करेंगे जैसे खाना खाते समय हाथ मुंह की ओर ही जाता है। खाना खाते समय हमें यह नहीं कहना पड़ता कि हाथ मुंह की ओर ले जाना है तथा यदि ऐसा है तो अपरिपक्वता, मानसिक विकलांगता जैसे कारण हो सकते हैं क्योंकि मनुष्य को जन्मजात ज्ञात होता है दूध मुंह से ही पिया जाता है।

प्रथमतः यह बताया जा रहा है कि धारा 428 दंड प्रक्रिया संहिता के अंतर्गत विवरण क्यों बनाना है। उक्त धारा के अंतर्गत निरोध अवधि की सजा की अवधि में समायोजित होना है। समायोजन का कार्य जेल अधिकारी करेंगे। उनके पास विवरण तो होना चाहिए ना? वह विवरण देने का कर्तव्य विचारण न्यायालय व अपील न्यायालय का है। विचारण न्यायालय रिमांड स्तर से निर्णय दिनांक तक का विवरण समाहित करते हुए प्रपत्र तैयार करेगा जो निर्णय का अंग रहेगा तथा जेल वारंट में उसका खुलासा किया जाएगा। एक नकल प्रपत्र की भी दे दी जाना चाहिए। यहां यह भी ध्यान रहे कि यदि अभियुक्त को अर्थदंड भी किया जाता है अथवा न्यायालय के उठने तक की अवधि की सजा हो या उसे निर्दोष मुक्त भी कर दिया हो तब भी ऐसा

विवरण दिया जाना है क्योंकि निर्णय के विरूद्ध अपील अथवा पुनरीक्षण होता ही रहता है तब वरिष्ठ न्यायालय को इस बात का ज्ञान होना चाहिए कि अभियुक्त विचारण न्यायालय में सुनवाई के कालावधि में कितने समय तक निरोध में रहा।

अपील अथवा रिवीजन न्यायालय का भी समान रूप से यही कर्तव्य है क्योंकि अपील रिवीजन में पारित निर्णय के विरुद्ध भी उच्च न्यायालय में कार्यवाही हो सकती है। कहने का तात्पर्य यह है कि उपार्पण न्यायालय, प्रारंभिक न्यायालय एवं अपील रिवीजन न्यायालय को भी ऐसा ही करना है क्योंकि उनके निर्णय/ आदेश के विरुद्ध वरिष्ठ न्यायालय में कार्यवाही होती रहती है। अपील/रिवीजन में धारा 389 दं.प्र.सं. के अंतर्गत पुनः आरोपी को प्रत्याभूति पर छोड़ दिया जाता है तो विचारण न्यायालय के निर्णय से धारा 389 दं.प्र.सं. के अंतर्गत प्रत्याभूति पर मुक्त होने की कालवधि का विवरण बनाकर भी विचारण न्यायालय वरिष्ठ न्यायालय को भेजेगा।

## निरोध अवधि विवरण तालिका

**(धारा 428 दं.प्र.सं. के अंतर्गत)**

**नाम न्यायालय एवं पीठासीन अधिकारी**

1. अपराधिक प्रकरण/अपील/रिवीजन/ सत्र प्रकरण क्रमांक : .....
2. पक्षकारों के नाम : राज्य शासन वि. .....
3. अभियुक्त का नाम : ..... पिता का नाम .....
   आयु ..... निवास .....
4. सिद्ध दोष धाराएं .....

उपरोक्त उल्लेखित अभियुक्त को ऊपर उल्लेखित धाराओं में सिद्ध दोष पाया गया होकर दंडित किया है। निरोध अवधि एवं समायोजन कालावधि इस प्रकार है :

(1) अभियुक्त को बंदी बनाने का दिनांक :
(2) पुलिस अभिरक्षा में निरोध अवधि :
(3) न्यायिक अभिरक्षा की अवधि :
(4) अभियुक्त को यदि प्रतिभूति पर मुक्त किया गया था तो उक्त अवधि का विवरण:
(5) निरोध में व्यतीत कुल अवधि जो सजा में समायोजित की जाना है :

सील :

स्थान : नाम

दिनांक : पीठासीन अधिकारी पदनाम

बनाने की। प्रथमतः इसे दो भागों में विभाजित किया जा सकता है। एक व्यवहार न्यायालयों के विषय में तो दूसरा अपराधिक न्यायालयों के विषय में। व्यवहार न्यायालयों के पीठासीन अधिकारी गणों के नाम न्यायालय का नाम लिखने पश्चात ठीक उसके नीचे लिखना है क्योंकि व्यवहार न्यायालय की पहचान हेतु न्यायालयों को अनुक्रमांक होता है। जैसे प्रथम व्यवहार न्यायाधीश वर्ग 2। लेकिन यहीं न्यायालय अपराधिक प्रकरण का श्रवण करते समय केवल यह लिखे कि न्यायिक दंडाधिकारी प्रथम श्रेणी तो सब गड़बड़ हो जाएगी। आपने अभिलेखागार में देखा होगा कि अपराधिक प्रकरणों के अभिलेख पीठासीन अधिकारी के नाम से रखे जाते हैं व व्यवहार प्रकरणों के अभिलेख न्यायालय के पद नाम से रखे जाते हैं। प्रशिक्षण के समय भी इस बात को विस्तार से बताया जाता रहा है।

सिविल न्यायालयों का गठन व्यवहार प्रक्रिया संहिता की धारा 6 सपठीत धारा 6 म.प्र. व्यवहार न्यायालय अधिनियम के अंतर्गत होता है तो अपराधिक न्यायालयों का गठन धारा 6 दंड प्रक्रिया संहिता के अंतर्गत होकर उच्च न्यायालय तत्पश्चात की धाराओं के अंतर्गत व्यवहार न्यायालय के पीठासीन अधिकारियों को कार्य करने हेतु अधिकृत करता है अतः इस कारण भी पीठासीन अधिकारी का नाम अवश्य होना चाहिए।

व्यवहार प्रक्रिया संहिता की धारा 7 सपठीत धारा 9 म.प्र. व्यवहार न्यायालय अधिनियम के अंतर्गत लघुवाद न्यायालय के रूप में अधिकार प्रयोग करने हेतु व्यवहार न्यायाधीशों को अधिकृत मात्र किया जाता है लेकिन यह ध्यान रहे कि वे लघुवाद न्यायालय नहीं होते हैं। लघुवाद प्रकरणों के लिए प्राव्हिन्शियल स्मॉल कॉजेज कोर्ट ॲक्ट म.प्र. में लागू होगा। प्रेसिडेन्सि टाऊनस् स्माल कॉजंस कोर्ट ॲक्ट प्रेसिडेन्सि क्षेत्रों हेतु होता है। उक्त प्रावधानों को अवश्य पढ़ें । साथ ही साथ धारा 22 म.प्र. व्यवहार न्यायालय अधिनियम को भी पढ़े जिसमें दर्शाया है कि लघुवाद न्यायालय के न्यायालय की सील में क्या विशेषता है। उसमें यही विशेषता है कि व्यवहार न्यायालय को ऐसे अधिकारों से वेष्ठित किया है ऐसा लिखा जाना है। वह नोटिफिकेशन भी यहां पर प्रकाशित कर रहा हूं जो इस प्रकार है:

**22. Seal-** Every Civil Court shall use a seal of such form and dimensions as the State Government may prescribe on all processes and orders issued, and on all decrees passed by it.

Under this section the M.P. Government has prescribed vide notification No.8-7375/-B 58 published in the M.P. Gazette dated 1st January, 1959 from 1st January, 1959 the following seal which shall be used by every civil Court.

(i) a circular seal of one and three quarters of an inch in diameter bearing the name of the Court and the extent of its local jurisdiction with the Coat of Arms in the centre for use of all processes and orders on decrees passed by the Civil Courts in the State **other than the Courts of Small Causes,** and

(ii) a circular seal of two inches in diameter bearing the name of the Court and the extent of its local jurisdiction with the Coat of Arms in the centre for use on all processes and orders issued and all decrees passed by the **Civil Courts in the State invested with the powers of a Court of Small Causes.**

यदि आप धारा 6 दंडप्रक्रिया संहिता को देखे तो ज्ञात होगा कि मुख्य न्यायिक दंडाधिकारी का कोई न्यायालय ही नहीं होता है। अतः तकनीकी दृष्टि से मुख्य न्यायिक दंडाधिकारी ने ऐसा नहीं लिखना चाहिए कि, "न्यायालय मुख्य न्यायिक दंडाधिकारी" न्यायनगर (समक्ष : स. दा. सशक्त)। मुख्य न्यायिक दंडाधिकारी के अधिकारों से कोई एक प्रथम श्रेणी न्यायिक दंडाधिकारी प्राधिकृत मात्र होता है जैसा की दं. प्र. सं. की धारा 12 से स्पष्ट है। यही बात अति. मुख्य न्यायिक दंडाधिकारी के लिए भी समान रूप से लागू होगी। धारा 9 दं. प्र.सं. के अंतर्गत सत्र खंड में अर्थात बोलचाल की भाषा में सिविल जिले में एक ही सत्र न्यायाधीश होगा व शेष अतिरिक्त सत्र न्यायाधीश। यदि एक से अधिक सत्र न्यायाधीश श्रेणी के व्यक्ति वहां पदस्थ हैं तो उच्च न्यायालय के आदेशानुसार मात्र एक राज्य न्यायाधीश होगा व शेष अति. सत्र न्यायाधीश। विशेष न्यायाधीश जब सत्र प्रकरण सुनेंगे जो सत्र न्यायालय द्वारा अंतरित किए हैं तब वे अति. सत्र न्यायाधीश अवश्य लिखेंगे समस्त न्यायिक अधिकारी निर्णय समाप्ति के पश्चात भी ऐसा ही करेंगे। किसी भी ज़िले में जिला एवं सत्र न्यायाधीश के अतिरिक्त और कोई जिला एवं सत्र न्यायाधीश नहीं होगा। विशेष सत्र न्यायाधीश नहीं होता है अपितु केवल विशेष न्यायाधीश होगा। यदि विशेष सत्र न्यायाधीश विशेष प्रकरण सुन रहा है तब उसे उस अधिनियम का उल्लेख करना होगा जिस अधिनियम के अंतर्गत प्राधिकृत किया गया है। इस प्रकार सिविल कार्य आप प्राधिकार से करते हैं जबकि लघुवाद न्यायालय का कार्य एवं अपराधिक कार्य प्राधिकृत करने के कारण। सूर्य स्वयं प्रकाशित है तो पृथ्वी एवं चंद्र सूर्य से प्रकाशित होते हैं।

अब हम इस विषय को उदाहरणों के रूप में देखे।

# अपराधिक प्रकरण हेतु

**उदाहरण :**

**(अ) न्यायिक दंडाधिकारी**

1. न्यायालय, स.दा. सत्य,
न्यायिक दंडाधिकारी, प्रथम श्रेणी, न्याय नगर

1 ए. न्यायालय, स.दा. सत्य,
विशेष न्यायिक दंडाधिकारी, प्रथम श्रेणी
(अमुक अधिनियम के अंतर्गत विशेष न्यायिक दंडाधिकारी के रूप में प्राधिकृत एवं न्यायिक दंडाधिकारी प्रथम श्रेणी) न्याय नगर

1 बी. न्यायालय, स.दा. सत्य
न्यायिक दंडाधिकारी प्रथम/द्वितीय श्रेणी
(धारा 260 दं.प्र.सं. के अन्तर्गत संक्षिप्ततः श्रवण करने हेतु अधिकृत)
न्याय नगर

**ब. मुख्य/अतिरिक्त मुख्य न्यायिक दंडाधिकारी :**

2. न्यायालय, स.दा. सशक्त
न्यायिक दंडाधिकारी प्रथम श्रेणी, न्याय नगर
(धारा 12 दं.प्र.सं. के अंतर्गत मुख्य/अतिरिक्त मुख्य न्यायिक दंडाधिकारी के अधिकारों से प्राधिकृत)

2 ए. न्यायालय, स.दा. सशक्त,
विशेष न्यायिक दंडाधिकारी प्रथम श्रेणी,
(अमुक अधिनियम के अंतर्गत विशेष न्यायिक दंडाधिकारी के रूप में प्राधिकृत एवं धारा 12 दं.प्र.सं. के अंतर्गत मुख्य/अतिरिक्त मुख्य न्यायिक दंडाधिकारी के अधिकारों से प्राधिकृत) न्याय नगर

**स. सत्र न्यायाधीश हेतु :**

3. न्यायालय, स.वं. शक्तिमान,
सत्र न्यायाधीश, सत्रखंड, न्यायनगर

3 ए. न्यायालय स.वं. शक्तिमान
विशेष न्यायाधीश, (अमुक अधिनियम के अंतर्गत प्राधिकृत)
एवं सत्र न्यायाधीश, न्यायनगर

**जिला जज के वेतनमान में नियुक्त विशेष न्यायाधीश हेतु :**

3 बी. न्यायालय, अ.ध. शक्तिमान
(अमुक अधिनियम के अंतर्गत विशेष न्यायाधीश के रूप में प्राधिकृत)
न्याय नगर

3 सी. जब ऐसा अधिकारी सत्र न्यायाधीश द्वारा
अन्तरित सत्र प्रकरण श्रवण करे तब
न्यायालय, अ.ध. शक्तिमान,
अतिरिक्त सत्र न्यायाधीश एवं
(अमुख अधिनियम के अंतर्गत विशेष न्यायाधीश के रूप में प्राधिकृत)
न्याय नगर

**अतिरिक्त सत्र न्यायाधीश हेतु :**

3 डी. न्यायालय पा.व. शक्तिमान,
अतिरिक्त सत्र न्यायाधीश
न्याय नगर

3 इ. न्यायालय पा.व. शक्तिमान,
(अमुक अधिनियम के अंतर्गत विशेष न्यायाधीश के रूप में प्राधिकृत
एवं अतिरिक्त सत्र न्यायाधीश)
न्याय नगर

(प्रत्येक अतिरिक्त सत्र न्यायाधीश अपने–अपने न्यायालय का अनुक्रमांक यथा प्रथम, द्वितीय आदि अवश्य देंगे। विशेष सत्र न्यायाधीश नहीं होता केवल विशेष न्यायाधीश होता है अतः विशेष सत्र न्यायाधीश लिखना औचित्यपूर्ण प्रतीत नहीं होता है।)

## व्यवहार प्रकरणों हेतु

**उदाहरण :**

1. प्रथम व्यवहार न्यायाधीश वर्ग–2/1, न्याय नगर
( समक्षः स.दा. सत्य)

2. जिला न्यायाधीश, न्याय नगर
(समक्ष : स.दा. सशक्त)

3. प्रथम अतिरिक्त जिला न्यायाधीश, न्याय नगर
(समक्ष अ.ध. सशक्त)

## लघुवाद न्यायालय हेतु

**उदाहरण :**

1. न्यायालय प्रथम व्यवहार न्यायाधीश वर्ग–2/1, न्याय नगर
(धारा 9 म.प्र. व्यवहार न्यायालय अधिनियम के अंतर्गत लघुवाद न्यायालय के अधिकारों से प्राधिकृत)
(समक्ष : स. दा. सत्य)

2. न्यायालय जिला न्यायाधीश, न्याय नगर
(धारा 9 म.प्र. व्यवहार न्यायालय अधिनियम के अंतर्गत लघुवाद न्यायालय के अधिकारों से प्राधिकृत)
(समक्ष : स.दा. सशक्त)

3. न्यायालय अति. जिला न्यायाधीश, न्यायनगर
(धारा 9 म.प्र. व्यवहार न्यायालय अधिनियम के अंतर्गत लघुवाद न्यायालय के अधिकारों से प्राधिकृत)
(समक्षः अ.ध. सशक्त)

## मोटर दुर्घटना अधिकरण हेतु

**उदाहरण :**

1. सदस्य, मोटर दुर्घटना दावा अधिकरण एवं जिला न्यायाधीश, न्याय नगर
(समक्ष : स.र्व. शक्तिमान)

2. सदस्य, अतिरिक्त मोटर दुघर्टना दावा अधिकरण
एवं अतिरिक्त जिला न्यायाधीश, न्याय नगर
(समक्ष : अ.ध. शक्तिमान)

आशा की जानी चाहिए कि न्यायिक अधिकारी गण विषय वस्तु को सैद्धांतिक रूप से स्वयं समग्र रूप से चिंतन करके उल्लेखित निर्णय की भावनाओं को, निर्देशों को समझेंगे व पालन करेंगे। ऊपर जो उदाहरण दिए हैं वे विषय वस्तु को समझने हेतु पर्याप्त होंगे ऐसी आशा की जाती है। यह भी आशा की जा सकती है कि इस बात को उच्च न्यायालय पुनः न दोहराएँ ऐसा विनम्र प्रयास हमें करना है।

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1. **ADMINISTRATIVE LAW : DEPARTMENTAL ENQUIRY : NATURAL JUSTICE AND EVIDENCE ACT, SECTIONS 32 AND 33 READ WITH R. 16 (3) OF DELHI POLICE (PUNISHMENT AND APPEAL) RULES, 1980:-**
**(1999) 2 SCC 10**
***KULDEEP SINGH Vs. COMMISSIONER OF POLICE***

It was held that they are akined to Service Law. Witnesses whose statements are relied on, must be produced. Reliance on a document which was not mentioned in the charge sheet, held, could not be relied on or even referred to, by the disciplinary authority, Examination of witnesses and recording of evidence arbitrary and perverse finding where as defence witness supporting the delinquents. Enquiry Officer holding him to be an impostor without stating any reasons therefor. Such a finding, held wholly arbitrary and perverse.

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2. **TRANSFER OF PROPERTY ACT, SECTIONS 31, 32, 52, 55 AND CONTRACT ACT, SECTION 37 :-**
**(1999) 2 SCC 37**
***INDU KAKKAR Vs. HARYANA STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD.***

For a transferee to deal with interest in the property transferred "as if there were no such direction" regarding the particular manner of enjoyment of the property, the instrument of transfer should evidence that an absolute interest in favour of the transferee has been created. This is clearly discernible from Section 11 of the T.P. Act, The Section rests on a Principle that any condition which is repugnant to the interest created is void and when property is transferred absolutely, it must be done with all its legal incidents. Hence the contention of the allottee that clause in the deed of conveyance regarding establishment of the plaint within the stipulated period was unenforceable under Section 11 cannot be accepted.

All that Section 32 of the Transfer of Property Act provides is that "in order that a condition that an interest shall cease to exist may be valid, it is necessary, that the even to which it relates be one which could legally constitute the condition of the creation of an interest." If the condition is invalid, it cannot be set up as a condition precedent for crystalization of the interest created. The condition that the industrial unit shall be established within a specified period failing which the interest shall cease, is a valid condition. Such a clause of the agreement between the parties is, therefore, valid and is binding on the parties thereto.

Paragraph 19 of the judgment is reproduced:

In fact, the question is not whether there is any legal bar for the allottee to make assignment of the plot. The real question is whether the assignee has a legal right to claim performance of any part from the allotter. The answer of the said question depends upon the terms of allotment. Assignment by an act of

## लघुवाद न्यायालय हेतु

**उदाहरण :**

1. न्यायालय प्रथम व्यवहार न्यायाधीश वर्ग–2/1, न्याय नगर
(धारा 9 म.प्र. व्यवहार न्यायालय अधिनियम के अंतर्गत लघुवाद न्यायालय के अधिकारों से प्राधिकृत)
(समक्ष : स. दा. सत्य)

2. न्यायालय जिला न्यायाधीश, न्याय नगर
(धारा 9 म.प्र. व्यवहार न्यायालय अधिनियम के अंतर्गत लघुवाद न्यायालय के अधिकारों से प्राधिकृत)
(समक्ष : स.दा. सशक्त)

3. न्यायालय अति. जिला न्यायाधीश, न्यायनगर
(धारा 9 म.प्र. व्यवहार न्यायालय अधिनियम के अंतर्गत लघुवाद न्यायालय के अधिकारों से प्राधिकृत)
(समक्षः अ.ध. सशक्त)

## मोटर दुर्घटना अधिकरण हेतु

**उदाहरण :**

1. सदस्य, मोटर दुर्घटना दावा अधिकरण एवं जिला न्यायाधीश, न्याय नगर
(समक्ष : स.र्व. शक्तिमान)

2. सदस्य, अतिरिक्त मोटर दुघर्टना दावा अधिकरण
एवं अतिरिक्त जिला न्यायाधीश, न्याय नगर
(समक्ष : अ.ध. शक्तिमान)

आशा की जानी चाहिए कि न्यायिक अधिकारी गण विषय वस्तु को सैद्धांतिक रूप से स्वयं समग्र रूप से चिंतन करके उल्लेखित निर्णय की भावनाओं को, निर्देशों को समझेंगे व पालन करेंगे। ऊपर जो उदाहरण दिए हैं वे विषय वस्तु को समझने हेतु पर्याप्त होंगे ऐसी आशा की जाती है। यह भी आशा की जा सकती है कि इस बात को उच्च न्यायालय पुनः न दोहराएँ ऐसा विनम्र प्रयास हमें करना है।

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## TIT-BITS

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All that Section 32 of the Transfer of Property Act provides is that "in order that a condition that an interest shall cease to exist may be valid, it is necessary, that the even to which it relates be one which could legally constitute the condition of the creation of an interest." If the condition is invalid, it cannot be set up as a condition precedent for crystalization of the interest created. The condition that the industrial unit shall be established within a specified period failing which the interest shall cease, is a valid condition. Such a clause of the agreement between the parties is, therefore, valid and is binding on the parties thereto.

Paragraph 19 of the judgment is reproduced:

In fact, the question is not whether there is any legal bar for the allottee to make assignment of the plot. The real question is whether the assignee has a legal right to claim performance of any part from the allotter. The answer of the said question depends upon the terms of allotment. Assignment by an act of

the parties may cause assignment of rights or of liabilities under a contract. As a rule, a party to a contract cannot transfer his liabilities under the contract without consent of the other party. This rule applies both at the common law and in equity (vied para 337 of Halsbury's Laws of England, Fourth Edition Vol. 9). Where a contract involves mutual rights and obligations, an assignee of a right cannot enforce that right without fulfilling the correlative obligations. The aforesaid principle has been recognised by a Constitution Bench of this Court in ***Khardah Co. Ltd. vs. Raymon and Co. (India) (P) Ltd. AIR 1962 SC 1810 : (1963) 3 SCR 183,*** T.L. Venkataramiah, J. who spoke for the Bench has observed thus :

"The law on the subject is well settled and might be stated in simple terms. As assignment of a contract might result by transfer either of the rights or of the obligations thereunder. But there is a well-recognised distinction between these two classes of assignments. As a rule obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is given, it is really a novation resulting in substitution of liabilities. On the other hand rights under a contract are assignable unless the contract is personal in its nature or the rights are incapable of assignment either under the law or under an agreement between the parties."

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**3. CRIMINAL TRIAL : IDENTIFICATION OF THE ACCUSED : EVIDENCE ACT SECTION 9 :-**
**(1999) 2 SCC 45**
***KISHORE Vs. STATE OF MAHARASHTRA***

Paragraph 5 of the judgment is reproduced :

We have carefully gone through the evidence of the three eyewitnesses and we find that their evidence has remained unshaken. It does not suffer from such infirmity as would create any doubt regarding its acceptability. Himmatlal had no reason to falsely involve the accused. It is highly improbable that he would have done so at the instance of the police or anyone else, knowing fully well whom he was accusing. The material on record does not show that he was in any way connected with the police. No good reason could be advanced by the learned counsel for the appellants for not accepting the evidence regarding their having been caught at the spot. As the appellants were caught on the spot, the question of their identity does not arise. Even after lengthy cross-examination of the three eye witnesses, the defence was not able to establish anything that can create a doubt regarding involvement of the appellants and the other co-accused. If the evidence is believed, it can be said with reasonable certainty that what they did amounted to commission of a terrorist act. As a result of what they did, the nearby shopowners closed their shops and went away. Passers-by on the road had run away from the place, though some remained at that place. Public tranquility was thus disturbed. The way of appellants behaved clearly indicates that they wanted to create fear in the mind of Himmatlal and the persons present at the place of the incident. It was a busy public road. In view of the facts and circumstances

established by the prosecution, it can be said without any doubt that the intention of the accused was to create terror so that they could carry on their terrorist activity in future also without being opposed by members of the public.

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**4. ARBITRATION ACT AND INTEREST ACT, 1978, SECTIONS 2(a) & 6 (2):-**
**(1999) 2 SCC 58**
***STATE OF ORISSA Vs. B.K. ROUTRAY***

Since the definition of 'Court' under S. 2 (a) includes a Tribunal or arbitrator, the proceedings before the arbitrator would also be covered by the expression 'legal proceedings' in S. 6 (2). Reference to arbitration made prior to commencement of the Interest Act. During its pendency Act coming into force Award made on 12-10-1982. The Act came into force on 19-8-1981. Arbitrator awarding interest for the pre-reference period. Arbitrator could not award interest. The whole text of the order is reproduced:-

**ORDER**

1. The only question which has been raised in this appeal pertains to the award of interest by the arbitrator for the pre-reference period. The pre-reference period, in the present case, is from 31-3-1977 to 20-3-1980. This entire period is prior to coming into force of the Interest Act, 1978. The Interest Act, 1978 came into force during the pendency of the reference and the award was made on 12-10-1982 when the Interest Act, 1978 was in force.
2. The short question is whether the arbitrator in 1982 could have awarded interest for the pre-reference period in view of the provisions of the Interest Act, 1978, although the entire pre-reference period is prior to the coming into force of the Interest Act 1978.
3. In this connection, our attention has been drawn to the decision of this Court in ***State of Orissa v. B.N. Agarwalla (1997) 2SCC 469.*** In para 18, this Court has held that interest cannot be given for the period prior to the coming into force of the Interest Act, 1978. This Court has also held that the decision in the case of ***Executive Engineer (Irrigation) vs. Abhaduta Jena (1998) 1 SCC 418*** has not been overruled insofar as it deals with interest for the pre-reference period. This Court has upheld the view taken in Abhaduta jena case to the effect that in respect of pre-reference period. interest cannot be awarded in respect of the period not covered by the Interest Act, 1978. Our attention was also drawn to a decision in the case of ***State of Orissa. v. Niranjan Swain (1989) 4SCC 269*** where also this Court said that where reference to arbitration was made prior to the commencement of the Interest Act, 1978, the arbitrator is not empowered to grant interest for the period up to the date of submission of claim to arbitration.
4. In this connection, we would also like to refer to Section 6 (2) of the Interest Act, 1978 which provides as follows:

"6. (2) The provisions of this Act shall not apply to any suit or other legal proceeding pending at the commencement of this Act and the provisions of the corresponding law applicable immediately before such commencement shall, notwithstanding the repeal of such law by sub-section (1)] continue to apply to such suit or other legal proceeding."

5. This section also clearly provides that the provisions of the Interest Act, 1978 shall not apply to any legal proceeding pending at the commencement of the said Act. Since the definition of "court" under Section 2 (a) includes a tribunal or arbitrator, the proceedings before the arbitrator would also be covered by the expression "legal proceedings" in Section 6 (2). Therefore the Interest Act, 1978 does not apply to pending arbitration proceedings.

In the premies, the present appeal is allowed and the award of interest for the pre-reference period, namely, 31-3-1977 to 20-3-1980 is disallowed. The award and the decree are modified accordingly to this effect.

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**5. EVIDENCE ACT. SECTION 32 DYING DECLARATION AND I.P.C. SECTIONS 302/34 : NEGLIGENCE ON THE PART OF I.O.:- (1999) 2 SCC 126**
***PARAS YADAV VS. STATE OF BIHAR***

It is true that there is negligence on the part of the investigating officer. On occasions, such negligence or omission may give rise to reasonable doubt which would obviously go in favour of the accused. But in the present case, the evidence of the prosecution witnesses clearly established beyond reasonable doubt that the deceased was conscious and he was removed to hospital by bus. All the witnesses deposed that the deceased was in a fit state of health to make the statements on the date of the incident. He expired only after more than 24 hours. No justifiable reason is pointed out to disbelieve the evidence of the number of witnesses who rushed to the scene of offence. Their evidence does not suffer from any infirmity which would render the dying declaration as doubtful or unworthy of the evidence. In such a situation, the lapse on the part of the investigating officer should not be taken in favour of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not.

The prosecution evidence resting on complaint of the deceased recorded by the I.O. at the spot which was later treated as a dying declaration after his death. Such oral dying declaration found reliable. Medical evidence corroborated the prosecution version. Conviction of the Accused No. 1 upheld.

**ARBITRATION ACT, 1940, SECTION 2 (A) DIFFERENCE BETWEEN 'CERTIFIER' AND 'ARBITRATOR' WORDS AND PHRASES:-**

In paragraph 4 of the judgment the Supreme Court held as under :

In the case of ***K.K. Modi v. K.N. Modi, (1998) 3 SCC 573,*** a Bench of this

Court (of which one of us was a Member) had the occasion to consider the essential ingredients of an arbitration clause. Among the ingredients which are described in the said judgment, two important ingredients are that the agreement between the parties must contemplate that substantive rights of parties will be determined by the agreed tribunal and that the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides and also that the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law. There is a difference between an expert determination and arbitration. S.K. Chawla in **Law of Arbitration and Conciliation** at p. 164 states as follows:

" **4. Arbitration agreement to be distinguished from agreement for decision by an engineer or expert :** Contracts may contain a clause that on certain questions the decision of an engineer, architect or another expert shall be final. The decision given in such cases by the engineer etc. is not an award. As pointed out by Bernstein, such a person is under no obligation, unless the contract otherwise provides, to receive evidence or submissions and is entitled to arrive at his decision solely upon the results of his own expertise and investigations. The procedure involved is not arbitration, and the Arbitration Act does not apply to it. The primary material on which such person acts is his own knowledge and experience, supplemented if he thinks fit by (i) his own investigations; and/or (ii) material (which need not conform to rules of 'evidence') put up before him by either party. An arbitrator on the other hand, acts primarily on material put before him by the parties. The determination by an engineer or an expert would involve a less thorough investigation. Only one mind will be brought to bear on the problem. There will be no discovery of documents, there will not normally be any oral 'evidence' or oral submissions."

**ARBITRATION ACT, SECTION 8 : EXISTENCE OF ARBITRATION AGREEMENT:-**

Unless a wording of a clause unambiguously indicates the intention and agreement of both parties enforceable in law to refer disputes to the adjudication of an arbitrator and casts a duty on the arbitrator to record evidence and to near both parties before coming to a decision the clause cannot be taken to be an arbitration agreement. Two clauses in a construction agreement setting out that : (1) the decision of the Executive Engineer was to be final, conclusive, and binding on both parties to the contract on all questions relating to meaning, specifications, designs etc. and quality of workmanship or material used or any other question arising out of such matters ; and (2) the decision of the Managing Director to be final in relation to any claim, right matter or thing arising out of the contract and all other matters. Contractor making application under S. 8 of the Arbitration Act, 1940 for appointment of an independent arbitrator. Application allowed by Civil Judge. In appeal High Court while upholding the finding that there was an arbitration clause holding that the court had no jurisdiction under S. 8 to appoint an arbitrator because in the

circumstances of the case none of the clauses of S. 6 were attracted and the... setting aside the order of the Civil Judge. Held, High Court decision correct though for different reasons. As the disputed agreement did not contemplate any arbitration the application under S. 8 was misconceived.

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**6. ACCOMMODATION CONTROL ACT : LANDLORD AND TENANT : BONAFIDE REQUIREMENT OF LANDLORD:-**
**(1999) 2 SCC 171**
***SAVITRABAI Vs. RAICHAND DHANRAJ***

Concurrent finding of lower courts are based on evidence on record that tenanted premises bonafide required by landlord's son in order to start a business. High Court reversed the finding of fact arrived at by the lower Courts whose finding was based on evidence and held that another property owned by the landlord which was vacated three years prior to filing of the eviction petition could have been used by the son. The evidence on record showing that son still in college at the relevant time. It was held that the High Court was wrong in assumption that the son (Madhukar) could have started a business in 1976. The most important part of the evidence which the High Court omitted to consider was the following statement of Madhukar:

> "Why my father did not retain the premises let out to the barber, I cannot say. It is a fact that my father was (sic not) requiring the suit premises, as I did not complete education at that time."

The trial Court stated in its judgment that by the time the suit came to be filed by the deceased the plaintiff, Madhukar had not taken B.A. degree. This was affirmed by the Appellate Court. The High Court erred in setting aside the concurrent findings of both the Courts. Appeal was allowed.

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**7. I.P.C. SECTIONS 300 3rdly, 299 EXPLN, 2 AND 302:-**
**(1999) 2 SCC 174**
***JAGTAR SINGH AND ANOTHER Vs. STATE OF PUNJAB***

The appellant, Jagtar Singh inflicted a gandasa blow on the head of the deceased (Naib Singh). Deceased dying 16 days after the incident. Medical evidence was that the death was caused by septicaemia which was due to head injury and the said injury was sufficient in the ordinary course of nature to cause death. Held, in the circumstances, appellant rightly convicted under S. 302.

Jagtar Singh and Harbans Singh, the accused were going together to the house of the deceased, Naib Singh armed with deadly weapons and attacked him. The death was due to gandasa injury caused by Harbans Singh. Jagtar Singh assaulted the deceased on his left ankle with the weapon he was carrying. Held that in the circumstances it can only be said that Jagtar Singh intended to cause grievous hurt to the deceased and not to cause his death. He cannot be said to have shared a common intention with Harbans Singh to commit the murder.

On the conclusions as above, the Supreme Court upheld the conviction and sentence of the appellant, Harbans Singh under Section 302 IPC and those of appellant, Jagtar Singh under Section 307 and 326 IPC and set aside their other convictions.

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8. **ELECTION : SUPPLY OF TRUE COPY OF THE AFFIDAVIT : REPRESENTATION OF THE PEOPLE ACT, SECTIONS 81 (3) & 83 (1) (c) : COMPLIANCE OF, TO WHAT EXTENT :-**
**(1999) 2 SCC 205**
***ANIL VS. ONKAR N. WAGH***

Paragraph 17 of the judgment is reproduced:-

It is to be noticed that the reference is only with regard to the applicability of **Dr. Shipra, (1996) 5 SCC 181** in cases like the one which arose before the said Bench. In the light of the rulings of the Constitution Bench referred to earlier, we have our own reservations on the correctness of the view expressed in Dr. Shipra case but it is unnecessary in the present case to dwell on the same. As pointed out earlier, Justice Ramaswamy has confined the ruling to the "fact situation" in that case. Insofar as the present case in concerned, there is a distinguishing factor which makes the ruling in Dr. Shipra case inapplicable. We have already referred to the fact that even before arguments were heard on the preliminary objection by the High Court in this case, the true copies of the affidavits had been served on the first respondent and his counsel. In the facts and circumstances of this case, we have no doubt that there was sufficient compliance with the provisions of Section 81 (3) read with Section 83 (1) (c) of the Act even if it could be said that the copies served in the first instance on the first respondent were not in conformity with the provisions of the Act. Unfortunately, this aspect of the matter has been completely ignored by the High Court. Hence the order of the High Court dismissing the election petition in limine is unsustainable.

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9. **ELECTION PETITION : COMPLIANCE REGARDING AFFIDAVIT : REPRESENTATION OF THE PEOPLE ACT. SECTIONS 81, 82, 83, 86, 117 AND CONDUCT OF ELECTION RULES, 1961, R. 94-A AND FORM NO. 25 READ WITH O. 6 R. 16 & O. 7 R. 11 :-**
**(1999) 2 SCC 217**
***H.D. REVANNA Vs. G. PUTTASWAMY***

The provisions in the Representation of People Act, 1951 are very specific. Section 86 provides for dismissal of an election petition in limine for non compliance with Sections 81, 82 and 117. Section 81 relates to the presentation of an election petition. It is not the case of the appellant that the requirements of Section 81 were not complied with. Sections 82 and 117 are not relevant in the instant case. Significantly, Section 86 does not refer to Section 83 and non-compliance with Section 83 does not lead to dismissal under section 86. The Supreme Court has laid down that noncompliance with Section 83 may lead to dismissal of the petition if the matter falls within the scope

of Order 6 Rule 16 or Order 7 Rule 11 CPC. Defect in verification of the election petition or the affidavit accompanying the election petition has been held to be curable and not fatal.

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**10. EVIDENCE ACT, SECTIONS 32, 114 ill (b), 133, 155 AND 157 :-**
**(1999) 5 SCC 30**
***RAM PRASAD Vs. STATE OF MAHARASHTRA AND OTHER CONNECTED CASES***

Statement made to a Magistrate under expectation of death but maker there of surviving. His statement is not admissible under Section 32. It can be used to corroborate him as provided in S. 157 or to contradict him as provided under Section 155. Confessional statement of approver given to the Magistrate before tender of pardon can be used as corroborative material. However, it being former statement of an accomplice not much weight can be attached to it. The approver's evidence must pass the test of reliability and secure adequate corroboration before the same can be acted upon.

The statement herein cannot be used as evidence under Section 32 though is was recorded as a dying declaration. At the time when the witness gave the statement he would have been under expectation of death but that is not sufficient to wiggle it into the cassette of Section 32. As long as the maker of the statement is alive it would remain only in the realm of a statement recorded during investigation.

Section 157 permits proof of any former statement made by a witness relating to the same fact before "any authority legally competent to investigate the fact" but its use is limited to corroboration of the testimony of such a witness. Though a police officer is legally competent to investigate, any statement made to him during such a investigation cannot be used to corroborate the testimony of a witness because of the clear interdict contained in Section 162 of the Code. But a statement made to a Magistrate is not affected by the prohibition contained in the said section. A Magistrate can record the statement of a person as provided in Section 164 of the Code and such a statement would either be elevated to the status of Section 32 if the maker of the statement subsequently dies or it would remain within the realm of what it was originally. A statement recorded by a Magistrate under Section 164 becomes usable to corroborate the witness as provided in Section 157 of the Evidence Act or to contradict him as provided in Section 155 thereof.

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**11. CRIMINAL TRIAL : "BENEFITE OF DOUBT" CONCEPT EXPLAINED:-**
**(1999) 5 SCC 96**
***STATE OF HARYANA Vs. BHAGIRATH***

There must be reasonable doubt regarding guilt of the accused. if benefit of doubt given to the accused as a "matter of abundant caution" is not proper.

**PROOF BEYOND REASONABLE DOUBT, MEANING OF :-**

It is nearly impossible in any criminal trial to prove all the elements with a

scientific precision. A criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression "reasonable doubt" is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge

Please refer to ***Inder Singh vs. State, A.I.R. 1978 SC 1091*** in which the proof of guilt beyond reasonable doubt was explained and it was further explained what should be the standard of proof.

Credibility of testimony, oral circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be prefect. If a case is proved too prefectly, it is argued that it is artificial; if a case has some flaws, inevitable becaûse human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guidline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up? Because the court asks for maufacture to make truth look true? No we must be realistic.

**Cases referred and followed:-**

1. Shivaji Sahabrao Bobade vs. State of Maharashtra, (1973) 2 SCC 793.
2. Municipal Corporation vs. Ram Kishan Rohtangi, AIR 1983 SC 67.

**OPINION OF MEDICAL EXPERT : SECTION 45 EVIDENCE NOT BINDING ON COURT:-**

The Court has to form its own opinion. The medical witness ruling out possibility of two successive blows with a sharp weapon falling at the same situs. No reasons given in support of such opinion by the doctor. It was held that in the circumstances of the case the prosecution version that the injury was caused by two strikes cannot be doubted.

The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject.

Looking at the width of the wound on the neck (4.5cm) and its length (14 cm) a doctor should not have ruled out the possibility of two successive strikes

with a sharp weapon falling at the same situs resulting in such a wide incised wound. If the doctor does not agree to the possibility of causing such a wound the doctor should have put forth cogent reasons in support of such an opinion. But the doctor did not give any such reason for the curt answer given by him that such an injury could not have been caused by two strikes with the same weapon or with different weapons of the same type. Therefore, there cannot be any doubt regarding the prosecution version on that score.

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**12. C.P.C., O. 19 R. 3 (1) : VERIFICATION OF AFFIDAVIT :-**
**(1999) 5 SCC 187**
***R.K. SINGH Vs. UNION OF INDIA***

Verification affirming that the statement made therein were to the petitioner's personal knowledge questioned by Court. Matter of official nature (recommendation for appointment as High Court Judges) held, in response it is not open to the petitioner to ask the court to look at the official record to verify that the allegations made are correct.

The amendment application refers to the alleged non-appointment of four District and Sessions Judges to the High Court at Allahabad. It is stated in para 9-B of the proposed amendment :

"The appointment of District and Sessions Judges namely Shri..... Shri.... Shri.... and Shri..... (names omitted in this order) in the Allahabad High Court for whom there was complete consensus, every formality was completed and nothing could prevent their appointment as High Court Judges has been delayed contrary to this constitution mandate." The affidavit supporting the application for the amendment is made by the petitioner as true and correct to his knowledge. We asked learned counsel for petitioner on what basis the petitioner had made the statement that there was complete consensus in regard to the appointment of the four District Judges as High Court Judges and every formality had been completed. Learned counsel's attention was drawn to the affidavit in verification. Learned counsel's reply was that whenever this and connected matters had been heard in the past, the Attorney General had appeared and this statement had been made by him. He submitted that the petitioner was in the dark, he knew nothing because no access to the relevant files had been given to him. He submitted that we should not look at technicalities and should allow the amendment. He also submitted that we should look at the files.

It is not open to a public interest writ peitioner to make averments of facts, purporting to be on personal knowledge, and then ask the court to look at the official records to see if the allegations made, obviously without any basis, are correct.

The application for amendment is rejected and writ petition is dismissed.

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**13. RENT CONTROL AND EVICTION : BOMBAY RENTS, HOTEL AND LODGING HOUSE RATES CONTROL ACT, 1947, SECTION 13 (1) (g) : REASONABLE AND BONAFIDE REQUIREMENT OF THE LANDLORD EXPLAINED:-**
**(1999) 4 SCC 1**
**DATTATRAYA Vs. ABDUL RASUL**

The grounds mentioned in Section 13 (1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 are couched in a language to provide emphasis to the genuineness of the requirement of the landlord by using the words "reasonably and bonafide required by the landlord". In fact both the terms (reasonably and bonafide) are complementary to each other in the context, for any unreasonable requirement is not bonafide. Vice versa it can also be spelt that if the requirement has to be bonafide it must necessarily be reasonable also. But when the legislature employed the two terms together the message to be gathered is that the requirement must be genuine from any reasonable standard. All the same, the genuineness of the requirement is not to be tested on a par with the dire need of a landlord because the latter is a much greater need.

When a landlord says that he needs the building for his own occupation there is no doubt that he has to prove it. But there is no warrant for presuming that his need is not bonafide. The statute enjoins that the court should be satisfied of his requirement. So the court would look into the broad aspects and if the Court feels any doubt about the bonafides of the requirement it is for the landlord to clear such doubts. Even in a case where the tenant does not contest or dispute the claim of the landlord the court has to look into the claim independently albeit the landlord's burden gets lessened by such non-dispute. In appropriate cases it is open to the court to presume that the landlord's requirement is bonafide and put the contesting tenant to the burden to show how the requirement is not bonafide.

If a person wants to start a new business of his own it may be to his own advantage if he acquires experience in that line. But to say that any venture of a person in the business field without acquiring past experience reflects lack of his bonafides is a fallacious and unpragmatic approach. Many a business has flourished in this country by leaps and bounds which was started by a novice in the field; and many other business ventures have gone haywire despite vast experience to the credit of the propounders. The opinion of the learned Single Judge that acquisition of sufficient know-how is a precondition for even proposing to start any business, if gains approval as a proposition of law, is likely to shatter the initiative of young talents and deter new entrepreneurs from entering any field of business or commercial activity. Experience can be earned even while the business is in progress. It is too pendantic a norm to be formulated that "no experience no venture".

That apart, the appellant is not a total novice in the field of dealing in electrical equipment. The fact that the discipline in his academic specialisation was Electrical Engineering is quite indicative of some knowledge he has

in the subject; though a business in such commodities may have different phases.

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**14. MADHYA BHARAT ZAMINDARI ABOLITION ACT, 1951, SECTIONS 2 (c), 3, 4 (2), 5 & 6:-**
**(1999) 4 SCC 11**
***MISHRI LAL (DECEASED) THROUGH L. Rs. Vs. DHIRENDRA NATH (DECEASED) THROUGH L. Rs.***

Khudkasht land not to vest in State. The subsisting interest of zamindar will continue. Therefore, there is no impediment under the Act allowing a zamindar's claim for redemption in respect of his mortgaged khudkasht land. The judgment of the High Court was upheld.

**CONSTITUTION OF INDIA, Arts. 141 and 137 : PRINCIPLE OF STARE DECISIS AND PRECEDENTS:-**

The statement though deserves serious consideration in the event of a definite finding as to the perpetration of a grave wrong but that by itself does not denude the time-tested doctrine of stare decisis of its efficacy. Taking recourse to the doctrine would be an imperative necessity to avoid uncertainty and confusion. The basic feature of law is its certainty and in the even of there being uncertainty as regards the state of law- the society would be in utter confusion the resultant effect of which would bring about a situation of chaos a situation which ought always to be avoided.

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**15. MOTOR VEHICLES ACT, 1988, SECTIONS 140, 141, 142, 146, 147, 149, 166, 168, 171, 173 : GRANTING OF COMPENSATION:-**
**(1999) 4 SCC 22**
***ASHWINI KUMAR MISHRA Vs. P. MUNIYAM BABU***

Paragraph 4 of the judgment is reproduced here:-

It is not disputed that the appellant had met with a road accident in which he was seriously injured, underwent operations on his spinal cord/kidney a number of times and has become invalid for all practical purposes for the rest of his life. The appellant had claimed that his income was Rs. 2000 per month at the time of the accident when he was 23 years of age. He had prayed for applying the multiplier of 55 (perhaps it is 15) for granting him compensation in lieu of loss of income which he would have earned in the absence of the accident in which he has admittedly been totally incapacitated. The learned counsel appearing for the Insurance Company submitted that there was no proof of his income and that he was not proved to have been an employee of his father in the work where the vehicle was being utilised at the time of the accident. It is, however, not disputed that at the time of the accident, the appellant was assisting his father in the construction work of Sunita Construction at Deposit No. 40 in the township of Kailash Nagar for renewing of fencing in front of residential and nonresidential quarters providing CC coping with glasses for compound walls of Kailash Nagar when he met with the accident.

He has claimed his income to be Rs. 2000.00 per month. The appellant, a young man cannot be disputed to be contributing and augmenting the income of his father. Some guesswork has to be applied while assessing the loss. This Court in ***R.D. Hattangadi v. Pest Control (India) (P) Ltd. (1995) 1 SCC 551 at page 556 Paragraph 9*** had held:

> "9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for dental and physical shock, pain and suffering. already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

whenever a tribunal or court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. However, all such elements are required to be viewed with objective standards. While assessing damage, the court cannot base its opinion merely on speculation or fancy though conjectures to some extent are inevitable.

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**16. RENT CONTROL AND EVICTION: A.P. BUILDINGS (LEASE, RENT AND EVICTION) CONTROL ACT, 1960. Ss. 10 (3) (a) (iii) & 2 (iii):-**
**(1999) 4 SCC 25**
***RAWALMAL Vs. B. AMARNATH AND OTHER***

The appellant is a tenant of the nonresidential premises in General Bazar, Secunderabad, who has preferred this appeal.

The appellant contended that the respondent-landlord was not justified in invoking the provisions of Section 10 (3) (a) (iii) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 as according to him the provision applicable in the case was incorporated in Section 10 (3) (c) of the Act. Accepting such a plea at this stage would render the provisions of the Act ineffective in as much as the definition of the word "building" incorporated in Section 2 (iii) of the Act would be rendered futile. The building or part of the building as leased out has to be deemed to be a "building" for the purposes of eviction proceedings and a part of the building cannot be permitted to be a part of the whole building. The building, a unit with a separate door number on the ground

floor which was leased out to the appellant-tenant was admittedly a non-residential "building" which attracted the applicability of the provisions of Section 10 (3) (a) (iii) of the Act. Section 10 (3) (c) would apply in case where out of the leased premises a part thereof is in occupation of the landlord who in that event can apply to the Rent Controller for an order directing the tenant to put him in possession thereof, if he required additional accommodation for residential purposes or for purposes of a business which he was carrying on, as the case may be, Part of the building referred to in clause (c) of sub-section (3) of Section 10 of the Act has to be understood in the context of the definition of the word "building" under section 2 (iii) of the Act. If the building within the meaning of Section 2 (iii) is indivisible, the same has to be taken as an entity for the purpose of deciding the issue regarding eviction and cannot be further split or its scope widened by having regard to the loose general meaning of the word "building".

Reaslising that the findings of fact have been returned by all the courts below against the tenant, Shri Mishra, the learned Senior Counsel appearing for the appellant contended that the respondent- landlord was not justified in invoking the provisions of Section 10 (3) (a) (iii) of the Act as according to him the provision applicable in the case was as incorporated in Section 19 (3) (c) of the Act. Accepting such a plea at this stage would render the provisions of the Act ineffective in as much as the definition of the word "building" incorporated in Section 2 (iii) of the Act would be rendered futile. The building or part of the building as leased out has to be deemed to be a "building" for the purposes of eviction proceedings and a part of the building cannot be permitted to be a part there of the whole building. The building, a unit with a separate door number on the ground floor which was leased out to the appellant-tenant was admittedly a non-residential "building", which attracted the applicability of the provisions of Section 10 (3) (a) (iii) of the Act. Section 10 (3) (c) would apply in a case where out of the leased premises, a part thereof is in occupation of the landlord who in that event can apply to the Rent Controller for an order directing the tenant to put him in possession there of, if he requires additional accommodation for residential purposes or for purposes of a business which he was carrying on, as the case may be. Part of the building referred to in clause (c) of sub-section (3) of Section 10 of the Act has to be understood in the context of the definition of the word "building" under Section 2 (iii) of the Act. If the building within the meaning of Section 2 (iii) is indivisible, the same has to be taken as an entity for the purpose of deciding the issue regarding eviction and cannot be further split or its scope widened by having regard to the loose general meaning of the word "building". We are of the opinion that the appellant is not justified in contending that the entire building was a single unit though having different door numbers for different portions of the building and that all the courts below have rightly overruled such a contention.

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**17. EVIDENCE ACT, SECTION 153 : EXCLUSION OF EVIDENCE TO CONTRADICT ANSWERS TO QUESTIONS TESTING VERACITY:-**
**(1999) 4 SCC 36**
***VIJAYAN Vs. STATE***

Evidence affecting veracity of the testimony given by the witness can be offered irrespective of his character.

The occurrence took place on 5-10-1984 at about 2.30 p.m. The defence examined DW 2 who testified that she and PW 3 (an alleged eyewitness) were at Salem at the time of occurrence for execution of some documents in connection with a lorry transaction. She proved sale receipt bearing the signature of PW 3. Though PW 3 admitted having sold the lorry mentioned in the sale receipt to DW 2, he denied having gone to Salem. The High Court rejected the evidence of PW 2 mainly because of the fact that PW 3 was recorded as present at the inquest which was shown to have been held at 5 p.m.

On appeal it was held the rule limiting the right to call evidence to contradict a witness or collateral issues excludes all evidence of facts which are incapable of affording any reasonable presumption or inference as to the principal matter in dispute.

But the above rule of prohibition has exceptions which can be discerned from the section itself. Among the four illustrations enumerated in the section, illustration (c) applies to the facts of the present case. ***Attorney General v. Hitchcock, (1847) 1 Exch 91 : 154 EH 38*** relied on.

Thus when the issue is whether PW 2 was present at the scene of occurrence evidence can be offered to show that at the very time, he was at a different place. Evidence of that type is not aimed at shaking the credit of the witness by injuring his character. It affects the veracity of the testimony irrespective of his character.

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**18. HINDU SUCCESSION ACT, 1956, SECTIONS 15 (1) AND 15 (2):-**
**(1999) 4 SCC 86**
***BHAGATRAM Vs. TEJA SINGH***

Succession to childless female intestate whose property was inherited by her from her mother or father. In such cases the order of succession as set out in S. 15 (1) is not applicable. Property devolves under Section 15 (2) upon the heirs of the intestate's father. The Supreme Court set aside the judgment of the High Court saying that the High Court in second appeal wrongly upheld the consequtive decisions of the lower courts that the respondent-plaintiff, brother of intestate's per deceased husband, was entitled to inherit the disputed property under S. 15 (1) (b) of the Act as an "heir of the husband".

On a perusal of the two sub-sections it is clear that their spheres are very clearly marked out. So far as sub-section (1) is concerned, it covers the properties of a female Hindu dying intestate. Sub-section (2) starts with the words "Notwithstanding anything contained in sub-section (1)". In other words, what falls within the sphere of sub-section (2), sub-section (1) will not apply. Sec-

tion 15 (2) (a) uses the words "any property inherited by a female Hindu f her father or mother". Thus property inherited by a female Hindu from father and mother is carved out from the property of a female Hindu d intestate. In other words any property of a female Hindu, if inherited by from her father or mother, would not fall under sub-section (1) of Section Thus, property of a female Hindu can be classified under two heads: e property of a female Hindu dying intestate is a general class by itself cove all the properties but sub-section (2) excludes from the aforesaid proper the property inherited by her from her father or mother.

It is not disputed that both Indro and Santi inherited this property from t mother, hence they inherited this property as females from their mother. T on the facts of this case succession clearly falls under sub-section (2). He the property would devolve after the death of Santi not on the heirs of predeceased husband but would devolve on Indro.

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**19. C.P.C., SECTION 2 (2) : DECREE : ESSENTIAL ELEMENTS OF:-**
**(1999) 4 SCC 89**
***R. RATHINAVEL Vs. V. SIVARAMAN***

On passing of the decree, rights of the parties are crystalised and unl the decree is reversed, recalled, modified or set aside, parties cannot divested of their rights under the decree.

**C.P.C., Or. 23 Rr. 1 & 1-A:-**

Withdrawal of suit by plaintiff after passing of a decree at appellate st cannot be allowed by the Court as a matter of course when by virtue of s withdrawal vested or substantive rights of any party to the litigation will adversely affected. Where after passing of decree in favour of plaintiff, property was sold by plaintiff to a third party but defendant preferred app against the decree, plaintiff cannot seek to withdraw the suit at the appell stage on ground of he having compromised the dispute with the original fendant, as that would result in nullifying the substantive right to the pro acquired by the third party transfer

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**20. TRANSFER OF PROPERTY ACT, SECTION 105 : LEASE OF BUILDI WITH ANOTHER ATTACHED COMPOUND :-**
**(1999) 4 SCC 135**
***K.P. BHAGIRATHI Vs. K.P. BALLAKURAYA***

Learned counsel for the appellant first pointed out the situation in wh both parties were placed then. The less or having such a pucca residen building with a sprawling compound attached to it had to remain in New De as he was working as a Secretary to the Government of India. The lessee w was a public servant working at Kassargod needed a house to live in at t place. Such facts, according to the learned counsel, would clearly show tha was the building which was of prime consideration for the lease. The attach compound could not have been left out, for practical reasons, uncared

'one and hence it became necessary to include that compound area also part of the lease. The said contention cannot be sidelined as without force.

**NANCY AND LAND LAWS:- KERALA LAND REFORMS ACT. 1963, Ss. (1) (ii) AND 72-B:-**

Lease of building with land appurtenant there to exempted from operation Act. A lease which does not create a right to enjoy the land independent of building, but only to take usufructs of the trees standing thereon while iding in the building will be exempt from the Act.

The fact that another building situated whithin the boundaries has been ained by the lessor is a pointer indicating that the land was only to be used adjunct to the residential building. Over and above all those, the interdict inst making any improvement on the land is a stirring feature which is in flict with the idea of the land becoming the dominant factor of the lease. No e of land can possibly be conceived without the lessee being given free- n to use the land to generate profit therefrom. Here the lease imposed a nplete ban on the lessee to use the land for such purposes. All that he is mitted thereon is to take usufructs of the trees already standing on the d.

A reading of the lease deed from the above angles indicates that there s no idea for the lessor to create a right to enjoy the land independent of the lding but only to take usufruct of trees standing thereon while residing in building. The area of the land alone cannot be a determinative factor. It s common practice in olden days for residential buildings to have sprawl- areas as adjuncts to such buildings. That practice could well have been owed by the parties in the lease deed which is the subject-matter of the e.

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**ARBITRATION ACT. SECTIONS 30 and 33:-**
**(1999) 4 SCC 214**
***H.P. ELECTRICITY BOARD Vs. R.S. SHAH AND COMPANY***

Judicial error of arbitrator. Question of non-reasoned Award. Error of sdiction or error in exercise of jurisdiction. If award is in excess of jurisdic- of arbitrator then it is liable to be set aside but if award is within jurisdiction the basis of the contract which the arbitrator was required to do, then Court not set it aside merely because another view was possible. Court has to mine some documents including the contract and reference of the dispute rbitrator for the limited purpose of determining whether arbitrator had juris- tion or not.

**ARBITRATION ACT, SECTIONS 14 AND 29:-** Arbitrators have jurisdic- to award interest on the principal sum till payment of principal as per the ard. Arbitrator has power to award interest pendente lite and for post award iod.

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## 22. C.P.C. SECTION 11 : RESJUDICATA:-

**(1999) 4 SCC 243**

***PAWAN KUMAR GUPTA Vs. ROCHIRAM NAGDEO***

It is the decision on an issue, and not a mere finding on any incider question to reach such decision, which operates as Res judicata. In the Pres case, the decree was not in fact against the plaintiff in that first suit, but wa: his favour. There was no hurdle in law for the defendant to file an app against the judgment and decree in that first suit as he still disputed th decisions on such contested issues.

The legal position as to the applicability of the principle of res judic against the defendant in respect of findings recorded in a dismissed sui that if dismissal of the prior suit was on a ground affecting the maintabilit the suit any finding in the judgment adverse to the defendant would not op ate as res judicata in a subsequent suit. But if dismissal of the suit was account of extinguishment of the cause of action or any other similar caus decision made in the suit on a vital issue involved therein would operate res judicata in a subsequent suit between the same parties. It is for the fendant in such a suit to choose whether the judgment should be appea against or hot. If he does not choose of file the appeal he cannot thereby a the bar of res judicata in the subsequent suit.

In the instant case the position is still stronger for the appellant. Dismis of the first suit was only on account of what the respondent did during pendency of the suit, i.e. depositing the arrears of rent claimed by the ap lant. The Court permitted the plaintiff to withdraw that amount under dep for satisfying his claim. Such a decree cannot be equated with a case wh the suit was dismissed as not maintainable because any adverse findin such a suit would only be obiter dicta. The finding made in the earlier suit t the appellant was the real owner of the building as per the sale deed beca final. If the respondent disputed that finding he should have filed an appea challenge of it.

It has, therefore, to be held that in the subsequent suit there was a ba re judicata in reagitating on the issue regarding the appellant's title to building.

Alternatively, assuming that the finding in the first suit would not oper as resjudicata, it has to be held that the High Court erred in holding that burden to prove the sale deed to be a benami transaction was wrongly plac on the defendant by the lower courts. The clear pleading of the plaintiff is t he purchased the suit property as per the sale deed. The burden of pr cannot be case on the plaintiff to prove that the transaction was consist with the apparent tenor of the document. The sale deed contains the rec that the sale consideration was paid by the plaintiff to Narayan Prasad transferor. There cannot be a further burden of proof on the plaintiff to subst tiate that the recitals in the document were true. **The party who wants prove that the recitals are untrue must bear the burden to prove it.** In instant case when the respondent asserted that the real transaction was

ıat was apparently mentioned in the sale deed, the burden was on the spondent to establish the transaction which he asserts to be the real one.

**:NAMI TRANSACTIONS (PROHIBITION) ACT, 1988, SECTIONS 2 (a) AND (1):-**

Prohibition under the Act against Benami Transactions operate only pro-ectively. The meaning of the words "paid or provided" explained. Purchas-ɜ of property with money provided by one's father would not render the ınsaction a benami one.

The word "provided" in Section 2 (a) of the BenamiTransaction(Prohibition) :t cannot be construed in relation to the source or sources from which the al transferee made up the funds for buying the sale consideration. The words aid or provided" are disjunctively employed in the clause and each has to ) tagged with the word "consideration". The correct interpretation would be read it as "consideration paid or consideration provided". If consideration ıs paid to transfer or then the word provided has no application as for the ıid sale. Only if the consideration was not paid in regard to a sale transaction e question of providing the consideration would arise. Any other interpreta-ın is likely to harm the interest of persons involved in genuine transactions, g. a purchaser of land might have availed himself of loan facilities from ınks to make up purchase money. In such a case it cannot be said that since e money was provided by the bank it was a benami transaction. So even if e appellant had availed himself of the help rendered by his father for making ) the sale consideration that would not make the sale deed a benami trans-:tion so as to push it into the forbidden area envisaged in Section 3 (1) of the :t.

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**I. NEGOTIABLE INSTRUMENTS ACT, 1881, SECTIONS 138 AND 140 : APPLICABILITY OF SECTION 138 :-**
**(1999) 4 SCC 253**
***NEPC MICON LTD. AND OTHERS Vs. MAGMA LEASING LTD.***

Return of cheque by the bank unpaid on the ground of the account being ɔsed, held that Section 138 of the Act attracts. Plea of strict construction was ɔt accepted by the Supreme Court and Heydon's Rule was applied.

**NOTE:-** Judicial Officers are requested to go through the whole judgment.

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**I. O. 41 R. 27 C.P.C.:-**
**1999 (2) VIDHI BHASVAR 89**
***RAM PYARI VERMA (SMT.) Vs. DARSHANLAL AND OTHERS***

In this case the appellants at the motion Stage filed an application, under rder 41 Rule 27 CPC on 18.9.1998, along with some documents. No ground shown for not filing the same earlier. The provision of Order 41 Rule 27 CPC ɔes not entitle the appellate Court to let in fresh evidence at the appellate age where even without such evidence it can pronounce judgment in a ıse. The provisions of Order 41 Rule 27 are not arbitrary but judicial one

circumscribed by the limitations specified in that provisions. In ***AIR 1976 1053, Natha Singh Vs. Final Commr. Taxation. Punjab,*** it is held that true to be applied in dealing with applications for additional evidence is whet the appellate Court is able to pronounce judgment on the materials befor without taking into consideration the additional evidence, sought to be a duced.

Considering the facts and circumstances and after perusal of the rec in the opinion of this Court, no case has been made out for allowing application under Order 41 Rule 27 CPC, for additional evidence. The ap cation is thus rejected.

**Or. 8 R. 6A:-** Eviction of the tenant (plaintiff) defendant landlord sought eviction by filing counter claim under M.P. Accommodation Control In the present case the respondent filed a counter claim and claimed that t may be given vacant possession of the disputed accommodation from appellants. the appellant plaintiff filed a suit claiming them selves to be owners of the suit property and for declaration against the defendants No. 3.

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**25. Or. 41 R. 22 AND SECTION 8 Sch. I ART. IA AND SCH. II ART. 11:- 1999 (2) VIDHI BHASVAR 120**
***STATE OF M.P. Vs. BADRI PRASAD AND OTHERS***

Appeal for enhancement or for reducing amount of compensation. valorem court-fees on difference of amount has to be paid under the ab provisions. Provisions of Sch. II Art. 11 for paying fixed court-fees not tracted. ***State of M.P. vs. Saint Goverdhan Das Maheshwari, 1993 (2) 218 (F.B.)*** and ***Indore Development Authority vs. Tarak Singh, AIR 1995 1828= 1995 JLJ 724*** relied on.

Cross- objection to enhance, amount of compensation cannot be en tained without payment of court fees.

**LAND ACQUISITION ACT, SECTIONS 23 AND 54 :-** Determinatio compensation as per land sold in the area fetching of single and double c also taken into account. Determination based on well settled principles liable to interfered with. ***Union of India vs. Mangatu Ram, AIR 1997 SC 2 and Special Deputy Collector vs. Kurrah Sambhashiva Rao, AIR 1997 2625*** relied on.

●

**26. DRUGS AND COSMETICS RULES, 1945 : APPEAL UNDER RULE (2) DUTY OF APELLATE COURT:- 1999 (2) VIDHI BHASVAR 102**
***ASHOK KUMAR Vs. STATE OF M.P.***

Appellate Court should consider all the points raised in the memo appeal and should pass a speaking order. From the appellate order H Court found that even though 2 grounds were raised specifically by the p tioner in the appeal same were not dealt with by respondent No. 1. Only

ıme other grounds petitioner's appeal has been dismissed, and the impugned der also did not reflect any application of mind to the facts of the present ıse.

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7. **MOTOR VEHICLES ACT, 1988, SECTIONS 147 (1) (b) (i) AND 128 READ WITH SECTION 168:-**
1999 (2) VIDHI BHASVAR 83
***ASHOK Vs. SMT. NARMADA BAI***

Pillion rider of motor-cycle died in accident. The insurer is liable to pay nount of compensation. No liability can be escaped on ground of he being a ·atuitous passenger. **1989 ACJ 466 P&H** held no more good law in vew of ***IR 1998 SC 1433, Amrit Lal vs. Kaushalya Devi.***

●

8. **I.P.C., SECTION 302 MURDER:-**
**1999 (2) VIDHI BHASVAR 67**
***CHOKHELAL VS. STATE OF M.P.***

In this case it was established that the accused appellant had acid in his ossession with which the child as well as he himself sustained injuries at the me of incident and that he had easy access to the child, as he resided in the ame house. He had an opprotunity to pour acid in his mouth when the mother f the deceased had gone to fetch water. The animosity between the appellant nd the parents of the deceased child clearly formed the motive to commit ffence. It may also be noted that even despite the death of the deceased who ıas his nephew the appellant did not have the minimum normal courtesy of isiting and coming to see him. This clearly speaks volumes about strained elations as well as the guilty conscience of the appellant. (Please refer to ara 11). Accordingly the accused was convicted under section 302.

●

9. **I.P.C. SECTION 376 RAPE AND SECTION 154 CR. P.C.:-**
**1999 (2) VIDHI BHASVAR 77**
***RADHELAL Vs. STATE OF M.P.***

Incident of rape was narrated to the husband and other relations. The ıase was lodged thereafter. The prosecutrix cannot be said to be a consenting ıarty. Corroboration of prosecutrix's evidence is not a Rule of Law if her evi- lence inspires confidence. Injury on the person of the prosecutrix is also not ıecessary in other cases. It is sine qua non to sustain the conviction. ***Amar Singh vs. State of M.P., 1986 (1) MPWN Note 3 and Yasim Khan vs. State 1996 JLJ 519*** distinguished.

The prosecution explained the delay saying that because of the death of he father of the cousin delay had occured in lodging the FIR. This was a ıersion by P.W. 2, Roop Chand. However, the appellant is none other than his ırother-in-law. Therefore, dealy in lodging the F.I.R. is explained and further the appellant being a close relation, whole prosecution story cannot be thrown ıut on this ground alone.

Accused making her close relation subject to his lust 5 years R.I. is lesser side. The appreciation of evidence depends on facts and circumstanc of each case.

●

**30. PREVENTION OF CORRUPTION ACT, 1988 : SECTIONS 13 (1) (D) R 13 (2) :-**
**1999 (2) VIDHI BHASVAR 105**
***K.P. AGNIHOTRI Vs. STATE OF M.P.***

Passenger vehicle registered showing lesser weight and lesser capac of travelling passengers. Thereby lesser tax imposed benefitting owner vehicle and loss to State. Prima facie offence made out. Objection as to nc existing prima facie case in prosecution can be raised at the time of framing the charge under Sections 227 and 228 of the Cr. P.C.

●

**31. INDIAN SUCCESSION ACT, 1925, S. 63 (C):-**
**1999 (2) VIDHI BHASVAR 117**
***NARBADA PRASAD Vs. HARNARAYAN***

Section 63 of the Indian Succession Act requires proof of 3 things me tioned in Clause A, B and C before it can be said that will has been du executed. The attestation of the will should be proved according to the law. It is not proved claim put through will cannot be accepted. It was further said the judgment that no alternative claim on succession claimed. Such clai cannot be granted.

●

**32. CR. P.C. SECTIONS 235 (2), 248 (2) AND 309- HEARING ON QUE TION OF SENTENCE:-**
**1999 (2) JLJ 68**
***JAI KUMAR Vs. STATE OF M.P.***

Hearing on question of sentence under Sections 235 (2), 248 (2) rea with Section 309 has been discussed by the Supreme Court. The Judge shou make a genuine effort to elicit from accused all information which eventual bear on question of sectence. ***Muniappan vs. State of Tamil Nadu (1981) SCC 11*** relied on.

The provision should be strictly followed. After recording conviction, cas should be adjourned to hear on question of sentence. The offender should b asked what he has to say or whether he wants to lead any evidence on th point. ***Allaudin Mian vs. State of Bihar, JT 1989 (2) SC 171*** relied on.

Proper sentence is amalgam of many factors. As nature of offence, pric criminal record, age of offender, record of offender as to employment, educa tion, home life, etc. ***Santa Singh vs. State of Punjab, (1976) 4 SCC 190*** relie on.

please refer to ***Burn Standard Company vs. Union of India, AIR 1991 S 1784.***

●

**CR. P.C. SECTION 154 AND I.P.C., SECTION 420:-**
**1999 (2) VIBHA 36**
***JAMSHED GUZDER Vs. STATE OF M.P.***

f dishonest or fradulent intention at the time of parting with money not olished prima facie nor inducement alleged. No criminal case can be ed to proceed. ***Hariprasad vs. Bheesm Kumar. AIR 1974 SC 301*** fol-d.

The F.I.R. was quashed by the High Court as the F.I.R. was lodged instead vil suit.

●

**CR. P.C., SECTIONS 157, 438 AND 439 : ANTICIPATORY BAIL:-**
**1999 (2) VIBHA 60**
***KAILASH SONKAR Vs. STATE OF M.P.***

Accused pitted with well orchestrated conspiracy in serious offence. Pre-st bail order before interrogation would greatly harm investigation.

Paragraphs 5, 6, 8 and 9 of the judgment are reproduced :-

It is well settled from the recent decisions of the Supreme Court that the sideration which should weigh with the Court while dealing with a request anticipatory bail need not be the same as for an application to release on after arrest. Custodial interrogation' is qualitiatively more elicitation ori-ed than questioning a suspect who is well esconsed with a favourable er under section 438 Cr. P.C. In a case like this effective interrogation of a pected person is of tremendous advantage in disinterring many useful rmations and also materials which would have been concealed. (State v. Sharma, (1997) 7 SCC 187).

The Supreme Court has observed in ***State of A.P. vs. Bimal Krishna ndu, AIR 1997 SC 3589,*** that it is disquietening that implications of arming accused, when he is pitted against this sort of allegations involving well hestrated conspiracy with a prearrest bail order have not been taken into ount by the High Court. If the accused is equipped with such an order ore he is interrogated by the police it would greatly harm the investigation l would impede the prospects of unearthing all the ramifications involved he conspiracy. Public interest would also suffer as a consequence.

In ***Directorate of Enforcement vs. P.V. Prabhakar Rao, (1997) 6 SCC 7,*** the Supreme Court has held that the High Court is not justified in granting licipatory bail to the accused when it found that the material already col-ted disclosed 'an accusing finger' against the accused.

In the present case at this stage the probative value of the statement of the accused is not being examined so as to arrive at a conclusion whether it is fficient for his conviction. The statements of Shamim and Riaz recorded der section 164 Cr. P.C. and the other alleged incriminating material which s been collected by the police rise an accusing finger against the applicant d the investigating agency is entitled to make custodial interrogation of

applicant kailash Sonkar. It is not fit to intrude into the sphere of investiga or hamper it. Therefore, this application for anticipatory bail is rejected.

●

**35. N.D.P.S. ACT, SECTIONS 35 (1), 35 (2) AND CR. P.C., SECTION 45**
**1999 (2) VIBHA 31**
***MALOOK KHAN Vs. STATE OF M.P.***

The provisions of Sections 35 (1) and 35 (2) should be understood pr erly with intention of legislature. 'Fact' is said to be proved only when the C believes it to exist. It has to be proved beyond reasonable doubt. Presump is rebuttable by the accused.

The truck was seized under Section 8/18 of the N.D.P.S. Act. The truck v likely to be damaged and become non-workable. The owner was resided away. It may be given on Supardnama with appropriate security. Suita conditions may also be imposed.

●

**36. M.P. ELECTRICITY ACT, SECTIONS 39 AND 50 READ WITH SECTI 379 IPC:-**
**1999 (2) VIBHA 14**
***STATE OF M.P. Vs. BABU SINGH***

Assistant Engineer of Electricity Board is a person aggrieved. He c lodge the complaint without any sanction under.

Unauthorised artificial means proved. Electricity current in cut out a starter proved. Theft of electricity energy may be presumed.

Part of paragraph 10 of the judgment is reproduced:-

In the present case, the material on the record has proved the existence artificial means not authorised by the licensee, for the abstraction, consum tion or use of energy by the consumer as in the cut out and starter, there w electric current and in view of this, the view of the trial Court cannot be a cepted that the prosecution failed to establish clearly that when the concern persons reached on the spot, they found the electricity meter running. When presumption is made by the law, then, the burden of rebutting the presumptic is on the consumer and in the present case, the consumer has failed to reb such a burden. The liability of the consumer u/s 39 of the Act cannot be al solved. (Please see J.O.T.I. Journal Vol. II Pt. V Page 18 under the head Ar cles).

●

**37. MOTOR VEHICLES ACT, 1988, SECTIONS 166 AND 149 :-**
**1999 (2) VIBHA 3**
***BROTHERS TRANSPORT SERVICE Vs. DR. SHAFIUZ-ZAMA***

The driver of the bus driving with excessive speed. Bus having no mud guards striking with fiat car and dragged it upto 20-25'. Driver of the bus alon is negligent. Policy covering liability of one accident. Liability of each victim i covered. ***Motor Owner's Insurance Co. Ltd vs. J.K. Modi, AIR 1981 SC 205*** followed.

●

**MOTOR VEHICLES ACT, 1988, SECTIONS 168 AND 149 (2) (D) (II), 3, 10, 2 (21), 2 (47) : ASSESSMENT OF COMPENSATION:-**
**1999 (2) VIBHA 8**
***MOHD. KARIM KHAN Vs. SHAMSHER KHAN***

Increment and promotion may be taken into consideration. Loss of estate eceased and funeral expenses should also be awarded besides pecuni- oss.

Autorickshaw is a light transport vehicle insured having valid licence of motor vehicle can drive such vehicle. Insurer cannot escape its liability to mnify the insured.

●

**I.P.C., SECTIONS 302, 300 Excep. 2, 304 PT. 1 AND 100 : RIGHT OF SELF-DEFENCE:-**
**1999 (2) VIBHA 55**
***HARPAL SINGH Vs. STATE OF M.P.***

Complainant party though having weapons but coming to catch hold the used. Accused inflicting one ballam injury. Right of self defence exceeded. nce falls under Section 304 (I).

●

**SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989, SECTION 3 (1) (X) : NATURE OF OFFENCE AND I.P.C., SECTIONS 451 AND 323 :-**
**1999 (2) VIBHA 44**
***RAJESH SINGH Vs. STATE OF M.P.***

Insult, Intimidation or dishonour not to humiliate member of Scheduled ste or Tribe. Prosecution story founded on earlier dispute. Provision not acted.

Paragraphs 11, 12 and 13 of the judgment are reproduced:-

After having heard the learned counsel for the parties, I am of the opinion t this is not a case where an offence can be said to have been made out der Section 3 (1) (x) of he Scheduled castes and Scheduled Tribes (Preven- n of Atrocities) Act, 1980. It be seen that PW 5 has stated that some abuse re hurled when the marriage party wanted the dancing girl to give perform- ce. This aspect of the matter was not adverted by the complainant or by any the witnesses. This makes the prosecution story doubtful. There is incon- tency as to the origin of the entire episode. As a matter of fact the dancing l did give performance. Therefore, the story put forward that the dancing girl s not allowed to give performance, cannot be believed. As indicated above, h regard to the abuses said to have been jurled when the marriage party s in the village, nothing has been said by the other witnesses. In the state- nts made in the Court by PW 1, PW 2 and PW 3, all that has said that the pellants addressed the complainant party as CHAMRA. As to what was the ture of the other abuses is not adverted to. The incident which is said to ve been taken place after two days of the marriage ceremony is based on

earlier occurrence. The version which has been given by PW 3 is totally m ing in the statements of PW 1 and PW 4. I am of the opinion that the story wl is put forward cannot be believed.

Apart from this, the medical version does not support the prosecu story. Rajesh (appellant No. 1) is said to have hit the complainant Man Si on the head with FARSHA. The doctor who has appeared in the witness has stated that the injury was caused by hard and blunt weapon. The fact the medical evidence is at variance to the ocular evidence, cannot be igno This also casts a shadow on the prosecution version.

Learned counsel for the appellants placed reliance on these decision this Court as ***1993 (2) MPWN short note 25 (Hari Singh vs. State of M 1994 (1) MPWN short Notes 154*** and ***217 (Ratanlal vs. State of M.P.) (Santosh Kumar Jain vs. State of M.P.).*** The later decision of Santosh Ku Jain's case supports the arguments raised by the learned counsel for appellants. He submits that insult, intimidation or dishonour should be th with a view to humiliate member of Scheduled Caste or Tribe. This is ag missing in this case. The prosecution story is founded on an earlier disp The witnesses are at variance qua this medical evidence is also inconsist

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**41. ARBITRATION ACT, SECTION 30:NON-SPEAKING ORDER WHETH AMOUNTS TO**
**(1999) 3 SCC 533**
***KUNDALE & ASSOCIATES Vs. KONKAN HOTELS***

Arbitrator making statement in award that he had considered all oral documentary evidence produced by both parties. His statement was gen one and meant that whatever evidence whether oral or documentary l been led before him had been considered by him. The arbitrator had a visited and inspected the site, therefore on facts the High Court erred in s ting aside the award on the grounds legal mis-conduct. Section 6 of Evide Act referred.

The High Court appears to have emphasised the fact that no reasons given in the award. However, under the law then in force, it was open to arbitrator to give an award without giving reasons since the parties not sti lated that the arbitrator should give a reasoned award. The High Court a commented on the fact that summary proceedings were not envisaged un the Arbitration Act, 1940. The trial court has, however, noted that both si led evidence before the arbitrator and tendered document which were cons ered by the arbitrator before giving his award. The trial court has noted that behalf of the respondents oral evidence of their architect Shri Bhagat a their Director Shri N.G. Bhave was adduced along with documentary e dence. On behalf of the appellants, no oral evidence was led but document evidence consisting of letters and other documents was produced. The spondents did not, at any time, protest before the arbitrator against the do ments being taken on record without a formal proof as envisaged under Evidence Act, 1972. Documents on both sides have been taken on record

e arbitrator. The arbitrator had also before him joint measurements taken by e architect of the respondents in respect of the work done by the appellants. ıe arbitrator himself visited in respect of the work done by the appellants. ıe arbitrator himself visited the site and inspected the construction of the iilding. On the basis of this evidence before him the arbitrator gave the vard in question. This does not show any legal misconduct on the part of the bitrator.

In his award the arbitrator has stated that after carefully considering all e claims and counter-claims made by both the parties and after carefully ɔnsidering the oral and documentary evidence produced by both the parties ıd the pleadings of both the parties and arguments advanced by the parties, ɜ was making the award. The High Court said that the arbitrator had not ɔplied his mind because the appellants had not led oral evidence. We fail to ɜe how this conclusion can be deduced in the way it has been done by the igh Court. Oral evidence was led before the arbitrator by the respondents. ıe arbitrator has made a general statement that he has considered oral as ell as documentary evidence led by both the parties. From this it would not ɜ proper to deduce that oral evidence was led by both the parties and documentary evidence was led by both the parties. All that can be said is that hatever evidence whether oral or documentary was led before the arbitrator as been considered by him.

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**2. ARBITRATION ACT, SECTIONS 15 (C) AND 30**
**(1999) 3 SCC 536**
***HINDUSTAN VIDYUT PRODUCTS LTD. VS. STATE OF RAJASTHAN***

The District Judge, Jaipur city appointed an arbitrator to adjudicate upon ıe disputes between the parties. The transaction relates to the supply of 3290 n. of "Panther Conducter". The appellant aggreed to supply this material to ıe respondent. The arbitrator set out the claims of both the parties and made ı award without setting out reasons for making such award. A letter was sent y the Advocate for the respondent on the date when the awardwas made ıown to the parties pointing out that a certain amount of adjusting the cost of ıw material had not been awarded in favour of the respondent and it is stated ıere in that this apparent error should be corrected in the award. The arbitraır refused to entertain the objection expressing his helplessness to consider ıe same as after pronouncement of the award he had become functus officio. he respondent filed a suit before the District Judge under Section 15 and 16 f the Arbitration Act for correcting the award. The District Judge rejected the aim. But the High Court allowed the claim in appeal.

After referring to the decisions of the Court in ***Hindustan Construction o. Ltd. vs. State of J & K, (1992) 4 SCC 217. State of Bihar v. Hanuman Mal ain, (1997) 11 SCC 40,Municipal Corpn. of Delhi v. Jagan Nath Ashok umar, (1987) 4 SCC 497*** and ***Naraindas Lilaram Adnani vs. Narsingdas laraindas Adnani, 1995 Supp (1) SCC 312*** the Supreme Court held that hen the claim either for return of the raw material or for its price had been

rejected, we fail to see as to how the respondent becomes entitled for adjt ment of the amount regarding raw material supplied and it cannot be tern as an inadvertent error of a clerial or arithmetical nature which can be c rected under Section 15 of the Arbitration Act. The High Court has exceec its jurisdiction in interfering with the award particularly when the award wa non-speaking award and the claims made by the parties have been borne mind by the arbitrator in passing the award and the aribirator had not omit any claim made by any of the parties. Therefore, we think the High Court v not justified in interefering with the award which was made the rule of the cc by the District Judge, Jaipur, City.

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**43. ARBITRATION ACT, SECTION 30 : GROUNDS FOR SETTING ASI AWARDS:-**
**(1999) 3 SCC 566**
***STATE OF ORISSA Vs. ORIENT PAPER & INDUSTRIES LTD.***

The arbitrator did not decided the points in issues but merely agreed w an official note appended to the arbitration agreement and the questions ferred to arbitration remain unanswered. Such award may be set aside. It w held that the High Court rightly set aside the award and remitted it to t arbitrator for redetermination.

**CONSTITUTION OF INDIA, ART. 136 : PRACTICE AND PROCEDURE : STA AS A LITIGANT :-**

State's responsibility when seeking determination under Art. 136 cani act like a private litigant and challenge every order made against it. State m seek proper advice as to whether a case requires determination by Supre Court under Art. 136 of the Constitution. Delay of twelve years resulting fr State appeal to Supreme Court. It was held that it was not necessary tl State Government should have challenged the order of the High Court ren ting the dispute to the arbitrator for redetermination thereby causing unnec sary expense and delay.

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**44. ARBITRATION ACT, SECTIONS 14 AND 27:- FINALITY OF AWAI AND QUESTION OF FUNCTUS OFFICIO :-**
**(1999) 3 SCC 487**
***SATWANT SINGH SODHI Vs. STATE OF PUNJAB***

An award is complete as soon as it is made and signed. The finality, leg effect and validity then attach thereto.

The question whether interim award is final to the extent it goes or h effect till the final award is delivered will depend upon the form of the awar If the interim award is intended to have effect only so long as the final award not delivered it will have the force of the interim award and it will cease to ha effect after the final award is made. If, on the other hand, the interim award intended to finally determine the rights of the parties it will have the force of complete award and will have effect even after the final award is delivered

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**MOTOR VEHICLES ACT, 1939, SECTIONS 94, 95, 97 AND 103-A: INSURER'S LIABILITY ON TRANSFER OF LIABILITY :-**
**(1999) 3 SCC 754**
***G. GOVINDAN Vs. NEW INDIA ASSURANCE CO. LTD.***

In the absence of the application/intimation under Section 103-A the Insurance policy remains effective in respect of third party risks but not in respect of the transferee's risks. Since insurance against third party risks being mandatory under the statute cannot over ride by any clause in the insurance policy. Sections 94 to 97 and 99 and Section 146, 147, 149, 150 and 151 of the Motor Vehicles Act 1939 referred. The view preferred by the ***A.P. High Court in 1986 A.P. 62, Madineni Kondaiah vs.Yasin Fatima*** was accepted. The Supreme Court held as under :

"A perusal of Section 94 clearly discloses that the statute intended to give protection to a third party in respect of death or bodily injury or damages to their property while using the vehicle in a public place. Hence the insurance of the vehicle under Section 94 read with Section 95 is made compulsory. Those two provisions do not extend the compulsory insurance to the vehicle or to the owner. In fact these two provisions made exception to protect the life and limb of the driver of the vehicle or the passenger in the vehicle except public service vehicle. Thus, it is seen the compulsory insurance is for the benefit of third parties. Hence, it is clear that the insurance policy covering three kinds of risks, i.e. person (owner), property (vehicles) and third parties is clearly in the nature of a composite one. The public liability (third party liability) alone is compulsory. While considering whether the transfer of the vehicle would put an end to the policy, we must see whether such a composite policy will lapse putting an end to all the three kinds of risks undertaken by the insurance company. For this purpose Section 95 (5) must be looked into :

'Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.'

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**CONCEPT OF OWNERSHIP :- T.P. ACT, SECTIONS 47, 54 & 55**
**(1999) 3 SCC 482**
***KOCHKUNJU NAIR Vs. KOSHY ALEXANDER***

Ownership imports three essential rights, namely, right to possession, right to enjoy and right to dispose. If an owner is wrongly deprived of possession of his property, he has a right to be put in possession thereof. All the three essentials are satisfied in the case of co-owner of a land. All co-owners have equal rights and co-ordinate interest in the property, though their shares may be either fixed or indeterminate. Every co-owner has a right to enjoyment and possession equal to that of the other co-owner or co-owners. Each co-owner has, in theory, interest in every infinitesimal portion of the subject matter and each has the right, irrespective of the quantity of his interest to be in posses-

sion of every part and parcel of the property jointly with others **(vide Mitra Co-ownership and Partition, 7th Edn.)**

A three-Judge Bench of this Court has held in ***Sri Ram Pasricha Jagannath (1976) 4SC 184 : AIR 1976 SC 2335*** that a co-owner owns eve part of the composite property along with others. The following statement law has been made by their Lordships : (SCC p. 190. para 27)

> "27. jurisprudentially it is not correct to say that a co-owner of a property not its owner. He owns every part of the composite property along wi other and it cannot be said that he is only a part-owner or a fraction owner of the property. The position will change only when partition tak place."

To hold that a co-owner is not an owner and his possession is not th possession envisaged in Section 2 (25) of the Act is in conflict with the corre legal position. If a co-owner wants to erect a homestead on the land, he is fre to do so. When a division of the co-ownership property takes place, the c owner who put up the homestead can claim that the said protion may b allotted to his share. Courts would ordinarily grant such equitable relief whe claimed (vide ***Nutbehari Das v. Nanilal Das AIR 1937 PC 61 : 41 CWN 613*** the other co-owner objects to the construction of a homestead, he can get th co-ownership property divided by partition, and if the other party is not readi willing to that course, it is open to him to get it partitioned through a suit. Thes are various remedies available to the co-owner in respect of his land. Mere because he has to resort to such steps, it cannot be said that a co-own cannot erect a homestead on his land.

The view adopted by the full Bench of the Kerala High Court that once th claimant is a co-owner of whatever extent of land, he must be treated as person who has no land on which he could erect a homestead, has preposte ous legal implications. For example, a co-owner having 50 acres of lan alongwith another co-owner claims the right of kudikidappu as against ar other person who has only a wee bit of land. If the Full Bench view gain acceptance, the claimant must be declared entitled to kudikidappu right. Suc an order would be unjust and inequitable, if not ridiculous. The Full Bench c Kerala High Court has gone wrong in adopting such a view.

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**47. BURDEN OF PROOF : SPECIAL KNOWLEDGE, EVIDENCE ACT, SEC TIONS 103 & 106 :- EVIDENCE ACT, SECTION 115 : ESTOPPE AGAINST SATUTE, PROMISSORY ESTOPPEL OR EQUITABL ESTOPPEL :-**
**(1999) 3 SCC 494**
***JALANDHAR IMPROVEMENT TRUST Vs. SAMPURAN SINGH***

Person who claims perferential treatment in the present case of allotmen of plots should prove that he is entitled to preferential treatment. The burden i on the person who want to take preferential treatment. The allotment of plots i controlled by statutory rules. Any allotment contrary to those rules will b

ainst the law. Since the allotments made in favour of some of respondents ıs passed on wrong application of the reservation made for local displaced rsons". Those allotments were contrary to law. Hence the principle of promsory/equitable estoppel cannot be invoked to protect such illegal allotments. ıere cannot be estoppel against the statutes with reference to wrongful allotent of plots, acceptance of initial deposits towards consideration of plots ıd subsequent cancellation by Town Improvement Trust. If allotments are ıntrary to statutory rules cannot be protected by the principle of promissory equitable estoppel. Preferential allotment of plots in favour of certain rules ıntrary to certain statute does not give some persons a right to claim with ıch allotees. Illegal or ultravires action does not give right to others for simir treatment.

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3. **C.P.C. SECTIONS 151 AND 152 :-**
**(1999) 3 SCC 500**
***DWARAKA DAS Vs. STATE OF M.P. AND ANOTHER***

Liberal use of sections 151 and 152 C.P.C. by the lower courts to alter riginal judgment, decree or order is depricated by the Supreme Court. endente lite interest was claimed by the party and despite the prayer made in ıat regard the Trial Court in its decree did not grant interest. The trial court rred in allowing an application under Section 152 and by correction awardıg interest pendent lite.

**ONTRACT ACT, SECTION 73 DAMAGES FOR BREACH OF CONTRACT :-**

In the present case the contract amount was 2 lakhs of rupees. The work ontract was rescined on the ground that the contractor had not completed ven 10% of the work. It was found that the contract was improperly rescined nd thereby breach of contract was committed. The contractor claimed 10% of ıe contract amount i.e. Rs. 20,000 on Rs. 2,00,000/- as 10% damages as he ⁄ould have earned profit of 10% on 2 lakhs of rupees. It was held that the ontractor is entitled to claim damages for loss of profit which he expect to ıarn by undertaking the works contract.

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19. **EVIDENCE ACT, SECTION 32 : DYING DECLARATION RECORDED BY I.O. :-**
**(1999) 3 SCC 507**
***STATE OF RAJASTHAN Vs. TEJA RAM***

Medical evidence showing that the brain functions of the injured would ıave impaired due to brain injury. Held, that even if the injured were able to ıpeak out something after sustaining such injuries, it is unsafe to place reliance on such dying declarations.

**EVIDENCE ACT, SECTIONS 145 AND 155 (3) :-** One of the permitted modes of impeaching the credit of a witness is proof of former statements which is inconsistent with any part of his testimony as indicated in section 155 of the Evidence Act. But the mode of using such former statements for the

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purposes of contradicting the witness is prescribed in Section 145 of the E dence Act. It is open to the defence to request for recalling the witnesses the purposes of further cross- examination to impeach the veracity of t witness on the strength of the alleged former statement which came on recr subsequently, ***Naba Kumar Das vs. Rudra Narayan Jana, AIR 1923 PC :***

**EVIDENCE ACT, SECTIONS 27 AND 45 r/w SECTIONS 162 (1) AND (2) ( P.C. :**

There is a prohibition of taking of signature of person whose statement reduced to writing under the provision. The axe was recovered in pursuant statements made by the accused under Section 27 of the Evidence Act t obtaining signature of the seizure memo does not vitiate the seizure or tes mony of such witness in the court. That apart, Section 102 (1) does not as p Section 162 (2) apply to the proceedings made as per section 27 of the E dence Act. Two weapons (axes) were recovered in pursuant to the stateme of the accused. The axes found stained with blood. On one axe blood found be of human origin. While origin of blood on the other axe could not be d tected due to disintegration of serum. It cannot be said that in all cases wheth there was failure of detecting the origin of the blood, the circumstance arisi from recovery of the weapon would stand relegated to disutility.

**CRIMINAL TRIAL : APPRECIATION OF EVIDENCE : DISCREPANCIES :-**

One set of witnesses stating that the asailants were seen going out fro the western gate while the other set of witnesses saying that the assailan went out through the eastern gate, both gates being of the same house ar situate close to each other. Occurrence taking place in the wee hours of th night. It was held in the circumstances of the case, no adverse inference ca be drawn against such witnesses.

The Supreme Court held as under:- We have absolutely no doubt tha whoever rushed to the spot on hearing the squeak or the outcry, it is mo unlikely that they would have remained where they were even after hearin the cries. It is extremely probable that the witnesses would have seen th fleeing assailants in such a hubbub and if some witnesses did not correctl notice the exact gate (out of the two gates) through which each one of th assailants flushed out, it is not a good cause for drawing any adverse infe ence against such witnesses.

**RELATED WITNESSES:-** Another reason which the High Court advance to repel the testimony of such a good number of probable witnesses is tha they are all close relatives of the deceased and that independent witnesse were not examined by the prosecution. The over-insistence on witnesses hav ing no relation with the victims often results in criminal justice going awry When any incident happens in a dwelling house, the most natural witnesse would be the inmates of that house. It is unpragmatic to ignore such natura witnesses and insist on outsiders who would not have even seen anything. I the court has discerned from the evidence or even from the investigatio records that some other independent person has witnessed any event con

ecting the incident in question, then there is a justification for making adverse comments against non examination of such a person as a prosecution witness. Otherwise, merely on surmises the court should not castigate the prosecution for not examining other persons of the locality as prosecution witnesse. The prosecution can be expected to examine only those who have witnesses the events and not those who have not seen it though the neighbourhood may be replete with other residents also

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**50. INDIAN SUCCESSION ACT, SECTION 90 :-**
**(1999) 3 SCC 517**
***LACHHMAN SINGH (DEAD) BY L. Rs. Vs. RAJARAM SINGH***

Section 90 is relevant for construing will bequeathing agricultural land and rights such as bhumidhari rights. Thus where property bequeathed is generic and increases, diminishes or otherwise changes during the lifetime of the testator so that the description applies at different times to different amounts of property or rights, that property or those rights which answer the description at the death of the testator pass under the will, unless a contrary intention is shown.

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**51. ADVOCATES ACT, 1961, Ss. 35 (1) AND 35 (2) : FRAMING OF ISSUES : C.P.C., Or, 14 R. 1 AND Or 6 : PLEADINGS:-**
**(1999) 3 SCC 522**
***SARDUL SINGH Vs. PRITAM SINGH***

The respondent was an Advocate. The Bar Council of Delhi suspended him form practice for 3 years on account of professional misconduct. The appellant was a complainant before the Delhi Bar Council. The Bar Council found reality of professional misconduct on the complaint made by the appellant as well as on the ground that in his enrolment form he has suppressed the fact that he had been convicted and sentenced to 6 months imprisonment in a criminal case. However, the question of conviction was not raised in his complaint. The parties who being conscious of such issues went to trial, adduced evidence and were given opportunity to produce evidence or cross-examine the witnesses concerned. It was held that such parties cannot subsequently be permitted to raise an objection as to want of a specific pleading regarding such an issue. During the enquiry the State Bar Council framing issues on the facts in the complaint and framing another issue relating to suppression by the respondent at the time of his enrolment of the fact of his conviction on a criminal case, although the same had not been raised in the complaint.

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**52. INDIAN SUCCESSION ACT, SECTIONS 211 (1), 307 (1), 311, 332 AND 333 : r/w OR. 21 Rr. 54 & 58:-**
**(1999) 3 SCC 548**
***K. LEELAVATHY BAI Vs. P.V. GANGADHARAN***

S.P. Sadanadan, by a will dated 23.6.1948 bequeathed a certain property

belonging to him, jointly to his sons E.D. Sadanandan and J.G. Sadanand S.P. Sadanandan died on 10.7.1948. He had originally appointed his wife, elder son and another person as executors of his will. The said other pers later relinquished his status as executor. The remaining two executors tained probate of the will from the High Court on 12.11.1963. Earlier, the s property was leased to a certain person. During the pendency of the lea E.D. Sadanandan, the elder son of S.P. Sadanandan mortgaged the said pr erty with possession in favour of the original lessee. One Ramdass filed a s against a certain company of which the widow of the testator. E.D. Sadanand and J.G. Sadanandan regarding the assets of the company. However, E Sadanandan was not made personally liable and there was no decree agai the widow as she had not been impleaded while there was a personal decr against J.G. Sadanandan. In execution of the decree, the property in questi was attached on 27.11.1961. On 10.1.1964, the attached property was p vately sold by the widow and E.D. Sadanandan. Subsequently, in execution the decree obtained by Ramdass, the attached property was brought for co sale on 17.9.1962. and was actually sold on 27.7.1964. The objections fil against the Court auction were rejected by the auction court and a sale certi cate was issued in favour of the auction-purchaser who was later given sy bolic possession of the property. The auction-purchaser thereafter filed a s for redemption of the mortgage which was decreed by the trial court. But t defendant's appeal was allowed by the first appellate court. Second appe filed by legal representatives of the plaintiff was dismissed by the High Co and therefore they approached the Supreme Court. They Contended that co sequent to an assent on the part of the executors, the suit property had veste in the legatees and therefore, the sale of the suit property by the executors c 10.1.1964 was an invalid sale. Thus, the suit property was legally available f court sale. Dismissing the appeal, the Supreme Court held as under :

> On facts, there is no dispute that the testator had originally appointed persons as executors of his will, and after the relinquishment of his dutie as executor by Mr Paramasivan, still two other executors were left, namel Smt. Suseela and Mr. E.D. Sadanandan (the elder one) who continued t be the joint executors of the will in question. Under Section 211 of the Ac these two executors became the legal representatives of the decease testator for all purposes and the properties bequeathed vested in thes two executors. Until and unless the said executors assent, the title of th property would not pass on to the legatee. (See Section 332 of the Act.) O course, in law, by the assent of the executor the title of a specific propert would pass on to the legatee and this assent could be verbal, express o implied. (See section 333 of the Act.) the appellants want us to infer tha such an assent of the executor could be inferred from the act of the elde Sadanandan in executing a possessory mortgage, Ex. A-1 in favour o S.V. Sivaramakrishna Iyer by which act the elder Sadanandan had acte as a legatee which conduct is sufficient to infer at least the implied assen of the executor to the transfer of title in favour of the legatees. If so, in the eye of of the law, title of the property had vested in the legatees. Hence

the property in dispute was available in execution for satisfaction of the decree in OS No. 63 of 1956. In our opinion, this presupposes the fact that the action of the loan executor would suffice to confer the title of the executors on the legatees. We are unable to agree with this proposition of law. Under Section 211 of the Act, the property of the deceased testator vests in all the executors and if there is more than one executor, all of them together become legal representatives of the deceased testator. In such a situation, it is futile to contend that the estate of the deceased testator could be either controlled or represented by one of the legal representatives of the deceased to the exclusion of other legal representatives. We find support for this conclusion of ours from the judgment of this Court, referred to above, which is incidentally a case arising out of the same will which is involved in this case. The view expressed in that case, though arising out of income tax proceedings applies on all fours to the facts of this case also. This Court in that case held : (ITR Headnote)

"If there are more than one executor of a deceased person all of them will s his representatives, and for the purpose of Section 24-B (2) all of them only an represent the estate of the deceased."

In view of our finding that the younger Sadanandan had only an inchoate ght in the suit property, the contention of the appellant that at least to the xtent of his share, the court sale should be upheld, cannot also be accepted.

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**3. I.P.C., SECTIONS 300 EXCEPTION 4 AND 302 : FREE FIGHT MEANING OF :-**

**(1999) 3 SCC 569**

***SIKANDER Vs. STATE (DELHI ADMINISTRATION)***

'Fight' postulates a bilateral transaction in which blows are exchanged etween the parties. Intervening and entreating the accused not to inflict blows n his father would not amount to 'fight'.

In the aforesaid case after analysing the ingredients of Exception 4 of ection 300 IPC, the Court observed as under : ***Surinder Kumar v. Union erritory, Chandigarh (1989) 2 SCC. 217, 220 (Parg 6 and 7).***

"6. Exception 4 to Section 300 reads as under:

Exception 4 - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

**Explanation-** It is immaterial in such cases which party offers the provocation or commits the first assault.

To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of

wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. ***Of course, the offende must not have taken any undue advantage or acted in a cruel manner."***

5. In the said case after considering the proved facts that all of a sudden a quarrel took place when the deceased and the witness entered the room occupied by the accused and his family members and had demanded vacan possession of the kitchen, the witness uttered filthy abuses in the presence o the sister of the accused which finally led to heated arguments between the deceased and the witness on the one side and the accused on the other. A that stage, the witness took out a penknife from his pocket, the accused went to the kitchen and returned with a knife and in the ensuing fight between them a few injuries were caused to the deceased out of which one proved to be fatal. In such circumstances, the Court held that the act would be covered by Exception 4 of Section 300 IPC and the offence would be punishable only under Part I of Section 304 IPC. As against that, in the present case, the facts are totally different, firstly, there was no sudden fight between the accused and the deceased Zohra Bi or her daughter Gulzar. Intervention of Zohra Bi at the stage when the accused Maqbool was inflicting injuries on her husband and protesting by saying as to why a handicapped father was being beaten would not amount to that there was a fight between the appellant and the deceased. Similarly, intervening and entreating the accused not to inflict blows on her mother Zohra bi by deceased Gulzar also cannot be termed as "fight". As such there was no "fight" between PW I and accused Maqbool or the appellant, it was only a verbal quarrel. "Fight" postulates as bilateral transaction in which blows are exchanged between the parties (Re: ***Bhagwan Munjaji Pawade v. State of Maharashtra (1978) 3 SCC 330*** and ***Narayanan Nair Raghvan Nair v. State of Travancore-Cochin AIR 1956 SC 99*** Further, both the victims, i.e., Zohra Bi and Gulzar were totally unarmed, they had not caused any injury to the appellant or Maqbool. Hence it will be difficult to accept the contention that there was a sudden fight between the accused or the witness and the victims, even though the quarrel started suddenly. Secondly, in the present case, it will be difficult to hold that the appellant had not taken any undue advantage or acted in a cruel manner. The injuries found by the doctor PW 12, who carried out the post-mortem examination on the body of the deceased Zohar bi, aged 40 years, were in all sixteen incised wounds, similarly, he had noted eleven incised wounds on the dead body of Gulzar, aged about 17 years. On the face of it, it is apparent that the accused acted in a most cruel manner by inflicting a number of dagger blows on a helpless step mother and younger sister. Hence, even assuming that there was no premeditation and the act was done in the heat of passion because of a sudden quarrel between PW 1 on one side and Maqbool and the appellant on the other and that the appellant used the dagger which was brought out by his brother Maqbool for inflicting injuries, yet the main requirements, vis., (i) it was a sudden fight and (ii) the accused have not taken undue advantage or acted in a cruel or unusual (the ingradients) manner of Exception 4 of Section 300 IPC are not satis-

ied. Further, the contention of the learned counsel for the appellant that PW 1 and the accused have reconciled and are staying together or that the accused s the sole earning member of the family would be totally irrelevant on the question of conviction and sentence of the accused for the offence of murder of his stepmother and sister. (Note : Please refer to Vol. No IV, Part No. I, Feb. 1998, JOTI Journal Page No. 44 Titbit No. 37).

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**54. TRANSFER OF PROPERTY ACT, SECTIONS 54, 55 (4) (b), 58 (C) AND 60 & C.P.C. OR. 8 : (1) PLEA OF SATE DEED NOT VALID WHO CAN RAISE (2) QUESTION OF NATURE OF MORTGAGE - INTERPRETATION OF DOCUMENT**
**(1999) 3 SCC 573**
***VIDHYADHAR Vs. MANIKRAO***

Nonpayment or inadequacy of sale consideration. **Plea that sale deed was void,** fictitious, collusive or not intended to be acted upon. Held that plea **can be raised also by defendant** who **is a stranger to the sale deed.** It will depend upon the pleadings of the parties, nature of the suit, nature of the deed, evidence led by the parties and other circumstances.

Actual payment of full price at the time of execution of sale deed is not a sine qua non for completion of sale, as for sale it is price paid or promised or part paid and part promised. Under Section 55 (4) (b) where ownership of the property is transferred to the buyer before payment of the wholesale price, vendor is entitled to a charge on that property for the amount of sale price as also interest thereon. Such charge provides him right to enforce the charge by a suit but does not entitle the seller to retain the property as against the buyer.

Question is whether a mortgage by conditional sale was an out and out sale or a mortgage. The real test is intention of the parties to the sale deed. The document is styled as 'Kararkharedi' executed by Defendant No. 2 in favour of Defendant for a sum of Rs. 1500 with the stipulation therein that if the entire amount of Rs. 1500 returned to defendant 1 before a specified date the property would be reconveyed to Defendant 2. It was held that the deed must be treated as a mortgage by conditional sale.

**C.P.C., OR. 8 : RAISING OF A PLEA IN PLEADING:-**

Defendant can raise any legitimate plea available to him under law to defeat the suit of the plaintiff.

**C.P.C., OR. 16 Rr. 1 (3) & 1-A :** R. 1-A is not in derogation of R. 1 (3). A party may bring a witness even without applying for court summons but leave of the court has to be obtained before proceeding to examine such witnesses.

**EVIDENCE ACT, SECTION 114 I11. (g):-**

Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.

Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not corrects has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in ***Sardar Gurbakhsh Singh Vs. Gurdial Singgh, AIR 1927 PC 230 : 32 CWN 119.*** This was followed by the Lahore High Court in ***Kirpa Singh Vs. Ajaipal Singh, AIR 1930 Lahore 1 : ILR 11 Lah 142*** and the Bombay High Court in ***Martand Pandharinath Chaudhari vs. Radhabai Krishnarao Deshmukh, AIR 1931 Bom. 97: 32 Bom L.R. 924.*** The Madhya Pradesh High Court in ***Gulla Kharagjit Carpenter Vs. Narsingh Nandkishore Rawat, AIR 1970 MP 225 : 1970 MPLJ 586*** also followed the Privy Council Decision in Sardar Gurubakhsh Singh case. The Allahabad High Court in ***Arjun Singh vs. Virendra Nath, AIR 1971 All. 29*** held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division Bench of Punjab and Haryana High Court in ***Bhagwan Dass vs. Bhishan Chand, AIR 1974 P & H 7*** Drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box.

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**55. SERVICE LAW- ADMINISTRATIVE TRIBUNALS ACT, SECTION 5 (4) (a) : SCOPE OF :-**
**(1999) 3 SCC 594**
***STATE OF MAHARASHTRA Vs. CHHAYA AND OTHERS***

The section does not enable the Chairman, if he is a Judicial Member, to act as an Administrative Member or vice versa.

The said provision reads as follows:-

"5 (4) Notwithstanding anything contained in sub-section (1), the Chairman-

> (a) may, in addition to discharging the functions of the Judicial Member or the Administrative Member of the Bench to which he is appointed, discharge the functions of the Judicial Member, or, as the case may be, the Administrative Member, of any other Bench."

In our opinion, the aforesaid submission of the learned counsel is not correct. The Chairman may be a Judicial Member or an Administrative Member. All that this sub-clause permits is that the Chairman can function at more than one Benches. This provision obviously had to be included in order to enable the Chairman to function at different places when he goes on tour. This provision does not enable the Judicial Member to act as an Administrative Member or vice versa. If the Chairman is a person who was an Administrative Member, then under Section 5 (4) (a) if he goes to another Bench he can sit on that Bench as Administrative Member, but certainly not as a Judicial Member. The same will be true with regard to the Chairman who is a Judicial Member.

We do not find any infirmity in the order of the High Court. The solution to the problem in hand is to make early appointments.

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**56. POWER OF ATTORNEY ACT, 1882, SECTION 2 AND Cr. P.C. SECTIONS 295, 273, 303 & 2 (q) AND ADVOCATES ACT, SECTION 32 :- (1999) 3SCC 614 WHO IS ENTITLED TO BE REPRESENTED IN COURT INSTEAD OF ADVOCATE**

***T.C. MATHAI Vs. DISTRICT & SESSIONS JUDGE***

When the Criminal Procedure Code requires the appearance of an accused in a court it is no compliance with it if a power of attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with "the personal attendance of the accused, and permit him to appear by his pleader" if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the prosence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power of attorney holder.

The observations made in ***M. Krishnammal vs. T. Balasubramania Pillai AIR 1937 Mad. 937 (approved by S.C.)*** though stated sixty years ago, would represent the correct legal position even now. Thus an agent cannot become a "pleader" for the party in criminal proceedings unless the party secures permission from the court to appoint him to act in such proceedings. ***(Ravulu Subba Rao vs. CIT, AIR 1956 SC 604 : (1956) 30 ITR 163, applied. M. Krishnammal v. T. Balasubramanial Pillai AIR 1937 Mad 937 : (1937) 2 MLJ 552*** approved. ***Jackson & Co. v. Napper, (1886) 35 Ch D 162, 172 : 55LT 836,*** referred to. **Stroud's Judicial Dictionary and Black's Law Dictionary** referred to.)

Under Sections 303 and 2 (q) Cr. P.C. it is not necessary that the "pleader". so appointed should be the power-of attorney holder of the party in the case. What is a condition precedent is that his appointment should have been preceded by grant of permission of the court. It is for the court to consider whether such permission is necessary in the given case and whether the person proposed to be appointed is capable of helping the court by pleading for the party, for arriving at proper findings on the issues involved in the case.

The work in a court of law is a serious and responsible function. The primary duty of a criminal court is to administer criminal justice. Any lax or wayward approach, if adopted towards the issues involved in the case, can cause serious consequences for the parties concerned. It is not just somebody representing the party in the criminal court who becomes the pleader of the party. In the adversary system which is now bing followed in India, both civil and criminal litigation, it is very necessary that the court gets proper assistance from both sides.

If the person proposed to be appointed by the party is not an advocate the court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for Parliament for fixing such a filter in the definition clause (Section 2 (q) of the Code) that prior permission must be

secured before a non-advocate is appointed by the party to plead his cause ir the court, is to enable the court to verify the level of equipment of such a person for pleading on behalf of the party concerned. ***Harishankar Rastogi vs. Girdhari Sharma, (1978) 2 SCC 165 : 1978 SCC (Cri) 168 : AIR 1978 SC 1019,*** relied on.

The definition envelopes two kings of pleaders within its ambit. The first refers to legal practitioners who are authorised to practice law and the second refers to "any other person". If it is the latter, its essential requisite is that such person should have been appointed with the permission of the court to act in such proceedings. This is in tune with Section 32 of the Advocates Act, 1961 which empowers a court to permit any person, who is not enrolled as an advocate to appear before it in any particular case. But if he is to plead for another person in a criminal court, such permission should be sought for by that person.

It is not necessary that the "pleader" so appointed should be the power-of-attorney holder of the party in the case. What seems to be condition precedent is that his appointment should have been preceeded by grant of permission of the court. It is for the court to consider whether such permission is necessary in the given case and whether the person proposed to be appointed is capable of helping the court by pleading for the party. for arriving at proper findings on the issues involved in the case.

Legally qualified persons who are authorised to practise in the courts by the authority prescribed under the statute concerned can appear for parties in the proceedings pending against them. No party is required to obtain prior permission of the court to appoint such persons to represent him in court. Section 30 of the Advocates Act confers a right on every advocate whose name is entered in the Roll of Advocates maintained by a State Bar Council to practise in all the courts in India including the Supreme Court. Section 33 says that no person shall be entitled to practise in any court unless he is enrolled as an advocate under that Act. Every advocate so enrolled becomes a member of the Bar. The Bar is one of the main wings of the system of justice. An advocate is the officer of the court and is hence accountable to the court. Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal professin.

V.R. Krishna Iyer. J. had occasion to deal with a similar matter while considering a plea like this in a chamber proceeding in the Supreme Court. In that case, a party sought permission to be represented by another person in a criminal case. Learned Judge then struck a note of caution in the following terms in ***Harishankar Rastogi v. Girdhari Sharma, (1978) 2 SCC 165 : 1978 SCC (Cri) 168 : AIR 1978 SC 1019 :***

"It the man who seeks to represent has poor antecedents or irresponsible behaviour or dubious character, the court may receive counter-productive service from him. Justice may fail if a knave were to represent a party. Judges may suffer if quarrelsome, ill-formed or blackguardly or blockheadedly private representatives filing arguments at the court. Likewise, the party himself may

uffer if his private representative deceives him or destroys his case by men-lacious or meaningless submissions and with no responsibility or respect for he court. Other situations, setting and disqualifications may be conceived of vhere grant of permission for a private person to represent another may be obstructive, even destructive of justice."

Under the English law, "every person who is sui juris has a right to appoint an agent for any purpose whatsoever, and he can do so when he is exercising statutory right no less than when he is exercising any other right ". (vide ***Jackson & Co. v. Napper, (1886) 35 Ch D 162, 172 : 55 LT 836 Ch.D at p. 172***). But this Court has pointed out that the aforesaid common law principle does not apply where the act to be performed is personal in character, or when it is annexed to a public office or to an office involving any fiduciary obligation. (vide Ravulu Subba Rao v. CIT, AIR 1956 SC 604 : (1956) 30 ITR 163).

**JUDICIAL PROCESS : EFFICACIOUS DISCHARGE OF :** The Bar is one of the main wings of the system of justice. Efficacious discharge of the judicial process very often depends upon the valuable services rendered by the legal profession.

(Note : Please refer to Titbit - Titbit No. 16 J.O.T.I. Vol III Pt I Feb. 1997, ***Thumnudeo Raghvi Vs. Baldeo Raghvi 1942 N.L.J. 449***)

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**57. CEILING ON AGRICULTURAL HOLDINGS ACT, 1960 (M.P.), SECTION 7:-**
**1999 R.N. 221 (H.C.)**
***RANKUNWARBAI Vs. STATE OF M.P.***

Previous case decided against separate holder cannot be taken into account in subsequent case against new holder of land.

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**58. C.P.C., Or. 1 R. 10 AND SPECIFIC RELIEF ACT, SECTION 34 : & C.P.C., OR. 22 Rr. 4 (1), 4 (3) 11, 1999 R.N. 243 (H.C.)**
***HARGOVIND Vs. STATE OF M.P.***

Suit for declaration that plaintiff is pujari of a private temple. Temple or diety is not necessary party.

One of the respondents dying at first appellate stage. Legal representative though existing not substituted. Joint decree in favour of deceased respondent and another surviving respondent. Appeal abated as a whole.

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**59. CR.P.C., SECTION 161 :-**
**1999 (2) JLJ 79**
***DASHRATH Vs. STATE OF M.P.***

Wife of deceased claiming to be eye witness and got injuries. Her presence was not recorded in FIR nor incident of beating. The injuries also not examined medically and the statement was recorded after 3 days. The statement was not relied.

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**60. CONSUMER PROTECTION ACT, 1986 : SECTIONS 2 AND 14 & 1 AND 17 :-**
**1999 (2) CPR 243 & 262**
***LIFE INSURANCE CORPORATION OF INDIA Vs. S. VENKATAMMA & NEW INDIA ASSURANCE CO. LTD. Vs. KODURU MADHUSUDHAI REDDY***

**Case No. 1**

Policy was taken by deceased for Rs. 50,000 in October, 1988 and he died on 14.6.90. Widow of the policy holder made claim but her claim was rejected on the ground that the fact of insured suffering from cancer was suppressed in the proposal. Evidence showing that he was suffering from cancer at the time of taking policy. It was held that LIC had rightly rejected the claim but as it was late in communicating the fact of repudiation to the claimant it was held to be deficiency in service and for that Rs. 10,000 awarded.

**Case No. 2**

Insurance claim. The insured motor cycle. Motor cycle stolen on 3.3.94. Complainant lodged report with the police after 2 months and 16 days and claim was made with the Insurance Company on 10.10.94. Claim was repudiated by the Insurance Company because the insured had committed a breach of condition of policy by not lodging FIR with police immediately after theft. It was held that there was no deficiency in service. Order of the District Forum allowing claim was set aside.

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**61. CO-OWNER: ADVERSE POSSESSION : LIMITATION ACT, SECTIONS 27, 64 & 65 AND LAND REVENUE CODE, SECTION 117 :-**
**1999 R.N. 188, 215, 170, 208 (H.C.)**
***MANGILAL Vs. HIRALAL, MAJEED Vs. PHOOGA, ISMAIL Vs. STATE AND RAJA RAM Vs. MAHILA BATTO DEVI***

Adverse possession between co-owners. Possession of one alone is not sufficient. Ouster of another should be established. If one co-owner is in possession he is presumed to be in possession on behalf of all co-owners. Mere possession with even profit of co-owner does not give rise to adverse possession. The Adverse Possession must be adequate in continuity, in publicity and the starting point of limitation should also be shown. Casual and stray entries of statutory period not sufficient to establish adverse possession. Owner is presumed to be in possession till proved otherwise. No right of ownership is acquired on the basis of stray entries. Permissive possession for more than 100 years does not convert it into adverse possession. Plaintiff an eldest male member in the family is presumed to cultivate joint land and repay the debt. No hostile title can be claimed by him on this ground. The Mutawalli of a trust property or Wakf property being the trustee cannot claim adverse possession. The plaintiff ever remained in permissive possession. No question of limitation arises.

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**62. EVIDENCE ACT, SECTIONS 18 AND 31 :-**
**1999 (2) JLJ 19**
***S.P. SHARMA Vs. STATE OF M.P.***

Admissions are binding if not explained.

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**63. EVIDENCE ACT, SECTIONS 90 AND 65 :-**
**1999 R.N. 170 (HC)**
***ISMAIL Vs. STATE OF M.P.***

A copy of document admitted as secondary evidence. 30 years old and produced from proper custody. Signaturre authenticating the copy may be presumed to be genuine. Presumption of due execution of original cannot be drawn (Provisions of Section 90 regarding presumption relates only to original documents).

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**64. EVIDENCE ACT, SECTION 118 :- CHILD WITNESS :-**
**1999 (2) JLJ 47**
***STATE OF M.P. Vs. TANTOO***

Child witness of 11 years and 14 years age having sufficient understanding and memory having no enimity with accused.

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**65. HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 SECTION 10 :-**
**1999 R.N. 22 (H.C.)**
***RANKURWAN BAI Vs. STATE OF M.P.***

Person of more than 15 years of age and also married cannot be adopted in absence of custom. Custom was not proved. It was held that adoption is illegal.

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**66. HINDU MINORITY AND GUARDIANSHIP ACT, 1956, SECTIONS 4 AND 8:-**
**1999 R.N. 208 (H.C.)**
***RAJARAM Vs. MAHILA BATTO DEVI***

Guardian not appointed as such under Section 4 is not a natural guardian and he cannot act as guardian. No guardian can transfer property of minor without permission of Court.

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**67. CIVIL PRACTICE & SPECIFIC RELIEF ACT, SECTION 34 :-**
**1999 R.N. 208 (H.C.)**
***RAJARAM Vs. MAHILA BATTO DEVI***

Plaintiff throughout claiming his possession cannot be nonsuited for a stray sentence of wrong typing in his deposition.

Please refer to ***1991 (1) M.P.W.N. 42, Bhagat Ram Vs. Bupulal*** in which it is said that stament of witness should be read as a whole.

**CRIMINAL TRIAL :-** Casual Statement :- ***1989 M.P. R.C.J.; NOC 14 Chittor Khan vs. Kalawati*** (It is the rule of the evidence that the appreciation of evidence of a witness must be made on the whole statement and not on casual statement.

●

**68. LEGAL MAXIMS:-**
**1999 R.N. 235 (SC)**
***MISHRILAL Vs. DHIRENDRANATH***

**STARE DECISIS :-** Decisions followed for a long period of time acted upon by the persons will generally be followed by Courts of higher authority. The principle of law becoming settled by series of decisions generally binding on courts and should be followed in similar cases. but it should not be followed to the extent that grievous wrong may result. In interpretation of local law view taken by High Court over number of years should normally be adhered to. No contrary decision shown. Such decision of the High Court cannot be upset. It should be allowed to rest in peace. Even long established conveyancing practice although not as authoritative as a judicial decision cannot be declared as wrong. This principle is rule of law and therefore, the law settled by the series of decisions is binding on Courts. The recourse of this doctrine is an imperative necessity to avoid uncertainty and confusion.

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**69. CIVIL PRACTICE :-**
**1999 (1) VIDHI BHASVAR 89 (SC)**
***RAM DAS Vs. SALIM AHMED***

Weakness of defendant's case does not establish case of plaintiff.

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**70. C.P.C., Or 41 R. 22 AND ARBITRATION ACT, SECTIONS 41 AND 39:-**
**1999 (2) M.P.L.J. 187 RIGHT OF CROSS-OBJECTIONER**
***SUPERINTENDING ENGINEER Vs. B. SUBBA REDDY***

Cross Objections in appeal not tenable under S. 39 of the Arbitration Act. The Award was presented before the Civil Court for making the Court. Rule of the court . The Court reduced the rate of interest from 18% to 12% The decree passed by the Civil Judge was challenged by the appellant. The respondent S. Subba Reddy did not challenge the reduction of the rate of interest. However, the respondent filed cross-objection under Or. 41 R. 22 of the C.P.C. The High Court dismissed the appeal but allowed the cross-objection.

The Supreme Court held as under:-

The respondent had not filed any appeal under section 39 of the Arbitration Act before the High Court which right the respondent had when the award of interest at the rate of 18% per annum was reduced to 12% per annum by the Trial Court. Section 41 of the Arbitration Act is purely procedural in nature. If there is no right of cross-objection given under section 39 of the Act, it cannot be read into section 41 of the Act. Filing of cross-objection is not procedural in nature. Section 41 merely prescribes that procedure prescribed by the Civil Procedure Code would be applicable to an appeal under section 39 of the

Act. Therefore cross-objection filed by the respondent was not maintainable and the High Court erred in holding otherwise.

***Sahadu Gangaram Bhagade vs. Special Deputy Collector. Ahmednagar and anr. 1972 Mh. L.J. 70 (SC)= 1970 (1) SCC 685, N. Jayram Reddy and anr. vs. Revenue Divisional Officer and Land Acquisition Officer, Kurnool, 1979 (3) SCC 578, Alopi Nath and others vs. Collector, Varansi, 1986 (Supp.) SCC 693*** relied on.

Cross-objection is like an appeal having all the trappings of an appeal. Court fees is payable on cross-objection like an appeal. The provisions relating to appeals by indigent persons also apply to cross-objection. Respondent even though he is not preferred appeal may support the appeal on any other ground BUT IF HE WANTS TO MODIFY IT HE HAS TO FILE CROSS-OBJECTION TO THE DECREE WHICH OBJECTIONS HE COULD HAVE TAKEN EARLIER BY FILING AN APPEAL.

Paragraph 24 of the judgment is reproduced:-

From the examination of these judgments and the provisions of section 41 of the Act and Order 41, Rule 22 of the Code in our view, following principles emerge:

(1) Appeal is substantive right. It is a creation of the statute. Right to appeal does not exist unless it is specifically conferred.

(2) Cross-objection is like an appeal. It has all the trappings of an apeal. It is filed in the form of memorandum and the provisions of Rule 1 of Order 41 of the Code, so far as these relate to the form and contents of the memorandum of appeal apply to cross-objection as well.

(3) Court fee is payable on cross-objection like that on the memorandum of appeal. Provisions relating to appeals by indigent person also apply to cross-objection.

(4) Even where the apeal is withdrawn or is dismissed for default, cross-objection may never the less be heard and determined.

(5) Respondent even though he has not appealed may support the decree on any other ground but if wants to modify it, he has to file cross-objection to the decree which objections he could have taken earlier by filing an appeal. Time for filing objection which is in the nature of appeal is extended by one month after service of notice on him of the day fixed for hearing the appeal. This time could also be extended by the Court like in appeal.

(6) Cross-objection is nothing but an appeal, a cross-appeal at that. It may be that the respondent wanted to give quietus to whole litigation by his accepting the judgment and decree or order even if it was partly against his interest. When,however, the other party challenged the same by filing an appeal statute gave the respondent a second chance to file an appeal by way of cross-objection if he still felt aggrieved by the judgment and decree or order.

**71. PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, SECTIONS 9 AND 10 AND C.P.C. SECTION 115:-**
**1999 (2) M.P.L.J. 221**
***JINDA RAM Vs. UNION OF INDIA***

Any order passed by the District Judge-an appellate officer under section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act is revisable by High Court under section 115 of Civil Procedure Code. The word "final" in section 10 of the Act means that the order passed by the District Judge in appeal shall be final under the Act of 1971 and no court much less any court in district will sit over the judgment of the District Judge and will acquire finality. But by this, it does not mean that the powers of a superior Court i.e. of the High Court under section 115, Civil Procedure Code are taken away. District Judge is subordinate to High Court. Under section 115, Civil Procedure Code, the High Court has power of superintendence over all subordinate courts and that power can certainly be exercised by the High Court in exercise of its supervisory powers and this has not been taken away by the Act of 1971. By using the word 'finality' to the order of the District, Judge, the general power conferred on the High Court to exercise its revisional jurisdiction over all judicial courts is not taken away. ***1983 MPLJ 18, M.P.No. 3070 of 1985, Atidayal vs. union of India dated 9.11.1989, approved, C.R. No. 1557/96 dt. 30.11.1997 (M.P.).*** OVERRULED. (***Arjunalal Agrawal Vs. Union of India.***)

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**72. C.P.C., OR. 6 R. 2:- LIBERAL CONSIDERATION**
**1999 (2) M.P.L.J. 247**
***JAGDISH PRASAD Vs. MUNICIPAL CORPORATION***

It is settled law that though liberal consideration to the pleadings is to be given so as to allow any question to be raised and discussed covered thereunder, yet a petitioner cannot be deemed to be entitled to a relief upon the facts and documents neither stated nor referred to in the pleadings relied upon. A decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. It should, however, not be lost sight of that consideration of form cannot override the legitimate consideration of substance. If a plea is not specifically made and yet it is covered by an issue by implication and the parties know that said plea was involved, in that event, a mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. ***Saddik Mohamed Shah vs. Mt. Saran and others. 1930 PC 57 (1)*** relied on. (Please refer to Or. 7 R 7 C.P.C.)

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**73. CONSTITUTION OF INDIA, ARTICLE 226:-**
**1999 (2) M.P.L.J. 259**
***SUDHA GUPTA Vs. STATE OF M.P.***

Generally relief under Art. 226 of the Constitution should not be refused purely on technincal grounds. The aforesaid Article is couched in comprehensive phraseology and EX FACIE confers a wide power on the High Court to

each injustice wherever it is found. While it is true that no limit can be placed upon the exercise of the discretionary jurisdiction envisaged under Art. 226 of he Constitution, yet none the less it must be exercised along recognised lines on sound judicial principles and not arbitrarily. It must be emphasised that in he larger public interest there always exists an element of self ordained restraint.

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**74. C.P.C., Or. 6 Rr. 4 and 17 & Or. 7 Rr. 1 (e) AND 11 :-**
**(1999) 3 SCC 737**
***V.S. ACHUTHANANDAN Vs. P.J. FRANCIS***

Election petition was dismissed in limine. Election petition alleging illegalities in counting of ballot-papers. It was held that trial Court was not justified in rejecting the petition in limine in vagueness without affording an opportunity to the petition to substantiate the allegations.

**WORDS AND PHARSES : DISTINCTION BETWEEN THE "MATERIAL FACTS" AND "MATERIAL PARTICULARS":-**

Allegation regarding corrupt practices as defined under Section 123 of the Representation of the Peoples Act. The distinction among the ideas of "grounds" in Section 81 (1) of "material facts" in Section 83 (1) (a) and of "full particulars" in Section 81 (1) (b) are obvious. Under C.P.C. Or. 6 Rr. 2 and 4 and Or. 7 R. 1 (e). while failure to plead, "material facts" is fatal to the election petition and no amendment of pleading is permissible who introduced such material facts after the time limit prescribed for filing the election petition, the absence of "material particulars" can be cured at a later stage by an appropriate ameddment in terms of Or. 6 R. 17 CPC. Material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. A reasonable cause of action means a cause of action with some chances of success when only the allegations in the pleadings are considered. So long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. An election petition is not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. Whether in an election petition a particular fact is a material fact or not, and as such, required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon, and in the light of the special circumstances of the case. A balanced judicial approach in implementing the laws relating to franchise is the mandate of this Court. Law relating to the accomplishment of democratic process by holding elections is not required to be so liberally construed as to frustrate the will of the people expressed at the elections and not too rigidly applied which may result in shaking the confidence of the common man in the institution entrusted with the noble task of establishment of the rule of law. It has always to be kept in mind that the law relating to elections is the creation of a statute which has to be given effect to strictly in accordance with the will of the legislature.

**DUTY OF THE COURT**

It may further be noticed, as observed by this Court in ***Raj Narain vs. Indira Nehru Gandhi, (1972) 3 SCC 850*** that rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it.

Paragraphs 14 to 17 of the judgment are reproduced for detailed studies.

14. In the instant case. as noted earlier, the election petition has been rejected by invoking the powers of Section 83 of the Act read with Order 7 Rule 11 (a) of the Code of Civil Procedure. After referring to some judgments, the learned trial Judge of the High Court has concluded:

> "Read as a whole, the averments contained in the election petition do not satisfy the requirements of Section 83 of the Act. No prima facie case is made out to hold that the first respondent has committed corrupt practices or that it is a fit case where-re-counting is to be ordered. On a perusal of the election petition. it is seen that the petitioner has not pleaded the material facts with necessary particulars which would enable the Court to grant the prayer made in the petition. Pleadings in the election petition do not make out a cause of action for ordering-re-count, as prayed for in the petition. So, the election petition is liable to be rejected under Section 83 of the Act read with Order 7 Rule 11 (a) CPC".

15. It would thus appear that the election petition was rejected mainly on the ground that it did not disclose the cause of action as according to the learned trial Judge the allegations regarding corrupt practice were vague and did not disclose "material facts and full particulars" of the corrupt practice alleged. It is evident that the learned trial Judge did not distinguish between the "material facts" and the "material particulars" of allegations regarding corrupt practies as defined under Section 123 of the Act. The law on the point is well settled which appears to have not been taken note of or appreciated by the learned trial Judge. After referring to various pronouncements of this Court including cases in ***Balwan Singh v. Lakshmi Narain, AIR 1960 SC 770, Samant N. Balkrishna v. George Fernandez (1969) 3 SCC 238, Virendra Kumar Saklecha v. Jagjiwan, 1972 (I) SCC 826, Udhav Singh v. Madhav Rao Scindia (1977) 1 SCC. 511, F.A. Sapa v. Singora (1991) 3 SCC 375*** and ***Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe (1995) 5 SCC 347*** and a host of other authorities, this Court in ***L.R. Shivaramagowda v. T.M. Chandrashekar (1991) 1 SCC. 666*** held that while failure to plead "material facts" is fatal to the election petition and no amendment of the pleading is permissible to introduce such material facts after the time-limit prescribed for filing the election petition. the absence of "material particulars" can be cured at a later ptage by an appropriate amendment.An election petition was not liable to be

dismissed in limine merely because full particulars of corrupt practice alleged were not set out. It is, therefore, evident that material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. Whether in an election petition a particular fact is a material fact or not, and as such, required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and in the light of the special circumstances of the case. In Udhav Sing's Case (1977) 1 SCC 511 the Court held : (SCC p. 523, paras 42-43)

> "In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are 'material facts' which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83 (1) (a).
>
> 'Particulars, on the other hand, are 'the details of the case set up by the party' 'Material particulars' within the contemplation of clause (b) of Section 83 (1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative'.

16. The appellant had specified the alleged corrupt practices in paras 11 (E), (F), (H), (J), (K), (M) and (P). It was alleged that Shri Ayyappan Pillai, the Election Tehsildar of the constituency was a close associate and friend of the 1st respondent who played a pivotal role in the manoeuvring relating to ballot-papers which were not distributed to the polling stations and ultimately used for the benefit of the successful candidate. He was alleged to have been helping the 1st respondent in violation of the provisions of the Act the rules, orders and instructions issued thereunder. He was admittedly a gazetted officer who was alleged to have acted as an agent of the 1st respondent. The trial Judge found that allegations made in paras 11 (E), (F), (H), (J), (K), (M) and (P) of the election petition were vague in nature and did not set forth full particulars of any corrupt practice. Lack of full particulars could not be made a basis for rejecting the election petition as the appellant had the right to amend the pleadings. The trial Judge found that "details of corrupt practice are wanting in the election petition". The absence of the details appears to have persuaded the learned Judge to reject the election petition apparently under a misconception of the legal position regarding the difference between the "material facts} and the "material particulars". The learned trial Judge rejected the election petition on his being satisfied that :

> "Though as per the amended affidavit, the corrupt practice will attract Section 123 (7) of the Act, it is not stated in the election petition that either the candidate or his agent or any other person with the consent of the candidate or his election agent, obtained, procured, abetted or

attempted to obtaian or procure the service of any person under the Government for the furtherance of the prospects of the candidate's election. Though it is stated that Shri Ayyappan Pillai is a gazetted officer, it is not stated anywhere in the petition that the first respondent or his agent directlyor by any other person with his consent or that of his election agent obtained or procured the assistance of a gazetted officer".

It appears that he lost sight of the allegations of the petitioner made in para 9 of the election petition wherein it was stated:

> "The result of election, in so far as it concerns the returned candidate, the 1st respondent in this case, been materially affected by (i) corrupt practice committed in the interest of the returned candidate by his agents , election agent.and the returned candidate (ii) by the improper reception of votes which is void and (iii) by the non-compliance with the priovisions of the Constitution and the provisions of the Representation of the People Act, 1951 as also rules and orders made under the Act".

It was, therefore, wrongly, found that in the absence of specific pleadings and full particulars of corrupt practices, the election petition deserved rejection as it allegedly did not disclose any cause of action. The trial Judge appears to have equated the cause of action with proof and thus committed an illegality of law requiring interference by us. This Court in ***Mohan Rawale v. Damodar Tatyaba*** **10 (1994) 2 SCC P. 392** held that a reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleadings are considered. So long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more known than clearly understood. It was further held that the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. The distinctions among the ideas of the "grounds" in Section 81 (1) : of "material facts" in Section 83 (1) (a) and of "full particulars" in Section 83 (1) (b) are obvious. The provisions of Section 81 (1) (a) and (b) are in the familiar pattern of Order 6 Rules 2 and 4 and Order 7 Rule 1 (e) of the Code of Civil Procedure. There is a distinction amongst the "grounds" in Section 81 (1); the "material facts" in Section 81 (1) (a) and "full particulars" in Section 83 (1) (b).

17. The Court approved the observations of Jacob in **The Present Importance of Pleadings** (1960) Current Legal Problems, at pp. 175-176: (SCC p. 398, para 11). ***F.A. Sapa Vs. Singora. (1991) 3 SCC 375.***

> "Pleadings do not only define the issues between the parties for the final decision of the court at the trial, they manifest and exert their importance throughout the whole process of the Litigation... They show

on their fact whether a reasonable cause of action or defence is disclosed. They provide a guide for the proper mode of trial and particularly for the trial of preliminary issues of law or fact. They demonstrate upon which party the burden of proof lies, and who has the right to open the case. They act as a measure for comparing the evidence of a party with the case which he has pleaded. They determine the range of the admissible evidence which the parties should be prepared to adduce at the trial. They delimit the relief which the court can award..."

Looking at the averments made in the election petition. It cannot be said that it suffered from lack of disclosure of material facts. The absence of material particulars, if any, could be rectified by resort to amendment of pleadings in terms of Order 6 Rule 17 of the CPC.

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**75. HINDU MARRIAGE ACT, 1955 : SECTION 13 (1) (IA) : CRUELTY : MENTAL CRUELTY, MEANING OF :-**
**(1999) 3 SCC 620**
***S. HANUMANTHA RAO Vs. S. RAMANI***

Mental cruelty broadly means, when either party causes mental pain, agony, or suffering of such magnitude that it severs the bond between husband and wife and of which it becomes impossible for the party who has suffered to live with the other party. In other words the party who has committed the wrong has not expected to live with the other party.

NOTE:- This Judgment is reproduced at verbatim. The purpose behind it is to know how to write a judgment, to appreciate and evaluate the evidence and how to marshall it. Perhaps this judgment may prove to be a model for writing a judgment.

1. The appellant is the husband who is in appeal. The respondent is his wife. The appellant and the respondent were married according to Hindu rites and customs on 26.8.1988 at Hyderabad. The marriage was also consummated. During October 1988, while the couple were on a honeymoon, it is alleged that the respondent told the appellant that she was forced into marriage by her parents. while she was more interested in her career rather than a married life, as she had studied M.Sc. in Electronics. It is also alleged by the appellant that on 15.10.1988, on a petty quarrel, the respondent walked out of his house and it was after great persuasion she was brought back to his house. The very next day of the said incident, the respondent was taken by her parents to their house and despite request by the appellant and members of his family, she did not return for about two-and-a-half months to the house of the appellant. During that period, there was a reconciliation, as a result of which the respondent was sent to the house of the appellant on the condition that she should be sent to the house of her parents on every Thursday and taken back on Saturday to facilitate her to perform Santoshimata Puja on every Friday. According to the appellant, this arrangement also did not suit the re-

spondent and all the time she complained of deprivation and expressed her desire to return to her parents' house permanently. On 8.3.1989, it is alleged that the respondent in privacy took out her mangalsutra and threw it at the appellant, and on the very next day, she went to her parents' place and thereafter she never returned to the appellant's house, despite several requests.

2. Thereafter, there were several meetings for reconciliation which failed, It is also alleged that the respondent got a complaint lodged through her uncle who was then posted as Superintendent of Police, with the Women's Protection Cell, CID, Hyderabad against him and his father and other members of his family as a result of which they had to seek anticipatory bail from the court, Subsequently, again, efforts were made for reconciliation but they did not fructify and under such circumstances, the appellant filed a petition before the Judge, City Civil Court, Hyderabed for dissolution of the marriage by granting decree of divorce on the grounds of mental cruelty and desertion. The grounds of cruelty were atrributed to three acts of the respondent. Firstly, while in privacy, the respondent took out her mangalsutra and threw it at the appellant; secondly, the respondent kept, maintained and preserved the copies of the letters sent by her to the appellant which shattered the mutual confidence between the couple; and thirdly, the respondent lodged a complaint through her uncle against the appellant and the other members of his family under Section 498- A IPC with the Women's Protection Cell, Hyderabed for which they had to obtain anticipatory bail from the court. According to the appellant, all these three acts of the respondent constituted mental cruelty upon him and thus was entitled to a decree of divorce. The wife filed counter-affidavit to the petition filed by her husband wherein she admitted that while in privacy she took out her mangalsutra and that she maintained and preserved the copies of the letters sent by her to her husband. However, she denied having lodged any complaint with the Women's Protection Cell, Hyderabad or that she threw her mangalsutra at the face of her husband. The appellant examined himself as well as his witnesses in support of his allegation and filed the letters sent by the respondent to him which were exhibited as Exts. A-1 to A-10. The Fourth Additional District Judge, City Civil Court found that the acts of the respondent in taking out her mangalsutra and throwing it at the husband, keeping and maintaining the copies of the letters sent to her husband and lodging of complaint with the Women's Protection Cell constituted mental cruelty upon the husband and as such the appellant was entitled to a decree of divorce. However, the trial court found that the wife did not desert the appellant.

3. Aggrieved. the respondent filed an appeal before the Andhra Pradesh High Court. The High Court on appreciation of evidence found that the incidents alleged by the appellant were blown out of proportion and in fact those incidents did not constitute mental cruelty. Consequently, the decree of the trial court was reversed and the appeal was allowed. It is against this judgment that the appellant is in appeal before us.

4. Learned counsel appearing for the appellant urged that the view taken by the High Court that since the parties after the incident of 8.3.1989, cohabited and it therefore amounts to condonation of guilt of the wife is based on no evidence, and as such the said finding suffers from legal infirmity. It is true that the High Court recorded the following finding in its judgment.

"the very admission in the petition of the respondent that he did not make an issue of the incident and cohabited with the appellant, thereafter constituted condonation"

5. On a perusal of petition filed by the appellant, what we find is that in the petition for divorce, the appellant has alleged that on 8.3.1989,his wife took out her mangalsutra and threw it at him and thereafter finally deserted him. We further find that the appellant and his witness in their testimony nowhere admitted that after the date of the incident, i.e., 8.3.1989, the wife and the husband cohabited with her husband after the date of the incident. It is, however, correct that the appellant in connection with the incident of 8.3.1989 stated that he did not make an issue out of the said incident as it would have disturbed the peaceful life of his family. But, he would never forgive his wife for the said act. We, therefore, do not find any evidence of the fact that the parties cohabited after 8.3.1989, as the wife is stated to have left the house of the appellant after that date. In the absence of such evidence, the finding of the High Court that since the parties cohabited after 8.3.1989 and as such the same would constitute condonation of guilt, is unsustainable.

6. It was then urged that the view taken by the High Court that the incident of throwing of mangalsutra by the wife as alleged by the appellant has not been substantiated and further the removal of mangalsutra by his wife would not amount to mental cruelty within the meaning of Section 13 (1) (ia) of the Hindu Marriage Act, is erroneous. The appellant in his petition as well as in his evidence, alleged that his wife after taking out her mangalsutra threw it at him. The wife in her counter-affidavit and statement admitted that she removed the mangalsutra but denied that she had ever thrown the mangalsutra at her husband. As stated above this incident took place in privacy. There was no other witness to the incident. The respondent very well could have denied the alleged incident. But she admitted to have removed the mangalsutra only to please her husband. Moreover, when the wife was being cross-examined before the trial court no question was put to her about throwing of mangalsutra at the appellant. For all these reasons we find that the testimony of the respondent was rightly believed by the High Court while disbelieving the incident of throwing of mangalsutra by the respondent, as alleged by the appellant.

7. Coming to the second limb of the argument whether the removal of mangalsutra by the respondent constituted mental cruelty upon the husband, learned counsel for the appellant submitted that mangalsutra around the neck of a wife is a sacred thing which symbolises the continuance of married life and mangalsutra is removed only after the death of the hus-

band. Thus, the removal of mangalsutra by the respondent-wife was an act which reflected mental cruelty of the highest order as it caused agony and hurt the sentiments of appellant.

8. Before we deal with the submission it is necessary to find out, what is mental cruelty as envisaged under Section 13 (1) (ia) of the Act. Mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and the husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party. It is in this background we have to test the argument raised by the learned counsel for the appellant. The respondent after having admitted the removal of mangalsustra stated that while in privacy the husband often used to ask her to remove the chain and bangles. She has also stated that in her parents' house when her aunt and mother used to go to the bathroom they used to take out mangalsutra from their neck and therefore she thought that she was not doing anything wrong in removing the mangalsutra when she was asked to do so by her husband. She also stated that whenever she removed her mangalsutra, she never thought of bringing an end to the married life and was still wearing her mangalsutra; and it is when her husband made a hue and cry of such removal of mangalsutra, she profusely apologised. From all these evidence the High Court concluded that the incident was blown out of proportion and the appellant attempted to take advantage of the incident by picturising the same as an act of cruelty on the part of the wife. The question, therefore, arises whether the removal of the mangalsutra by the wife at the instance of her husband would amount to mental cruelty within the meaning of Section 13 (1) (ia) of the Act. It is no doubt true that mangalsutra around the neck of a wife is a sacred thing for a Hindu wife as it symbolises continuance of married life. A Hindu wife removes her mangalsutra only after the death of her husband. But here we are not concerned with a case where a wife after tearing her mangalsutra threw it at her husband and walked out of her husband's house. Here is a case where a wife while in privacy, occasionally has been removing her mangalsutra and bangles on the asking of her husband with a view to please him. If the removal of mangalsutra was something wrong amounting to mental cruelty, as submitted by learned counsel for the appellant, it was husband who instigated his wife to commit that wrong and thus was an abettor. Under, such circumstances the appellant cannot be allowed to take advantage of a wrong done by his wife of which he himself was responsible In such a case the appellant cannot be allowed to complain that his wife is guilty of committing an act of mental cruelty upon him, and further by such an act, has suffered mental pain and agony as a result of which married life has broken down, and he is not expected to live with his wife. It also appears to us that whenever the appellant asked his wife for removal of her mangalsutra, the respondent never comprehended that her husband at any point of time would

react to such occurrences in the way he did. Under such circumstances, the appellant was not expected to have made an issue out of it. We are, therefore, of the view that removal of mangalsutra by the respondent would not constitute mental cruelty within the meaning of Section 13 (1) (ia) of the Act.

9. The next ground of act of cruelty attributed to the wife relates to her preserving and maintaining copies of her letters sent to her husband. Learned counsel urged that the act of the wife's preserving copies of such letters has shaken the confidence of the husband which amounts to mental cruelty upon her husband, as according to him, copies of such letters were preserved knowingly to use them as evidence in future and such an action definitely amounts to mental cruelty.

10. The view taken by the High Court was that mere retention of copies of the letters would not amount to mental cruelty. We also find that if the wife had any intention to use copies of those letters she would have filed the same before the trial court. Excepting filing a counter-affidavit the respondent-wife did not file any copy of the letters sent to her husband, whereas the husband has filed all the letters sent to him by his wife in the court which were exhibited. The respondent-wife in her testimony stated that she wrote several letters to her husband, but her husband did not reply to any of them and as such she started preserving the copies of the letters sent by her to her husband. This act of the respondent, according to us, is a most natural behaviour of a human being placed in such circumstances. Thus, we find mere preserving the copies of the letters by the wife does not constitute an act which amounts to mental cruelty, and as a result of which it becomes impossible for the husband to live with his wife. We, therefore, reject the submission of learned counsel for the appellant.

11. The last act of the respondent, which according to the learned counsel for the appellant, amounts to mental cruelty is that she lodged a complaint with the Women's Protection Cell, through her uncle and as a result of which the appellant and the members of his family had to seek anticipatory bail. The respondent in her evidence stated that she had never lodged any complaint against the appellant or any member of his family with the Women's Protection Cell. However, she stated that her parents sought help from the Women's Protection cell for reconciliation through one of her relatives who, at one time, happened to be the Superintendent of Police. It is on the record that one of the functions of the Women's Protection Cell is to bring about reconciliation between the estranged spouses. There is no evidence on record to show that either the appellant or any member of his family was harassed by the Cell. The Cell only made efforts to bring about reconciliation between the parties but failed. Out of panic if the appellent and the members of his family sought anticipatory bail, the resondent cannot be blamed for that. Thus, we are of the opinion, that representation made by the parents of the respondent to the Cell for reconciliation of the estranged spouses does not amount to mental cruelty caused to the appellant.

12. For all these reasons, we do not find any merit in this appeal. The appeal is accordingly dismissed. There shall be no order as to costs.

NOTE- PLease refer to (1994) 1 SCC 337 for meantal Cruelty.

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**76. CONTEMPT OF COURTS ACT SECTION 12:-**
**1999 (2) M.P.L.J. 236**
***STATE OF M.P. Vs. VIRENDRA SINGH PARIHAR, ADVOCATE***

Advocate filing criminal contempt against Judicial Officer in respect of his order. Advocate tendered apology. The Advocate was in habit of making such complaints. Apology not accepted.

Facts of the case are as under:-

A complaint was filed by the Advocate alleging under Sections 201, 203, 204, 217 and 218 of the I.P.C against an Executive Engineer, The Magistrate dismissed the complaint on the ground that sanction for prosecution was required as the accused was an Executive Engineer. The Advocate thereafter filed a complaint against the Magistrate and the S.D.P.O. alleging that the order dismissing his earlier complaint was passed malafide that the two were in conspiracy so that no report was made by the S.O. This complaint was also dismissed holding that no sanction was obtained under Section 197 Cr.P.C. Reference was made under Section 12 of the Contempt of Courts Act. The Advocate was held to be guilty of contempt under Section 12 of the Contempt of Courts Act.

Apology in the contempt proceedings should stem from a sincere expiation from the heart and to avoid such conduct in future and to feel and express the apology for the past conduct. If the apology is merely a outer form to avoid the consequences of the contempt of Court it is best not accepted. It is best in the interest of the judicial system as a whole that it is not accepted. The conduct of contemner in deliberately committing contempt of Court time and again and then expressing apology before the High Court indicates that his apology is merely in outer form to avoid serious consequence. In the circumstances the apology could not be accepted as sufficient to purge the contempt of court by him.

The power to punish for contempt postulated by Article 215 of the Constitution cannot be abridged or controlled by any Act of the Legislature. So no limitation as postulated by section 12 of the Contempt of Courts Act can be read with exercise of that power. Thus High Court in exercise of its contempt jurisdiction can devise preventive and reformatory measures against the contemner instead of actually punishing him after holding him guilty.

We, therefore, in interest of the judicial system and even keeping in view the best interest of this contemner as an an Advocate to give him a chance to improve himself and to disist from such activities towards courts, direct that instead of being sentenced at present, he be released on probation of good conduct for period of 2 years. The terms of probation would be that he shall furnish a personal bond with one surety in the sum of Rs. 5,000/- to ensure that during the period of 2 years he shall not commit contempt of Court and

shall conduct himself in noble manner. If during this period he commits a contempt of Court he shall be liable to be called before this Court to receive his substantive sentence in this case. The bonds shall be furnished beofre C.J.M. Sidhi within one month of this order. If he fails to execute the bonds he shall be liable to appear or be brought before this Court to receive the substantive sentence in this case. C.J.M. Sidhi will send report about furnishing of bonds to this Court.

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**77. HINDU MARRIAGE ACT, SECTION 13 (1) (I-B) : QUESTION OF DESERTION, EXPLANATION:-**
**1999 (2) M.P.L.J. 212**
***URMILA DEVI Vs. DEEPAK KUMAR***

To constitute desertion under section 13 (1) (i-b) of the Hindu Marriage Act, following elements are necessary (1) The factum of separation; (2) Intention to bring the cohabitation permanently to an end; (3) Absence of consent; (4) Absence of conduct giving reasonable cause to quit the matrimonial home. Therefore, the question of desertion cannot be decided by merely ascertaining as to which party left the matrimonial home, and the person who actually withdrew from cohabitation is not necessarily a deserting party. It may be that the party withdrawing from cohabitation may have been forced by the conduct of the other to leave the home.

In an appeal challenging the decree passed on the ground of desertion against the wife in a petition by the husband it was borne out from the material and evidence on record that the appellant/wife was forced to live away from her husband, the respondent, on account of the maltreatment that she received at the hands of the husband's relatives in her matrimonial home. Such conduct of living separately from the husband, cannot be said to be unreasonable or without any proper cause. It did not appear that the appellant/wife wanted to repudiate permanently her relationship with the respondent/husband. She could not be expected to live under constant torment and to suffer persistent misbehaviour of her in laws. In the circumstances, even if she was living separately from her husband, that by itself would not establish that she had deserted her husband. Hence, simply because the wife was living separately for more than two years, from her husband, the respondent, it would not confer a ground to the husband/respondent to seek a decree for divorce under section 13 (1) (i-b) of the Hindu Marriage Act. Decree of divorce set aside. ***Teerth Ram vs. Smt. Parvati Devi, AIR 1995 Raj. 86 and Om Prakash Vs. Smt. Rajni, AIR 1988 Delhi 107*** referred.

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**78. NEGOTIABLE INSTRUMENTS ACT, SECTIONS 138 AND 142 AND INTERPRETATION OF STATUTES : NOTICE BY FAX LIMITATION**
**1999 (2) M.P.L.J. 168 (SC)**
***SIL IMPORT, USA Vs. M/S EXIM AIDES SILK EXPORTERS, BANGALORE***

Notice transmitted by Fax will be compliance with the legal requirement envisaged in clause (b) of the Proviso to section 138 of the N.I. Act.

Limitation will run from the date of the receipt of the fax.

For the need to update legislation, the Courts have the duty to use interpretative process to the fullest extent permissible by the enactment. ***State Vs. S.J. Chaudhary, 1996 (2) SCC 428, Sadanandam Bhadran Vs. Madhavan Sunil Kumar, 1998 (2) MPLJ (SC) 422= 1998 (6) SCC 514*** referred.

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**79. LANDLORD AND TENANT-C.P.C., O. 14 R. 1: APPORTIONMENT OF RENT-ISSUE REAGARDING**
**1999 (2) M.P.L.J. S.N. 4**
***BABULAL Vs. SITA RAM SONI***

There was a suit for eviction by one of the several purchasers to whom earlier landlord had sold the tenanted premises. Issue relating to property purchased by plaintiff and its extent and apportionment of rent and liability of dependent for payment of rent to plaintiff must be cast having material bearing on decision of the suit.

**NOTE :** Please refer to Section 109 of the T.P. Act relating to assignment (Rights of lessor's transfer)

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**80. M.P. ACCOMMODATION CONTROL ACT, SECTIONS 11 AND 31 : WORD AND PHARASES - EVERY ORDER**
**1999 (2) M.P.L.J. 206**
***MUKESH D. RAMTEK Vs. SMT. KESHAR SINGH***

Words 'every order' as used in section 31 mean the final order and not interim order passed by the Rent Controlling Authority.

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**81. M.P. ACCOMMODATION CONTROL ACT, SECTIONS 12 (1) (G) AND (H) AND 18 : RE-ENTRY - WHEN TO BE ORDERED**
**1999 (2) M.P.L.J. 184**
***MOHD. SHARIF Vs. KESHARSINGH HIRASINGH THAKUR***

The case of the landlord basically was that he required BONA FIDE the suit accommodation for the purpose of his residence as well as for his business and also that the suit accommodation was in a dilapidated condition, therefore, he wanted to repair the same, No direction for re-entry under section 18 of the Act is warranted in such case. The decree of eviction granted in favour of the landlord/plaintiff upholding his BONA FIDE requirement for personal need would stand nullified and rendered meaningless if directions of re-entry in the suit premises of the defendant/tenant are given under section 18 of the Act. The directions under section 18 for re-entry can reasonably be given only when the decree was under section 12 (1) (g) or under section 12 (1) (h) of the Act. ***Ramniklal Pitambardas Mehta vs. Indradaman Amratlal Sheth, AIR 1964 SC 1676, Radhey Shyam and other Vs. Kalyan Mal and another 1985 MPLJ 112 and kishorekant (deceased) through:*** L.Rs. Pradip Kumar and others vs. Ramabai (deceased) through: L.Rs. Shrichand and other, **1985 MPRCJ N. (61).** referred.

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**82. LIMITATION ACT, SECTION 5 :- SUFFICIENT CAUSE, MEANING OF :-**
**1999 (2) M.P.L.J. S.N. 11**
***STATE OF M.P. Vs. M/S LABOUR INDUSTRIES***

The case was fixed for delivery of judgment on 24.11.1997. The appellant counsel being present and having argued the matter before the trial Court on 19.11.1997 and the case having been fixed for judgment on that very date for 24.11.1997. leaves no manner of doubt that the appellants had full knowledge that the judgment would be delivered on 24.11.1997 which, in fact, was so delivered. If the appellants were careless in making necessary inquiries and thereafter in filing the application for seeking certified copy of the judgment, they cannot get the advantage of such leaches of their own.

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**83. M.P. ACCOMMODATION CONTROL ACT, SECTION 13 (6) :- STRIKING OUT DEFENCE**
**1999 (2) M.P.L.J. S.N. 2**
**SARDAR SOHINDER SINGH Vs. STAR CHAPPAL AND ORS.**

As a result of striking out of defence under section 13 (6) of the Act, the tenants/defendants would not be entitled to lead evidence on dispute under section 12 (1) of the Act, but they are entitled to cross-examine the plaintiff and his witnesses to demolish his case and be can raise contest regarding issues on general law. Only consequence of defence having been struck off is that the defendants/tenants were not entitled to claim protection against ejectment on grounds under section 12 (1) of the Act, However, the defendants/tenants were not precluded from contesting the suit on other issues.

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**84. M.P. CEILING ON AGRICULTURAL HOLDINGS ACT, 1960, Ss. 9 AND 15:- SUIT FOR DECLARATION THAT TRANSFER OF LAND WAS SHAM MADE IN VIEW OF CEILING ACT : DECREE FOR POSSESSION AND CONSEQUENTIAL MODALITY:-**
**1999 (2) M.P.L.J. 145**
***KHOM BAI Vs. FIRST ADDITIONAL DISTRICT JUDGE, RAIPUR***

Suit for declaration that transfer in favour of defendant was sham and bogus and was only for the purpose of Ceiling Act. The plaintiff filed second appeal before the High Court. The High Court allowed the appeal and passed a decree for possession. It was observed that the plaintiff can work out her rights by making an application before the Revenue Court. However, the Executing Court directed the plaintiff to obtain an order from Revenue Court whether he was entitled to keep the suit land. The Revision application was dismissed by the District Court. High Court in writ peition held as under:-

The trial court had no jurisdiction to direct the plaintiff decree holder to approach the Revenue Court for seeking certain directions. The Executing Court is bound by the directions issued. observations made and the decree granted by this Court. This Court has simply said that the plaintiff-appellant can work out her rights in spite of this order (Ceiling Order); she will be entitled

to do so by an appropriate application before the Revenue Court or otherwise. The right is given to the plaintiff and not to the defendant. The plaintiff after obtaining possession of the property from the defendant-judgment-debtor would be required to file an additional return under section 15 and if he does not do so the competent authority applying the provisions of Chapter 3 can collect information under section 10 and require the holder to submit all the details.

The orders passed by the Courts below are patently illegal, these are contrary to law and have been passed without appreciating the legal provisions. The error is apparent on the face of the record. The orders deserve to and are accordingly quashed. The Executing Court is directed to execute the decree without any further direction to the plaintiff-decree holder to seek clarification from the Revenue Courts.

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**85. MOTOR VEHICLES ACT, 1988, SECTION 147 : ABSENCE OF LIABILITY WHERE VEHICLE INSURED BUT NOT THE OWNER:-**
**1999 (2) M.P.L.J. 231**
***HEMLATA SAHU Vs. RAMADHAR***

Comprehensive policy. Insurance Company only insures liability arising out of insured. Does not insure the insured. Deceased while driving scooter in a collision with the cyclist fell down and ultimately died. Scooter had been comprehensively insured. Insurance Company not liable to pay any compensation to the heirs of the scooterists as what was insured was the liability erising out of the insured and not the person concered.

Under the comprehensive insurance policy, the owner can only claim reimbursement of damages suffered by the vehicle. The Insurance Company only insures the liability arising out of the insured and it does not insure the insured. Though the policy was comprehensive policy, but it did not cover the insured and as per section 147 (1), it clearly transpires that a policy of insurance must be a policy which insures the person or class of persons specified in the policy to the extent specified in sub section (2) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in public place. Where there was no evidence to show that any separate premium was paid for the purpose of covering risk of the owner himself, the Insurance Company was not liable to pay any compensation the claimants of the deceased scooterist.

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**86. MOTOR VEHICLES ACT, 1988, SECTION 140 AND 142 : PERMANENT DISABILITY :-**
**1999 (2) M.P.L.J. 182**
***RAJESH VS. DALIP***

Appellant suffered fracture of his right hand causing partial disability at 8% Disability not being permanent. Claimant not entitled to Rs. 25,000/- on principle of no fault.

A plain reading of sections 140 and 142 of the Motor Vehicles Act shows that section 140 (1) provides for liabillity of the vehicle owner in certain cases on the principle of no fault where the motor accident had resulted only in death or permanent disablement of the accident victim. Sub-section (2) of section 140 fixed the amount of compensation for permanent disablement of the nature mentioned in section 142, at Rs. 25,000/-. Where the injury suffered was a fracture of right hand causing only partial disability at 8%. the claimant was not entitled to Rs. 25,000/- on account of no fault liability. The appellant allegedly suffered a fracture in his right hand and the doctor certified his partial disability at 8%. His case was not therefore, covered by section 140 (2) of the Act. The award of Rs. 20,000 pursuant to the award made by the claim tribunal was not in any way vitiated.

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**87. MOTOR VEHICLES ACT, 1988, SECTION 163-A AND SECOND SCHEDULE : CAN IT BE APPLIED TO ACCIDENTS PRIOR TO 14-11-94**
**1999 (2) M.P.L.J. 217**
***NEW INDIA ASSURANCE COMPANY LTD. Vs. PRAKASH NARAYAN***

Facts of the case are:

One 16 years old riding on her vehicle was hit by the offending bus on 16.9.1994, she sustained injuries and ultimately succumbed on 25.9.1994, she sustained injuries and ultimately succumbed on 25.9.1994. Her claimants filed claim and M.A.C.T. The tribunal awarded Rs. 1,80,300/- with 12% interest, after assuming the income of the deceased to Rs. 15,000/- p.a. in accordance with Second Schedule framed under section 162-A brought in force on 14.11.1994. On the question whether section 163A was applicable even though the accident had taken place prior to the insertion of section 163A.

It was held as under:-

The Tribunal was bound to apply and administer the law as it stood on the date of passing the award. It could not shut its eyes to it and was duty bound to apply it. The date of accident was immaterial for all practical purposes because the law as it stood on that date was silent on the issue of fixing the notional income of accident victims. The matter did not involve any conflict between old law and new law. As a matter of fact section 163-A and the Schedule prepared under it came into existence first time and took effect from 14.11.1994. It did not scrap or repeal any existing provision. It only made a new provision to cater to certain requirements and to further make the statute beneficial and purposeful. Section 6 of the General Clauses Act had thus no application in the matter because no repeal of any old law was involved. Looking at it from the other angle even if it was accepted that amending Motor Vehicles Act 54 of 1994 was not retrospective in operation, nothing debarred or stopped the Tribunal from treating it as an index and guideline for assessing the earning of victim and determination of just compensation. This was approved by the Apex Court in **R.N. Gupta's case, 1990 (1) SCC 356** and was followed by the Division Bench of this Court also in **1994 MPLJ 709.** All that the Tribunal had done was to assess the income of the deceased at Rs. 15,000/

- p.a. as per Schedule 2 prepared under section 163-A which was brought in force on 14.11.1994. Had the Tribunal not drawn from the aforesaid Schedule it had still to fallback upon some method for determining the compensation. Therefore, it was wholly illogical to contend that it could not adopt the Schedule as a guideline merely because it had come into existence two months after the date of accident ignoring that award was passed by the Tribunal two years thereafter.

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**88. N.D.P.S. ACT, SECTION 35 : RELEASE OF VEHICLE SEIZED : AND CR. P.C. SECTION 451 AND ONWARDS:-**
**1999 (2) M.P.L.J. 243**
***MALOOK KHAN Vs. STATE OF M.P.***

The truck which contained contraband goods was seized but in an abandoned position and none was present at the spot when it was raided. The owner made a prayer for the custody of the truck on superdginama. Such truck can be given on furnishing solvent security.

●

**89. SPECIFIC RELIEF ACT, SECTION 16 (1) (C) : READINESS AND WILLINGNESS:-**
**1999 (2) M.P.L.J. 199**
***SHRI LAXMI NARAYAN Vs. RAM CHARAN NOGHRAIYA***

Readiness and willingness to perform his part of contract by plaintiff must be determined on consideration of facts in entirety and relevant circumstances.

●

**90. TORT : NEGLIGENCE :-**
**1999 (2) M.P.L.J. 259 (F.B.)**
***SUDHA GUPTA Vs. STATE OF M.P.***

**(A) NEGLIGENCE:-** Negligence is omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs will do or doing something which a prudent and reasonable man would not do.

**(B) BURDEN OF PROOF:-** There must be direct nexus between the death of a person and the negligent act. The burden of proving negligence rests upon the person who asserts it. In medical negligence cases it is for the patient to establish his case against the medical man and not for medical man to prove that he acted with sufficient care and skill.

**CONSTITUTION OF INDIA, ART, 226 :-** Generally, relief under Art. 226 of the Constitution of India should not be refused purely on technical grounds. The aforesaid Article is couched in comprehensive phraseology and EX FACIE confers a wic ower on the High Court to reach injustice wherever it is found. While it is true that no limit can be placed upon the exercise of the discretionary jurisdiction envisaged under Article 226 of the Constitution, yet none the less it must be exercised along recognised lines on sound judicial principles

and not arbitrarily. It must be emphasised that in the larger public interest there always exists in element of self ordained restraint.

**NOTE:-** Please see Section 101 to 106 of the Evidence Act. Please also refer to ***M/s. Paste Control Vs. Ramanand Dev Rao Hattangadi, AIR 1990 Bombay 4*** and ***R.D. Hattangadi vs. Paste Controal.*** Also refer to **'JOTI JOURNAL' Vol. V Part II April 1999 issue at page 138.**

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**91. I.P.C. SECTION 302: DEATH SENTENCE:-**
**1999 (2) JLJ 47**
***STATE VS. TANTOO***

The murder was proved by the eye witnesses. Weapon of offence and clothes of accused found with blood. The offence is made out. Double murder of innocent boys which was resulted in the impulsive act of accused. Not preplanned or wreaking vengeance on anybody. Case is not one of rarest of rere cases. Extreme punishment of death not proper.

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**92. I.P.C. SECTIONS 302 AND 201:-**
**1999 (2) JLJ 68**
***JAI KUMAR VS. STATE***

Double cold blooded murder on failure to satisfy lust, head of woman tied with tree. Baby of 8 years after cutting buried in sand. Case is one rarest of rate cases. Death sentence is just and common.

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**93. I.P.C. SECTIONS 300 FOURTHLY, 302, 304 AND 317 :-**
**1999 (2) JLJ 13**
***PAWAN KUMAR VS. STATE OF M.P.***

The child of two years was snatched away from wife in quarrel. The next day the child was found dead in a pond. It was held that the offence does not fall either under. S. 317 or 304. The accused was convicted under Section 302. The judgment of the trial Court was upheld.

Part of paragraph 11 of the judgment is reproduced:-

In the instant case, there is reliable evidence against the accused of having forcibly carried away the child. On this proved fact two inferences are possible, namely, (i) he killed the child by throwing it in the pond where its body was found; and (ii) he left the child by abandoning it in a place resulting in its fall and death in the pond. The medical evidence does not show injuries on the body of the child. There is also no evidence led by the prosecution, as there is none, that the accused had thrown away the child in the pond resulting in its death by drowning. It is settled that where on the basis of proved facts more than one inferences arise, then the inference more favourable to the accused is to be drawn. It is amply proved that the accused snatched the child from the mother and it was found dead and the accused never returned till the discovery of the dead body of the child. Out of the two inferences, the

inference that he abandoned the child, therefore, has to by drawn against him. As the abandoned child has died, may be as a result of fall in the pond, the offence of murder is made out under S. 300, 4thly.

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**94. M.P. ACCOMMODATION CONTROL ACT, SECTIONS 23-A (B), 23 D (3) AND 23-J:-**
**1999 (2) JLJ 33**
***BHAGWAN DAS VS. RAMCHARAN***

The landlord respondent was a retired Government Servant, Therefore, he cannot be deprived of doing his own business only on ground of his son being in business. The landlord has to prove his requirement. Presumption of requirement being bona fide is available under Section 23-D (3). ***Ratan Bai vs. Chetan Das, AIR 1986 MP 16*** relied on.

●

**95. INDIAN SUCCESSION ACT: SECTION 371 AND C.P.C. SECTION 20 AND O. 7 R. 10 & 10-A:-**
**1999 (2) JLJ 51**
***CHANDRA KALA VS. SHYAM RAO***

Jurisdiction of civil Courts provided by CPC not applicable to succession cases. It is a general provision. Section 371 of Succession Act confers jurisdiction on Succession Court. It is the special provision if the Court finds lack of jurisdiction the court should return the plaint and may specify the Court before whom it is to be presented. If applied may fix a date for appearance of both parties in that Court.

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**96. CRIMINAL TRIAL: APPRECIATION OF EVIDENCE : CR. P.C. SECTION 154:-**
**1999 (2) JLJ 47**
***STATE VS. TANTOO***
**& 1999 (2) JLJ 79**
***DASARATH VS. STATE***

The police station being 30 kms. away from the spot delay of 24 hours in lodging FIR is immaterial. This is Tantoo's case.

The report was lodged after 44 hours. No explanation was given for such delay. No Eye-witnesses were named in it. The document becoms suspicious.

●

**97. CR.P.C. SECTIONS 167 (1) & (2) READ WITH SECTION 57:-**
**1999 (2) JLJ 1**
***MANOJ VS. STATE OF M.P.***

The accused after arrest not produced before the Magistrate (within 24 hours) as per requirement of Sections 167 (2) and 57 Cr.P.C. Such arrest after 24 hours becomes otiose. Benefit under Section 167 (2) Proviso is available to an accused of an offence under N.D.P.S. Act.

●

**98. CR. P.C. SECTIONS 170 AND 173:-**
**1999 (2) JLJ 54**
***ARUN KUMAR VS. STATE***

Dying declaration of deceased was not filed with the charge-sheet. It may be ordered to be filed with copy to accused persons.

●

**99. HINDU MARRIAGE ACT, SECTIONS13 (1) (IA) AND 20:-**
**1999 (2) JLJ 30**
***NARESH PUROHIT (DR.) VS. DR. P.K. SHOBHANA***

The petition for divorce was duly verified in accordance with Section 20. No written statement was filed contradicting the allegations in the plaint. Averment of petition will be presumed to be correct.

The spouses are of high society both in respectable jobs. Daily quarrel, police report, neglect during illness and attempt to commit suicide will amount to cruelty.

**WORDS AND PHRASES :** Shobhana in the Matrimonial Petition which she submitted in the Family Court had described her departure as "escape". This shows that spouses have gone to such a distance from which coming back is totally impossible. This aspect has to be given due consideration at the time of coming to conclusion whether the decree of divorce by dissolving their marriage should be passed or whether the Court should refuse to pass it. Divorce granted by the High Court setting aside the order of the Trial Court.

●

**100. DOCUMENT- PRESUMPTION (SECTION 89 EVIDENCE ACT AND ADVERSE INFERENCE)**
**1999 (2) JLJ 19**
***S.P. SHARMA VS. STATE OF M.P.***

The original document in possession of Government was ordered to be produced but the Government did not comply with the order. Copies filed by the petitioner appellant may be presumed to be correct.

**AGE :** The Civil servant was appointed on 29.3.1957 found minor by 2 months 8 days. The Service rule was relaxed as to the age of 18 years. Hid date of birth cannot be treated to be 6.8.1936 else there was no need of relaxation.

The High School certificate duly filed in original at the time of appointment was already verified from the Board. Found genuine as to the date of birth being 6.8.1939. Such date of birth cannot be disputed. The certificate was acted upon by the Government and the civil servant was appointed on that basis.

●

**101. CR.P.C., SECTIONS 227, 228 AND 173 (5) : FRAMING OF CHARGE CONSIDERATION**
**1999 (2) JLJ 54**
***ARUN KUMAR VS. STATE OF M.P.***

Paragraphs 8 and 9 of the judgment are reproduced:-

On the question of reconsideration of charges, in my considered opinion, charges already framed by the trial Court in absence of the aforesaid statements of the deceased cannot be quashed or reconsidered at this stage of the trial exercising the powers under S. 482 Cr. P.C. The law is well settled on the point that while framing of charges the Court has to peruse the record of the case and documents submitted by the prosecution along with the charge-sheet as contemplated under S. 173 Cr.P.C. Section 170 of the Code of Criminal Procedure contemplates that if, upon an investigation, it appears to the officer-in-charge of Police Station that there is sufficient evidence or reasonable grounds as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon the police report and to try the accused or commit him for trial. In Section 173 (5) of the Cr.P.C. it is stated that:

"When such report is in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate alongwith the report (a) all documents or relevant extracts there of ON WHICH THE PROSECUTION PROPOSES TO RELY other than those already sent to the Magistrate during investigation.

(b) the statements recorded under S. 161 of all the persons whom the prosecution proposes to examine as its witnesses.

On plain reading of the aforesaid provision, it emerged that when a report by the Police Officer on completion of investigation under S. 170 is forwarded to the Court concerned, the police concerned shall forward with the report all such documents or relevant extract thereof on which the prosecution proposes to rely other than those already sent to a Magistrate during investigation as also the statements of all persons whom the prosecution proposes to examine as its witnesses.

●

**102. C.P.C.O. 14, 15 R. 1, O. 7 R. 11 (a) AND O. 6 Rr. 16 AND 2:-**
**(1999) 3 SCC 267**
***D. RAMACHANDRAN Vs. R.V. JANAKIRAM***

In all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot probe into the facts on the basis of the controversy raised in the counter.

It is not the case of the first respondent that the pleading in the election petition is vitiated by all or any one of the defects mentioned in Rule 16 of Order 6 CPC. Hence striking out parts of the pleading in this case was not at all justified. There is no question of striking out any portion of the pleading under Order 7 Rule 11 (a).

Moreover, the election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11 (a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under O. 7 R. 11 (a) CPC, the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition. The election petition in this case could not have been rejected in lemine without a trial.

***Roop Lal Sathi Vs. Nachhattar Singh Gill, (1982) 3 SCC 487*** relied on.

The High Court did not keep in mind the settled difference between "material facts" and "full particulars" and the different consequences of failure to set out either of them. The trial court may decide the respondent's application for striking out the pleadings in the light of the relevant judgments of the Supreme Court, in particular, those laying down the difference between "material facts" and "full particulars."

●

**103. STATE FINANCIAL CORPORATIONS ACT, 1951, Ss. 29 AND 31:-**
**(1999) 3 SCC 298**
***DELHI FINANCIAL CORPORATION Vs. B.B. BEHEL***

Order of recovery under S. 31 Cannot be modified by arrangements and understandings between the parties. Such arrangements etc. Can only be understood to prescribe the mode of recovery but not to modify the order of recovery.

The Order under Section 31 was passed for recovery. Failure of State Financial Corporation to reschedule a loan for a number of years does not entail the penal consequence of losing the right to recover the interest granted by the court for that period. The debtor cannot be granted interest holiday for the period but may claim suspension of recovery and sale proceedings during the period that rescheduling not carried out. It was held that the High Court in revision not justified in recalculating and reducing the amount due under the order of recovery and also arbitrarily reducing the rate of interest from 17.5% to 13.5% for one period and waiving it for another.

Debtor's hardship no ground for court to order lowering of interest rates. It is beyond the powers of the courts to compel a creditor to forego part of its claim of interest on the ground that it had earlier granted significant relief to debtors affected by terrorist activities. Held, on facts, however fit case for condoning default in repaying during the period 1-7-1986 to 30-6-1993 and for payment of lower rate of interest.

●

**104. CONSTITUTION OF INDIA, ARTICLES 235 AND 311 AND BIHAR SERVICE CODE RULES 1952, R. 74 : COMPULSORY RETIREMENT OF ADDITIONAL DISTRICT & SESSIONS JUDGE:-**

**AIR 1999 SC 1018**

***MADAN MOHAN CHOUDHARY Vs. STATE OF BIHAR***

The petitioner granted anticipatory bail in a case under Section 307 I.P.C. This itself cannot be made basis for his compulsory retirement particularly when there was a cross case pending. The order might be wrong but it was an order passed on the judicial side in all bonafides.

Paragraph 31 of the judgment is reproduced:-

The character roll entries, recorded by various District Judges, have already been reproduced by us in the earlier part of the judgment. The remarks given by the High Court on various occasions have also been set out above. It has also been found that there were no entries in the character roll of the appellant for the years 1991-92, 1992-93 and 1993-94. The entries for these years were recorded at one time simultaneously and the appellant was categorised as "C" Grade Officer. The expression used by the High Court in the counter affidavit, filed in this Court in relation to the entries for the aforesaid three years is that they were recorded "at one go" And, we may add, the Officer was made to go. The date on which these entries were made is not indicated either in the original record or in counter affidavit filed by the respondents. These were communicated to the appellant on 29.11.1996 and were considered by the Full Court on 30.11.1996, but it is clear that these entries were recorded at a stage when the Standing Committee had already made up its mind to compulsorily retire the appellant from service as it had directed the office. on 6.11.1996. to put up a note for compulsory retirement of the appellant. The High Court should have considered that all entries prior to his promotion to Superior Judicial Service were not bad and his integrity either as a member of the Inferior Judicial Service or Superior Judicial Service was never doubted. The grant of anticipatory bail in a case under Section 307, IPC, particularly when there was a cross case could not have been legally made the basis of compulsory retirement in the particular circumstances of this case. Whatever might have been the feeling of the learned Judge who entertained and ultimately allowed the petition for cancellation of bail granted by the appellant, the fact remains that it was an order passed on the Judicial side in all bonafides. It may have a wrong order but it was not a motivated order based on extraneous considerations. It was thus, a case where there was no material on the basis of which an opinion could have been reasonably formed that it would be in the public interest to retire the appellant from service prematurely in terms of Rule 74 of the Bihar Service Code.

●

**105. ARBITRATION ACT, SECTION 8 AND LIMITATION ACT, ARTICLE 137:-**

**(1999) 2 SCC 571**

***UTKAL COMMERCIAL CORPORATION Vs. CENTRAL COAL FIELDS LTD.***

The limitation period in relation to an application seeking appointment of

an arbitrator under Section 8 of the Arbitration starts to run only after the requirements of the section are met out.

Paragraphs 9 and 12 of the judgments are reproduced:

In view of the express language of Section 8, it is quite clear that unless a party who desires to apply has resorted to the process set out in Section 8, and has failed to secure the coucurrence of the other party to the appointment of an arbitrator within the prescribed period, the court will not intervene under Section 8. The right to apply under Section 8, therefore, would accrue when, within 15 clear days of the notice, the other parties do not concur in the appointment of an arbitrator.

It has been submitted before us by the respondent that since the contract expired on 28-2-1975, that is the date from which the period of limitation under Article 137 would start. We do not see any merit in this contention becuase the requirements of Section 8 of the Arbitration Act have to be met before limitation would start under Article 137 of the Limitation Act for an application under Section 8.

In the present case on 7-9-1974, the appellant entered into a contract with the respondent under which the appellant agreed to supply the material of ICI specification to the respondent. The contract was operative till 22-8-1975. On account of certain disputes and difference which arose between the parties, the appellant, on 12-9-1976, gave a notice to the respondent. The respondent did not respond to it. On 9-8-1978 the appellant filed an application under Section 8 of the Arbitration Act before the sub-ordinate Judge, Ranchi. The application was allowed on 18-9-1979 and the Court appointed an Arbitrator. The arbitrator gave an award on 16-6-1980. The respondent filed a revision before the High Court challenging the order. The High Court has, by the impugned order held that the application of the appellant under Section 8 of the Arbitration Act was barred by limitation. Hence no arbitrator could have been appointed.

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**106. ARBITRATION ACT, SECTIONS 14, 16, 29 AND 30:-**
**(1999) 2 SCC 594**
***M.K. SHAH ENGINEERS & CONTRACTORS Vs. STATE OF M.P.***

An arbitration award is not vitiated merely because the arbitrator had not given an itemwise award and has chosen to give a lump sum award. A lump sum award is not a bad award. It need not formally express the decision of the arbitrator on each matter of difference nor is it necessary for the award to be a speaking one. It will be presumed that the award disposes of finally all the matters in difference.

So far as the award of interest by the arbitrators is concerned, the law has been settled by the decision of this Court in ***State of Orissa v. B.N. Agarwalla, (1997) 2 SCC 469.*** The reference in the case was made before 19-8-1981 when the Interest Act of 1839 was in force. Interest could not have been awarded in the absence of a statute, contract, usage or custom. Therefore, the interest for the pre-reference period was liable to be set aside.

Principle of Section 34 CPC which provides both for awarding of interest pendente lite as well as for the post-decree period is applicable to proceedings before the arbitrator though the section as such may not apply. The award of interest is made by the arbitrator was upheld by the Supreme Court.

In the cases at hand, the awards have not been made the rule of the court so far and are being so made by the Supreme Court. The award of interest pendente lite by the arbitrator deserves to the sustained.

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**107. C.P.C., Or. 1 R. 10 & SECTION 151:-**
**(1999) 2 SCC 577**
***SAVITRI DEVI Vs. DISTRICT JUDGE, GORAKHPUR***

The appellant Savitri Devi filed a suit against her 4 sons for decree for maintenance and for creation of charge over ancestral property of the family. The suit was filed on 14-8-1992 and was fixed for hearing on 31-8-1992. She wanted to restrain her sons from alienating her property and therefore moved an application for injunction but in the meanwhile on 18-8-1992, a vakalatnama was filed on behalf of the defendants and the 4th defendant also filed an affidavit in the Court purporting to be on behalf of the defendants. In the light of the consent of the counsel, the Court passed an order on that date directing the parties not to transfer the disputed property described in the plaint in favour of any other person till the disposal of the suit.

But the first defendant sold 1/4th of the share each to other defendants, i.e. Respondents 3 to 5 and executed a registered sale deed. The sale deeds were registered on 1-1-1993. The Respondents 3 to 5 filed an application before the trial court under Or. 1 Rule 10 and Section 151 CPC for implementing them as parties to the suit. In the application, they had stated that the first defendant had received sale consideration before executing the sale deeds and handed over possession of the subject-matter of the sale deeds to them. It was also alleged that the plaintiff and the defendants had colluded together in order to cause loss to them. The trial court allowed the application.

A revision by the plaintiff in the Court of the District Judge, Gorakhpur suffered a dismissal The said order of the District Judge was challenged in the writ petition by the appellant in the High Court. But the High Court dismissed the same refusing the contention of the appellant. The Supreme Court held as under:-

Paragraphs 8 and 9 of the judgment are reproduced:

The facts set out by us in the earlier paragraphs are sufficient to show that there is a dispute as to whether the first defendant in the suit was a party to the order of injunction made by the Court on 18-8-1992. The proceedings for punishing him for contempt are admittedly pending. The plea raised by him that the first respondent had played a fraud not only against him but also on the Court would have to be decided before it can be said that the sales effected by the first defendant were in violation of the order of the Court. The plea raised by Respondents 3 to 5 that they were bonafide transferees for value in good faith may have to be decided before it can be held that the sales in their favour created no interest in the property. The aforesaid questions

have to be decided by the Court either in the suit or in the application filed by Respondents 3 to 5 for impleadment in the suit. If the application for impleadment is thrown out without a decision on the aforesaid questions, Respondents 3 to 5 will certainly come up with a separate suit to enforce their alleged rights which means a multiplicity of proceedings. In such circumstance, it cannot be said that Respondents 3 to 5 will certainly come up with a separate suit to enforce their alleged rights which means a multiplicity of proceedings. In such circumstance, it cannot be said that Respondents 3 to 5 are neither necessary nor proper parties to the suit.

Order 1 Rule 10 CPC enables the court to add any person as a party at any stage of the proceedings if the person whose presence before the court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of a multiplicity of proceedings is also one of the objects of the said provision in the Code.

The Supreme Court held that it cannot be said that Respondents 3 to 5 are neither necessary nor proper parties to the suit.

**PRACTICE AND PROCEDURE : The Courts cannot be made parties to the proceedings.**

In the writ petition filed in the High Court as well as the special leave petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division), Gorakhpur are shown as respondents and in the special leave petition, they are shown as contesting respondents. There was no necessity for impleading the Judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the special leave petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the judicial officers concerned. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or special leave petitions underArticle 136 of the Constitution of India was stopped. We are strongly deprecating such a practice.

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**108. I.P.C. SECTIONS 464, 468:-**
**(1999) 2 SCC 617= AIR 1999 SC 1201**
***STATE OF U.P. Vs. RANJIT SINGH***

The respondent, accused, was a Stenographer of a learned Judge of the Allahabad High Court, Hon'ble Shri Justice J.L. Sinha, In his court the accused was working as Personal Assistant. It was alleged that he fabricated a forged bail order for one accused khelawan. The accused however denied the allegations in the trial. The Chief Judicial Magistrate convicted the accused of all the charges but the Additional Sessions Judge, Allahabad acquitted the accused under Sections 417, 420 and 467 IPC but maintained his conviction under Sections 466 and 468. The High Court said that since the accused has

not signed the bail order, the said bail order cannot be said to constitute a document and, therefore, it cannot be said that the ingredients of the offence under Sections 466 and 468 have been satisfied and accordingly the High Court acquitted the accused.

The Supreme Court explained the meaning of the word "document" "gaining wrongfully" and "losing wrongfully" and dishonestly, as under:-

If by virtue of preparing a false document purporting it to be document of a Court of justice and by virtue of such document a person who is not entitled to be released on bail could be released, then undoubtedly damage or injury has been caused to the public at large and, therefore, there is no reason why under such circumstances the accused who is the author of such forged document cannot be said to have committed offence under S. 466 of the IPC. A person is said to do a thing fradulently if he does that thing with intent to defraud but not otherwise. The expression 'defraud' involves two elements, nemely deceit and injury to the person deceived.Injury is something other than economic loss and it will include any harm whatever caused to any person in body, mind, reputation or such others. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. The preparation of a forged bail order by the utilisation of which the person concerned obtained an advantage of being released deceiving the Courts and the Society at large cannot but be said to have made the document fraudulently, thereby attracting S. 466 of the Indian Penal Code.

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**109. EVIDENCE ACT, SECTIONS 91 AND 3: GENUINENESS OF DOCUMENT:-**

**(1999) 2 SCC 635**

***TAHERAKHATOON Vs. SALAMBIN MOHAMMAD***

Long gap of five and a half years between date of alleged agreement for the sale and the sale deed, that it was written on a small piece of paper with revenue stamp affixed on it and not on regular non-judicial stamp paper. These circumstances are all relevant in considering the genuineness of the agreement. As long as there is some material for the rejection of the document, the second appellate court ought not to have interferred with the abovesaid finding of fact.

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**110. EVIDENCE ACT, SECTIONS 101 AND 106:-**

**(1999) 2 SCC 718**

***A.P. POLLUTION CONTROL BOARD Vs. PROF. M.V. NAIDU***

Burden of proof in environmental cases is to be placed on those attempting to alter the status quo. They are to discharge this burden by showing the absence of a "reasonable ecological or medical concern".

Paragraph 39 of the judgment is reproduced:-

It is also explained that if the environmental risks being run by regulatory inaction are in some way **"uncertain but non negligible"**, then regulatory

action is justified. This will lead to the question as to what is the "non-negligible risk". In such a situation, the burden of proof is to be placed on those attempting to alter the status quo. They are to discharge this burden by showing the absence of a "reasonable ecological or medical concern". That is the required standard of proof. The result would be that if insufficient evidence is presented by them to alleviate concern about the level of uncertainty, then the presumption should operate in favour of environmental protection. Such a presumption has been applied in ***Ashburton Acclimatisation Society vs. Federated Farmers of New Zealand, (1988) 1 NZLR 78.*** The required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable persons" test.

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**111. CONSTITUTION OF INDIA, ARTICLES 226 227 AND 136: FRAMING OF CHARGE: CONSIDERATION FOR AND QUASHING OF F.I.R.:- (1999) 2 SCC 651**
***STATE OF KERALA Vs. O.C. KUTTAN AND OTHER CONNECTED CASES***

Police registered a case under Sections 366-A, 372, 376, 344 IPC and Immoral Traffic Act. The Supreme Court in para 6 of the judgment held that at the outset, there cannot be any dispute with the proposition that when allegations in the FIR do not disclose prima facie commission of a cognizable offence, then the High Court would be justified in interfering with the investigation and quashing the same as has been held by the Supreme Court in Sanchaita Investments case, i.e. ***State of W.B. vs. Swapan Kumar Guha, (1982) 1 SCC 561.*** In the case of ***State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335*** the Supreme Court considered the question as to when the High Court can quash a criminal proceeding in exercise of its powers under Section 482 of the Cr. P.C. or under Article 226 of the Constitution of India. On facts it was held that the High Court was not justified in quashing the first F.I.R. The Supreme Court held that such powers could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, ***In State of U.P. vs. O.P. Sharma, (1996) 7 SCC 705,*** it was indicated by the Supreme Court that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India, as the case may be and allow the law to take its own course. The same view was reiterated by yet another three- Judge Bench of the Supreme Court in the case of ***Rashmi Kumar Vs. Mahesh Kumar Bhade, (1997) 2 SCC 397*** where the court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice. The Court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against society as a whole. Bearing in mind the parameters laid down in the aforesaid judgments and on a thorough scrutiny of the statement of Seena dated 23-7-1986, which was treated as an FIR and on the basis of which a criminal case was registered and her subsequent

statements dated 24-8-1996 and 25-8-1996, we have no hesitation to come to the conclusion that the High Court committed gross error in embarking upon an enquiry by sifting of evidence and coming to a conclusion with regard to the age of the lady on the date of alleged sexual intercourse she had with the accused persons and also in recording a finding that no offence of rape can be said to have been committed on the allegations made as she was never forced to have sex but, on the other hand, she willingly had sex with those who paid money.

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**112. HINDU SUCCESSION ACT, SECTION 14 (2) OR SECTION (4) (1) : MODE OF INTERPRETATION OF TWO SUB-SECTIONS**
**(1999) 2 SCC 656**
***NARESH KUMARI Vs. SHAKSHI LAL***

Sub-section (1) has to be construed liberally and sub-section (2) which is in the nature of a proviso to Sub-section (1), should be construed restrictively.

One Smt. Kesri, widow of Radhakishan sold the house to Smt. Naresh Kumari, Appellant No. 1 on 29-1-1954 for Rs. 3000. Shakshi Lal and Ashwani Kumari, the respondents, are reversioners of Radhakishan. Earlier, the said reversioners challenged the said sale and sought declaration of the title over the said house by filing a suit for declaration, challenging the claim of the appellants. The suit was decreed. The case was that Smt. Kesri had only a limited interest in the property and thus she had no right to sell the property without any legal necessity. While decreeing the suit the Court held that the transfer by virtue of the said sale made by the widow was without any legal necessity and hence void against the reversioners' interest, Aggrieved by this, Smt. Naresh Kumari appealed before the first appellate Court. During the pendency of the first appeal, on 17-6-1956 Hindu Succession Act came into force and Smt. Kesri died on 22-5-1957. The appeal was dismissed. On 10-6-1959, the reversioners of Radhakrishan, the respondents before the Supreme Court filed another suit for possession of the house in dispute on the basis of the decree as aforesaid. The defendants, the appellants before the Supreme Court, have contested the suit on the ground that on the date Smt. Kesri died, i.e. 22-5-1957 since the Hindu Succession Act came into force. Smt. Kesri became full owner of the said property and hence she being transferee from her and being in possession of his property became full owner. For such transfer she, in fact, invested Rs. 3000. The trial court decreed the suit in favour of the plaintiff-respondents. The appeal was allowed by the Additional District Judge. The second appeal by the plaintiff was allowed by the High Court. Aggrieved by the order the present appeal by Smt. Naresh Kumari now dead was preferred.

Paragraphs 10, part of 11 and paragraphs 12 and 13 are reproduced:-

In ***C. Masilamani Mudaliar vs. Idol of Sri Swaminathaswami Thirukoil, (1996) 8 SCC 525*** this Court while interpreting sub-sections (1) and (2) of Section 14 held that in case where a Hindu female acquires and possesses the property in recognition of her-per-existing right, sub-section (1) will apply

and in case where she gets the right for the first time under an instrument or order without any pre-existing right, sub-section (2) will apply.

It is not in dispute that in the first leg of litigation between the parties, when Smt. Kesri, widow of Radhakishan, succeeded in their suit by getting declaration of this disputed house, that the sale deed by Smt. Kesri to Smt. Naresh Kumari was without legal necessity and hence void. The appeal filed by the appellants was dismissed which became final. The present issue has arisen when the respondent-reversioners filed their second suit for possession over the same property about which they got the decree as aforesaid.

The question is, whether still the appellants can claim to fall under sub-section (1) of Section 14. There could be no doubt that before a benefit of sub-section (1) of Section 14. even by the widow (Smt. Kesri), could be conferred, she has to show that she is possessed of this property in dispute in lieu of her limited right of maintenance. The question is whether she was possessed of this property, to claim full right under subsection (1) which she acquired before the 1956 Act came in force. The admitted fact is, she transferred all her right to the appellants through the said sale deed before the 1956 Act came into force. Thus. she could not be said to be possessed of this property. Thus. by her own conduct, she herself relinquished all her right and even lost possession in it through the said transfer. Thus. she could not be said to be possessed of this property before the coming into force of 1956 Act. Then how can she get the benefit of Sub-section (1) of Section 14? It may be examined from another angle, It is not in dispute that any female Hindu could only alienate her limited right in an estate prior to the coming into force of the 1956 Act, which is in her possession, only for a legal necessity. If alienation is without any legal necessity or is contrary to the law, the alienee would only get a transitory limited right to enjoy the property during the lifetime of the widow which is the only residuary right she possessed which could be deemed to have been transferred. Thus, after the widow's death, such property even from the alienee would revert back to the reversioners of her husband. In ***Kalawatibai v. Soiryabai 5 (1991) 3 SCC 410.*** The S.C. held as under :

> "A Hindu widow prior to 1956 held the property fully with right to enjoy or even destroy or dispose it of or alienate it but such destruction or alienation should have been impressed with legal necessity or for religious or charitable purposes or for spiritual welfare of the husband. Necessary consequences that flowed from an alienation for legal necessity was that the property vested in the transferee or alienee, and the reversioners were precluded from assailing its validity.
>
> But if prior to 1956 any alienation was made by a Hindu widow of widow's estate prohibited by law or being beyond permissible limits, it stripped the widow of her rights and she could not acquire any rights under Section 14. And so far as alienees were concerned it could utmost create temporary and transitory ownership precarious in nature and vulnerable in character open to challenge if any attempt was made to cloud reversioner's interest. The alienee's possession may be good against the world, his right in property may not be impeachable by the widow but his interest

qua the reversioner was to continue in possession at the maximum till the lifetime of his donor or transferor. It was life interest, loosely, as the duration of interest created under invalid transfer came to an end not on death of donee or transferee but donor or transferor."

This authority completely demolishes the case of the appellants. After having lost the battle in the first suit where it was held that Smt. Kesri sold the property to the appellants without any legal necessity, after transfer of the property through the sale, as aforesaid, she could not be said to have continued in possession of such property. The sale was prior to the coming into force of the 1956 Act. So. prior to the coming into force of the 1956 Act, she could not be said to be possessed of this property under sub-section (1) of Section 14. On the other hand, in the absence of any valid transfer by Smt. Kesri, the reversioners would get the right in the said property after her death and the alienee would have no right over it thereafter. Thus, the submission on behalf of the appellants, that as the sale deed dated 29.1.1954 does not restrict the enjoyment of the estate, hence it would fall outside the purview of sub-section (2) and would fall under sub-section (1) of Section 14 is misconceived and cannot be accepted. The alienee could have matured her right in the property, if the transfer by Smt. Kesri would have been after she had become the full owner under Section 14 (1), after the coming into force of that Act. It is only in cases of valid transfers that the question of examining whether such deed or document of transfer confers the transferee a restrictive right or not, arises.

In the present case, this does not arise, as transfer was already held to be void in the earlier suit. A possible argument, though not argued. that in case the transfer was bad as void, the property would be deemed to have reverted back to Smt. Kesri and on the coming into force of the 1956 Act, she became full owner. Even if that be, the alienee could only succeed if there be any transfer to her after this date. There is more in the present case, her claim is only through the sale deed executed when she had only a limited right. On the contrary, we find that the order and decree in the first suit results in giving the alienee a restricted right. Thus. the said transfer would be circumscribed and restricted by the order passed in the first suit. Thus, even on this ground it could not be said that the appellant-alienees had unrestricted right. It is also not in dispute that the appellants received the property not in lieu of her any per-existing right, but received right in the property for the first time through the sale deed. In view of this, the appellants' case would fall under sub-section (2). Thus. the appellants' right in the said property could not be upheld.

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**113. O. 41, R. 22 CROSS OBJECTIONS : TENABILITY OF :-**
**1999 (2) M.P.L.J. 51**
***SURJA DEVI Vs. SHIV DEVI***

Paragraph 13 of the judgment is reproduced:-

It must be emphasised that a party cannot be said to have a right to file a second appeal merely against a finding that may have been recorded against him when the ultimate decree stands in his favour. Such a party could, how-

ever, file a cross objection in the event the party aggrieved by the decree has challenged the same in an appeal. But, this cross-objection envisaged under Order XLI, Rule 22 of the Code of Civil Procedure, 1908, has to be for challenging the finding given in the judgment to sustain the decree and nothing else. It cannot be lost sight of that a right to file a cross-objection in a pending appeal is entirely different from the right vesting in a party to file an appeal against a decree.

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**114. C.P.C. SECTION 144 AND FILING OF FRESH SUIT READ WITH SECTION 23-A (b) M.P. ACCOMMODATION AND CONTROL ACT:-**
**1999 (2) M.P. L.J. 112**
***SHAKUNTALA BAI Vs. GOPI CHAND GUPTA***

The tenant was dispossed on the basis of ex-parte order directing delivery of possession. Order was set aside subsequently. The tenant is entitled to have restitution of possession. Section 144 CPC is applicable. However, there was application for compensation for wrongful dispossession on basis of ex parte order allowing application for bonafide occupation. Rent Controlling Authority has no jurisdiction to direct payment of compensation.

In fact, the Rent Controlling Authority is the court of very limited jurisdiction i.e. only for the purpose of eviction of a tenant either under section 23-A (a) or 23-A (b) of the Act. If this be the purpose for which the court of limited jurisdiction was constituted, it is difficult to understand as to how can a Rent Controlling Authority grant compensation in terms of money when it cannot pass even an order of recovery of arrears of rent. This court is of the confirmed view that the Rent Controlling Authority is not constituted for the purpose of passing an order for recovery of money. Therefore, it cannot grant restitution under section 144, Civil Procedure Code. The initial jurisdiction of the Rent Controlling Authority is limited. It cannot be enlarged by application of section 144, Civil Procedure Code. Section 144, Civil Procedure Code cannot confer that power which the legislature in its wisdom has not conferred upon the Rent Controlling Authority. Section 144, Civil Procedure Code is being applied to the proceedings before the Rent Controlling Authority by way of reference in view of Rule 16 framed under section 50 of the Act. Rule 16 made under section 50 of the Act is a subordinate legislation. This rule cannot confer the substantive power to any court of limited jurisdiction by way of reference. The scope of application under section 144, Civil Procedure Code is limited to the acts which the Rent Controlling Authority itself is authorised to do. The Rent Controlling Authority is not authorised to pass any order for recovery of money dues.

The remedy of the applicants, if any, lies in filing a civil suit. Such a suit would not be barred for the reason that this court has come to the conclusion that section 144, Civil Procedure Code would not apply for recovery of compensation during the period the applicants were out of possession pursuant to the EX PARTE order passed by the Rent Controlling Authority.

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**High Court of M.P. Jabalpur. order No. 1414/Confdl/ 96 JBP/ II-2-21/ 63 Pt II 3rd Sep. 1996 regarding urgent charge of Judicial work of Special Sessions Judges appointed for disposal of Cases under S.C.S.T. (P of A) Act 1989**

In exercise of the Powers conferred u/s 9 (5) of the Cr. P.C. 1973 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989) the High Court of Madhya Pradesh here directs that /where the Office of the Special Sessions Judge specified by the Govt. of Madhya Pradesh u/s 14 of the aforesaid Act (Special Judge) is vacant or the Judge is on leave or casually absent, any urgent application which may be made or pending before such Court of Sessions, shall be disposed of by the Sessions Judge of the Division or in his absence by the senior most Add. Sessions Judge at the headquarters or in their absence, by the senior most Add. Sessions Judge available in the Sessions Division or in the absence of all of them by the Chief Judicial Magistrate of the District; and every such Judge or Magistrate shall be deemed to be the Presiding Officer/Judge of the said Court of Session (Court of Special Judge) for that purpose.

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**Govt. of M.P., Law and Legislative Deptt Notification No. 1/6189/XXI-B (1) Dtd. 26.5.1997 Regarding urgent charge of Judicial work of Special Session Judges appointed disposal of cases under N.D.P.S. Act endorsed by H.C. vide Endt. No A/4730/ III-6-3/89 JBP dtd. 5th June 1997.**

फा. क्रमांकं 1/6/89/21-ब (एक), स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 (1985 का क्र. 61) की धारा 36 की उपधाराओं (1) व (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हए एवं इस विभाग की अधिसूचना क्र. 1/6/89/21–ब (एक) दिनांकित 13.2.97 व अधिसूचना क्रमांक 1/6/89/ 21-ब (एक) दिनांकित 10-4-97 के अनुक्रम में, राज्य शासन, मध्यप्रदेश उच्च न्यायालय के मुख्य न्यायाधिपति की सहमति से एतत् द्वारा यह निर्देश देता है कि जब ऊपर वर्णित अधिसूचना दिनांकित 13-2-97 द्वारा गठित किसी विशेष न्यायालय के न्यायाधीश का पद रिक्त हो अथवा ऊपर वर्णित अधिसूचना दिनांकित 10-4-97 एवं पश्चात्वर्ती अधिसूचना द्वारा नियुक्त कोई न्यायाधीश अवकाश पर हो अथवा आकस्मिक रूप से अनुपस्थित हो तो उस विशेष न्यायालय के समक्ष प्रस्तुत किये जाने वाले अथवा पूर्व से लंबित आवश्यक आवेदन पत्र का निराकरण ऐसे विशेष न्यायालय के मुख्यालय के सत्र न्यायाधीश अथवा उनकी अनुपस्थिति में उस सत्र खंड के मुख्यालय पर उपलब्ध वरिष्ठतम अतिरिक्त सत्र न्यायाधीश द्वारा किया जावेगा और ऐसा प्रत्येक न्यायाधीश इस प्रयोजन के लिये, उस विशेष न्यायालय का न्यायाधीश समझा जावेगा।

# HIGH COURT OF M.P., JABALPUR

## Memorandum No. B/4070/III-2-9/40- V-2C. JBP. Aug. 28th, 1999, issued to all the D.&S. Judges Disposal of Properties in Criminal Cases lying in Malkhana.

I am to refer to this Registry D.O. Letter No. 382 dated 7.3.98 and to inform you that so many District Judges have not been complied with the instructions contained in the said D.O. Letter. Most of the District & Sessions Judges were sent incomplete information. Some of the District Judges have not yet sent the information.

I am, therefore directed to enclose here with a preform and to request you kindly send the information as per perform to this Registry immediately by return of post.

I am further directed to request you to dispose of entire disposable properties, as per Rules, lying in the Malkhana as early as possible and also complete physical verification of properties as early as possible.

### प्रारूप प्रपत्र

| मालखाना में जमा कुल संपत्तियों की संख्या नोट - एक प्रकरण से संबंधित सभी संपत्तियों एक ही दर्शाया जाय | निराकृत हुए प्रकरणों से संबंधित कुल संपत्तियों की संख्या | लंबित प्रकरणों से संबंधित कुल संपत्तियों की संख्या | निर्णित प्रकरणों की संपत्तियां (जो कालम नं. 2 में वर्णित हैं) जिनका निराकरण हो चुका है की संख्या |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| | | | |

| निर्णित प्रकरणों की संपत्तियां जिनका निराकरण होना शेष है, की संख्या | शेष रहने का क्या कारण है | क्या मालखाना में कुल मुद्देमाल का भौतिक सत्यापन किया गया है, यदि नहीं तो क्यों, और हां तो कब-कब |
|---|---|---|
| 5 | 6 | 7 |
| | | |