VOL. VI PART-V OCTOBER 2000 (BI-MONTHLY)

JOTI JOURNAL

न्यायिक अधिकारी प्रशिक्षण संस्थान

उच्च न्यायालय जबलपुर 482007

JUDICIAL OFFICERS' TRAINING INSTITUTE

HIGH COURT OF MADHYA PRADESH

JABALPUR-482007

☎ 325995

संपादकीय

कर्म प्रधान बनना है

व्यवहार न्यायाधीश से उच्च न्यायालय के न्यायाधीश बने छह वर्ष से अधिक का समय व्यतीत हो गया है। आंखों में दृष्टिदोष होने से वे मद्रास (चेन्नई) जाना चाहते थे। वहां जाने का उनका कार्यक्रम यह था कि शुक्रवार के कार्य दिवस पर कार्य करके ही रात की गाड़ी से वे मद्रास जाते। चूंकि मद्रास के चिकित्सकों ने उन्हें सूचित किया कि आँखों की आपात स्थिति है त्वरित आओ तो वे गुरूवार की रात को ही निकल गए। शुक्रवार को वैसे भी काम नहीं हो पाता क्योंकि अधिवक्तागणों की हड़ताल एवं जबलपुर बंद का आयोजन था। उन्हें किसी भी प्रकार के अवकाश की कोई कमी नहीं है। विपुल मात्रा में अवकाश उपलब्ध है। लेकिन मानसिक स्तर देखने योग्य है। चिंतन ये था कि शुक्रवार के कार्यदिवस का हर्जा न हो। यें चिंतन उस व्यक्ति का है जो सेवाकाल से पूर्व ही केन्द्रीय उच्च वर्ग सेवा में भी चयनित हुआ था लेकिन व्यवहार न्यायाधीश बनना ज्यादा उचित समझा व अपनी बैच में भी प्रथम रहकर उक्त व्यक्ति का चयन हुआ। सेवाकाल तो निश्कलंक ही रहा है परन्तु योग्यतापूर्व भी रहा है। उत्तराधिकार में मिली–थाथी को न केवल संचित कर रखा अपितु वृद्धि की। और इस समय भारत के प्रधान मंत्री माननीय श्री अटल बिहारी बाजपेयी के शब्दों को जो अमेरिका में उच्चारित किए याद आए कि **"प्रामाणिकता शब्दों से नहीं कर्म से ज्ञात होती है।"**

बड़े सटीक शब्द हैं। आदर्श का शब्दों में प्रयोग करना एवं आचरण में लाना, तद्नुसार व्यवहार एवं वर्तन करना इसमें संभवता कोई संबंध नहीं रहा है ऐसी अनुभूति समय समय पर होती रही है। एक बोध वाक्य पढ़ने को मिला कि You will never know what great things you can do until you try - really try आगे यह भी कि Try it out - it works. यह भी तो उक्ति है कि प्रयत्नार्थी परमेश्वर। सब खेल प्रयत्न का है एवं प्रयत्न का पूरक है परिश्रम। हमारे भीतर असीम शक्ति संचित है, तेज भी है अतः हम शक्तिहीन भी नहीं हैं। लेकिन हमारे में, संभवता, निर्धार, अर्थात निश्चय अथवा संकल्प का अभाव प्रतीत होता है। अंग्रेजी में इसे डिटरमिनेशन (determination) शब्द से भी परिचित कराया जा सकता है, तथा इस अंग्रेजी शब्द का पर्यायवाची शब्द है बैक बोन (Back bone) याने रीढ़ की हड्डी। इस बैक बोन का अंग्रेजी में ही एक और अर्थ दिया है Strength of Character अर्थात चरित्र की शक्ति का ताक़द। चरित्र का एक अर्थ आचरण भी है। अर्थात आचरण की हमारी शक्ति, इच्छा तथा उसका अभाव। हम आचरण में ही बातें नहीं लाना चाहते तो कोई क्या कहे।

पूर्व इतिहास की क्या कहें। वर्तमान को ही देख लें। व्यवहार न्यायाधीश वर्ग 2 के रूप में चयनित उम्मीदवारों के लिए समस्त जिला न्यायाधीशों को पर्याप्त रूप से समय

पर सूचित कर दिया था कि वे संस्था में प्रशिक्षण हेतु आने के पूर्व कुछ विषयों पर उन्हें नियम एवं आदेश सिविल तथा क्रिमिनल के विषय में अवश्य बताएं तथा समझा दें ताकि उनकी विषय से संबंधित पूर्वाभ्यास एवं पृष्ठभूमि मजबूत होने से यहां बताई जाने वाली बातें अच्छे से समझ सकें जिससे यहां प्रशिक्षण कार्य में प्रशिक्षण देने पश्चात वे विषय वस्तु को ठीक से समझ सकें। लेकिन यदि अपवादों को छोड़ा जावे तो कोई भी प्रशिक्षु अपने अपने जिलों से कुछ भी पढ़कर नहीं आया था। मैंने 11-5-2000 को समस्त जिला न्यायाधीश गणों को लिखा था कि :–

"....the time, their posting orders likely to be issued, is such, most of the Courts would be non-working during vacation. Therefore they may be well trained in different sections of the administration and office management. Hope these Judges will have vigour for all out and intensive training. The District Judge and the Judicial literati as mentors may impulse for vigorous and inexorable training as per the approved programme by the High Court. The Training Programme was communicated to the District Judges round about in the year 1997.(Training Scheme)

A Few of these Judicial Officers may not be aware of the Rules and Orders, Civil and Criminal. In initial training, their attention may be invited to Chapter Nos. 1-2-3-8-9 15-16-22 and 23 of Rules and Orders, Civil and to Chapter Nos. 1-2-3-5-6-7-9-10-15 and 35 of the Rules and Orders, Criminal.

Your Co-operation in up-bringing these Judicial Officers will help this Institution as feed back before they start attending lectures here in the Institution and it will be other way round also."

यहां प्रशिक्षण सत्र में व्यवहारिक बातें बताने के समय एल एल.बी. प्रथम वर्ष परीक्षा के लिए पढ़ाने की अनुभूति हो रही थी न कि नवनियुक्त व्यवहार न्यायाधीशों को जो कथित रूप से तीन–तीन वर्ष का अभिभाषकीय व्यवसाय करने के पश्चात न्यायाधीश के पद पर आसीन हुए थे। ऐसा क्यों होता है इसका बहुत बड़ा मनोविज्ञान हो सकता है। एक कारण यह भी कि नव नियुक्ति पश्चात उन्होंने मान लिया कि वे सर्वज्ञाता हो गए एवं अब करने को शेष कुछ भी नहीं है, केवल सेवाकाल में निर्णय भर देते रहना है। मनोविज्ञान का एक पहलू ये भी था कि इन प्रशिक्षुगणों की इच्छा थी कि प्रशिक्षण पश्चात इन्हें नई पद स्थापना नये स्थान पर मिलना चाहिए क्योंकि अन्यथा सर्वसाधारण की दृष्टि में वे नए सिक्कड़ हैं ऐसा लोग अनुभव करेंगे। एक ने तो यह कह कर कमाल कर दिया कि "कौन बनेगा करोड़पति" में एक व्यक्ति "फोकट में" पचास लाख रूपये ले गया। पचास लाख रूपये ले जाने में उसको न जाने कितना मानसिक दबाव, रहा होगा, चिंतन अध्ययन करना पड़ा होगा। टी.वी. पर एवं स्टूडियो में दर्शकों की भीड़, प्रश्नकर्ता के प्रश्नों को समझना, सूझबूझ से उत्तर देना आदि न जाने कितने ही पीड़ादायक

अवसरों से पार पड़ना पड़ा होगा। क्या यह सही माना जा सकता है कि नव–नियुक्ति पश्चात बिना परिश्रम के बिना प्रयत्न के एवं कर्तव्यों के निर्वाह किए बिना दो माह का वेतन प्राप्त कर लिया?

हम इस प्रकार की मानसिकता के साथ कभी भी उन्नति नहीं कर सकेंगे। जीवन में असफल हो जायेंगे। नौकरी में बने रहना जीवन की सफलता नहीं होगी। न्यायाधीश के रूप में समाज में मान्यता प्राप्त करने के लिए निश्चित ही सबसे अलग कुछ करना होगा। हम आपकी पहचान सरकारी नौकरों के रूप में नहीं रहे अपितु संवैधानिक पदाधिकारी के रूप में (Constitutional Functionary) होना चाहिए। ये तब ही होगा जब हम मनसा वाचा कर्मणा इस पद के दायित्वों के निर्वाह हेतु अहर्निश सेवामहे के सिद्धांत को स्वीकार करें।

एक बात जो प्रशिक्षण काल में अनुभव होती है वो यह कि प्रशिक्षण के समय भी न्यायिक अधिकारी जानने समझने के लिए चौकस नहीं है, सतर्क नहीं है न उनमें किसी भी प्रकार की कोई आतुरता थी। माननीय न्यायाधिपतिगणों ने सत्रारंभ एवं समापन अवसर पर भी इस बात को विशेष रूप से प्रदर्शित किया था। **(देखें संस्थानिक प्रतिवेदन अगस्त एवं अक्टूबर 2000 'ज्योति')** प्रशिक्षण काल में बार बार यह कहना पड़ता था कि भाई! पुस्तक खोलो, प्रावधान देखो फिर पढ़ो, व्याख्याता जो बता रहा है उसकी टिप्पणियां तैयार करो तब जाकर कुछ ही लोग ऐसा करते थे, अन्यथा ऐसा करने में भी वे न्यूनगंड (इन्फिरियारिटी कॉम्पलेक्स) अनुभव करते थे।

कुल मिलाकर निष्कर्ष के रूप में हम यह कह सकते हैं कि प्रेरणा का स्त्रोत बाहर से नहीं स्वयं के अंदर से उत्पन्न होना चाहिए। तब ही जाकर स्वयं स्फूर्त रूप से सुचारू रूप से विद्यार्जन, अनुभव प्राप्त कर कार्य किया जा सकेगा। पांतजली ने अपने योग के विचारों में एक सटीक बात कही है कि When the understanding and soul are united, then self knowledge results.

हमें स्वयं को अनुशासित, शालीन व शिष्ट बनना होगा तब ही जाकर इस पद की गरिमा को न केवल कायम रख सकेंगे अपितु ऊपर भी उठा सकेंगे। अनुशासन व अनुताप (पछतावा) दोनों ही कष्टप्रद हैं लेकिन दोनों में से किसी एक को चुनना ही पड़ेगा।

Outstanding people have one thing common : an absolute sense of mission.
The heights by great men reached and kept,
were not attained by sudden fight,
But they, while their companions slept,
Were toiling upwards in the night,

पुरूषोत्तम विष्णु नामजोशी

न्यायाधीश - चरित्रवान व्यक्तित्व

नव–नियुक्त व्यवहार न्यायाधीश वर्ग–2 सन् 2000 का तृतीय एवं चतुर्थ सत्र क्रमशः 17 अगस्त 2000 से 26 अगस्त 2000 तक एवं 5 सितम्बर 2000 से 14 सितम्बर 2000 तक का सम्पन्न हुआ।

तृतीय सत्र एवं चतुर्थ सत्र में माननीय न्यायाधिपति एवं अध्यक्ष, न्यायिक अधिकारी प्रशिक्षण संस्थान श्रीमान सी.के. प्रसाद महोदय ने उद्घाटन सभारंभ में विद्वतापूर्ण रूप से संबोधन कर मार्गदर्शित किया। माननीय महोदय ने कहा कि व्यवहार न्यायाधीश के रूप में नव–नियुक्त हो जाना न्यायिक अधिकारी के लिए प्रथम चरण है न कि अंतिम लक्ष्य। उन्होंने कहा कि आप जिस ज्ञान की पूंजी के आधार से चयनित हुए हैं वह ज्ञान केवल चयन सीमा तक के लिए था तथा सतत् रूप से विधि का अध्ययन अपेक्षित है। यदि हम प्रारंभ को ही अंत मान लेंगे तो काफी समस्याएं उत्पन्न हो जाएंगी। उन्होंने अपने अनुभव के आधार से यह पाया कि कुछ न्यायिक अधिकारी चयन हो जाने के पश्चात पढ़ना, लिखना व समझना छोड़ देते हैं। विधि के मूलभूत सिद्धांतों की ओर ध्यान नहीं दिया जाता। माननीय न्यायाधिपति श्रीमान प्रसाद महोदय ने यह भी कहा कि विधि का ज्ञान (Knowledge of Law) के संबंध में विधि का ज्ञान होना (Knowing Law) तथा विधि का न्यायिक कार्य में प्रयोग (applying Law) ये दोनों बातें भिन्न है। अतः विधि का सतत् अध्ययन करने की अपेक्षा उन्होंने की। माननीय महोदय को इस बात का अत्यन्त दुख व खेद था कि चयन होने के पश्चात से प्रशिक्षण सत्र में आने तक प्रशिक्षण काल में प्रशिक्षण के माध्यम से विधि प्रक्रिया संबंधी ज्ञान प्राप्त करने के लिए कोई प्रयत्न नहीं किया है। उनका कहना था कि जो न्यायिक अधिकारी कार्य नहीं करना चाहते, अध्ययन नहीं करना चाहते अथवा पठन–पाठन नहीं करना चाहते उनके लिए यह पद नहीं है तथा ऐसे अधिकारियों को न्यायिक सेवा से स्वयं को पृथक कर लेना चाहिए। प्रशिक्षण संस्थान का महत्व दर्शाते हुए माननीय महोदय ने कहा कि प्रशिक्षण काल में अपनी समस्याओं का समाधान अवश्य करा लें। यह संस्था प्रारंभिक, मूलभूत ज्ञान के माध्यम से मार्गदर्शित कर रही है, जो महत्वपूर्ण होता है। विधिक सेवा एक वचनबद्धता (Commitment) है। चूंकि सेवा के प्रति यह वचनबद्धता है अतः न्यायदान का कार्य प्रकरण का अध्ययन करके विधि प्रावधानों को देखकर समझकर करें। माननीय न्यायाधिपति श्रीमान प्रसाद महोदय ने यह भी कहा कि न्यायाधीश का पद एक नौकरी या धंधा नहीं है, अपितु व्यवसाय है जहां कर्त्तव्य के प्रति बहुत अधिक समर्पण की अपेक्षा है। पृथ्वी पर दो व्यक्तियों के बीच के विवादों का निराकरण करने के लिए यह पवित्र कार्य कम संख्या में बहुत भाग्यशाली लोगों को प्राप्त होता है। ईश्वरीय सत्ता का यह अंश होता है। अतः ऐसा पवित्र कार्य एक चित्त एक लक्ष्य रखकर समग्र रूप से विचार, मनन करके ही करना चाहिए। समग्र चिंतन न्यायदान का मूल आधार है।

न्यायदान की पद्धति उत्तम होने की बात कहते हुए माननीय प्रसाद साहेब ने यह भी कहा कि वरिष्ठ अधिकारी आपको प्रभावित नहीं करेंगे। न्यायिक आत्मा के आधार से ही आप कार्य करेंगे। अन्य सेवाओं में उचित अनुचित प्रभाव अधिकारियों पर डाला जा सकता है परन्तु न्यायपालिका पर ऐसा प्रभाव नहीं हो सकता। वृत्तिक जागरूकता (career consciousness) होना एक बात है लेकिन इसका यह अर्थ नहीं है कि इस कारण हम न्याय नहीं करेंगे। न्यायदान में गलती (भूल) भी हो सकती है लेकिन भय की बात नहीं होगी जब भूल सद्भावनापूर्वक हुई है।

माननीय न्यायाधिपति महोदय श्रीमान प्रसाद महोदय ने यह भी कहा कि व्यवहार न्यायाधीश बनना एक लक्ष्य था जो प्राप्त कर लिया लेकिन वह अंतिम कड़ी नहीं थी अपितु लक्ष्य की ओर प्रथम कड़ी मात्र थी। लक्ष्य के आगे सतत्, अविरत लक्ष्य होता है। अतः आगे बढ़ते रहना है। आप प्रतियोगिता परीक्षा में सफल हो गए इसका कोई लेना देना, सरोकार, संबंध पक्षकारों के लिए नहीं है। सफलता से आपको प्रसन्नता होना ठीक बात है। न्यायाधीश के रूप में आपको न्यायदान करना होगा, सत्य को विधि की कसौटी पर परखना होगा। इस कार्य में आपको सहयोग करने वाले कुछ व्यक्ति व्यवसायिक दृष्टि से अयोग्य व व्यक्तिगत रूप से भ्रष्ट भी हो सकते हैं। न्यायदान के क्षेत्र में धनवान या बलवान को यह अधिकार नहीं है कि वह न्याय करे। ऐसा पवित्र अधिकार मात्र न्यायाधीश को दिया गया है। अतः न्यायिक कार्य बिना भय के व पक्षपात रहित करने हेतु आहवान् किया। माननीय महोदय ने एक सटीक बात कही कि न्यायाधीश नियुक्त हो जाने मात्र से वह रातोंरात न तो विद्वान हो जाता है न योग्य हो जाता है। अतः विभिन्न प्रकार के अनुभव प्राप्त करना होंगे। नए–नए शास्त्रीय तथा तंत्रज्ञान का उपयोग करना होगा। पक्षकारों का अधिकांश सम्पर्क विचारण न्यायालयों से आता है अतः न्यायपालिका की छवि भी इन्हीं न्यायालयों में उनके साथ किए जाने वाले व्यवहार पर निर्भर रहेगी। आपका उच्च कोटि का चरित्र व व्यवहार परिणामदायक रहेगा। सोचने व समझने का स्तर आपका ऊँचा होगा तभी आप जीवन में कुछ अच्छा प्राप्त कर सकेंगे। इन शब्दों के साथ माननीय न्यायाधिपति श्रीमान सी.के. प्रसाद महोदय के सत्रारंभ अवसर पर शुभाशीष दिये।

इन सत्रों में माननीय न्यायाधिपति श्रीमान एस.एस. सराफ महोदय माननीय न्यायाधिपति (सेवानिवृत्त) श्रीमान आर.पी. अवस्थी महोदय, श्री सी.एल. पांगारकर, जिला न्यायाधीश, संप्रति एड. रजिस्ट्रार, बाम्बे उच्च न्यायालय, नागपुर पीठ, श्री आय.एस. श्रीवास्तव रजिस्ट्रार स्टेट एडमिनिस्ट्रेटिव ट्रिब्यूनल, श्री एस.एन. खरे. अति. जिला न्यायाधीश एवं श्री पी.के. तिवारी अधिवक्ता एवं पूर्व लेखा अधिकारी ने भी अपने दीर्घ अनुभवों के आधार से मार्गदर्शित किया।

MERITS BEGETS CONFIDENCE.
CONFIDENCE BEGETS ENTHUSIASM.
ENTHUSIASM CONQUERS THE WORLD.
- WALTER COTTINGHAM

EUPHONIC EVOCATION

DEMEANOUR OF JUDICIAL OFFICERS

JUSTICE DIPAK MISRA
M.P. High Court

Inaugural Address By Hon'ble Shri Justice Dipak Misra to the newly appointed Civil Judges Class II of 2000 Batch (second batch) on 29-7-2000. The address is reproduced At Verbatim. Some of the portion could not be recorded due to technical failure in the recording system. For that the institute regrets.

EDITOR

Mr. Namjoshi and Ladies and Gentlemen,

I wish I could speak in Hindi like Mr Namjoshi, but unfortunately I do not have the ability. I am conscious all of you are equipped well with Hindi but I will try my level best to communicate my thoughts and ideas to you in English as far as it is understandable.

I have been asked to talk to you. I am not inclined to give a speech or to take a class as a teacher. I intend to talk to you in a warm manner, so that my thoughts, my ideas and my thinking process get embedded in your mind.

All of you are absolutely fresh to the Institution. You have lot of expectations from the Institution and the Instituion has also lot of expectations from you. I am not aware how much you practised at the Bar, what was your intensity of practice. But I am sure, all of you must have gone through the Court premises and must have attended the proceedings wherever you practised and you must have gathered some experience. But the experience of a 'lawyer' and experience of a 'Judge' is quite different. When I said experience of a Judge, I don't mean Judge of a High Court. A Judge is a person who decides. He may be a Magistrate, he may be a sub-judge, he may be a Chief Judicial Magistrate, may be a District Judge, may be a High Court Judge, may be a Judge of the Supreme Court. All of us have been given the duty to decide at an hierarchial level because there is a hierarchy, there is a pattern. Now that you have been assigned the duty to decide. What should be the formost concern of yours. My purpose is to talk to you with regard to that. Not that you are not at all aware. You must have seen Magistrates, you must have seen District Judges and if you have the opportunity to come to the High Court, you must have seen some High Court Judges. Your acquaintance with the proceedings of the Court I don't doubt but when you have been given the duty to decide, that you are going to be a judge and individual burden comes on you, you ask yourself a question- How do I decide? How do I behave? what should be my conduct? What should be my reputation? What should be my public image? These are the questions one tends to ask after one is getting the job of deciding controversies. You must remember that you are not better than anyone on

the road. My purpose of saying is you are much better but simultaneously you have been given the divine duty. I emphasise divine duty to Judge your fellow beings. When you are been given this sacrosanct duty to judge your fellow beings, you must be at a pedestal. It has been said don't judge your fellow beings. A man should not be a judge of man. Man has to be judged by God. But man by evolution has evolved this Institution. A man has been asked to judge a man. This duty is not an ordinary duty. Therefore, you require training. Possibly, that is why you have been asked to come to this Institute how to get training, so that you can behave in such a way that dehors your position, that suits your post. While doing your duty what should be your foremost concern. All of you must be thinking that we must know the Law. If we know the Law, we can decide. That is the duty of the Judge, to decide the controversy, to decide the cases, if I know the Law or if I get assistance from the Bar about the Law, there should be no difficulty in deciding. The question arises, is that enough? or Is that the sole criteria? The knowledge of law by Magistrate is good enough. It has been said by many and I join them company that knowledge of law may be the last and the least criteria possibly to become a good Judge. Knowledge you can acquire with the passage of time but from the day one you have to train yourself to become a good Judge. It has been said, "A Magistrate is a speaking law". All of you are going to be Magistrates. So the Magistrate is a speaking law and the Law is a silent Magistrate. Please try to understand this. A Magistrate is a speaking law, that is to say, you symbolise law, you are the embodiment of law, you are the epitomy of law. A common man looks at you with the reference because you have been given the duty to see that the law prevails and when a matter comes to you decision is to be given in accordance with law. That is why Magistrate is a speaking law. What is Law? Law is a silent Magistrate. It operates, it functions in its own silent manner. What are the qualities of a Judge that you must inculcate? I am not saying, for a moment, that always people who have become judges have these qualities. Possibly none has, not only in India but also outside where the Anglosaxon Jurisprudence or any kind of jurisprudence prevails. But you must set up an ideal for yourself. If you keep a target to achieve, possible you can endeavour to achieve. Not for nothing, it has been said, that if you aspire for the stars possibly one day you may reach at the top of the tree. But if your aspirations are low your achievement shall be low. That is why my suggestion to you, you must aspire to reach the stars so that definitely you can reach the top of the tree. Hence you must set up an ideal for you to inculcate the proper, positive and constructive qualities of a Judge.

I will start from the negative because all of you might have been congratulated while you have been selected. Once you are selected and will start functioning to get an order, that I am Magistrate. I have already told you, you are the speaking law but simultaneously you must be conscious that you are not a person who is going to suffer from Judges' disease. I told you that I am discussing from the negative. Therefore, I tell you the first

quality you must inculcate, you must train your mind, you must build your constitution in such a manner that you do not have to suffer from the Judges' disease. What are the Judges' diseases? Not Blood Pressure or Spondlices or arthritis or Gaut. A Judge may suffer from those becuase he sits for a quite considerable time. But Judges' disease as understood in the legal structure is a Magistrate or a Judge while functioning in the Court may become garrulous or talkative. His duty is to patiently hear. Leant your ears first then react. But history records and legal history records, there are many judges who are over careless while they preside over the Bench. They talk most of the time. They are called talkative Judges. **A talkative judge** suffers from garrulousness. That is a Judges' disease.

Another Judges' disease which everyone of us has after one gets into power **irritability.** You have been conferred power recently and you will be conferred more powers when you grow up in the system. Supposing a lawyer is arguing before you. He is repeating it or he is arguing on which you have already raised or referring to the facts which you have already came across in the last evening, so you are impatient and you get irritated. "Ah! I know that, come to the next. No, you have to avoid the irritability which is not a quality of a Judge which has been regarded as a Judges' disease.

Another aspect of Judges' disease is **composity.** I like to eloborate on this. There are some presiding officers, who sit in an elevated position. The lawyer is there, the litigant is there but you sit at a pedestal. When you sit at the pedestal, you tend to be believed that 'I am the Law'. So you throw your weight around, you behave in an extremely composed manner. Remember, you are also a servant of law. Once you accept that you are also the servant of law, you must also abide by the law then you will abondon this bad quality of composity, throwing your weight around. Once you abondon the bad quality of composity, you will automatically develop a good quality, a quality that is known as humility. Humility is one of the best criteria of a good judge. You should be humble not only to the aged or to the senior counsel but also you should be humble and courteous to the junior counsel as well as to the litigants. A litigant who knocks at the door is not servile or subservient to you. He has come for adjudication of his rights and you are the adjudicating authority. Just because the power has been conferred on you, you need not or should not ill treat a litigant or a witness in a rough or tough manner. Your noble duty is to be polite and humble whoever comes before you, so that when he goes back whether he is a junior lawyer or senior lawyer or a litigant or a witness says that here is a polite and humble judge who knows the law yet does not throw his weight around. This is one of the most negative qualities in a Judge. That is why my request to all of you is to abondon, take a vow that I should not suffer from Judges' disease throughout my career. None of you to try hard but we can find to the post of a Magistrate. A time will come in your career when you will be going to step to the higher and higher post, once you will go to

the higher post you are more prone to suffer from the Judges' disease. But if you have taken a vow from the day one, you will guide yourself that I have taken a vow earlier not to be affected by this disease and accordingly you will behave wherever you go and whichever position you may go.

Now, I will come to the other better qualities which a Judge should have, which you must be knowing by now because you are at the Bar and you are expecting from the Judges. A Judge must have a good temparament. When I said good temparament, I mean you should not lose temper. See all of us are human beings and of our own humour. But your individual problem should not compel you to become a person who would be recognised as one to be losing temper while he is presiding over a proceeding. He who loses temper can never be a good judge. A good judge is expected to have the calmness of mind and the poise of soul. He must not only behave in a divine manner, simultaneously, he must try to look divine that there is a clam, composed and cool judge. There would be occasions when you will be feel like losing temper but you must have the aptitude, an apititude to control and curb it. **He who can curb and control his temper he eventually acquires a very good quality of a very good judge.**

Next, I will emphasise on the aspect of integrity. All of you know a judge must have integrity because that is the basic quality of a Judge or it is what we call so much incult in the job of a judge, is inseparable, it cannot be conceived of a judge without integrity and all of us understand what integrity is. But integrity has many facets. Integrity does not mean that a judge does not take bribe. You may not take bribe but yet you may not be a judge of great integrity. Integrity means you should be absolutely impartial, honest to your work and maintain judicial integrity to the maximum. When I say that you must be impartial, not only that you should be impartial, you must appear to be impartial at all times, Supposing you are posted at a place which is far away from where you are to be guided, you have to conduct yourself in such a manner that nobody can point a finger towards you. If you are courteous to 'X', a counsel who has put in 3 years of practice and if you are over curteous to another gentleman who has put in 10 years of practice, then you are not impartial. Remember, your behaviour should be the same. It must be the same yardstick for all. Your discussion, your consumption of time in a particular case also would reflect your character or quality of impartiality. Supposing you are hearing a bail application, it is argued by a very raw junior. You might have understood, but if you close him within 2 minutes and similar bail matter of another person you hear for half an hour, the Bar will not be happy with you because they say, here is a man, hears juniors for 2 minutes and on the same point hears a senior lawyer for half an hour. You may hear a senior counsel for half an hour if there is a complicated question of law is involved. As far as facts are concerned everybody must be given the equal treatment. That would be indicative of your impartiality. Impartiality would also include in its swift

your attitude to maintain aloofness. There has been relationship between a Bench and the Bar because you have come from the Bar and you will always belong to the Bar and the Bar is the judge of the judges. These principles are well known. But simultaneously, an onerous duty is cast on you to see that you **maintain aloofness.** Your conduct in the market place is also noticed by people. You might some times compared yourselves with the officers belonging to the Executive that if they are able to mix with public, do like this and if I am doing my duty properly why can't I mix? A Judge is not supposed to mix in that manner. He has to have aloofness because his aloofness is his protection. By that he will not only show to the litigant public as well as to the lawyers who appear before him that I am not only impartial but I also maintain the same aloofness from all. Integrity also would include **judicial integrity.** It is very difficult unless you are of that conscience. I give an example. There have been judges not only here but also abroad. When a lawyer enlightens or illumines a judge, the judge instead of giving credit to the lawyer takes it himself. Supposing you are hearing a matter, the lawyer cites a decision before you. While writing your judgment you only write I may refer to this decision which lays down as follows, without indicating in your judgment that decision was cited at the Bar, by the counsel. In my humble opinion as far as I understand law that will amount to judicial dishonesty because you are taking credit which is not due to you. The credit must be given to the lawyer who has done the labour and brought the law to your notice. Judicial honesty is also to be maintained at that level, and do not take the plea at any point of time that I don't know or I forgot and I thought it the best way or it should be the best way to put it in the judgment and I refer to so and so. It is your obligation, I will say the paramount duty to say that this decision was cited at the Bar. The lawyer has taken pains to search for the book and cited for your knowleuge, for your enlightenment and for your illumination.

When you become a Magistrate, hold on to power, when you walk on the road, you may feel I became a lion. पॉवर का नशा होता है। But that kind of concept should be curbed. Decide the case according to **your knowledge** and you should not decide according to your experience. You might have experience but you might be having very unwarranted, uncalled for and sad type of experience. If you transmit your experience to your judicial decisions not only that would be wrong but also they would not be appreciated by the public. When I say public, I mean the litigant public because they would be of the view that here is a judge who decides certain cases in anger. Sometimes you may be having more pity, more of emotions because of your personal experience in certain spheres. My advice to you, do not decide a case by taking pity. Decide a case according to law but hold on. You will ask me a justice has to be accompanied by mercy. It has to be dealt with mercy. How can mercy be sagregated or separated from justice. I do not say so. Compassion is a part of a judges' quality. But do not over to

it. If you feel always pity, here is a man, he has only stolen Rs. 100, he behaved like that as he is a poor man, I must leave him. No, punish him taking the gravity of the crime into consideration. Let not your own personal pity over-ride the concept of law. You may feel pity by looking at man's face but how do you judge a face? Do you know him personally? Do you know the incident? Are you acquainted with the situation? If you are not do not judge a man by his face because there may be kindness beneath the guffness, there may be guffness over a very very calm face. A person may be able to invoke your pity but you are not to show pity as a passionate man, you have to show a compassion of a judge. That compassion which is cognizable in law which is quality of a judge.

Another aspect which I would like to highlight, which all of as are prone to some time or other is **credulousness,** who believe easily. Supposing a lawyer stands and says, your honour this is the position of law, our High Court has said that in so and so. You believe him and pass an order. It is settled in law. Never do that. If a lawyer refers to a citation, ask him to produce the book before you. If the citation is not produced because he said this is the law, you are not supposed to believe. That kind of credulousness will be that you are in straight wrong. You will lose the ground not he, Recently, it came to the notice of the High Court. A Magistrate while imposing a sentence, has imposed a sentence of fine of Rs. 1,000/- and further sentenced the accused to be punished till rising of the Court. As far as substantive sentence till the rising of the court is concerned is absolutely correct but as far as the fine of Rs. 1,000/- is concerned it is absolutely wrong because the section stipulates maximum fine of Rs. 500/-. This had happened in the last week only. I narrate this because before you impose a sentence or before you decide a case it is my heartfelt request to all of you, see the provision, even if you have seen the provision in the morning or in the earlier case, see it again. It does not cause any harm. Don't be egoistic as far as knowledge is concerned. You see all of us are likely to do mistakes. Never go by impressions. अरे, हमने अभी तो देखा, ये बात नहीं है।

You might have seen it 10 times a day, doesn't matter. Let the Bar say what is this Magistrate sees the provision all the time. Doesn't matter. Whether the offence is bailable or not, compoundable or not, what is the sentence, it is better you consult the book whenever the problem arises. By that you will not be committing mistakes and you will be guiding yourself properly and you will not be credulous not to yourself also. You might have seen that this is wrong. Am I not confident, I know this provision, I am sure. I don't dispute that, definitely you are confident, definitely you are sure, definitely you are knowledgeable but there is no harm in checking up and doesn't take time. There was a great lawyer in West Bengal. He was the master of the Criminal Law and once a litigant went to him in a case under

S. 379. He said get me the I.P.C. The briefing lawyer said, Sir why to see the provision? I would like to see S. 379 again, there might be something. This is humility. He must have been gone through hundreds of cases under that provision. But yet he likes to see the provision before drafting or arguing and that is getting the status. Not that he don't know the provision. He very well know what the provision says. The purpose of telling you all this is there might be simple problems but there is no harm in verifying the same.

Another weakness from which all of us suffer is seeking solicitations. I would like to clarify this. I have also this disease. Supposing you have passed an order. That order is being challenged before the superior court. Your order is affirmed. The lawyer arguing before you comes and tells you Sir, your order has been affirmed. As a human being you feel happy. Then you sometimes venture to ask the informer or informing person what was the reaction of the Superior Court? What was the comment at the time of proceeding? How do they appreciate my order? This is **soliciting appreciation.** I have given you one example. You may solicit appreciation from the lawyer in whose favour you have passed the order. How is my order? There again he will appreciate. My advice to you on the no circumstance solicit appreciation or yield him to flattery. I give you one example. Two lawyers went to argue a matter on the Section 145 of the code of criminal procedure. Some of you might have done these cases because these are done at very different level. A party was quite affluent, so he took a very senior long doing lawyer from the High Court. The lawyer went prepared with number of books and citations, Whether the notice has been properly issued? Whether there has been real dispute with regard to section 145? Whatever it is, he went with number of books. The other lawyer who was engaged, possibly did not have books or that much of knowleldge but he has been practising on the criminal side and doing so many 145 cases. After the senior lawyer kept the books on the table and this lawyer got slightly baffled that so many books have been got, what is to be done. Then he thought of a way, after lawyer who had got the books argued the case, he told, this has really happened, that your honour you have been deciding 145 proceedings since last so many years and this gentlemen has come to teach you, your honour the Law. "हुजूर आपको तो सब मालूम है. I have told only this is this and this is this. So what happened the Magistrate got totally flattered. by this man and delivered the order in his favour forgetting the law. The counsel renewed the books did not count the points raised but only raised this point. He flattered the Magistrate that you know the law but you are the father and mother of the law, everything of law. You are the grandfather of law under S. 145 cases and this man is trying to educate you. Purpose of saying this is while sitting as a Magistrate also there will be occasions, situations where you will be flattered and **do not diswayed away that flattery.** This happens everyday here. If you ask the

counsel who has not brought the book, Your Lordship know the law. How the judge reacts is another matter. But you feel happy when someone says that you know the law or you are acquainted or you decide. Don't yield him to flattery.

Another aspect which is always criticised in a Magistrate, the bad quality of **procrastination**, i. e. to say if you go on deferring matter or adjourning the matter or do not deliver judgment within time. You are supposed to deliver judgment within time as per the Rules which have been circulated by the High Court and as per the Code of Civil Procedure as provided there in, that is different. But it is to be obeyed or if you are coming across a very complex matter there are some Judicial Officers who make out your way to adjourn the matter so that it goes as far as they are concerned. The burden is not on them. But my request to you if a compex problem come before you accept the challenge. Decide it. Your decision may be wrong. You see there is no judge who has never committed a mistake. Mistakes are bound to occur but if you procrastinate, if you defer or if you avoid, that would only imply that you are a judge who avoids. Let the problem be complex. You deal it according to your capacity. You are been endowed with certain capacities by God and some capacity which you have inculcated by your experience, by your effort. Apply whatever at your command and decide. Put an end to the controversy. Then superior courts are there. They will look into it. But if you feel scepticle or diffident to decide a complex matter you will be earning a bad name at the Bar. Here is a Magistrate who is diffident here is a judge who is not confident, here is a judge if you tell him the matter is complex "सर, इसमें बहुत टाइम लगेगा, ठीक है।" put up 10 days after. No, find out why should it take time. Therefore, when a situation comes leave up to it and don't try to defer it which would only affact your own reputation.

Last quality which you should try to possess, I have already said in the beginning, you have been given the divine duty to judge your fellow men. Bible says a man cannot be a judge of a man. But that duty has been given to you. When that duty has been given to you, it is a noble duty and this noble duty has to be performed by having faith in God and having faith in your conscience. Meaning to say when you decide a case or adjudicate a controversy **believe in God** that I am answerable to God and **I am answerable to my conscience** and none else. If you decide a controversy having faith in the God and **having faith in your conscience,** I am sure the decision may be wrong as per law but nobody will be in a position to point a finger at you. You will be a Magistrate with good reputation.

Today, I cannot wish you success, I can only wish you that all of you become judicial officers of this state with good reputation of which the Institution can be proud of.

Thanking you all.

अनुसंधान से निर्णय तक की प्रक्रिया

शैलेन्द्र सिंह नाहर, उपसचिव
विधि एवं विधायी कार्य विभाग,
मध्यप्रदेश शासन, भोपाल

श्री शैलेन्द्र सिंह नाहर, ने अनुसंधान प्रारंभ होने से प्रकरण के निराकरण तक न्यायालयों द्वारा प्रक्रिया संबंधी कार्यवाही किस प्रकार से करना चाहिए व किस प्रकार के सतर्कता रखते हुए सतत् रूप से अधीक्षण करना चाहिए, इस विषय में लेख लिखा है, जो प्रकाशित किया जा रहा है। जो न्यायिक दंडाधिकारी किसी सीमा तक अपेक्षित प्रक्रिया का पालन नहीं कर पाते अथवा ऐसी प्रक्रिया से उचित रूप से अवगत न हो तो उन्हें यह लेख मार्गदर्शन प्रदान कर सकेगा तथा जो न्यायिक अधिकारी ऐसी प्रक्रिया का पालन करते हैं तो उनके लिए यह लेख पुनरीक्षण के रूप में लाभदायक होगा। हरेक लेख में अपेक्षाएं होती हैं। व्यवहारिक धरातल पर प्रत्येक का पालन करना किसी सीमा तक संभव नहीं हो सकता है लेकिन प्रयत्न करने की सीमा तक संभव करने का लक्ष्य हमारा अपना होना चाहिए।

आशा है, उक्त लेख सभी के लिए पठनीय व मार्गदर्शक होगा। अधिक जानकारी के लिए पाठक वर्ग उनसे ही संपर्क कर सकते हैं।

संपादक

आरोपी के मजिस्ट्रेट के समक्ष उपस्थित होने से लेकर प्रकरण में निर्णय होने तक मैंने आपराधिक मामले को 6 अवस्थाओं में रखा है और इस दौरान हमें हर पल अग्नि परीक्षा देते हुए कभी पुलिस की युक्तियों से, कभी पक्षकारों की शिकायतों से, कभी बाबू कर्मचारियों के कृत्यों से, कभी एडवोकेट्स के क्रियाकलापों से, तो कभी अपनी नौकरी को बचाते हुए, गुजरना पड़ता है क्योंकि हमारी थोड़ी सी, अन्जाने में भी हुई, भूल का हमें क्या परिणाम भुगतना पड़ सकता है ये हमें इस पल मालूम नहीं होता है। इसलिए साथियो हमें कोशिश यही करना चाहिए कि आज के इस करिशमाई युग में हम हर पल ज्यादा से ज्यादा सावधानी बरतकर कार्य करें जिससे कम से कम तनावग्रस्त होकर इस छोटी सी जिन्दगी को गुजार सकें।

(1) गिरफ्तारी से पुलिस रिपोर्ट (चालान/खात्मा) पेश होने तक

1. दिनांक 18 दिसम्बर, 1996 को ***डी.के. बासू विरूद्ध बंगाल राज्य,*** (**1997 पार्ट। सुप्रीमकोर्ट केसेज 416**) वाले मामले में माननीय उच्चतम न्यायालय ने अभिरक्षा में होने वाली हिन्सा व अपराधों को रोकने के लिए जब तक कोई वैधानिक उपबन्ध नहीं बनते हैं तब तक के लिए गिरफ्तार या निरोध के उन सारे मामलों में

पुलिस अधिकारियों को किन बुनियादी आवश्यकताओं का अनुसरण करना चाहिए तथा उन आवश्यकताओं का पालन न करने वाले पुलिस अधिकारियों के खिलाफ क्या कार्यवाही करना चाहिए इस संबंध में अनुदेश जारी किए हैं जिसका टेलीविजन के माध्यम से कई दफा प्रसारण भी किया गया था लेकिन आज तीन साल गुजर गए है। इस तरफ हम लोगों में से किसी का ध्यान गया हो ऐसा प्रतीत नहीं होता है। मजिस्ट्रेट महोदय के समक्ष आपराधिक मामले का आरंभ वास्तव में उस वक्त होता है जब आरोपी को पुलिस गिरफ्तार करने के पश्चात रिमाण्ड हेतु पेश करती है। इस प्रक्रिया पर यह ध्यान देना चाहिए कि कहीं पुलिस ने अनावश्यक विलम्ब से तो आरोपी को पेश नहीं किया है। पुलिस में प्रायः देखा गया है कि ऐसी धारणा व्याप्तहै कि वह किसी भी व्यक्ति को गिरफ्तार करने के 24 घंटे के भीतर कभी भी मजिस्ट्रेट के समक्ष पेश कर सकती है, धारा 57 दण्ड प्रक्रिया संहिता में इस संबंध में उपबन्ध है किन्तु इस उपबन्ध के द्वारा प्रत्येक व्यक्ति को जो गिरफ्तार किया गया है, 24 घंटे तक हिरासत में रखने का आत्यांतिक अधिकार पुलिस अधिकारी को नहीं दिया गया है, यदि 24 घंटे तक मामले की परिस्थितियों में अभियुक्त को निरोध में रखना आवश्यक न हो तो उसे तुरन्त मजिस्ट्रेट के सामने पेश किया जाना चाहिए ***(1955 इलाहाबाद 138 स्टेट विरूद्ध राम औतार)।*** दण्ड प्रक्रिया संहिता की धारा 56, 57, तथा 167 (1) का अर्थ यह है कि जब तक पुलिस अधिकारी का मत यह न हो कि वह अन्वेषण 24 घंटे में ही पूर्ण कर लेगा उसे अभियुक्त को अविलम्ब मजिस्ट्रेट के समक्ष पेश कर देना चाहिए। ***(1964 मणिपुर 39 आर.के. चन्द्रसिंह वि. मणिपुर प्रशासन)।*** यदि पुलिस को आरोपी के गिरफ्तार होने के थोड़ी देर बाद यानि कि मानो कि एक घंटे पश्चात, यह विदित हो जाए कि विवेचना 24 घंटे में पूर्ण नहीं हो पाएगी तो पुलिस को अविलम्ब रिमाण्ड के लिए मजिस्ट्रेट के समक्ष आरोपी को पेश कर देना चाहिए। यह देखा गया है कि 24 घंटे पश्चात या उसके अन्दर ही पुलिस, मजिस्ट्रेट के समक्ष आरोपी को प्रस्तुत करती है उन 23 घंटो के हिसाब के बारे में कभी कोई प्रश्न उठता भी नहीं है और न उठाया जाता है।

(2) माननीय उच्चतम न्यायालय के द्वारा ***1980 में, 1980 सी.आर.एल.जे. 426 (निरंजन विरुद्ध प्रभाकर)*** वाले मामले में जब यह प्रतिपादित किया कि आरोपी यदि स्वयं न्यायालय के समक्ष उपस्थित है तो यह माना जाना चाहिए कि वह कस्टडी में है। तब से यह परम्परा शुरू हुई है कि अब आरोपी सीधे न्यायालय में आत्मसमर्पण करके जमानत का आवेदन प्रस्तुत कर रिहाई की प्रार्थना करता है और इस तरह से भी अब आपराधिक मामले की शुरूआत होने लगी है। यहां इस बात को ध्यान में रखने की जरूरत है कि वह व्यक्ति जो समर्पण कर रहा है उसके विरुद्ध वास्तव में अजमानतीय अपराध का अभियोग है या उस पर ऐसा सन्देह भी

है कि उसने अजमानतीय अपराध किया है? यदि मजिस्ट्रेट को पुलिस रिपोर्ट से या अन्यथा यह विश्वास हो जाए कि आरोपी के खिलाफ अजमानतीय अपराध का अभियोग है या शंका है तभी उसके समर्पण को माना जाना चाहिए उसके पहले नहीं तथा उसके पश्चात ही जमानत के आवेदन पर विचार करना चाहिए।

(3) धारा 167 द.प्र.सं. के तहत रिमाण्ड के समय आरोपी की उपस्थिति तथा केस डायरी की मामले से संबंधित प्रविष्टियों की एक प्रतिलिपि मजिस्ट्रेट के पास भेजा जाना आवश्यक है लेकिन इन दोनों बातों में से एक का तो कभी पालन ही नहीं होता है, पुलिस डायरी से संबंधित प्रविष्टियों की एक प्रतिलिपि न भेज कर पूरी केस डायरी ही मजिस्ट्रेट के समक्ष भेज देती है, जिसके अवलोकन के पश्चात उसे वापिस पुलिस को लौटा दिया जाता है तथा मजिस्ट्रेट महोदय के पास इस बात का कोई रिकार्ड नहीं रहता है कि वास्तव में पुलिस ने कौन सी केस डायरी तथा कितने रिकार्ड पर्चे सहित, वह केस डायरी रिमांड के वक्त पेश की थी और प्रविष्टियों की एक प्रतिलिपि न भेजने से केस डायरी में इन्टरपोलेशन की, उसके टेम्परिंग की उसके परिवर्तित होने की हमेशा संभावना बनी रहती है, इस संबंध में **ए.आई.आर. 1957 ए.पी. 561, 1964 मणिपुर 39 तथा 1973 सीआर.एल.जे. 869** अवलोकनीय है। यहां एक प्रश्न और गौर करने लायक है कि क्या बिना लिखित आवेदन या प्रार्थना के न्यायिक रिमाण्ड दिया जा सकता है। इस संबंध में **1987 सीआर.एल.जे. 489** माननीय पटना उच्च न्यायालय की पूर्ण पीठ का जो फैसला है वह अवलोकनीय है जिसके अनुसार बिना लिखित आवेदन या प्रार्थना के भी न्यायिक रिमाण्ड दिया जाना चाहिए। यहां रिमाण्ड के संबंध में, माननीय उच्चतम न्यायालय के द्वारा **1994 सु.को. 1447** में जो सिद्धान्त प्रतिपादित किया है, उसके संबंध में महत्वपूर्ण बात कहना चाहूंगा कि पहले 15 दिन तक रिमाण्ड की प्रकृति तो परिवर्तित हो सकती है यानि पहले 15 दिनों में आरोपी को न्यायिक निरोध से पुलिस निरोध में और पुलिस निरोध से न्यायिक निरोध में भेजा जा सकता है लेकिन 15 दिन के पश्चात सिर्फ आरोपी को न्यायिक निरोध में ही भेजा जायेगा। दूसरा यह भी देखा गया है कि आरोपी को रिमाण्ड के लिए पेश ना करने के बावजूद भी नियमित रूप से रिमाण्ड दे दिया जाता है जो कि अवैधानिक है। जब तक अपरिहार्य परिस्थिति/कारण न हो, आरोपी की उपस्थिति आवश्यक है। कृपया ***1993 सीआर.एल.जे. 102 (कर्नाटक) श्रीमती नूरजहां वि. स्टेट*** एवं **ज्योति 1996 जून पेज 17** देखें। आरोपी के हस्ताक्षर या निशानी अंगूठा आदेश पत्रिका में होना ही इस तथ्य का प्रमाण होता है कि आरोपी मजिस्ट्रेट महोदय के समक्ष व्यक्तिगत रूप से उपस्थित हुआ था। इसके अलावा यह भी ध्यान में रखने योग्य है कि आरोपी के मजिस्ट्रेट के समक्ष पेश होने के पश्चात् विवेचना पर पूर्ण

नियंत्रण रखने की शक्ति मजिस्ट्रेट की होती है। इस शक्ति का प्रयोग प्रायः नहीं किया जाता है इस संबंध में **1887 सीआर.एल. जे. 489 एफ.बी.** पठनीय है।

4. धारा 157 द.प्र.सं. के तहत संज्ञेय अपराध पंजीबद्ध होने की सूचना तुरन्त मजिस्ट्रेट को भेजी जाती है परन्तु उसकी प्राप्ति दिनांक एवं समय दोनों का कोई रख–रखाव अभी भी नहीं किया जाता है। इस संबंध में **'जोति' में 96 फरवरी पार्ट में पेज नं. 36** पर माननीय उच्च न्यायालय के द्वारा 1995 में जारी सरक्युलर को प्रकाशित किया है, जिस पर ध्यान देने की जरूरत है।

5. यदि किसी व्यक्ति की जब जमानत हो जाती है तो उस चालान पेश होने तक की बीच की तिथियों में उपस्थित होने के लिए कहीं–कहीं बाध्य किया जाता है जो कि माननीय उच्चतम न्यायालय के द्वारा ***1982 में ए.आई.आर. 1982 एस.सी. 1943 फ्री लीगल एंड विरूद्ध स्टेट*** के मामले में प्रतिपादित सिद्धान्त के अनुसार स्वस्थ परम्परा नहीं है।

6. प्राइवेट कंप्लेन्ट संज्ञेय अपराध होने पर उन्हें प्रायः 156 (3) द.प्र.सं. के तहत विवेचना हेतु पुलिस को भेजा जाता है। लेकिन पुलिस इस विवेचना में काफी विलम्ब करती है जिससे ऐसे इस्तगासों को धीरे धीरे अंबार हो जाता है। परिवादी न्यायालय के चक्कर खा–खाकर परेशान हो जाते हैं। ऐसी इस्तगासे को विवेचना हेतु भेजने के साथ पुलिस को यह भी निर्देश दिए जाना चाहिए कि मामले का पंजीबद्ध करके तथा इस्तगासा को एफ.आई.आर. की तरह मानकर फलां–फलां समय में विवेचना पूर्ण करके रिपोर्ट पेश की जावे। तभी इस विलम्बित प्रक्रिया को थोड़ा बहुत नियंत्रित किया जा सकता है। वैसे इस संबंध में **जोति 98 के फरवरी 49 तथा जोति 1999 पेज 156** में प्रकाशित न्याय दृष्टांत भी पठनीय है।

7. धारा 164 द.प्र.सं. के तहत कोई व्यक्ति स्वयं आवेदन देकर या प्रार्थना करके अपना कथन मजिस्ट्रेट को नहीं दे सकता है। इस संबंध में हाल ही में माननीय उच्चतम न्यायालय ने **1999 सुप्रीम कोर्ट टूडे 379 (छटा भाग)** में यह ठहराया है कि कोई भी व्यक्ति ऐसा आवेदन या निवेदन नहीं कर सकता है।

8. विवेचना के प्रक्रम पर सुपुर्दगी का आवेदन धारा 451–57 द.प्र.स. के अन्तर्गत दिया जाता है जो कि आपराधिक नियम एवं आदेश के नियम 575 के तहत एम.जे.सी. के रूप में पंजीबद्ध होना चाहिए लेकिन प्रायः यह देखा गया है कि इस आवेदन को एम.जे.सी. में पंजीबद्ध नहीं किया जाता है।

2. आरोप पत्र प्रस्तुत होने के समय

1. जब पुलिस के द्वारा धारा 173 द.प्र.सं. के तहत रिपोर्ट पेश की जाती है तो प्रायः यह तो देखा जाता है कि खात्मा रिपोर्ट की सूचना तो उस व्यक्ति को दे दी जाती

है जिसने प्रथम सूचना लिखाई थी परन्तु चालान (चार्जशीट) पेश करने की सूचना उस व्यक्ति को, क्या नहीं दी जाना चाहिए, क्या उसे यह कहने का अधिकार नहीं है कि उसके मामले में पुलिस ने ढंग से विवेचना नहीं की है या क्या उसे उस रिपोर्ट को अग्रिम विवेचना हेतु भिजवाने का मौका नहीं देना चाहिए। इस संबंध में माननीय उच्चतम न्यायालय का न्यायिक दृष्टांन्त **ए.आई.आर. 1985 सु.कोर्ट 1285** अवलोकनीय है जिसमें यहां तक व्यवस्था दी है कि उस व्यक्ति को चार्जशीट की एक प्रति भी देना चाहिए।

2. आरोपपत्र या परिवाद, अवधि बाह्य तो नहीं है, इस तथ्य की ओर ध्यान न्यायालय का बहुत समय बाद आता है। जबकि माननीय उच्च न्यायालय ने 1976 में ही **एम. पी.एल.जे. 1976 पेज 559** में यह सिद्धान्त प्रतिपादित किया है कि जब कभी भी आरोप पत्र या परिवाद पेश होता है, पहले यह देखना चाहिए कि धारा 468 द.प्र. सं. आकर्षित होती है या नहीं, यदि होती है तो केस रजिस्टर नहीं करना चाहिए तथा पहले अभियोजन या परिवादी को नोटिस देकर सुनकर तथा न्यायालय को संतुष्ट होने पर ही केस को पंजीबद्ध करना चाहिए।

3. चार्जशीट के अन्तर्गत धारा 173 द.प्र.सं. प्रस्तुत किए जाते समय, धारा 170 द.प्र. सं. के तहत करते समय पुलिस, मुद्देमाल प्रायः साथ में प्रस्तुत नहीं करती है। कहीं–कहीं यह भी देखा गया है कि पूरा विचारण समाप्त हो जाता है तब तक मुद्देमाल ही प्रस्तुत नहीं हो पाता है जिसका परिणाम कभी–कभी दोष मुक्ति ही होता है। इसी प्रकार सभी आरोपी को दी जाने वाली आरोपपत्र की नकलें, अधूरी, अस्पष्ट तथा अपठनीय दे दी जाती हैं जिसकी वजह से प्रकरण महिनों तक, कभी–कभी सालों तक आगे नहीं बढ़ पाता है तथा इसी प्रकार पुलिस के द्वारा आरोपपत्र के साथ, कभी की फरियादी या उसके गवाहों के द्वारा न्यायालय में साक्ष्य हेतु उपस्थित होने बाबत दिए गए बन्धपत्र पेश नहीं किए जाते हैं जिसकी वजह से इस बात की संभावना रहती है कि न्यायालय में फरियादी या उसके वे गवाह, जिसके पुलिस ने धारा 161 द.प्र.सं. के कथन लिए हों, उनकी जगह कोई दूसरा ही न्यायालय में आकर गवाही दे जाए जिस पर रोक गवाह के हस्ताक्षर कराके उसके हस्ताक्षरित बांड से तुलना करके हो सकती है। उपरोक्त तीनों बातों पर मजिस्ट्रेट महोदय भी ध्यान नहीं दे पाते हैं क्योंकि आरोपपत्र प्रायः निष्पादन लिपिक को दे दिए जाते हैं जो मजिस्ट्रेट महोदय से काफी दूर नीचे टेबिल पर बैठा रहता है और पुलिस वर्ष अंत में दिसम्बर के महिने के आखिर में जो चालान पेश करती है, उन पर तो विशेष ध्यान देने की जरूरत होती है। अतः आवश्यक है कि अरोपपत्र प्रस्तुत होनेपर उसकी जांच ठीक से कर ली जावे।

3. अपराध का संज्ञान लेते समय

1. पुलिस पेपर्स के आधार पर यदि आरोपपत्र प्रस्तुत होने पर मजिस्ट्रेट को यह लगता है कि पुलिस ने किसी आरोपी को छोड़ दिया है तो धारा 190 (1) द.प्र.सं. के तहत उस व्यक्ति को भी आरोपी बनाया जा सकता है जिसे पुलिस ने छोड़ दिया है इस संबंध में **जोति 1995 के दिसम्बर पार्ट पेज नं. 2 तथा 1992 जे.एल.जे. 277 अतिबलसिंह विरुद्ध स्टेट, 1994 डब्ल्यू एन द्वितीय पार्ट देव वि. शासन ए.आई. आर. 67 सु.को. 1167, 188 (1) वीकली नोट नं. 5ए ए.आई.आर. 1987 सु. को. 773 1985 (1) वीकली नोट 248, 1998 (II) वीकली नोट 226 तथा 1990 (I) वीकली नोट 218** अवलोकनीय है। ऐसा मजिस्ट्रेट द्वारा सुनवाई योग्य प्रकरणों में ही होगा।

2. धारा 206 द.प्र.सं. तथा 208 मोटर वाहन अधि. में किसी आरोपी को उसकी स्वयं की उपस्थिति से विमुक्ति देने तथा उसके अधिवक्ता के जरिये उपस्थित होने का निर्देश देते हुए समन जारी करने का प्रावधान है लेकिन इस उपबन्धों का पालन नहीं के बराबर होता है इसी प्रकार छोटे अपराध जिसमें रु. 1000/– का अर्थदंड का प्रावधान है उस ओर भी ध्यान देना चाहिए।

3. धारा 299 द.प्र.सं. के महत्वपूर्ण प्रावधान का पालन उचित रूप से होना चाहिए। होता यह है कि आरोपी के फरारी में आरोपपत्र प्रस्तुत होने पर समन्स निर्वाहकर्ता के कथन लेकर आरोपी को फरार घोषित करके तथा उसके विरुद्ध गैर मियादी गिरफ्तारी वारन्ट जारी करके प्रकरण को अभिलेखागार में भेज दिया जाता है लेकिन जो सबसे महत्वपूर्ण उपबन्ध है उसका पालन नहीं किया जाता है अर्थात अभियोजन साक्षी, जिन्हें अभियोजन साक्ष्य हेतु पेश करना चाहता है या जो पेश होना चाहिए उन गवाहों के कथन लिए बगैर या मौका दिए बगैर उन प्रकरणों को अभिलेखागार में भेज देना, अवैधानिकता है। आज जिस प्रक्रिया को प्रायः पालन किया जा रहा है उसके अनुसार, भविष्य में कोई चालाक आरोपी आराम से कितना भी गंभीर अपराध करके शर्तिया बरी हो सकता है।

4. यह जरूरी नहीं है कि पुलिस ने यदि धारा 307 भा.द.वि. में आरोप पत्र प्रस्तुत किया हो तो मजिस्ट्रेट उसे धारा 209 द.प्र.सं. के तहत उपार्पित ही कर दे, यदि मजिस्ट्रेट को प्रतीत होता है कि मामला अनन्यतः सेशन न्यायालय के द्वारा विचारणीय मामला नहीं है और धारा 324 भा.द.वि. का मामला है तो उसे उस प्रकरण को उपार्पित करना आवश्यक नहीं है। इस संबंध में ***1993 (सप्लिमेंट) (2) सु.को.के. 121 रिजवान वि. वकार एहमद*** का दृष्टांत देखें। **ज्योति 1996 जून भाग पृष्ठ 17** पर प्रकाशित हुआ है।

4. चार्ज या अपराध के विवरण की स्टेज पर

1. यह देखा गया है कि कभी कभी कोई विचारण बिना आरोपी के अधिवक्ता के ही समाप्त हो जाता है और आरोपी को सजा हो जाती है जबकि माननीय उच्चतम न्यायालय ने **ए.आय.आर. 986 एस.सी. 991** में यह प्रतिपादित किया है कि यदि आरोपी बिना अधिवक्ता के उपस्थित होता है तो यह न्यायाधीश का कर्तव्य है कि वह आरोपी से पूछे कि उसका कोई अधिवक्ता है या नहीं और यदि आरोपी कहता है कि वह अपनी गरीबी के कारण अधिवक्ता करने में असमर्थ है तो उसे यह बताना चाहिए कि शासकीय खर्चे पर निःशुल्क विधिक सहायता प्राप्त करने का वह अधिकारी है और उपरोक्त तथ्य अवगत कराने के पश्चात भी वह अभिभाषक नियुक्त कराना नहीं चाहता है तभी कार्यवाही आगे बढ़ सकती है। इस संबंध में माननीय उच्चतम न्यायालय ने यहां तक निर्धारित किया है कि रिमाण्ड की स्टेज से ही, वह यह सुविधा पाने का अधिकारी है, देखें **1981 सु. को. 928** इस संबंध में माननीय मुख्य न्यायाधिपति की ओर से भी हम लोगों के मार्गदर्शन हेतु अनुदेश जारी करवाए गए है जिनका प्रकाशन **1998 जोति जनरल के अक्टूबर पार्ट में पेज नं. 46** पर हुआ है।
2. जहां एक से अधिक आरोपी किसी प्रकरण में हों तो प्रायः यह देखा गया है कि उनमें से एक के अनुपस्थित रहने पर प्रकरण में स्थगन हो ही जाता है और यह स्थगन लगातार कई महिनों तक चलता रहता है जबकि विशेषतः वारन्ट या समन मामलों मे चार्ज या अपराध का विवरण, आरोपी को, उसके अधिवक्ता के माध्यम से भी पढ़कर सुनाया एवं समझाया जा सकता है। इस संबंध में ***1957 सी. आर.एल.जे. 672, 1959 एम.पी. 150 एवं 91 एम.पी.एल. जे. 85 श्री किशन विरूद्ध शासन*** तथा **जोति जनरल के 1995 के दिसम्बर पार्ट का पेज नं. 5** एवं **ज्योति एप्रिल 2000 पृष्ठ 143 से 145** पठनीय है।
3. चार्ज या अपराध का विवरण पढ़कर सुनाए जाने पर प्रायः सारे आरोपी उपस्थित रहते हैं यदि उसी दिन उन आरोपियों के द्वारा इस आशय का आवेदन न्यायालय में अलग से ले लिया जाय कि यदि वे साक्ष्य की दिनांक पर किसी कारणवश न्यायालय में उपस्थित रहने में असमर्थ होते हैं तो वे अपने अधिवक्ता को आने वाले साक्षियों का कूट परीक्षण करने के लिए पूरा अधिकार देते हैं तो इससे प्रकरण के अनावश्यक विलम्ब को या स्थगन को रोका जा सकता है, प्रायः यह देखा गया है कि जेल से कई बार आरोपी लॉ एण्ड आर्डर की वजह से या अन्य कारण से उपस्थित नहीं किए जाते हैं और गवाह न्यायालय में उपस्थित रहते हैं लेकिन आरोपी की तरफ से कोई लिखित में निर्देश न होने की वजह से या लिखित निर्देश न होने का बहाना करके, स्थगन अधिकार स्वरूप ले लिया जाता है।
4. चार्ज या अपराध का विवरण पढ़कर सुनाए जाने के पश्चात प्रकरण अभियोजन

साक्षीगण के परीक्षण के लिए नियत किया जाता है और अभियोजन के द्वारा बिना निवेदन के ही साक्षियों को कही–कही आहूत करने का आदेश दे दिया जाता है जबकि धारा 242 (2) तथा 254 (2) द.प्र.सं. तथा 230 द.प्र.सं. के तहत अभियोजन की तरफ से आवेदन तो आवश्यक है। आदेशिका में इस प्रकार के निवेदन का खुलासा करना चाहिए।

5. साक्ष्य के प्रक्रम पर

1. यदि मुद्देमाल का पर्चा, साक्ष्य दिनांक के पूर्व संध्या के मुद्देमाल नाजिर को भिजवा दिया जाने की आदत पड़ जाये और प्रत्येक दिन बोर्ड डायरी पर हस्ताक्षर करते वक्त बाबू से यह पूछने की आदत पड जाएगी कि आज के प्रकरणों का मुद्देमाल आया कि नहीं, तो हो सकता है कि प्रकरण में अनावश्यक स्थगन को कुछ सीमा तक रोकने में हम सफल हो सकते हैं।
2. अभियोजन के उपस्थित गवाहों को बिना परीक्षण के नहीं लौटाना है, इस बात पर हमेशा जोर दिया जाता है। इस संबंध में अभी हाल ही में माननीय उच्चतम न्यायालय ने धारा 309 द.प्र.सं. का कड़ाई से पालन करने का आदेश भी दिया है लेकिन आरोपी जब तक कि सारी स्थिति उसके नियंत्रण में नहीं आ जाती उसकी यही कोशिश हमेशा रहती है कि प्रकरण में स्थगन होता रहे और इसके लिए वह कई हथकण्डों को अपनाता है, ऐसे में उपस्थित गवाहों को आरोपी उपस्थिति में परीक्षण अभियोजन द्वारा करा लेना चाहिए तथा आरोपी स्वयं को गवाह से प्रतिपरीक्षण का मौका देना चाहिए जिसका हवाला आदेश पत्रिका तथा साक्ष्य की शीट पर कर देना चाहिए साथ ही आरोपी को इस बात से भी अवगत करा देना चाहिए कि भविष्य में यदि गवाह को कूट परीक्षण के लिए बुलाने की इजाजत दी जाती है तथा यह पाया जाता है कि गवाह न्यायालय की पहुंच के बाहर हो जाता है या वह मर जाता है या उसे बड़ी मुश्किलों से बुलाना संभव होगा तो यह उसकी (आरोपी) ही रिस्क होगी अर्थात यदि भविष्य में किसी कारणवश गवाह का कूट परीक्षण इजाजत देने के बाद भी नहीं हो पाता है तो उसका मुख्य परीक्षण ही साक्ष्य में पढ़ लिया जाएगा, इस संबंध में **जोति जनरल 1996 के अगस्त पार्ट में पेज नं. 25** में प्रकाशित निर्णय अवलोकनीय है।
3. किसी कारण से स्थगित हुए प्रकरण में उस दिन आपराधिक मामलों में उपस्थित साक्षीगण को (शासकीय सेवक को छोड़ कर) वास्तव में पाबन्द नहीं किया जाता है, अभिलेख पर ऐसा कोई प्रमाण भी नहीं होता है जिससे यह विदित हो सके कि साक्षीगण को वास्तव में पाबंद किया गया है। इस संबंध में दण्ड प्रक्रिया संहिता की धारा 88 के अन्तर्गत बन्धपत्र उपस्थिति बाबत लिए जाने का प्रावधान है जो लिए जाने चाहिए जिससे अनावश्यक विलम्ब को रोका जा सकता है।
4. हम लोगों में से बहुत से न्यायिक अधिकारी ऐसे भी होते हैं जिन्हें स्वयं को यह ज्ञात

होता है कि वे पूरे साल में वे कब कब अवकाश पर रहेंगे, ऐसे भी हम लोगों में से होंगे कि जिन्हें 15 दिन से 1 माह पूर्व, यह स्वयं को मालूम होता है कि वह आने वालों 15 दिनों से एक महिने में कब अवकाश पर रहेंगे, ऐसी स्थिति में हमें प्रकरण साक्ष्य हेतु नियत ही नहीं करना चाहिए और यदि कर भी लिए गए हों तो शासकीय अंधिवक्ता को बुलवा कर विशेषतया बाहर से आने वाले गंवाहों को रेडियो मैसेज करवा कर या किसी भी अन्य प्रकार से उन्हें न्यायालय में उपस्थित न करने बाबत सूचना भिजवाना चाहिए जिससे गवाहों को न्यायालय से जो बड़ी दूर से आकर निराश और परेशान होकर लौटते हैं उन्हें इस तरह से न लौटना पड़े, इससे शासकीय धन का अपव्यय भी रुकेगा।

5. साक्ष्य के प्रक्रम पर आदेश पत्रिका को देखने से कई बार यह स्पष्ट नहीं होता है कि अभियोजन के द्वारा कितने गवाहों को बुलाया गया है और उनके समन/वारंट/ कौनसी तारीख कौं जारी हुए हैं यदि आदेश पत्रिका से संबंधित क्लर्क दाहिनी ओर के मार्जिन में इतना भर लिख दे कि फलां फलां नम्बर के गवाह का समन/वारंट फलां फलां तारीख को जारी किया गया तो उससे अगली आदेश पत्रिका को लिखाने में पीठासीन अधिकारी को सुविधा हो जाएगी, जहां तक समन सिर्फ पुलिस अधिकारी के द्वारा तामील कराए जाने की वजह से आने वाली समस्या का प्रश्न है, इस संबंध में जो नियम बने हैं जो कि **जोति जनरल के 1999 के पेज 331** पर छपे हैं उस अनुसार किसी भी आदेशिका वाहक या लोक सेवक के भी समन तारीख के लिए अब दिए जा सकते हैं। जिले के बाहर के गवाहों को तलब करने के लिए धारा 67 एवं 69 द.प्र.सं. के प्रावधानों का पालन प्रायः नहीं के बराबर होता है जो कि यदि पालन हो तो अनावश्यक विलम्ब तथा अनियमितता होने से रोका जा सकता है।

6. साक्ष्य के प्रक्रम पर कभी कभी आरोपी के अनुपस्थित हो जाने से उसके खिलाफ गिरफ्तारी वारंट जारी हो जाता है परन्तु उस गिरफ्तारी वारंट का निष्पादन हो, उसके पूर्व किसी भी वक्त आरोपी के द्वारा न्यायालय में आत्मसमर्पण करके जो आवेदन दिया जाता है उसकी नकल शासकीय अधिवक्ता को हर प्रकरण में नहीं दी जाती है और आरोपी का गिरफ्तारी वांरट निरस्त कर दिया जाता है और प्रकरण पुनः साक्ष्य के लिए नियत भी कर दिया जाता है जबकि शासकीय अधिवक्ता को इस बात का ज्ञान ही नहीं रहता है कि प्रकरण पुनः साक्ष्य के लिए नियत हो गया है अतः मेरे मत में शासकीय अधिवक्ता को आवेदन की नकल देकर ही आदेश देना चाहिए तथा वांरट निरस्त होने पर उसकी सूचना तुरंत संबंधित थाने को भेजी जानी चाहिए तथा वारंट अनिर्वाहित मंगाना चाहिए तथा उस आदेश की एक प्रति आरोपी को भी देना चाहिए ताकि उसकी पुनः गिरफ्तारी की संभावना क्षीण हो जाए।

7. शासकीय सेवक, जैसे विवेचना अधिकारी या चिकित्सकीय साक्ष्य के न्यायालय में साक्ष्य हेतु उपस्थित रहने पर कभी कभी उनके कथन लेना संभव नहीं होता है और उन्हें उस वक्त उन्मुक्त कर दिया जाता है यदि इन गवाहों को उन्मुक्त करते समय उन्हें यह निर्देश दे दिया जाए कि वे इस प्रकरण में, जिसमें वे उपस्थित हुए हैं, उनके कथन लिए जाने के पूर्व कही और स्थानान्तरित हो जाते हैं तो वे न्यायालय को लिखित में पता लगाने में, जो काफी समय बर्बाद होता है, उस समय की बर्बादी भी बच जाएगी और इन गवाहों के कथन भविष्य में कराने में जो आज दिक्कतें पैदा होती है, वे दिक्कते कम हो सकती हैं।
8. यदि आरोपी शुरू से जेल में है और अपराध अजमानतीय हो तो, यदि उस मामले में साक्ष्य लेने के लिए नियत प्रथम तारीख से साठ दिन की अवधि के अन्दर विचारण पूरा नहीं होता है तो वह आरोपी जमानत पाने अधिकारी हो जाता है ऐसा प्रावधान 437 (6) में है।

6. निर्णय के प्रक्रम पर

1. यदि एक से अधिक आरोपी किसी प्रकरण में है और यदि निर्णय सुनाए जाने के दिनांक को उनमें से एक या अधिक अनुपस्थित हो जाता है तो अनावश्यक विलम्ब से बचने के लिये धारा 353 (6) के परन्तुक के तहत निर्णय अनुपस्थिति में भी सुनाया जा सकता है।
2. आरोपी को दोषसिद्ध ठहराए जाने के पश्चात यदि न्यायाधीश धारा 325 द.प्र.सं. या 360 द.प्र.सं. के प्रावधानों के तहत कार्यवाही नहीं करता है तो ही आरोपी को दण्ड के प्रश्न पर सुने जाने का प्रावधान है।
3. प्रायः निर्णय पारित करते समय जप्त मुद्देमाल का विधिवत निराकरण का आदेश दिया जाना चाहिए। यदि आदेश दे भी दिया जाए तो मुद्देमाल का पर्चा संबंधित नाजिर के पास पहुंचना चाहिए।
4. धारा 428 द.प्र.सं. के तहत आरोपी पूर्व में भोगी गयी निरोध अवधि का कारावास के दण्डादेश के विरुद्ध समायोजित किए जाने की पात्रता रखता है लेकिन इस संबंध में कभी–कभी निर्णय में मौन रहता है। निरोध प्रमाण पत्र परिपत्र क्रमांक 4742 दिनांक 22.5.75 **जोति जनरल 95 दिसम्बर पेज 15 से 17 तथा निर्णय 1999 जोति जनरल में पेज नं. 373** में प्रकाशित हुआ है। प्रायः इस प्रकार प्रारूप तैयार नहीं किया जाता है जिससे यह गणना करते में काफी असुविधा होती है कि आरोपी कितने दिनों तक निरोध में रहा इसके अलावा सजा वारंट भी विधि अनुसार तैयार कर रिकार्ड में नहीं रखा जाता है।

FOLLOW THE PROCEDURE AND SUCCESS WILL FOLLOW YOU

मुस्लिम विधि में सुन्नी विधि के अनुसार उत्तराधिकार

रमाशंकर प्रसाद, व्यवहार न्यायाधीश
बालाघाट (म.प्र.)

श्री रमाशंकर प्रसाद, व्यवहार न्यायाधीश, बालाघाट ने एक लेख मुस्लिम विधि के अंतर्गत उत्तराधिकार में प्राप्त संपत्ति के संबंध में लिखा है जो यहां प्रस्तुत किया जा रहा है। उनके अनुसार मुस्लिम विधि, लेखक एस.के. जैन की पुस्तक में बताए विवरण को ध्यान में रखते हुए तथा कुछ उदाहरण उन्होंने स्वयं देकर तथा कुछ आधार उक्त पुस्तक में दिए गए उदाहरणों को बनाया गया।

लेख अध्ययन योग्य है व यदि पाठकों को उक्त लेख के संबंध में अतिरिक्त जानकारी की आवश्यकता हो तो श्री रमाशंकर प्रसाद से ही संपर्क कर सकते हैं।

संपादक

मुस्लिम विधि में उत्तराधिकार एक गणित है और सभी वंशज एवं अवशिष्ट उत्तराधिकार का अंश निश्चित है इसके लिए मुस्लिम विधि को स्पष्ट किया गया है। कब अंशधारी कितना अंश प्राप्त करेंगे, कब अवशिष्टधारी कितना अंश प्राप्त करेंगेः–

संपत्ति के विभाजन में मुख्यतः दो सिद्धान्त प्रमुख भूमिका निभाते हैं:–

1. वृद्धि का सिद्धान्त।

2. रद्द का सिद्धान्त।

1. **वृद्धि का सिद्धान्त** - जब अंशधारियों को बंटवारा करने के पश्चात अंशों का योग ज्यादा हो जाता है जैसे 21/20 अर्थात 1/20 अंश अधिक बंटवारा हो जाता है। दूसरे शब्दों में जब पूर्णांक से ज्यादा का विभाजन हो जाता है तो वृद्धि के सिद्धान्त के अनुसार उसको उसी अनुपात में कम करके पूर्णांक से अंश को बराबर कर दिया जाता है जिसके लिए पूर्णांक बढ़ाकर उतना कर दिया जाता है, जितना अंश होता है अर्थात 21/21 योग।

उदाहरण :एक सुन्नी व्यक्ति एक पत्नी, पिता, भाई, एक पुत्री, एक पुत्र छोड़ कर मरता है और इसके पास दो सौ रूपये हैं इसे विभाजन करना है।

1. भाई को कोई अंश प्राप्त नहीं होगा क्योंकि मृतक का पिता एवं पुत्र जीवित है।

शेष में – पत्नी – 1/8
पिता – 1/6
} ये दोनों अंशधारी के रूप में यह अंश प्राप्त करेंगे।

अब अवशिष्ट के रूप में पुत्री– 1/2
तथा पुत्र, पुत्री के अंश का दुगुना 2/2

इस प्रकार– पत्नी 1/8, पिता 1/6, पुत्री 1/2 पुत्र 2/2 अब अंश समान करने के लिए सभी अंशों को जोड़ा जावेगा।

1/8 + 1/6 + 1/2 + 2/2

चूंकि नीचे का अंश समान नहीं है। अतः नीचे के अंक को समान करने के लिए इस पद्धति का सहयोग लेंगे।

2	8, 6, 2, 2
2	4, 3, 1, 1
2	2, 3, 1, 1
3	1, 3, 1, 1,
1	1, 1, 1, 1

3 x 2 x 2 x 2 = 24

अब नीचे का अंश समान हो उसका अंक 24 हो गया है। तो 24 से 1/8 का भाग देंगे = 3/24 आवेगा।

इसी प्रकार 24 से 1/6 का भाग देंगे तो = 4/24 आवेगा।

24 से 1/2 का भाग देंगे तो = 12/24 आवेगा।

24 से 2/2 का भाग देंगे तो = 48/2 या 24/24 आवेगा।

इसी प्रकार सभी अंशों का योग निकल जावेगा।

3/24+4/24+12/24+24/24 = 43/24

अब अंश ज्यादा वितरित हो गया है। अतः वितरित अंश को उसी अनुपात में कम करने के लिए नीचे का अंश बढ़ाकर ऊपर के अंश के बराबर कर दिया जावेगा अर्थात 43/43 =1

इस पद्धति को वृद्धि का सिद्धान्त कहते हैं अब दो सौ रूपये का बंटवारा निम्नानुसार होगाः–

पत्नी –	3/43 x 200 अर्थात भाग देने पर यह पत्नी का अंश होगा।	14.00 रुपये आवेगा
पिता –	4/43 x 200 अर्थात भाग देने पर यह पिता का अंश होगा	18.60 रुपये आवेगा
पुत्री –	12/43 x 200 अर्थात भाग देने पर यह पुत्री का अंश होगा।	55.80 रुपये आवेगा
पुत्र –	24/43 x 200 अर्थात भाग देने पर यह पुत्र का अंश होगा।	111.60 रु. आवेगा
		200.00

2. **रद्द का सिद्धान्त**- इस सिद्धान्त का सहयोग तब लिया जाता है जब ऊपर का अंश नीचे के अंश से कम रहता है।

उदाहरण - सुन्नी व्यक्ति अपनी मां, पत्नी एवं एक पुत्री को छोड़ कर मरता है –

पत्नी– 1/8 मां 1/6, पुत्री 1/2

योग करने के लिए

1/8+1/6+1/2 =

2	8, 6, 2
2	4, 3, 1
2	2, 3, 1
3,	1, 3, 1
	1, 1, 1

2 x 2 x 2 x 3 = 24

पत्नी – 1/8 x 24 = 3/24 अंश पत्नी का होगा।

मां – 1/6 x 24 = 4/24 अंश मां का होगा।

पुत्री – 1/2 x 24 = 12/24 अंश पुत्री का होगा।

इस प्रकार योग करने पर 3/24+4/24+12/24 = 19/24

अर्थात 5/24 अंश शेष बचा रहता है।

इसी अंश को वितरित करने का सिद्धान्त रद्द का सिद्धान्त कहलाता है।

अब 5/24 अंश का वितरण सिर्फ मां एवं पुत्री के मध्य होगा क्योंकि पत्नी का अंश निश्चित है उसे बढ़ाया नहीं जा सकता–

5/24 को 1/6 तथा 1/2 के मध्य विभाजित करना है जिसके लिए निम्नलिखित पद्धति उपयोग में लाया जावेगा –

मां का अंश एवं पुत्री के अंश को पहले जोड़ा जावेगा –

$$1/6+1/2 = 1/6+3/6 = \frac{4}{6} = \frac{2}{3}$$

अब कुल अंश 2/3 भाग में पुत्री का अंश 1/2 है।

तो 5/24 भाग में पुत्री का भाग होगा– $\frac{1/2 \times 5/24}{2/3} = \frac{5 \times 3}{48 \times 2} = \frac{5}{32}$

5/24 में पुत्री का अंश 5/32 है,

तो कुल अंश 5/32 + 1/2– 5/32 + 16/32 = 21/32

पुत्री को अपने पिता की कुल संपत्ति में 21/32 अंश मिलेगा।

अब मां का अंश निकाल लेते हैं –

जिसके लिए 5/24 – 5/32

2	24, 32
2	12, 16
2	6, 8
2	3, 4
2	3, 2
2	3, 1
3	1, 1
1	1, 1

2 x 2 x 2 x 2 x 2 x 3 = 96

अब– 5/24x96 का भाग देंगे = 20/96 तथा 15/96

तथा – 5/32x96

अब 20/90 से 15/90 को घटा देने पर अंश आयेगा 5/96

अब 5/96 अंश 5/24 से मां को प्राप्त होगा

तो कुल अंश 1/6+5/96 = 16/96+5/96 $= \frac{21}{96} = \frac{7}{32}$

अर्थात कुल संपत्ति पर मां का अंश होगा– 7/32

अब बची पत्नी तो पत्नी का अंश निकालने के लिए पुनः योग करना होगा

पत्नी– 1/8 पुत्री 21/32+ मां 7/32

8	8, 32, 32
4	1, 4, 4
	1, 1, 1

8x4–32

अब पत्नी का अंश होगा – 1/8x32 = 4/32 भाग

पुत्री का अंश होगा – 21/32x32 = 21/32 भाग

मां का अंश होगा – 7/32 x 32 = 7/32 भाग

इस प्रकार सभी भाग का अंश होगा–

4/32+21/32+7/32 = 32/32 = 1

अब मान लीजिए सुन्नी व्यक्ति की मृत्यु के समय 200 रुपये थे तो;

4/32x200 = 25.00 रुपये पत्नी को

21/32x200 = 131.25 रुपये पुत्री को

7/32x200 = 43.75 रुपये मां को

200.00

इस प्रकार हर एक को हिस्सा प्राप्त होगा।

धारा 257 मध्यप्रदेश भू राजस्व संहिता
सिविल न्यायालय की अधिकारिता

विजय कुमार सिंह,
व्यवहार न्यायाधीश वर्ग-2,
हरदा, जिला-होशंगाबाद

श्री विजय कुमार सिंह ने मध्यप्रदेश भू राजस्व संहिता की धारा 257 एवं व्यवहार न्यायालय की अधिकारिता के संबंध में संक्षिप्त विवरण टीप रूप में प्रस्तुत किया है और सीमित जानकारी को एकत्र करके इस पत्रिका के माध्यम से प्रकाशन हेतु भेजा है। आशा है प्रारंभिक स्तर की अल्प जानकारी उपयोगी होगी। इस आधार से विशिष्ठ जानकारियाँ एकत्र करने व विषय की तैयारी करने में सहायता होगी।

लेख के संबंध में अधिक जानकारी हेतु सीधे लेखक से ही पत्र व्यवहार कर जानकारी प्राप्त कर सकते हैं

संपादक

नोट : म.प्र. भू.रा.सं. 1959 में वर्णित सिविल न्यायालयों मे पेश किये जाने वाले दांवों के संबंध में विभिन्न धाराओं में उल्लेक्षित उनके आशय के संदर्भ में समीक्षा, जिसका आधार मुख्य रूप से दावा किये जाने अथवा प्रारंभ में पोषणीयता के विचारण के समय किया जा सकता है कि क्या वाद संस्थित हो सकता है अथवा नहीं।

1. धारा 57 समस्त भूमियों पर राज्य का स्वामित्व और सिविल वाद तथा उसकी परिसीमा :-

यदि उपधारा (3) :– उपधारा (3) क) को छोड़कर उपखण्ड अधिकारी के आदेश से व्यथित होकर कोई व्यक्ति एक वर्ष के भीतर सिविल वाद ला सकता है, यदि वह संहिता की धारा 44 तथा 50 के अधीन उपखण्ड अधिकारी के आदेश के विरूद्ध अपील या पुनरीक्षण कर्ता है तो उसकी परिसीमा की गणना उस आदेश की तारीख से होगी, लेकिन यदि उपखण्ड अधिकारी ने किसी व्यक्ति का स्वत्व मान लिया है तब परिसीमा की गणना उपखण्ड अधिकारी के आदेश दिनांक से होगी। (***म.प्र. राज्य वि. ग्यारसी राम 1993 रा.नि. 113 उच्च न्यायालय***)

2. धारा 59 (I) जिन प्रयोजन के लिए भूमि उपयोग में लाई जाये उसके अनुसार भू राजस्व में फेर फार सिविल वाद वर्जित है :-

धारा 257 म.प्र. भू रा. संहिता के खण्ड (क) द्वारा भूमि के उपयोग के संबंध में राजस्व न्यायालय द्वारा पारित आदेश के संदर्भ में सिविल सूट वाद रहेगा।

3. धारा (III) सिविल न्यायालयों की अधिकारिता

हक के संदर्भ में घोषणा का सिविल वाद तीन वर्ष की परिसीमा के अन्दर संस्थित किया जावेगा। (***सोनाबाई विरूद्ध वैशाखनी बाई 1982 रा.नि. 292***) अतः सिविल वाद लाया जा सकता है। (***सबल विरूद्ध लक्ष्मीबाई 1991 रा.नि. 174 दामोदर विरूद्ध लक्ष्मण 1989 रा.नि. ओंकार विरूद्ध गिल्ला 1982 रा.नि. 64***) इस प्रकार के हक के संबंध में दावे में सिविल न्यायालय में दी गई डिक्री वाद के पक्षकारों तथा राजस्व न्यायालय एवं तहसीलदार पर मान्य होगी। (***गृह निर्माण संस्था विरूद्ध म.प्र. राज्य 1985 रा.नि. 216***) ***सोनाबाई विरूद्ध वैशाखनीबाई 1982 रा.नि. 292***)

4. धारा 116 (I) खसरा या किन्हीं अन्य भू-अभिलेखों में की गई प्रविष्टी के बारे में विवाद सिविल न्यायालय की अधिकारिता वर्जित है।

सिविल न्यायालय ऐसे किसी वाद को स्वीकार कर भू–अभिलेखों में शुद्धिकरण करने का कोई आदेश पारित नहीं करेंगे यह अधिकार सिर्फ राजस्व न्यायालयों को है। (***रामभरोसे विरूद्ध जगन्नाथ सिंह 1968 जे.एस.जे. एस.एन. 51***)

5. धारा 126 संदोष कब्जा रखने वालों की बेदखली का सिविल वाद एक वर्ष के भीतर किया जा सकता है।

धारा 124 एवं 126 के तहत बेदख्ल किये गये व्यक्ति द्वारा एक वर्ष के भीतर सिविल वाद पेश किया जा सकता है। (***लक्ष्मण विरूद्ध उदलसिंह 1978 (2) एम.पी. डब्ल्यू एन. 237***)

6. धारा 129 सर्वेक्षण अर्थात भू-खण्ड सीमांकन पर सिविल न्यायालय की अधिकारिता

इस संदर्भ में राजस्व प्राधिकारी द्वारा यदि कोई सीमांकन या परिशुद्धता की जाती है, तो उसके विरुद्ध उपयुक्त न्यायालय के विरूद्ध ही दावा पेश होगा। (***चुन्नीलाल विरूद्ध गोविन्द 1985 एम.पी. डब्ल्यू एन. 452***)

7. धारा 131 (I) मार्गाधिकार और अन्य प्रायवेट सुखाचार के संबंध में सिविल वाद

इस धारा के अन्तर्गत सिविल न्यायालय के केवल उन आवश्यक तथ्यों के बारे में विचारण या दावा जिसकी अनदेखी राजस्व न्यायालय ने की है उपधारा (2) केवल उसी दशा में सिविल वाद की अनुज्ञा देती है जब राजस्व न्यायालय में सुखाचार अधिनियम 1882 के तहत दावा अमान्य किया हो। इस संदर्भ में कृपया धारा 131 (क) को देखना आवश्यक है। ***फक्का विरूद्ध हरिराम 1984 रा.नि. 422 उच्च न्यायालय, बजरंगा वि. चर्तुभुज 1980 रा.नि. 73, यूनियन आफ इंडिया विरूद्ध ताराचन्द्र गुप्त ए.आई.आर. 1971, एस.सी. 1558***) ***उच्चतम न्यायालय गोपीदास वि. रामकृष्ण 1971 जे.एल.जे. 825***)

8. धारा 147 बकाया वसूली के लिये आदेशिका पर सिविल न्यायालय की अधिकारिता

इस धारा के अन्तर्गत 257 (ज) के वे प्रावधान सिविल सूट वादित (वर्जित) करते हैं जिनके अन्तर्गत वसूली योग्यधन का दावा लाया गया है लेकिन यदि कोई विधि के मंशा के विपरीत किया गया है तो सिविल न्यायालय की हस्तक्षेप करने का अधिकार होगा। (*जगदीश वि. म.प्र. राज्य 1988 रा.नि. 131 उच्च न्यायालय*)

9. धारा 166 (I) कतिपय अन्तरणों के मामलों में सिविल न्यायालयों की अधिकारिक वर्जित

धारा 257 (अ) के अन्तर्गत यदि धारा 9 सी.पी.सी. वर्णित दावों को छोड़ अन्य दावों को सुनने को वर्जित किया गया है, लेकिन पेसिफिक रिलीफ एक्ट 1963 की धारा 34 के अधीन सिविल वाद लाया जा सकता है (*बजरंगा वि. चतुर्भुज 1980 रा.नि. 72 उच्च न्यायालय*) और राजस्व न्यायालय द्वारा कोई मनमानी की गई है तो सिविल न्यायालय अपने अधिकारियों का उपयोग कर सकता है अर्थात दावा पेश किया जा सकता है। कुल मिलाकर न्यायालय विवेकाधिकार इस धारा के अन्तर्गत आने वाले दावों के संदर्भ में महत्वपूर्ण (*धूलाबाई वि. म.प्र. राज्य 1968 रा.नि. 683 1969 जे.एल.जे. (1) उच्चतम न्यायालय, नीलदास, विरूद्ध आसकरण 1960 जे.एल.जे. 105 उच्च न्यायालय।*

10. धारा 170 (अ) धारा 165 के उल्लंघन में किये गये अन्तरण के संदर्भ में सिविल वाद वर्जित

इस संदर्भ में धारा 257 (उ) उपबंध करती है कि यदि भूमि स्वामी द्वारा अन्तरण किया गया है तो उसे रद्द करने के लिये सिविल वाद नहीं लाया जा सकता है, परन्तु यदि धारा 165 (6) का उल्लंघन हुआ है, विक्रय शून्य करने व कब्जा हेतु विक्रेता के उत्तराधिकारी सिविल वाद प्रस्तुत कर सकते हैं (*पनऊ वि. अजीतराम 1975 रा.नि. 400 जे.एल.जे. 715*)

11. धारा 177 खातों का निपटारा तथा सिविल वाद का स्वरूप

इस संदर्भ में सिविल वाद का स्वरूप उपधारा (3) में वर्णित निर्देशों के अनुसार फाईल किया जावेगा यदि दावेदार उनके हों तो राज्य शासन पक्षकार होगा और यदि मुख्य पक्षकार राज्य शासन है तो धारा 80 सी.पी.सी. का पालन आवश्यक हो इसके लिये परिसीमा आदेश दिनांक से एक वर्ष विहित है। (*मालोजी राव वि. म.प्र. राज्य 1969 रा.नि. 201, 1969 जे.एल.जे. 403 उच्चतम न्यायालय*) अन्तर्गत आदेश 20 नि. 18 सी.पी.सी. के अधीन विभाजन से 178 लागू नहीं होती। अर्थात तहसीलदार कृषि भूमि का विभाजन कर सकता है परन्तु यह भूमि धारी की भूमि का निर्धारण नहीं कर सकता है सिविल वाद ही लाया जायेगा *कन्हैया वि. लीलाबाई 1968 रा.नि. 101 उच्च न्यायालय।*

12. 178 खाते का विभाजन एवं सिविल वाद का स्वरूप

तहसील के समक्ष विभाजन की कार्यवाहियों में जो हक संबंधी प्रश्न उत्पन्न होते हैं उसमें घोषणा प्राप्त करने का ही वाद दायर हो सकता है इसमें कब्जा व अन्य कोई सहायता मांगने की आवश्यकता नहीं (***मानसिंह वि. हनुमतसिंह 1977 रा.नि. 193 उच्च न्यायालय*** एवं ***मुन्नीबाई वि. शारदाबाई आई.एल.आर. 1946 नागालैण्ड 312*** (सिविल वाद में घोषित पारित डिक्री कभी प्रभावहीन नहीं होती भले ही 12 वर्ष व्यतीत हो) ***रहमान खां वि. राजस्व मण्डल 1985 रा.नि. 178 एवं 1985 जे.एल.जे. 40 उच्च न्यायालय*** (हक की घोषणा होने पर डिक्री का निष्पादन तथा उनके आधार पर विभाजन का दावा किया जा सकता है अतः सिविल न्यायालय अंशों की घोषणा कर विभाजन करता है तो राजस्व न्यायालय उसके अनुसार करेगा) ***सुवर्तिखा विरूद्ध नाथूखां 1992 रा.नि. 21 उच्च न्यायालय***)

13. धारा 189 कतिपय मामलों में भूमि स्वामी द्वारा पुनः ग्रहण एवं सिविल न्यायालयों की अधिकारिता वर्जित

धारा 257 के खण्ड (ड) में यह स्पष्ट उपबंध है कि धारा 189 अधीन मौरूसी कृषक धारित भूमि का भू–स्वामी द्वारा पुर्नग्रहण विनिश्चय मौरूसी कृषक के पास छोड़ी गई भूमि के लगान नियत किये जाने के विषय में विवाद का अधिकार सिविल न्यायालय को नहीं है।

14. धारा 191 मौरूसी कृषक को भूमि वापस दिलाये जाना सिविल न्यायालय की अधिकारिता वर्जित

धारा 257 के खण्ड (त) के अनुसार संहिता की धारा 191 के अधीन मौरूसी कृषक को पुनः कब्जा दिलाये जाने के विषय में कोई सिविल वाद पेश नहीं किया जा सकता है अधिसूचना क्रमांक 2539–3426–61 सात–ना (नियम) राजपत्र दिनांक 5–7–62 एवं जारी दिनांक 26–6–62 के अनुसार धारा 191 की उपधारा (1) के अधीन धारा 181 की उपधारा (दो) के तहत मौरूसी कृषक द्वारा पुनस्थापना के लिये आवेदन दो वर्ष के भीतर में उपखण्ड अधिकारी के समक्ष पेश किया जावे।

15. धारा 193 (3) कृषक अधिकार की समाप्ति एवं सिविल न्याया. में वादवर्जित

धारा 257 के खण्ड (ध) के अनुसार संहिता की धारा 193 के अधीन मौरूसी कृषक के कृषक अधिकार समाप्ति के विषय में सिविल वाद वर्जित है।

16. धारा 197 (I) मौरूसी कृषक द्वारा किये गये अन्तरणों को अपास्त कराने के लिए सिविल वाद वर्जित

धारा 257 के खण्ड (द) के अनुसार 197 के अधीन मौरूसी कृषक द्वारा किये गये अन्तरण को अपास्त कराने के हेतु सिविल सूट दायर नहीं किया जा सकता है कि केवल उपखण्ड अधिकारी के समक्ष पेश किया जा सकता है।

17. धारा 200 रसीद न देने की या अधिक वसूली के लिये शासित मामलों में सिविल वाद वर्जित

धारा 257 के खण्ड (घ) के अनुसार भूमि स्वामी पर इस संदर्भ में सिविल सूट के द्वारा दावा नहीं लाया जा सकता है।

18. धारा 202 दोषपूर्ण ढंग से बेदखल किये गये मौरूसी कृषक को पुर्नस्थापित करने के लिये सिविल वाद वर्जित

संहिता की धारा 257 के खण्ड (प) के अनुसार दोषपूर्ण रीति से बेदखल किया या बेकब्जाँ किया मौरूसी कृषक को कब्जा दिलाये जाने के विषय में सिविल वाद पेश नहीं किया जा सकता है अतः वर्जित है।

19. धारा 209 खातों की चकबंदी के लिये स्कीम का तैयार किया जाना सिविल वाद वर्जित है।

संहिता की धारा 257 के खण्ड (फ) के अनुसार धारा 209 की उपधारा (3) के अधीन किसी प्रतिकर के रूप में देय रकम के बारे में सिविल न्यायालय की अधिकारिता अर्थात सिविल वाद वर्जित है इस संदर्भ में धारा (50) के अधीन बन्दोबस्त आयुक्त द्वारा पारित आदेश ही अंतिम होगा।

20. धारा 210 स्कीम की पुष्टि करने हेतु सिविल वाद वर्जित

धारा 257 के खण्ड (फ) के अनुसार खातों की चकबंदी की स्कीम की पुष्टिकरण हेतु वर्णित है चकबंदी अधिकारी द्वारा दिया गया पट्टा सिविल कोर्ट द्वारा रद्द नहीं किया जावेगा। ***नाथूलाल विरूद्ध बद्रीलाल 1992 रा.नि. 138*** एवं ***फत्ते विरूद्ध बंशीलाल 1973 रा.नि. 363 व 1973 जे.एल.जे. 754 उच्च न्यायालय*** (लेकिन यदि पट्टा प्रदान किया गया है तो कब्जा नहीं दिया गया है तब हक पर आधारित सिविल वाद लाया जा सकता है। (***नाथूलाल विरूद्ध बद्रीलाल 1992 रा.नि. 138 उच्च न्यायालय***)

21. धारा 213 भूमि स्वामियों के उनके खाते में से अधिकार का अन्तकरण पर सिविल वाद वर्जित है

संहिता की धारा 257 के खण्ड (फ) के अनुसार योजना क्रियान्वित करने में अधिकारों के अन्तकरण के बारे में सिविल वाद वर्जित है।

22. धारा 215 स्कीम को क्रियान्वित करने के खर्चे के संदर्भ में सिविल वाद नहीं लाया जा सकता।

धारा 257 के खण्ड (फ) के अनुसार खातों के खर्चों के अवधारण एवं विभाजन के बारे में सिविल वाद वर्जित है।

23. धारा 248 अप्राधिकृत रूप से भूमि पर कब्जा कर लेने के लिये शासित मामलों में सिविल वाद

इस प्रकार के मामलों में धारा 248 के अधीन दिये गये आदेश पर सिविल वाद धारा 80 सी.पी.सी. की सूचना देने के पश्चात किया जा सकता है (*अनिश जहां बेगम विरूद्ध म.प्र. राज्य 1981 रा.नि. 350* एवं *शासन विरूद्ध मंगलू 1965 जे.एल.जे. एस.एन. 54 उच्च न्यायालय*)

24. धारा 250 अनुचित रूप से बेकब्जा किये गये भूमि स्वामी के पुर्नस्थान तथा सिविल वाद

धारा 257 के खण्ड (भ) के अनुसार अनुचित रूप से बेकब्जा किये गये भूमि स्वामी के पुर्नस्थापन के लिये अपने अधिकारिता का उपयोग नहीं करेगा इसमें विनिश्चय शब्द केवल राजस्व न्यायालय से संबंधित है, लेकिन यदि कोई स्वत्वाधिकार का दावा है और कब्जे के प्रश्न के साथ हक का प्रश्न जुड़ा है तो सिविल सूट लाया जा सकता है (*रामचन्द्र विरूद्ध शंकर 1989 रा.नि. 178 उच्च न्यायालय सिपिथा विरूद्ध रामदासवा 1985 म.प्र. बीकली नोट 224 रामगोपाल विरूद्ध चेतु 1976 रा.नि. 146-1976 जे. एल.जे. 278 उच्च न्यायालय पूर्णन्यायापीठ फत्ते विरूद्ध वंशीलाल 1973 रा.नि. 363 उच्च न्यायालय दीवानसिंह वि. रामेश्वर 1964 ज.एल.जे. 279 उच्च न्यायालय) 1989 रा.नि. 49 उच्च न्यायालय सीताराम वि. प्रभुलाल, 1988 रा.नि. 378 उच्च न्यायालय।*

25. धारा 251 तालाबों का राज्य सरकार में निहित होना सिविल वाद में वर्जित होना

धारा 257 के खण्ड (म) के अनुसार तालाबों के राज्य सरकार के निहित होने के संबंध में राज्य सरकार के विरूद्ध वाद वर्जित है।

26. धारा 253 उपबंधों के उल्लंघन के लिये दण्ड सिविल वाद वर्जित

धारा 257 के खण्ड (य) के अनुसार अधिरोपित किसी प्रीमियम शासित उपकर या रेट एवं किसी अधिकारी को कर्तव्य पालन के लिए राजस्व सरकार के विरूद्ध पेश नहीं होगा।

27. धारा 255 खेती तथा प्रबंध के मानदण्डों का विहित किया जाना सिविल वाद वर्जित है :-

धारा 257 के खण्ड (य) (1) के अनुसार खेती एवं प्रबंध के मानदण्ड विहित किये जाने के संबंध में धारा 255 के अधीन है, दावे के विषय सिविल सूट वर्जित होगा।

28. धारा 257 सिविल न्यायालय की अधिकारिता एवं उसका वर्जन

धारा 9 सी.पी.सी. स्पष्ट उपबंध करती है कि जिन विधियों द्वारा सिविल न्यायालयों में वाद की वर्जना उपबंधित की गई है तो सिविल न्यायालयों की अधिकारिता वर्जित रहेगी। (*म.प्र. राज्य वि. ग्यारसीराम 1993 रा.नि. 113 उच्च न्यायालय ईश्वरसिंह वि. नरसिंह 1987 रा.नि.189 उच्च न्यायालय म.प्र. राज्य विरूद्ध सुन्दरलाल 1976 रा. नि. 175-1976 जे.एल.जे. 323 उच्च न्यायालय अब्दुल वहीद खां विरूद्ध धावानी 1966 रा.नि. 493-1966 जे.एल.जे. 1022 उच्च न्यायालय रामसिंह विरूद्ध शासन*

1965 रा.नि. 511-1965 जे.एल.जे. आई.एन.ए. उच्च न्यायालय रामसिंह विरूद्ध शासन 1965 रा.नि. 511-1965 जे.एल.जे. आई.एन.ए. उच्च न्यायालय किन्तु धारा 34 स्पेसिफिक रिलीफ एक्ट 1963 के संबंध वाले वाद पर सिविल न्यायालय की अधिकारिता सुरक्षित रखी गई। बजरंगा वि. चर्तुभुज 1980 रा.नि. 72 उच्च न्यायालय) जिन मामलों में राजस्व न्यायालयों को अधिकारिता दी गई है। सिविल न्यायालय को यह देखना है कि राजस्व न्यायालय तानाशाही तो नहीं कर रहा है अर्थात उन पर अंकुश रखने की अधिकारिता सिविल न्यायालय को दी गई है। *भूलाभाई वि. म.प्र. राज्य 1968 रा.नि. 683-1969 जे.एल.जे.-1 उच्चतम न्यायालय नीवलदास वि. आसकरण 1960 जे.एल.जे. 105 उच्च न्यायालय, जिला सहकारी केन्द्रीय बैंक वि. श्रम न्यायालय 1993 रा.नि. 403 उच्च न्यायालय।*

धारा 257 अधिकारिता का प्रश्न और निबंध

अधिकारिता के प्रश्न पर न तो पूर्व में न्याय का सिद्धान्त और नहीं पक्षकारों की सहमति आदि से न्यायालय को ऐसी अधिकारिता प्राप्त नहीं हो जाती जो विधि के विरूद्ध है जब किसी मामले में इस प्रकार की अधिकारिता विषयांकित कोई प्रश्न राजस्व न्यायालय या सिविल न्यायालय में उठाया जाता है तब उस प्रकरण में ऐसी आपत्ति पर सुनवाई नहीं होगी। *गोविन्द प्रसाद विरूद्ध परमेश्वरीदास 1957 जे.एल.जे. 526 पूर्ण न्यायपीठ, फुलवा विरूद्ध लक्ष्मीचंद 1960 रा.नि. 34-1960 जे.एल.जे. 90 उच्च न्यायालय।*

29. धारा 257 और उच्च न्यायालय की शक्ति

धारा 257 के उपबंधों का प्रभाव उच्च न्यायालय की उस शक्ति पर नहीं होगा जो उसे भारत के संविधान के अनुच्छेद 226 तथा 227 के अधीन प्राप्त है।

30. धारा 257 (ए) विथि व्यवसायियों (अधिवक्ता) का वर्जन

धारा 165 की उपधारा (छ) तथा धारा 169 या धारा 170 की उपधारा–1 तथा 170 (ए) या धारा 250 की किसी भी ऐसी कार्यवाहियों अधिवक्ता बगैर न्यायालय की अनुमति से सम्मिलित होंगे न ही कोई अभिवचन करेंगे जो कि आदिम जाति, अनुसूचित जनजाति के भूमि स्वामी संदर्भ में हो, इसी संदर्भ में विधिक परिषद अधिनियम की धारा 14 भी उपबंध करती है।

31. धारा 264 यह संहिता कतिपय मामलों में लागू नहीं होगी

इस संहिता में अन्तविष्ट कोई भी बात किसी ऐसे व्यक्ति पर लागू नहीं होगी जो केन्द्रीय सरकार से भूमि धारण करता है।

धारा का उद्देश्य :- इस धारा का उद्देश्य उन व्यक्तियों को संहिता के उपबंधों से मुक्त करता है जो केन्द्रीय सरकार से भूमि धारण करते हैं, केन्द्रीय सरकार की यदि कोई भूमि म.प्र. राज्य में हो और उसे राज्य सरकार किसी व्यक्ति को दे तब वह संहिता के उपबंधों के प्रभाव से मुक्त नहीं होगा। आवश्यक यह है कि व्यक्ति केन्द्रीय सरकार

से भूमि धारण करता हो इस धारा को आकर्षित करने के लिए यह आवश्यक है कि भूमि का स्वत्व अधिकारी केन्द्रीय सरकार का हो ***(अॅसबेस्टॉस सीमेन्ट लिमिटेड वि. म.प्र. राज्य 1970 रा.नि. 299 (उच्च न्यायालय)***

32. विशेष निवेदन :-

कृपया किसी भी प्रकार के वाद पंजीकृत करने के पूर्व उससे संबंधित विधि वर्जना रूप कृषि भूमियों के वाद के लिये म.प्र. भू–राज्य संहिता की उक्त लेख में की गई संपूर्ण धाराओं मुख्यतः धारा 257 का अवलोकन अवश्य करें। यह लेख केवल सिविल न्यायालयों की विधि वर्जना की संक्षेपिका है और वर्तमान लेख इसी परिपेक्ष्य में सुविधा की दृष्टि से सहायक हो सकता है।

संशोधन

माह अगस्त 2000 की ज्योति में कुछ त्रुटियां अक्षर संयोजन की हुई हैं। संशोधन विवरण इस प्रकार है। अपनी–अपनी प्रतियों में संशोधन कर लें।

- पृष्ठ 398 पंक्ति क्र. 7 प्रशिक्षण के स्थान पर प्रशिक्षक।
- पृष्ठ 398 पंक्ति क्र. 10 मुख्य न्यायाधीश के स्थान पर मुख्य न्यायिक दंडाधिकारी।
- पृष्ठ 400 नीचे से पंक्ति क्र. 2 में कार्य करने के स्थान पर कार्य करने के लिए।
- पृष्ठ 401 नीचे से पंक्ति क्रमांक 2 में व्यतीय के स्थान पर व्यतीत।
- पृष्ठ 403 उपर से पंक्ति क्र. 10 में गर्वेषणा के स्थान पर गवेषणा।
- पृष्ठ 403 उपर से पंक्ति क्र. 23 में करते के स्थान पर कहते।
- पृष्ठ क्र. 419 शीर्षक में न्यायादान के स्थान पर न्यायदान एवं न्याय दृष्टांत में 1982 के स्थान पर 1987।
- पृष्ठ क्र. 469 टिट बिट क्र. 4 में आ. 1 नि. 17 के स्थान पर आ. 1. नि. 10।
- पृष्ठ क्र. 485 टिट बिट नं. 34 में Judicial के स्थान पर Investigating।
- पृष्ठ क्र. 501 टिट बिट क्र. 53 में Appriciation के स्थान पर Appreciation।
- पृष्ठ क्र. 517 पर टिट बिट क्र. 83 में Relevant के आगे Factors शब्द लिखना।
- पृष्ठ क्र. 525 पर टिट बिट क्र. 98 में Complain के स्थान पर Compensation लिखना।

अपराधिक प्रकरणों में समझौता

पुरूषोत्तम विष्णु नामजोशी

दंड प्रक्रिया संहिता (द.प्र.स.) की धारा 320 के प्रावधान प्रकरण में अपराध के शमन (कम्पाउन्डिंग) के संबंध में है। वे प्रावधान व्य.प्र.सं. के प्रावधानों की तुलना में अधिक सुगम हैं। धारा 320 (5) के प्रावधानों के आधार किसी सीमा तक न्यायिक अधिकारीगणों को उलझनें उत्पन्न करते रही हैं व प्रशिक्षण कक्षाओं में भी इस विषय में कई बार प्रश्नों का समाधान करने का प्रयत्न किया है। इस विषय में पर्याप्त मत भिन्नता भी ज्ञात होती है इसलिए उपधारा 320 (5) पर सतत रूप से चिंतन होते रहना चाहिए।

व्य.प्र.सं. (व्यवहार प्रक्रिया संहिता) के अंतर्गत राजीनामे के विषय में ज्योति 2000 (अगस्त) पृष्ठ 421 पर लेख लिखा जा चुका है। उसी लेख को मूल आधार बनाते हुए द.प्र. सं. से संदर्भित राजीनामा (शमन) के विषय में यह लेख है। **अपराधिक प्रकरणों में राजीनामे हेतु विशेष रूप से शमन (कम्पाउन्ड) शब्द का प्रयोग होता है।** लेख की सीमा तक यथा स्थान राजीनामा शब्द ही प्रयोग करते रहेंगे।

द.प्र.स. की धारा 320 नौ भागों में विभक्त है। धारा 320 भाग 1 उन अपराधों के विषय में वर्णन करती है जो अपराध पक्षकारगण न्यायालय के अनुमति के सिवाय ही राजीनामा कर सकते हैं तथा न्यायालय को एक आवेदन पत्र देकर दर्शाया जा सकेगा कि राजीनामा हो गया है तथा प्रमाणित करके प्रकरण राजीनामे के आधार से शमित कर दिया जाकर समाप्त हो तथा अभियुक्त को दोषमुक्त किया जावे। धारा 320 भाग 2 उन अपराधों में शमन के विषय में बताता है जिसमें प्रथमतः न्यायालय, जिसमें सामने प्रारंभिक सुनवाई (ट्रायल) लंबित है। (ट्रायलकोर्ट) से अनुमति लेना है कि शमन करने हेतु अनुमति दी जावे तथा ऐसी अनुमति मिलने पश्चात ही शमन हेतु पक्षकार गण राजीनामा प्रस्तुत कर सकेंगे व तब न्यायालय ऐसी अनुमति के आधार से राजीनामा प्रमाणित कर आरोपी को राजीनामे के आधार से निर्दोष घोषित करेगा। उक्त प्रावधान धारा 320 (1) एवं 320 (2) में तीन स्तंभ में दिये हैं जिसमें अपराध की प्रकृति, अपराध की धारा एवं वह व्यक्ति जिसके द्वारा अपराध का शमन किया जा सकता है। उपधारा 4 (क) एवं (ख) उन व्यक्तियों के विषय में स्पष्टीकरण देता है जो अन्यथा स्वयं ही राजीनामा कर सकते थे लेकिन विधिक निर्योग्यता के कारण ऐसा नहीं कर सकते हैं। उपधारा (3) में बताया है कि धारा 320 (1), (2) में वर्णित अपराध के दुष्प्रेरण (अॅबेटमेंट) अथवा प्रयत्न (अटेम्प्ट) भी शमनीय है जब ऐसा प्रयत्न भी अपराध है। यथा चोरी करना या चोरी करने का प्रयत्न धारा 511 भा.द.वि. के अंतर्गत अपराध है अतः उल्लेखित प्रावधानों के अनुरूप राजीनामा किया जा सकता है। धारा 320 (5–6) के प्रावधान ये दर्शाते हैं कि अपील या रिवीजन न्यायालय भी इस प्रावधान के अंतर्गत

राजीनामा करने हेतु आदेश दे सकेगा। लेकिन शर्त ये है कि अपील या रिवीजन न्यायालय ऐसा करने की अनुमति दे। अर्थात धारा 320 (1) के अंतर्गत समझौते हेतु विचारण न्यायालय (ट्रायल कोर्ट) के सामने अनुमति लेने की आवश्यकता नहीं है लेकिन यदि विचारण न्यायालय द्वारा प्रकरण अंतिम रूप से निर्णीत कर दिया हो तथा निर्णय के विरूद्ध अपील अथवा रिवीजन लंबित है तब अपराध जो धारा 320 (1) द.प्र.स. में वर्णित अपराध भी क्यों न हो रिवीजन या अपील जैसी भी स्थिति हो अनुमति लेना आवश्यक है। यह बात धारा 320 (5) व 320 (6) के प्रावधानों से स्पष्ट हो जाएगी। धारा 320 (7) के अंतर्गत यह प्रावधान है कि यदि अभियुक्त पूर्व दोषसिद्धि के कारण किसी अपराध के लिए या तो वर्धित दंड से (धारा 75 भा.द.वि.) या भिन्न किस्म के दंड से दंडनीय है तो ऐसे अपराध का शमन न किया जाएगा। धारा 320 (8) में यह दर्शाया है कि प्रकरण में यदि राजीनामा हो जाता है तो आरोपित अपराधों का शमन हो जाता है व परिणामतः अभियुक्त को उल्लेखित अपराधों से दोषमुक्त किया जाएगा ऐसा माना जाएगा। प्रावधान 320 (9) में कहा है कि अपराध का शमन धारा 320 द.प्र.सं. के उपबन्धों के अनुसार ही किया जाएगा, अन्यथा नहीं। यह वाक्य छोटा है लेकिन निर्वचन विधि के दृष्टिकोण से कठिनाईयां उत्पन्न करने योग्य है। धारा 320 (1), (2) में केवल भारतीय दंड संहिता में दर्शित अपराधों के विषय में शमन होने की बात बताई है न कि किसी अन्य अधिनियम के अंतर्गत घटित अपराधों के विषय में। अतः अन्य अधिनियमों के अंतर्गत घटित अपराधों के संबंध में क्या होगा। औसत गणितीय सिद्धांत केवल यह हो सकता है कि यदि किसी विशेष अधिनियम के अपराध को उस अधिनियम द्वारा शमनीय बताया हो तो राजीनामा होगा अन्यथा नहीं। क्योंकि तब द.प्र.सं. के प्रावधान लागू होंगे एवं धारा 320 (9) के अनुसार 320 (1) (2) में दर्शाए अपराधों के अतिरिक्त अन्य किसी अपराध में अपराध शमित नहीं होगा। लेकिन एक न्यायदृष्टांत ठीक विपरीत है। ***एम. मोहन रेड्डी वि. जयराज बी. भालेराव 1996 सीआर.एल.जे. 1010*** में कहा है कि धारा 138 पराक्राम्य लिखतम अधिनियम (निगोशिएबल इंस्ट्रमेंट एक्ट) में घटित अपराध का शमन हो सकता है। विभिन्न कारण जो उक्त दृष्टांत में दर्शाए हैं वे इस प्रकार हैं।

(ए) दंड प्रक्रिया संहिता 1973 लागू होने के पूर्व पुराने अधिनियम में परिशिष्ट क्रमांक दो हुआ करता था जिसमें दर्शाया था कि अन्य अधिनियमों के अंतर्गत कौन से अपराध शमन योग्य है व कौन से नहीं। अब नए अधिनियम में वह प्रावधान निरसित कर दिया है। (अतः अन्य अधिनियमों के लिए शमन हेतु दं.प्र.सं. लागू नहीं होगी।)

(बी) यह कि नए अधिनियम में धारा 320 (9) को जोड़ दिया गया है परिणाम स्वरूप उक्त प्रावधान अन्य अधिनियमों के लिए लागू नहीं होंगे।

(सी) यह कि धारा 320 (9) द.प्र.सं. जैसा प्रावधान पुराने दंड प्रक्रिया संहिता की धारा 345 में नहीं था। लेकिन धारा 345 (7) (पुरानी दंड प्रक्रिया सहिता) में कहा है कि No Offence shall be compounded except as provided by this section (अर्थात् भा.द.वि. के अपराध मात्र)। राजस्थान उच्च न्यायालय ने ***नेवार मार्बल इंडस्ट्रीज वि. राजस्थान स्टेट इलेक्ट्रिसिटी बोर्ड 1993 सी आर.एल. जे 1191*** में धारा 39 विद्युत अधिनियम का अपराध शमनीय नहीं बताया है।

सर्वोच्च न्यायालय ने धारा 138 पराक्राम्य लिखतम अधिनियम के अंतर्गत राजीनामे की अनुमति केवल एक अपवादात्मक प्रकरण के रूप में मात्र दी थी। [***ओ.पी. ढोलकिया वि. हरियाणा राज्य*** **(2000) 1 एस.सी.सी. 762 (2000) 3 ज्योति पृष्ठ 349**] यह एक नियम के रूप में स्थापित सिद्धांत नहीं होने से सर्वोच्च न्यायालय का यह कार्य एकमेव अधिकारिता के रूप में था।

आपके सामने ऐसी कोई समस्या आए तो विधि प्रावधानों का तुलनात्मक अध्ययन करें, उल्लेखित दृष्टांत को **पूर्णरूप से पढ़ें एवं समझें** एवं अन्य न्याय दृष्टांतों को देखें व साथ ही दंड प्रक्रिया संहिता 1973 की धारा 4 व 5 का समग्र रूप से अध्ययन एवं धारा 6 जनरल क्लासेस एक्ट का चिंतन करें। मेरी पदीय स्थिति पत्रिका में विचारों की अभिव्यक्ति की गुंजाईश व पृष्ठों की संख्या, विषय से संबंधित शैक्षिक लेख के बजाय न्यायालयीन कार्य की दृष्टि से विचार करना ऐसी बातें हैं जो मुझे खोज, गवेषणा से किसी सीमा तक रोकती हैं। यही बात धारा 320 (5) दं.प्र.स. के विषय में भी मैं कहूंगा जिस बाबत चिंतन नीचे दिया जा रहा है।

धारा 320 (5) दंड प्रक्रिया संहिता के प्रावधान इस प्रकार हैः-

जब अभियुक्त विचारणार्थ सुपुर्द कर दिया जाता है या जब वह **दोषसिद्ध कर दिया जाता है और अपील लम्बित है,** तब अपराध का शमन, यथास्थिति, उस न्यायालय की इजाजत के बिना अनुज्ञात न किया जाएगा जिसे वह सुपुर्द किया गया है, या जिसके सामने अपील सुनी जाती है।

अंग्रेजी अनुवाद इस प्रकार है :–

320 (5). When the accused has been comitted for trial or when he has been **convicted and an appeal is pending,** no composition for the offence shall be allowed without the leave of the court to which he is committed or, as the case may be before which the appeal is to be heard.

अब इस शब्दों का विश्लेषण करेंगे व देखेंगे कि कौनसा सक्षम न्यायालय है जो देय परिस्थितियों में राजीनामा प्रमाणित करा सकता है।

एक विषय अभियुक्त को विचारण के लिए सुपुर्द करने का है। अर्थात यदि आपके सामने आरोप पत्र प्रस्तुत नहीं हो जाता है तब तक आप राजीनामा नहीं कर सकते।

अथवा यदि कोई प्रकरण सत्र न्यायालय द्वारा श्रवण योग्य है तो सत्र न्यायालय तब तक राजीनामा नहीं करा सकता जब तक कि प्रकरण उसके सामने कमिट (उपार्पित) होकर सुपुर्द न किया जावे। दूसरा मुद्दा अपील का है। उसमें कहा गया है कि यदि अभियुक्त को **दोषसिद्ध (कन्व्हिक्टेड) कर दिया जाता है** और **अपील लंबित है** तो वह सक्षम न्यायालय राजीनामे के लिए अनुमति देगा जो अपील सुनेगा।

वर्तमान में धारा 248 (2) अथवा धारा 235 (2) के अंतर्गत दोषसिद्ध अभियुक्त **(कन्व्हिक्टेड)** अभियुक्त को तब तक **सजा (सेन्टेन्स) नहीं दिया जा सकता** जब तक कि सजा के संबंध में उसे न सुना जावे। अर्थात आरोपी को दोषसिद्ध दोष पाने मात्र से प्रकरण में आगे कोई भी कार्यवाही करने की अधिकारिता समाप्त (Functus officio फंक्शस ऑफिसिओ) नहीं होती है। वर्तमान में सत्र एवं वारण्ट प्रकरणों की तीन स्तरीय स्थिति है। अभियुक्त को (1) सिद्ध दोष (Guilty) पाना, (2) दोषसिद्ध (Convict) करना एवं (3) दंडित (Sentence) करना। इतनी प्रक्रियापूर्ण होने पर ही न्यायालय पदकार्य मुक्त (Functus officio i.e. one has discharged the duty assigned; one out of office after doing his duty; deprived of official power) होता है। जिन लोगों को न्याय दृष्टांतों से ही अधिक चिंतन बोध हो सकता हो उनके लिए धारा 354 द.प्र.सं. से संबंधित न्याय दृष्टांत ***रामनारंग वि. रमेश नारंग (1995) 2 सु.को. के 513*** का संदर्भ दूंगा जिसमें कहा है कि,

S. 354- Judgment becomes complete and appealable only after conviction is recorded and also sentence is awarded

Under the Criminal Procedure Code there are two stages in a criminal trial before a Sessions Court, the stage up to the recording of a conviction and the stage post-conviction up to the imposition of sentence. After the conviction is recorded, Section 235 (2) inter alia provides that the Judge shall hear the accused on the question of sentence and then pass sentence on him according to law. After the court records a conviction, the accused has to be heard on the question of sentence and it is only after the sentence is awarded that the judgment becomes complete and can be appealed against under Section 374 of the Code. ***Rama Narang v. Ramesh Narang,* (1995) 2 SCC 513 : (1995) 83 Comp Cas 194.**

उक्त दृष्टांत के चरण 12–13 एवं 15 को भी इस संदर्भ में पढ़ा जाना चाहिए। सारांश रूप से यह बात सामने आती है कि

> "..... The appeal Under S. 374 (Cr. P.C) is essentially against the order of conviction because the order of Sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. therefore, when appeal is preferred u/s 374 the appeal is against both the conviction and sentence...."

उक्त दृष्टांत कंपनी केस से संबंधित था जिसमें दोषसिद्धि एवं सजा स्थगित करने का प्रश्न उपस्थित था। उसमें इस विषय का चिंतन नहीं है कि किसी प्रकरण में अभियुक्त को राजीनामा योग्य अपराध में दोषसिद्ध (कन्विक्टेड) पाया लेकिन अभी 248 (2) या 235 (2) दं.प्र.स की प्रक्रिया के अंतर्गत कार्यवाही शेष है तो क्या वह न्यायालय इस स्टेज पर राजीनामा स्वीकार कर सकता है या नहीं। इस संदर्भ को ध्यान रखकर देखें तो धारा 320 (5) में दर्शाए 'कन्विक्टेड' शब्द का संदर्भ न्यायालय की अधिकारिता समाप्त होने से नहीं है। विपरीत इसके धारा 320 (5) में दोष सिद्ध के आगे जो और भी अपेक्षा है और वह अपेक्षा है अपील का किया जाना। यदि विचारण न्यायालय ने किसी व्यक्ति को धारा 324 भा.द.वि. के अंतर्गत सिद्ध दोष पाते हुए दोष सिद्ध किया है अथवा धारा 307 के आरोप के प्रकरण में 324 भा.द.वि. के अन्तर्गत सिद्ध दोष पाते दोष सिद्ध किया है तो भी यदि दोषसिद्धि पर से मात्र अपील हुई ही नहीं है तो संभवतः विनम्र मत से यह तर्क दिया जा सकता है कि अभी विचारण न्यायालय के सामने ही प्रकरण लंबित है व इसलिए विचारण न्यायालय वह सब कुछ कर सकता है जो दंड प्रक्रिया संहिता के अंतर्गत जैसा करने को सक्षम है।

मैंने **ज्योति भाग दो खंड 1 फरवरी 1996 पृष्ठ 18 प्रश्न 14** को भी पढ़ा है व उसमें उल्लेखित दृष्टांतों को भी देखा है उसमें भी रामनारंग के दृष्टांत का खुलासा है। वे दृष्टांत इस प्रकार हैं।

(1) ***1990 सु.को.के. सप्लिमेंट पृष्ठ 63 तनवीर अकील वि. स्टेट*** जिसमें लंबित प्रकरण में सर्वोच्च न्यायालय ने भा.द.वि. की धारा 324 में राजीनामा मान्य किया।

(2) ***एआयआर 1974 सु.को. 1744 भीमसिंह वि. राज्य*** में भी यही स्थिति है।

(3) ***1993 सी.आर.एल.जे. 404 (केरल) पी. दामोदरन वि. राज्य*** में "The KeralaHigh Court refused to accord permission for compounding the offence U/s 420 I.P.C. at a stage, when the accused had been convicted and conviction had become **final** in Revision and High Court had **no seisin over the matter.**"

इसी प्रकार ***1980 क्रि. लॉ. ज. 583 छोटेसिंह वि. राज्य*** में स्थिति यह थी कि प्रकरण **'अन्तिम'** रूप से निराकृत हो गया था तो कोई भी कार्यवाही शेष नहीं थी। विचारण न्यायालय ने आरोपीगणों को भा.द.वि. की धारा 307 के अन्तर्गत दोषसिद्ध कर दंडित भी किया। उच्च न्यायालय ने 323 एवं 324 भा.द.वि. अपराधी पाया। प्रकरण का निराकरण 3.10.1978 को हो गया। उच्च न्यायालय में 19.10.1978 को नाजीनामे का आवेदन पत्र यह प्रस्तुत हुआ कि उच्च न्यायालय द्वारा निर्णय दि. 3.10.1978 को 307 भा.द.वि. के बजाय राजीनामा योग्य अपराध धारा 323–324 में दोषसिद्ध पाने के कारण राजीनामा प्रस्तुत करने का अधिकार उत्पन्न हुआ। तब उच्च न्यायालय ने कहा अब

19.10.1978 को उसके सामने प्रकरण लंबित नहीं है अतः राजीनामा स्वीकार करना धारा 362 एक धारा 482 दं.प्र.स. के अंतर्गत उल्लंघनीय होगा।

एक अन्य दृष्टांत ***क्रि. लॉ. जनरल भाग 11, 1910 अवध ज्यूडीशियल कमिश्नर कोर्ट पृष्ट 496 रामस्वरूप वि. एम्परर*** का है जिसमें विचारण न्यायालय ने 325/109 भा.द.वि. में आरोपी को सजा दी सत्र न्यायालय ने 323/114 में दोषसिद्धि करके सजा दी। सत्र न्यायालय ने ऐसा करते अंत में लिखा कि इस स्टेज पर भी राजीनामे का आवेदन पत्र नहीं आया है। तो अवध न्यायिक कमिश्नर के न्यायालय में रिवीजन हुई। तो वहां राजीनामा हो सका। उसमें एक वाक्य महत्वपूर्ण है उसमें कहा है कि "when an appellate court alters the sentence to one of those mentioned in this section, it may allow the parties to compound."

धारा 320 (1) एवं 320 (2) को धारा 320 (5) के साथ पढ़ना अधिक सारगर्भित होगा। धारा 320 (2) में स्पष्ट शब्दों में कहा है कि उक्त प्रावधान में उल्लेखित अपराधों का उपशमन केवल वही न्यायालय कर सकेगा जिसके न्यायालय में ऐसा अभियोजन **लंबित** है। धारा 320 (1) में ऐसा कुछ भी नहीं है। साथ ही धारा 320 (5) का उल्लेख भी है। इस प्रकार अहम बात यह है कि जिस न्यायालय में प्रकरण **लंबित** है वह न्यायालय अपराधों का राजीनामा या उपशमन कर सकता है। ऐसा चिंतन करने के लिए कन्व्हिक्शन, सेंटेन्स और प्रकरण का पेंडिंग होना इन सभी बातों को ध्यान रखना होगा।

दोस्तो! यहां यह बात ध्यान रखना होगी कि धारा 320 दं.प्र.स. के प्रावधानों के अंतर्गत प्रकरण का राजीनामा नहीं होता है अपितु राजीनामा योग्य अपराधों में ही राजीनामा होगा एवं अराजीनामा योग्य अपराध प्रकरण में शेष रह जाते हैं तो प्रकरण चलता रहेगा। यदि सभी अपराध राजीनामे योग्य हैं व राजीनामा हो गया हो तो ही प्रकरण समाप्त होगा। धारा 320 दं.प्र.स. की शब्दावली यही बात बताती है। ***1968 जे. एल.जे. पेज 1050 राज्य वि. रुखमन*** का दृष्टांत भी यही बात बताता है जो डिव्हिजन बेंच का लीडिंग केस के रूप में हमेशा प्रस्तुत होता रहा है। **दं.प्र.सं. द्वारा सोहनी 1986 का संस्करण भाग 4 पृष्ठ 3387 की टीप क्र. 23** के कुछ अंश भी दिए हैं जो आभार सहित इस प्रकार प्रस्तुत कर रहा हूं।

23. Charge for a different offence, whether maintainable on same facts.

A composition has the effect of acquittal only in respect of the offence which has been compounded, and not of any other offence or offences of which the accused is charged in the same case and only as between the person who is entitled to compound, and the accused with whom the composition takes place. The composition of one offence will not, therefore, bar a prosecution for a distinct offence with which the accused might have been charged on the same facts.

The Code contemplates only compounding of offences and not of cases as such. The acquittal contemplated under sub-section (8) is only of the offence compounded. Such an acquittal does not bar prosecution for other offences not compoundable and not compounded.

What this section provides for is the composition of the offences concerned and not of the right to proceed in respect of that offence. The offence must be kept distinct and separate from the right to prosecute for that offence.

Whether or not a complaint or trial for a different offence would be permissible or barred under Section 300 would depend upon;

(i) was the person in jeopardy upon indictment :

(ii) was there a final verdict, and

(ii) was the previous charge substantially similar to the present one.

एक अन्य दृष्टांत इस प्रकार है :–

Aslam Mea Vs. Emperor, AIR 1918 Cal. 238 (2), regarding Section 345 Old Cr.P.C., it is said that :

"In this case the opposite party on whom the Rule was servd, does not appear to show cause. In his explanation the Magistrate before whom the case was tried, states that he does not think that the compromise petition could be accepted at such a late stage, when the judgment was actually being written but **a case may be compromised under S. 345, Cr.P.C., at anytime before the sentence is pronounced. We accordingly make the rule absolute** and set aside the conviction and the sentence passed on the petitioner. The fines, if paid, will be refunded."

अधिक जानकारी के लिए **ए.आई.आर 1920 मद्रास 245 = 20 क्रि.लॉ.ज. 832** एवं **ए.आई.आर. 1915 इलाहाबाद 8 (9) = 16 क्रि.लॉ.ज. 247** को भी देखा जा सकता है।

धारा 320 भा.द.वि. में संशोधन कर के म.प्र. राज्य ने भा.द.वि. के कुछ अन्य अपराधों में शमन की अनुमति दी है। उस सम्बन्ध में जो संशोधन किए गए थे वे यहां पुनः प्रकाशित किए जा रहे हैं जो त्वरित संदर्भ हेतु उपयोगी होंगे। ध्यान रहे संशोधन की सीमा तक ही धारा 147–148 भा.द.वि. के संदर्भ में राजीनामा करें अन्यथा नहीं। म.प्र. उच्च न्यायालय के कुछ दृष्टांत एक दूसरे के विरुद्ध होना प्रतीत होता है लेकिन मार्गदर्शक दृष्टांत ***1968 जे.एल.जे. 1050 (डी.बी.) स्टेट वि. रुखमन*** एवं ***1990 एम. पी.एल.जे. 123 रामलाल वि. स्टेट*** हो सकते हैं। अन्य दृष्टांत **1986 (1) एम.पी. डब्ल्यू.एन. नोट 202।** ***अहिवराम वि. राज्य, 1979 (1) वि.नो. 91 केशरीसिंह वि.***

स्टेट, 1970 सी.आर.एल.जे., स्टेट वि. भेरूलाल। सर्वोच्च न्यायालय ने ***रामपाल वि. राज्य 2000 (2) वि.भा. 48*** में **304 भाग 2, 324/149, 325/149 एवं 323/149 भा.द.वि.** के अंतर्गत राजीनामा सर्वोच्च न्यायालय की अधिकारिता के अंतर्गत किया है न कि धारा 320 द.प्र.स. के अंतर्गत।

यहां यह बात भी ध्यान रखने योग्य है कि प्रकारण में समझौते हेतु अभियुक्त की उपस्थिति अनिवार्य नहीं है। शमन हेतु अनुमति का आवेदन पत्र एवं राजीनामा दोनों ही एक साथ भी प्रस्तुत किए जा सकते हैं। जैसा कि ***गणेश वि. राज्य 1987 (2) वि.नो. 227*** एवं ***सुखध्यान वि. राज्य 1986 (1) वि.नो. 126*** में बताया है।

विधिक चिंतन पश्चात शेष रह जाती है वह न्यायालयीन प्रक्रिया। जिस प्रकार व्यवहार प्रकरणों में प्रक्रिया अपनाई जाती है ठीक उसी तरह आंखों में तेल डालकर, चैतन्य अवस्था में रहते हुए विचार करें। कौन से प्रकरणों में अनुमति देना है, नहीं देना है न्यायिक विवेक की बात है। विभिन्न न्याय दृष्टांतों में उल्लेखित स्थितियों का अध्ययन न्यायिक विवेक का प्रयोग करने हेतु उपयोगी होगा। परिवादी व अभियुक्त वही है या नहीं यह बात उनके मेडिकल रिपोर्ट व गिरफ्तारी पंचनामें क्रमशः अंकित पहचान चिन्ह से ज्ञात होगा। जहां मात्र मुद्देमाल ही हो व ऐसी स्थिति न हो कि जांच की जा सके तो क्रास चेंकिंग से ज्ञात होगा। घटनास्थल की जानकारी, प्रथम सूचना रिपोर्ट साक्षियों के कथन नाम, निवास आदि से आसानी क्रास चेकिंग हो जाता है। अधिवक्ताओं से पहचान विषयक तथ्य लिखवा लेना चाहिए। इस संबंध में समग्र चिंतन **ऑगस्ट 2000 की ज्योति पृष्ठ 421** में है ही।

न्यायालयीन प्रक्रिया में आपका अपना विवेक है, विधि प्रावधान है न्याय दृष्टांत है उसका पालन अवश्य करें। यह लेख वैचारिक चालना हेतु है।

उपर उल्लेखित संक्षिप्त विचारण के पश्चात प्रकरण में आदेशिका कैसी लिखी जानी चाहिए यह प्रारूप के रूप में बताया जा रहा है।

धारा 320 (1) के अन्तर्गत :

दिनांक 01-01-2000

1. म.प्र. शासन द्वारा ए.डी.ओ.पी. श्री ए.बी. शर्मा।
2. आरोपी सहित श्री सी.डी. वर्मा।
3. परिवादी कमली स्वयं उपस्थित।

4. परिवादी कमली व अभियुक्त ने संयुक्त आवेदन पत्र धारा 320 (1) द.प्र.स. के अंतर्गत प्रकरण में आरोपित अपराधों के शमन हेतु प्रस्तुत किया। अवलोकन किया। आरोपी के विरुद्ध धारा 448--326 भा.द.वि. के अंतर्गत आरोप निर्मित किए गए हैं।

जिसमें से धारा 326 भा.द.वि. के अंतर्गत अपराध शमनीय नहीं है लेकिन धारा 448 भा.द.वि. के अंतर्गत अपराध शमन योग्य है।

5. परिवादी को श्री ..... ने पहचाना। रिकार्ड के आधार से उक्त व्यक्ति के विषय में संतुष्टि की गई। आरोपी एवं परिवादी स्वेच्छया राजीनामा करना चाहते हैं अभियोजन को आपत्ति नहीं है। अतः परिवादी व अभियुक्त के कथन लिपिबद्ध किए गए। कथनों में ही पहचान चिन्ह अंकित किए गए।

6. यह न्यायालय राजीनामे की वैधता के विषय में व स्वेच्छिक रूप से राजीनामा करने के विषय में संतुष्ट हो चुका है अतः राजीनामे के आधार से आरोपी (नाम) को धारा 448 भा.द.वि. के अपराध से मुक्त किया जाता है तथा उक्त अपराध शमित किया जाता है। अपराध विवरण (चार्ज) में तथा आरोप पत्र में (आरोपी के नाम के सामने) इस संबंध में टीप लाल स्याही से अंकित की कि दि. 01–01–2000 को धारा 448 भा.द. वि. का अपराध शमित किया गया।

7. प्रकरण में धारा 326 भा.द.वि. के अपराध के लिए कार्यवाही चलती रहेगी (प्रकरण जिस कार्यवाही के लिए नियत करना हो तदानुसार निर्धारित हो)

हस्ताक्षर
(नाम)
पदनाम सील

धारा 320 (2) के अन्तर्गत

ऐसे अपराधों में जिसमें अपराध न्यायालय के अनुमति से ही शमन होना हो में आदेशिका प्रारूप :-

1. म.प्र. शासन द्वारा ए.डी.ओ.पी. श्री ए.बी. शर्मा।
2. आरोपी सहित श्री सी.डी. वर्मा।
3. परिवादी कमली स्वयं उपस्थित।

4. परिवादी कमली ने एक आवेदन पत्र धारा 320 (2) द.प्र.स. के अंतर्गत प्रस्तुत कर निवेदन किया कि वह आरोपी के साथ विचाराधीन प्रकरण में समझौता करना चाहती है। अपराध धारा 324 भा.द.वि. के अंतर्गत आरोपित है। आवेदन पत्र का अवलोकन किया। धारा 324 भा.द.वि. का अपराध न्यायालय के अनुमति से शमनीय है। रेकार्ड से ज्ञात होता है कि परिवादी के हाथ पर चाकू से तुच्छ प्रकार की उपहति कारित हुई है तथा परिवादी एवं आरोपी पड़ोसी हैं व अपने सम्बन्ध मधुर रखना चाहते हैं।

5. परिवादी को श्री ..... ने पहचाना। रिकार्ड के आधार पर उक्त

व्यक्ति के विषय में संतुष्टि की गई। आरोपी एवं परिवादी स्वेच्छया राजीनामा करना चाहते हैं। अभियोजन को आपत्ति नहीं है अतः अनुमति दी गई।

6. पश्चात परिवादी व अभियुक्त ने संयुक्त आवेदन पर राजीनामे को प्रस्तुत किया। अतः परिवादी व अभियुक्त के कथन लिपिबद्ध किए गए। कथनों में ही पहचान चिन्ह अंकित किए गए।

7. यह न्यायालय राजीनामें की वैधता के विषय में व स्वेच्छिक रूप से राजीनामा करने के विषय में संतुष्ट हो चुकी है। अतः राजीनामें के आधार से आरोपी (नाम) को धारा 324 भा.द.वि. के अपराध से मुक्त किया जाता है तथा उक्त अपराध शमित किया जाता है। प्रकरण राजीनामें के आधार से समाप्त होता है तथा उसे मुक्त किया जाता है। आरोपी के बंधपत्र एवं प्रतिभूति पत्र भार मुक्त होते हैं।

8. जप्त चाकू दो माह की अवधि तक अथवा अपील/रिवीजन की अवधि तक जो भी दीर्घ हो नजारत में कायम रहेगा [देखें धारा 452 (4) दं.प्र.सं. एवं धारा 452 के प्रावधानों का पालन करते हुए]। वरिष्ठ न्यायालय में इस आदेश के विरुद्ध यदि कोई कार्यवाही होती है तो उक्त न्यायालय के आदेशानुसार चाकू का निराकरण होगा अन्यथा उक्त चाकू को तोड़कर नष्ट किया जावे।

9. प्रकरण में आवश्यक कार्यवाही करके यह प्रकरण लेखागार में प्रविष्ट हो।

हस्ताक्षर
(नाम)
पदनाम सील

मध्यप्रदेश अधिनियम

क्रमांक 17 सन् 1999

दण्ड प्रक्रिया संहिता (मध्यप्रदेश संशोधन) अधिनियम, 1999.

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

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

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

संक्षिप्त नाम

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

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

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

धारा 320 का संशोधन

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

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

1	2	3
बल्वा	147	वह व्यक्ति जिसके विरुद्ध अपराध कारित करते समय बल या हिंसा का प्रयोग किया गया है : परन्तु अभियुक्त ऐसे अन्य अपराध के लिए आरोपित नहीं किया गया है, जो शमनीय नहीं है।
घातक आयुध से सज्जित होकर बल्वा करता	148	वह व्यक्ति, जिसके विरुद्ध अपराध कारित करते समय बल या हिंसा का प्रयोग किया गया है : परन्तु अभियुक्त ऐसे अन्य अपराध के लिए आरोपित नहीं किया गया है, जो शमनीय नहीं है,
अश्लील कार्य या अश्लील शब्दों का प्रयोग	294	वह व्यक्ति, जिसके विरुद्ध अश्लील कार्य किए गए थे या अश्लील शब्दों का प्रयोग किया गया था,

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

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

1999 ज्योति अगस्त पृष्ठ 259-66 पर प्रकाशित

A DEBATE

GRANTING OF BAIL BY MAGISTRATES, HAVING NO JURISDICTION TO TRY CASES

P.V. NAMJOSHI,
DIRECTOR, JOTI.

Hello Friends !

After the judgment in ***Gangula Ashok Vs. State of A.P., JT 2000 (1) SC 375=AIR 2000 SC Page 740*** the same question which used to be raised in the previous decades is being raised again. The question is whether in a case which is not triable by a Magistrate has jurisdiction to grant bail? This problem which is always posed is because as a routine we do not go through the provisions of law and on assumptions we come to a conclusion. Even during academic and judicial discussion, we, Judicial Officers generally do not refer books. On the assumption basis we can solve the arithmetical problems and can come to a correct conclusion. But in the field of law we, Judicial Officers, cannot come to a rational conclusion on assumptions only.

The answer in law is always open ended answer. But at the same time it is only because of the fact that different reasons are being advanced at different stages and the matter is approached from different angles and under different circumstances. That apart we must develop our reasoning power to discuss a problem and come to a reasonable answer. Whenever such type of discussion crops up about the question posed, a reference is always made to citation of ***Gulam Mohammed Vs. State, 1959 MPLJ 322= AIR 1959 MP 147= 1959 JLJ 227.*** Generally the citation is being applied by the Judicial Officers without going through the ratio of the case in the judgment. In fact, that judgment relates to the Old Criminal Procedure Code, i.e. Criminal Procedure Code, 1898. That judgment rests on the provisions of section 54 (1) clause 9, Section 60, Section 167 (2), Sections 497 and 498. The facts of the case are as under. The extract is from **1959 JLJ 227:**

> "The petitioners were arrested by the police of Ujjain on requisition under Section 45 (a) from the **Dy. Superintendent, Police, Madras** stating that they were charged in case before the First Class Magistrate, Trivellore, under Section 9 (a) (b) (c) of the Indian Opium Act read with Section 109 and 120 I.P.C. and non-bailable warrant for their arrest had been issued by the Court. The City Magistrate, Ujjain remanded the petitioners to police custody on four occasions before whom they were produced. Petitioners' application for bail was rejected by the City Magistrate, Ujjain on the ground that he had no jurisdiction to grant bail. The Sessions Judge also took the same view and rejected the application for bail. On an application to the High Court it was held:
>
> (i) That though the Magistrate had no power to grant bail, the Sessions Judge could and the High Court can release the petitioners

on bail to appear before the City Magistrate, Ujjain and in the mean time direct the Madras Police Officer to produce warrants of the Trivellor Court, Madras State, for the arrest of the petitioners.

(ii) That the powers of the High Court and the Sessions Court under Section 498 are in no way controlled by Section 497 Cr.P.C. and it is open both to the High Court or to the Court of Sessions to admit a person to bail on good and sufficient cause in any case. [I would like to attract attention to Sec. 81 Cr. P.C. (new)].

As regards Sections 498, 61, 63 and 497 (Old Cr.P.C.) the High Court said that the object of Section 60 Cr.P.C. (New S. 56) is that the accused person should be brought before a Magistrate competent to try or commit with as little delay as possible. The expression "a Magistrate having jurisdiction in the case" clearly means the Magistrate having jurisdiction to try the case.

The High Court Further said that, the provision in S. 60 is that the arrested person shall be taken before a Magistrate having jurisdiction subject to provisions as to bail only refers to the powers of the police to grant bail. If the police in its discretion do not think it fit to allow bail to the arrested person then have to take him or send the person arrested before a Magistrate having jurisdiction in the case. Section 61 (New S. 57) is concerned solely with the question of the period of detention by the police of a person arrested without warrant. This section does not deal with the question of grant of bail.

Section 63 Cr.P.C. (New S. 59) does not confer any power on any Magistrate to release a person on bail. It only provides for the release of a person arrested without warrant on his bond or on bail or on his discharge under the special order of a Magistrate. The release is to be only when under other provisions of the Code, a person has been ordered to be released under the bond or on bail on his discharge under the special order of a Magistrate. The special order of a Magistrate contemplated is "a special order of a Magistrate under Section 167 (old and new). The High Court further added that if a Magistrate has no jurisdiction to try the case, he has no power even u/s 497 to grant bail to the person arrested.

Regarding Ss. 54 (9) and 54 (a) (New S. 41) the High Court said that the power of directing the arrest under S. 54 (a) Cr. P.C. of some person at a place outside the local limits of the jurisdiction of a Court is wide and has to be exercised with caution, circumspection and on substantial reasons.

Let us see what S. 54 (1) ninthly of the Old Act says which runs as under :

"54. WHEN POLICE MAY ARREST WITHOUT WARRANT :

(1) Any police officer may, without an order from a Magistrate and without a warrant, arrest :

Ninthly, any person for whose arrest a requisition has been received from another police officer. provided that the requisition specifies the person to be arrested and the **OFFENCE OR OTHER, CAUSE** for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without warrant by officer who issued the requisition."

SECTION 60 OF THE OLD ACT RUNS AS UNDER :

"S. 60. PERSON ARRESTED TO BE TAKEN BEFORE MAGISTRATE OR OFFICER IN CHARGE OF POLICE STATION : A police officer making an arrest **without a warrant,** shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer-in charge of a police station."

The corresponding section to Section 54 is Section 41 of the New Act and the corresponding section of 60 of the Old Act is Section 56 of the New Act. Section 41 of the New Cr.P.C. also states about the powers of the police to **arrest without warrant** and there is no conflict about these sections for answering the present posed question. Therefore, before applying the judgment of **1959 MPLJ 322,** we must compare the provisions with New Cr.P.C. of 1973 (1974). Once we go through the provisions the subject is very clear and perhaps the answer would be unambiguous, reasonable and rational also. The important factor is reading Section 437 of the New Cr.P.C. (Section 497 of the Old Cr.P.C.) The part of the section is reproduced in a comparitive tabulised form so that it may be simultaneously and conveniently perused :

OLD ACT SECTION 497 WHEN BAIL MAY BE TAKEN IN CASE OF NON-BAILABLE OFFENCE :	NEW ACT SECTION 437 WHEN BAIL MAY BE TAKEN IN CASE OF NON-BAILABLE OFFENCE :
(1) When any person accused of or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.	(1) When any person accused of, or suspected of, the commision of any non-bailable offence is arrested or detained without warrant by and officer-in-charge of a police station or appears or is brought BEFORE A COURT (other than the High Court or Court of Sesseion) HE MAY BE RELEASED ON BAIL. (Note : Brackets and capital letters emphasised).

There is vast different between old and new provision. The difference lies in producing the accused before a particular Court. The art of reading section 437 (new) is not to read some portion in the beginning and then to read and understand this section. Part of Section 437 is reproduced in plain style or I will reproduce Section 437 in this style:

> "S. 437. (1) When any person accused of, or suspected of, the commission of any non-bailable offence **is arrested** or **detained without warrant** by an officer-in-charge of a police station or **appears** or **is brought before a Court** he shall be released on bail."

That is if he is produced before a Court other than the High Court or the Court of Session. Thus this part of the section does not speak about the powers of the High Court or the Court of Sessions or of that Court having jurisdiction to try the case as court of original jurisdiction. That court may be a Court of Magistrate having jurisdiction to commit the case for trial. In simple words it speaks about the production of an accused before a Court other than the High Court or Court of Sessions.

There are four different words which are being used in relation to the production of an accused before Court (not High Court or Court of Sessions.) The first is an **arrested person,** second is **detained person without arrest,** thirdly **a person appeared before a Court** and **lastly a person brought before a Court.** Again we will dwell on the citation of **1959 MPLJ 322.** The old Section 60 (S. 56 of the New Act) says about person arrested to be taken before the Magistrate or officer-in-charge of a police station. This provision relates to a person, who is arrested without warrant. Section 41 New, relates to the general provisions of the arrest of a person. However, in that section also there is no special provisions relating to arrest of person whose warrant has been issued by Court because the section itself speaks about arrest by police officer without warrant. The Court has jurisdiction to issue warrant from time to time under Chapter VI of New Cr.P.C. (Ss. 61 to 90), i.e. process to compel appearance and in particular from S. 70 onwards. A person who is suspected of an offence has every right to appear before the Court and to request the Court for getting him arrested, i.e. surrendering before the Court. [S. 44 (2) Cr.P.C. New].

The **Sohani's book on Criminal Procedure Code, 1986 Edition, 5th Volume, Section 437 at page 4556** says that when a person voluntarily surrenders before a Court, the Magistrate cannot refuse to accept his surrender. He must take him into custody and deal with the application of bail moved by him **(In Re Digendra Sarkar, 1982 Cr.L.J. 2197).** Further it says that when the Court takes up the application of bail moved by a person who has voluntarily surrendered, he must dispose of that application

within the limitation imposed by S. 437. ***State of Assam Vs. Mobarak Ali, 1982 Cr.L.J. 1816 and State Vs. Maguni Charan Sahu, 1983 Cr.L.J. 1212 Orissa.***

Again please refer to the ruling of **1959 MPLJ 322** and refer to Section 167 (2) Old and new both which runs like this :

"167 (2). The Magistrate to whom the accused is forwarded under this section may...".

Remember the important word **forwarded** to the Magistrate. Forwarding of the accused to a Magistrate is the important aspect of considering the application for bail of an accused, whose case the Magistrate is not competent to try, but that Magistrate is competent to commit the accused either for trial or to the judicial lock-up or to grant police remand. This Position has been explained in the **AIR Manual, 5th Edition, 1989 Vol. No. 19 Section 437 head Note No. 9 "APPEARS OR IS BROUGHT BEFORE A COURT" at page 141 and Head Note No. 6** in which the meaning of words "arrest", "detention", "appears" and "is brought" are stated :

9. APPEARS OR IS BROUGHT BEFORE A COURT :-

(1) The provisions of this section come into operation only when a person accused of non-bailable offence is brought before the Court and not earlier. **1978 UCR (Bom) 499 (504).**

(2) Expression "appear" occurring in this section does not mean appearance through pleader. When a person appears in Court his physical presence results in placing himself in custody of Court for purpose of releasing him on bail. **(1979) 47 Cut LT 233 (235).**

(3) The expression "appear" occurring in this section include "voluntary appearance" as when a person accused of an offence seeks bail by "appearing" in Court, he in fact surrenders himself to the custody of the Court and the Expression "appear" in that sense means "presents and surrenders" himself before the Court. In such circumstances there would be notional detention of the accused person. **1979 Cri LJ 345 (350) : 1978 Kash LJ 274.**

[See however **1981 Cri LJ 1057 (1059) : 51 Cut LT 391.** overruled]

Grant of bail- Person not under restraint but voluntarily appearing and surrendering before Court- Is not entitled to bail- Only persons placed under restraint by arrest or otherwise can be granted bail. Therefore it is necessary for the Magistrate to accept his surrended and take him into custody (Note : This ruling has been overruled by **1983 (Cri L.J. 1212).**

(4) The words "arrested" and "detained" are used in the section to signify arrest and detention by a police officer in cognizable offences but,

the expressions 'appears' and 'is brought' are used to signify appearance and arrest in obedience to a summons or a warrant issued by the Court. **AIR 1954 Madh B 113 (114) : 1954 Cri LJ 1052 (FB).**

6. WORDS "ARREST, DETENTION AND APPEARS"- MEANING :

(1) From S. 437 it appears that 'arrest' and 'detention' are used to signify arrest and detention by a police officer. The expression 'appears' and 'is brought' are used to signify appearance and arrest in obedience to a process of Court. The expression 'is brought before a Court' is used in relation to issue of warrant while the expression 'appears' is used in relation to issue of summons. **1989 Orissa Cri R 439 (443).**

(2) When accused persons surrendered to the jurisdiction of the Court and agreed to abide by the judicial direction the Magistrate had full jurisdiction to deal with their case for bail under S. 437 Cr.P.C. Therefore, where the Magistrate released the accused on bail when they voluntarily surrendered before him. It could not be said that bail had been granted without jurisdiction. **1983 Cri LJ 1212 (1215) (DB) : (1983) 55 Cut LJ 419. [1981 Cri LJ 1057 (Orissa)],** overruled.

The new Section 437 does not restrict the powers of the Magistrate to grant bail in cases in which the Magistrate has no jurisdiction to try the case. In this respect following citations may help to consider the subject. ***Khaligwar Vs. State. 1974 Cr. LJ 526 (527) J & K*** States that bail can be granted at the initial stage by a Magistrate before whom a person charged with an offence triable by a Court of Sessions is produced. The bar of jurisdiction contemplated by this section is not attracted at this stage.

Aftab Ahmed Vs. State of U.P. **1990 Cr.L.J. 1636 Head Note 'B' Para 3** says that :

> **"Bail in case of an offence under Section 366, the Magistrate is empowered to grant bail, the power of Magistrate in granting bail, governed not by Court which has jurisdiction to try the case but by punishment prescribed by commission of crime.** Though a case u/s 500 (pt.1) and 501 (a) 502 (b) of IPC are triable by the Court of Sessions, since the offences are bailable and even the police officer is bound to grant bail".

Thus from this citation, it is very clear that there is no question of jurisdiction of the Magistrate to try the case in granting bail. The question is about the quantum of sentence prescribed under an offence under a particular provision of Law. As the Section 437 Cr.P.C. contemplates that such Court other than the High Court or the Court of Sessions may grant bail except where other sub-clauses are attracted and one of the clauses is if offences punishable with death or imprisonment for life. Thus a Magistrate

who may not have jurisdiction to try a case but the punishment is other than the death or imprisonment for life, the Magistrate has full jurisdiction to grant bail. Para 3 of ***Aftab Ahmed Vs. State of U.P. 1990 Cr.L.J. 1636*** runs as under :

> Learned Counsel for the petitioner contends that the Courts below may take sufficient time for the disposal of bail application, and therefore, some direction be issued for expeditious disposal of bail application. The apprehension of the petitioners that the magistrate is not empowered to grant bail in respect of an offence punishable under Section 366, Penal Code is not well founded. Of late, it has been pointed out through a Division Bench decision of this Court (Hon. Saxena, J. was a member of that Bench) **THAT THE POWERS OF THE MAGISTRATE IN GRANTING BAIL ARE NOT GOVERNED BY THE COURT WHICH HAS JURISDICTION TO TRY THE CASE;** rather are governed by the punishment prescribed for commition of the crime. A Magistrate has no jurisdiction to grant bail only in such case where the prescribed punishment is imprisonment for life or death penalty. Under Section 366 of the Penal Code, punishment is that of 10 years. Therefore, the Magistrate is empowered to grant bail. Whatever material is placed before us by the learned. counsel for the petitioner, the same be placed before the Magistrate, who would do well to consider the matter and dispose of bail applications of the petitioner. And, it need not be emphasised that the bail-application be disposed of by the Magistrate, if possible, on the date on which it is presented."

There are other sections which deal with punishment with death or imprisonment for life and in which sentence of 10 years is also prescribed. For example Section 326 IPC, in which punishment is prescribed as, "shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years." Same is the case with offence like 409 IPC wherein it is stated that "..... shall be punished with imprisonment for life or imprisonment for 10 years and both. In addition to those sections 413, 436, 438, 459, 460, 467, 472, 474, 477 (imprisonment for life or imprisonment for 7 years) 489 (d) imprisonment for life or imprisonment for 10 years) 304, 305, 307 and so on. These are the cases in which either death or imprisonment for life punishment or a punishment for 10 years or 7 years is provided. These are the cases in which though one of the punishment is for 10 years only the Magistrate cannot split up the punishment and so in such type of punishments the Magistrate has no power to grant bail. For that, reference can be made to ***Ramanand Mahaton Vs. kailash Mahaton, (1885) 11 Cal 236*** from the book **Sohani on Cr.P.C. 1986 Edition Vol. 4 Section 322 at page 3425** under head **"Magistrate not to split up offence".** in which it is stated as no magistrate is entitled to split up an offence into its component parts for the purpose of giving himself jurisdiction.

Here reference to two citations ***Santosh Babu Rao Vs. State of Maharashtra,* 1989 Cr.L.J. 205** and ***Thakur Kanji Bahi Vs. Thakur Ambah Ram,* 1985 (1) Crimes 443** can be made. Extracts from paragraph 4 of Thakur Kanji Bhai's case are reproduced here :

> "Under section 326 of the Indian Penal Code sentence of imprisonment for life can be imposed. Section 326 also provides that the Court has jurisdiction to impose sentence of imprisonment for life or imprisonment of either description for a term which may extend to ten years. Section 437 (1) (i) in terms provides that when any person accused of or suspected of the commission of any non-bailable offence is arrested and is brought before the Court other than the High Court or Court of Sessions, such person shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. It cannot be said that this bar would not operate in respect of offences punishable with imprisonment for life or in the alternative imprisonment for ten years because the Court trying the case is empowered to impose a maximum sentence of imprisonment for life. In this set of circumstances, the Magistrate before whom the accused is produced would not have jurisdiction to release him on bail except in cases which fall in the excepted categories of provides to Section 437 (1). Therefore, at the initial stage when the accused are produced before the Magistrate and it is alleged that the accused have committed an offence punishable under section 326, then the Magistrate would not have jurisdiction to release the accused on bail."

The Judicial Magistrate, in pending cases if warrants had not been issued by the competent Court, then he should not exercise the power under Section 437 because the competent Court has jurisdiction to consider the bail application as and when the accused is produced before that Court. However, interim bail can be granted while remanding the accused in cases in which the Magistrate has jurisdiction to try the cases. For example if a warrant has been issued by one of the Magistrate at the headquarters for production of the accused before him in a pending case and the urgent duty Magistrate who is attending the duties on an holiday has to entertain remand proceedings of the accused and if the accused makes an application for grant of bail and the considerations are that an interim order for bail can be granted for some period, the Magistrate may exercise the power. But if such type of case is not triable by Magistrate, he should not grant even temporary ad-interim bail. Attention is invited to the provisions of Section 81 of the Cr.P.C. which says about procedure by Magistrate before whom such person arrested is brought. This is an important provision and the Judicial Officers are requested to go through it. The provision runs as under:

"S. 81. THE PROCEDURE BY MAGISTRATE BEFORE WHOM SUCH PERSON ARRESTED IS BROUGHT :- (1) The Executive magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under Section 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant.

Provided further that, if the offence is a non bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of Section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of Section 78, to release such person on bail.

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under S. 71."

Therefore, in such cases the power is to be exercised only by the Sessions Judge of the District or Chief Judicial Magistrate and not by any other Magistrate. The corresponding provision is section 86 of the Old Cr.P.C., with the difference that the second proviso has been added to sub-section (1).

The Joint Committee of Parliament has observed :

> "Under the present provision where a warrant of arrest is sent to a place outside the local jurisdiction of a Magistrate, for execution, the arrested person has necessarily to be transported in custody to the Magistrate issuing the warrant before he can claim to be released on bail. The Committee feels that this results in considerable hardship and inconvenience to persons arrested far away from the court issuing the warrant of arrest. To remove such hardship and inconvenience, the Committee has amended these clauses, conferring power on the Magistrate **having jurisdiction over the place of arrest** to release the person on bail subject to the other provisions of the Code relating to bail. To enable such magistrate to consider whether bail should be granted, it has further been provided in clause 78 that the Magistrate issuing a warrant should also forward along with the warrant the substance of the information together with relevant documents."

Though the cases under S.C. S.T. (Prevention of Atrocities) Act makes a provision under Section 14 of the Act that the cases be tried by Special Courts but it does not provide any procedure relating to presentation

of charge-sheets before the Special Courts. Therefore, the Supreme Court in ***Gangula Ashok Vs. State of A.P. JT 2000 (1) SC 375*** has stated that Special Courts (U/s. 14 of the S.C. S.T. (P.A.) Act cannot take cognizance of any offence without case being committed to that Court. But under Prevention of Corruption Act or N.D.P.S. Act the procedure relating to presentation of charge-sheets and trials have been laid down and therefore, there is no need to commit, cases under those enactment before Special Judges for trial, by the Magistrate. **1993 Cr.L.J. 2436 (FB) Patna High Court** by majority of 2 : 1 says that "the Special Judge is not subordinate to the Sessions Judge and can exercise all powers of a Sessions Judge, can grant anticipatory bail or regular bail, it is within the exclusive power of Special Judge." It further says that "the anticipatory bail cannot be granted by Special Courts presided over by the Assistant Sessions Judge."

A Magistrate has to commit the case under Section 209 of the Cr.P.C. It is important to note that this section itself provides that the cases may be committed to the Court of Sessions and subject to the provisions of this Code relating to bail, remand of accused to thecustody until such commitment has been made and sub clause (b) also provides that subject to the provisions of this Code relating to bail, remand the accused to custody during an until conclusion of trial.

The definition of 'Court' has been given under S. 3 of the Evidence Act which says that the Court includes all Judges and Magistrates and all persons, except arbitrators legally authorised to take evidence. However, this definition is limited as this (Evidence Act) itself is a special Act. The definition of Court is framed only for the purposes of the Act itself and should not be extended beyond its legitimate scope. Special laws must be confined in their operation to their special object. The definition is not meant to be exhaustive. It is inclusive definition. The word 'Court' means not only the Judge in a trial by judge with a jury but includes both judge and jury. True, this is said in ***Haricharan Kundu Vs. Koushicharan Dey, AIR 1940 Cal 286,*** but in ***Achchayya Vs. Gangayya (1891) 15 Mad 138 (FB).*** it is said that a Magistrate committing a case to the Court of Sessions "is a Court". Therefore, a Magistrate who is competent to commit the case to the Court of Sessions is Court within the meaning of Section 3 of the Evidence Act and under Chapter XVI of the Cr.P.C. which refers to commencement of proceedings before Magistrate under which Section 209 is also covered. It is true that a Magistrate who commits the case is not a Judge as such as defined under S. 19 of the I.P.C. and the illustration No. (d) of that Section also speaks so. In any case Magistrate is a Court and the word 'Court' has the same reference as stated in Section 437 of the Cr.P.C.

Therefore it is humbly Submitted that a Magistrate though having no jurisdiction to try a case may grant bail in such cases subject to the provisions laid down U/s 437 of the Cr.P.C. This is what I want to submit. We, the judicial officers, if start debate on this subject, may lead ourself towards right direction वादे वादे जायते तत्व बोधे। The base line for debate would be "the power of Magistrate in granting bail, governed not by Court which has Jurisdiction to try the case but by punishment prescribed by commission of crime". Good bye friends!

FLASH

When the Article was under printing for publication Shri B.P. Maheshwari, A.R. (VL) Contibuted one judgment of **A.M. Ali Vs. State of Kerala, 2000 Cr.L.J. 2721.** The order of the High Court of Kerala is being published at verbatim.

ORDER : The sub Inspector of Police, North Parur has registered a case as Crime No. 107/2000 on a complaint from one Appu against the first petitioner and others for offences including one under S. 3(1)(XV) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act. The prayer in these petitions is to quash the complaint. It is contended that the First Information Report does not make out a case under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. From a perusal of the First Information Statement it is not possible to say that such a case is not made out. So there is no scope for quashing the complaint at this stage. It is for the investigating agency to collect evidence and examine whether there is scope for filing a final report under the provisions of the Act also.

2. It is submitted by learned counsel for the peritioners that since the case is triable by Sessions Court, the petitioners will not be granted bail by the Magistrate on their surrendering before the Court. An anticipatory bail order is prohibited by the provisions in the S. 18 of the Act. though the case is triable by Sessions Court, there is not prohibition in granting regular bail. The Supreme Court has made it clear that committal proceeding must be followed in cases under the Act. Section 3 of the Act take in a number of offences. Some are grave offences. Some offences are comparatively not that grave and carry only a lesser punishment. In many cases pre trial detention in judicial custody will not be necessary or even be unjust. There is no bar for the Magistrate for granting bail in such cases on the basis of the general principles enunciated in S. 437, Cr.P.C. If the petitioners surrender before the Court or are arrested and produced, the Magistrate will consider any bail application on merits.

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"न्याय का रोबोटिकरण"

दोस्तो! जागते जरूर रहना। कभी सुस्ता भी लो तो ध्यान रखना सोना मत। अब सोना इसलिए भी मत कि नई पीढ़ी जो आ रही है वह स्वयं जानकार भी है व अधिकाधिक जानना भी चाहती है। इसलिए उनकी उत्कंठा की पूर्णता तो हम आपको ही करना है। यदि हम किसी समस्या का निदान नहीं कर पा रहे हैं तो निदान हेतु मार्ग ढूंढना हमारा ही काम होगा। कनिष्ठ को एक समस्या का निदान करना था। वरिष्ठ से पूछा। वरिष्ठ ने कनिष्ठ को अंग्रेजी में कहा "कम सम ऑदर डे" अर्थात किसी दिन सुविधा से आना। बिचारा कनिष्ठ उसको कौन सी अंग्रेजी आती थी। उसने पूछ लिया मंडे से संडे में अनादर डे कब आयेगा? बड़े साहब ने कहा इंटरप्रिटेशन के सिद्धांत पढ़के आना। जब से वो कनिष्ठ बड़े साहब के यहां से गया डिफिकल्टी पूछने आया ही नहीं। बड़े साहब के स्थानान्तरण पर कनिष्ठ मिलने मात्र गया। बड़े साहब खुश थे। उसकी पीठ थपथपाई व कहा, लगता है समझदार, होशियार हो गए हो। कनिष्ठ ने कहा सर! आपका ही आशीर्वाद है जो आपने पढ़ने हेतु प्रेरित किया।

हम यदि ऐसा कर रहे हैं तो अपने आप को अंधेरे में रख रहें हैं। माननीय महोदय के चेंबर में बैठा थां क्यों बैठा था, इसका स्पष्टीकरण मैं क्या दे सकता हूं। शिक्षक (उस्ताद) तथा विद्यार्थी (चेला) का तालमेल नहीं बैठता है तो इस बेसुरे नाद–स्वर को ठीक करने हेतु मेरे जैसे डग्गा और तबले (वास्तविक आकार में भी) को हथौड़े से ठीक करना जरूरी होता है। माननीय महोदय कह रहे थे कि सत्र न्यायालयों से पारित आदेशों पश्चात प्रतिभूति आवेदन पत्र. उच्च न्यायालय में प्रस्तुत होते हैं। मन ही मन मैं कह रहा था कि ये तो मुझे भी मालूम है तथा मुझे ये भी मालूम है कि सीधे भी आवेदन पत्र उच्च न्यायालय में प्रस्तुत हो सकते हैं। इसी चिंतन में मैं खो गया था तो माननीय ने कहा, सुन रहे हो? मैं हड़बड़ाहट में तंद्रा से बाहर आया। मन की बात ताड़ने में उन्हें देर नहीं लगी थी। फिर भी उदारता व स्नेह से वे कहने लगे कि आदेश में क्या आप लिखते हो इसका सम्पूर्ण चित्र वरिष्ठ न्यायालय के सामने होना चाहिए व कहने लगे कि प्रतिभूति आवेदन पत्र पर पारित आदेश में कुछ औपचारिक बातें सुस्पष्ट क्यों नहीं होती। जीवंत व्यक्ति का देखना व उसका फोटो देखकर उसके जीवंत अवस्था की कल्पना करना दोनों ही दो भिन्न बातें हैं। प्रारंभिक न्यायालय तो जीवंत व्यक्ति को देख रहा है लेकिन वरिष्ठ न्यायालय तो केवल फोटो देख रहा है। फोटो भी वो जो कनिष्ठ

न्यायालय ने अपने विचारों के सीमित दायरे वाले कैमरे का स्कोप मिलाकर खींचा है न कि सम्पूर्ण व्हिडियो टेप। माननीय महोदय का कहना था कि प्रत्याभूति आवेदन पत्र के आदेश में स्पष्ट रूप से खुलासा होना चाहिए कि –

(ए) किस आरक्षी केन्द्र का यह प्रकरण है?
(बी) अपराध क्रमांक क्या है?
(सी) प्रथमतः किन धाराओं के अंतर्गत प्रकरण पंजीकृत किया था?
(डी) बाद में अन्य धाराएं जोड़ी गई हैं तो कौन–कौन सी?
(ई) किन आरोपीगणों ने आवेदन पत्र प्रस्तुत किया है?
(एफ) किन–किन की जमानत पूर्व में हो चुकी है?
(जी) किन–किन का आवेदन पत्र पहले निरस्त हो चुका है?
(एच) कौन प्रतिभूति पर मुक्त है?

विषयांकित आदेश में केवल यह लिखना पर्याप्त नहीं है कि प्रकरण गंभीर प्रकृति का है अतः आवेदन पत्र स्वीकार करना उचित नहीं है या कि प्रकरण की परिस्थिति को देखते आवेदन पत्र स्वीकार किया जाता है। जो भी कारण स्वीकार या अस्वीकार करने के हो सुस्पष्ट रूप से दर्शाना होंगे। उनका कहना है कि यदि सभी सुसंगत बातों का उल्लेख आदेश में है तो वरिष्ठ न्यायालय को ऐसे आदेश का मूल्यांकन करना अधिक लाभकारी होगा। अतः संक्षिप्त में निम्नलिखित तथ्य प्रत्येक आदेश में होंगे तो सुविधा होगा यथा,

(1) आरक्षी केन्द्र का नाम
(2) अपराध क्रमांक
(3) धाराएं जिनमें अभियुक्तगण आरोपित हुए?
(4) परिवर्तित धाराएं जिनमें (अनुसंधान अवधि में) अभियुक्त को आरोपित किया जा रहा है।
(5) सुनवाई में लिए जा रहे आवेदन पत्र की बारंबारता की संख्या।
(6) किन आरोपियों का आवेदन पत्र है
(7) प्रकरण में कुल कितने आरोपी हैं?
(8) किन–किन के आवेदन पत्र स्वीकृत हों चुके हैं?
(9) किन आवेदकों के आवेदन पत्र पूर्व में अस्वीकार हो चुके हैं?
(10) विषयान्तर्गत आवेदन पत्र की विषय वस्तु व कारणों सहित आदेश।

मैंने माननीय महोदय को आश्वस्त किया कि आपके विचारों को पत्रिका के माध्यम से शीघ्र ही अभिव्यक्त कर दिया जाएगा ताकि आपको किसी कठोर कार्यवाही की आवश्यकता नहीं होगी। यहां यह भी ध्यान रखने योग्य बात है कि

आवेदन पत्र के निराकरण के समय यह बात अवश्य ध्यान रहे कि केस डायरी के आधार से अनुसंधान की गति प्रगति क्या है, यह स्पष्ट हो। पुलिस केस डायरी में, दैनंदिन "पर्चा क्र. ....." डालती रहती है। अनुसंधान की प्रगति उससे एकदम स्पष्ट हो जाया करेगी। इस विषय पर एक विस्तृत लेख पृथक से यथा समय अवश्य लिखा जाएगा।

और ये लेख जब शाम 4.15 बजे लिख ही रहा था कि उसी रोज एक और माननीय महोदय ने याद किया। उपस्थित हुआ। वे कहने लग कि आप जो पढ़ाते हैं उसका उपयोग क्या है? मैंने मन ही मन में बोलने की आदत विकसित कर ली है। कहा चलो अच्छा है श्रीमान को गलत लेकिन सुखद धारणा तो है कि मैं पढ़ाता हूं। मैंने श्रीमान महोदय से कहा प्रयत्न तो करता हूँ एवं हर बारीक से बारीक बात भी समझाता हूँ तथा कई संदर्भ, कई प्रावधानों को एकत्र करके भी बताता हूँ। श्रीमान महोदय इस बात से दुखी थे कि न्यायिक अधिकारी ठीक से कार्य नहीं करते हैं, प्रक्रिया संबंधी विधि को न पढ़ते हैं, न जानने का प्रयत्न करते हैं। बीच में ही मैं बोल पड़ा कि समझाता तो जरूर हूँ तो माननीय बोले तो उसका उपयोग क्या है। क्या वे प्रशिक्षण पश्चात इन सब बातों को भूल जाते हैं? मैं यह कहने से तो रहा कि प्रशिक्षण सत्र में ही वे प्रशिक्षण को विस्मृत करके "तेरा तुझको अर्पण" कर चले जाते हैं। वास्तव में जब–जब ऐसे अवसर आए हैं मेरी स्थिति लज्जास्पद हो जाती है कि मैं क्या कहूं क्या नहीं कहूं। लेकिन एक बात ध्यान रखना होगी कि यदि हम आप ऐसी ही उपेक्षावृत्ति से लापरवाही से तथा इस भ्रम के साथ कि हमें सब कुछ आता है हमारा कोई क्या बिगाड़ लेगा कार्य करेंगे तो हमें गलत फहमी नहीं होना चाहिए न गलत धारणा हो एवं वास्तविकता यह होगी कि एक दिन उच्च न्यायालय समय–असमय हमें दरवाजा दिखा देगा। संभवतः जिला न्यायाधीशों का दायित्व भी समान रूप से बनता होगा कि वे अपने अधीनस्थ अधिकारियों के कार्य का समय–समय पर कठोरता पूर्वक निरीक्षण– परीक्षण, मार्गदर्शन, चैतन्य करके चेतावनी से अवगत व अनुभव कराएं। स्वाभाविक रूप से हम जिला न्यायाधीश स्तर के लोगों को भी समग्र रूप से अनुभवी होना ही चाहिए अथवा अनुभव प्राप्त करना चाहिए। ऐसा होने से सतत रूप से निरीक्षण–परीक्षण, पर्यवेक्षण– निदेशन एवं मार्गदर्शन की प्रक्रिया चलती रहेगी। पत्रिका के माध्यम से भी विभिन्न लेखों द्वारा एवं कक्षाओं में अनेकानेक भाषण मालिकाओं के माध्यम से उत्तिष्ठ, जागृत एवं चैतन्य बनाने की क्रिया चल रही है। माननीय महोदय ने मुझे कहा कि "जागे को क्या जगाओगे" वास्तव में माननीय महोदय ने हम सबके क्रिया कलापों की पोल इस एक वाक्य में खोल दी। मुझे वह प्रकरण देखने को दिया जो उनके सामने अपील के रूप में लंबित था। सम्पूर्ण प्रकरण में उपेक्षा वृत्ति झलक रही थी। निर्णय में

अनुसंधान अधिकारी के विरूद्ध दोषारोपण किया गया था कि अनुसंधान लापरवाही से किया गया है।

वास्तव में हम जब अधिकार तथा सत्ता में बैठते हैं तो संभवतः हम कर्तव्यों से विस्मृत हो जाते हैं। प्रकरण का सरसरी रूप से निरीक्षण किया तो ठीक वैसा ही पाया जिसके विपरीत कक्षाओं में समझाया गया था। यथा, अनुसंधान अधिकारी का कथन लिपिबद्ध कैसा करना। अपराधिक प्रकरणों में साक्ष्य का लिपिबद्ध करना। विलेखों में उल्लेखित तथ्यों को सिद्ध करना, लोप एवं विसंगतियों को लिपिबद्ध करना एवं धारा 161 द.प्र.सं. के कथनों को धारा 162 दं.प्र.सं. की विसंगतियों को सिद्ध करने की प्रक्रिया। इन सब बातों को नहीं देखा गया। अनुसंधान अधिकारी के कथन में दर्शाया है कि पी. 1 का मौका नक्शा बनाया था जिस पर ए–ए के मेरे हस्ताक्षर है। पी–2 द्वारा वस्तुओं की पहचान कराई गई थी आदि। वास्तव में नक्शा बनाया गया था याने क्या किया था। घटनास्थल नक्शे में कहां है? अन्य स्थान, साक्षियों की उपस्थिति, दूरी, वस्तुएं यदि वहां पड़ी थी, तो कहां थी? ये सब दस्तावेज की अन्तर्भूत बातें भी सिद्ध करना होती है। मुद्दे माल का प्रस्तुत करना, उस पर वस्तु संख्या अंकित करना आदि बहुत सी बातें नहीं थी। धारा 428 द.प्र. सं. का विवरण नहीं था। पीठासीन अधिकारी के हस्ताक्षर के नीचे उसका नाम नहीं था। सारभूत रूप से वे सब बातें "नदारत" (गायब) थी जिस विषय में विधि प्रावधान, नियम एवं आदेश, उच्च न्यायालय के परिपत्रों के निर्देश, कक्षाओं एवं ज्योति के माध्यम से बताई हुई बातें। शेष था तो केवल स्वयं के अधिकारों का प्रतिबिंब। आपको अधिकार है। आपको अधिकार नहीं है ऐसी चुनौती किसी ने नहीं दी है। माननीय महोदय के कहने का सार यह था कि हम–आप में उपेक्षावृत्ति, अकर्मण्यता व दायित्वबोध का अभाव कूट–कूट कर भरा है। हम यह मान बैठे हैं कि न्यायिक कार्य जैसा–तैसा निपटाओ व यूनिट्स पूर्ण करो। यही एक मात्र लक्ष्य शेष है। विधि, विधि प्रक्रिया, नियम, निर्देश व मार्गदर्शन की तो आवश्यकता ही नहीं रही है। इसी बात को माननीय महोदय ने इस प्रकार से भी कहा कि लगता है पीठासीन अधिकारी का **न्यायिक कार्य भी** उनके सहायक लिपिकगण करने लग गए हैं।

अभी कुछ दिन पूर्व कुछ प्रावधानों के संबंध में चर्चा चल रही थी। एक परिवाद धारा 138–142 निगोशिएबल इन्स्ट्रूमेंट एक्ट का था। अभियुक्त द्वारा दिया चेक अस्वीकार हुआ। परिवादी ने नोटिस दिया। अभियुक्त ने किसी दायित्व से मना कर दिया। परिवाद पत्र प्रस्तुत हुआ। वह परिवाद पत्र चेक अस्वीकार होने से 15 दिन में प्रस्तुत हुआ। प्रश्न यह है कि किसी भी अधिनियम में यह उल्लेख है क्या कि चेक

अस्वीकार होने के पश्चात किसी भी परिस्थिति में चाहे परिवादी ने नोटिस भेजा हो तथा अभियुक्त ने नोटिस के उत्तर में दायित्व अस्वीकार किया हो तथा यह सब काम चेक अस्वीकार होने से 15 दिन में हो चुका हो तो भी चेक अस्वीकार होने से 15 दिन के पूर्व परिवाद प्रस्तुत नहीं हो सकता है? कृपया आपको दिखे तो अवश्य बताना। चर्चा में दर्शाया न्याय दृष्टांत **1997 (3) क्राइम्स 294 कोटेश्वरी विरूद्ध मद्रास** के दृष्टांत को मैंने पढ़ा है व विशेषकर दृष्टांत का चरण 6। ऐसी कोई बात मुझे ज्ञात नहीं हुई। स्थिति यह है कि हम जिस विषय से संबंधित प्रकरण का निर्णय लिखने बैठे उनके प्रावधानों को भी ठीक से नहीं पढ़ेंगे व नहीं समझेंगे तो न्याय का आधार ही नष्ट हो जायेगा। हम क्या पढ़ रहे हैं क्या समझ रहे हैं यह पुस्तक से जानना होगा विपरीत इसके हमारा जो मत है उसे हम उन प्रावधानों में ढूंढना चाहते हैं व वैसा ही करना चाहते हैं। इसी पूर्वाग्रह के कारण प्रावधानों को न तो पढ़ना चाहते है न समझना चाहते हैं।

एक और उदाहरण। धारा 319 द.प्र.सं. के अन्तर्गत किसी व्यक्ति को अभियुक्त बनाने के विषय में। दो व्यक्तियों के विरूद्ध आरोप–पत्र प्रस्तुत हुआ। चार्ज लगा। वरिष्ठ न्यायालय ने एक अभियुक्त को रिवीजन में डिस्चार्ज कर दिया। विचारण न्यायालय में प्रकरण की सुनवाई के समय अन्य अभियुक्त के संबंध में लिपिबद्ध साक्ष्य में डिस्चार्जड् अभियुक्त के विरूद्ध भी प्रमाण आया। अब मजिस्ट्रेट महोदय डिस्चार्जड् अभियुक्त को प्रकरण में धारा 319 दं.प्र.सं. के अन्तर्गत जोड़ना चाहते हैं व सब तर्क दे रहे हैं जो वे दे सकते हैं। उन्हें प्रावधान पढ़ने को दिया। पढ़ा। फिर भी जिद्द पर अड़े हैं कि ऐसा हो सकता है जैसा वे सोचते हैं। मैंने कहा प्रावधान ठीक से नहीं पढ़ा। पुनः पढ़वाया फिर भी वे अड़े रहे। मैंने उस प्रावधान में उल्लेखित शब्द – .... it appears from the evidence that any person **not being the accused.** पढ़वाया। वे मानने को तैयार नहीं है। **सोहनलाल विरूद्ध राज्य ए.आय.आर. 1990 सु. को. 2158 (2162-63) का संदर्भ** दिया। पीठासीन अधिकारी ने कहा देखेंगे। ये दृष्टांत पूर्व में भी **1997 ज्योति भाग-2 खंड-3 पृष्ठ 36** पर प्रकाशित किया जा चुका है। वर्तमान में विधि की यही व्यवस्था है।

दोस्तो! हम आप में सबसे बड़ा दोष है पठन (Reading) पाठन (Learing) नहीं करना। किसी बात को मानकर (Assume) काम करना या हमारी मन की बात को प्रावधानों में ढूंढना। एक दम गलत है। हमारा पठन–पाठन विश्लेषणात्मक हो व उसमें अध्ययनशीलता होगी तो हम एक न्यायाधीश के रूप में कार्य कर रहे होंगे। ऐसा तादात्म्य स्थापित होना चाहिए। अन्यथा न्यायदान का कार्य रोबोट भी ज्यादा अच्छे से करें तो क्या आश्चर्य।

THE INDIAN STAMP (MADHYA PRADESH AMENDMENT) ACT, 1999

No 11 of 2000

CONTENTS

(Received the assent of the President on the 18th March, 2000; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)" dated the 29th March, 2000).

An Act further to amend the Indian Stamp Act, 1899, in the application to the State of Madhya Pradesh.

Be it ehacted by the Madhya Pradesh Legislature in the Fiftieth Year of the Republic of India as follows :-

1. Short title and Commencement.- (1) This Act may be called the Indian Stamp (Madhya Pradesh Amendment). Act, 1999.

(2) It shall come into force on such date as the State Government may, by notification, appoint and different dates may be appointed for different provisions of the Act.

2. Amendment of Central Act No. 2 of 1899 in its application to the State of Madhya Pradesh.- The Indian Stamp Act, 1899 (No. 2 of 1899) (hereinafter referred to as the Principal Act) shall in its application to the State of Madhya Pradesh be amended in the manner hereinafter provided.

3. Amendment of Section 47-A.- In Section 47-A of the Principal Act,-

(i) for sub-section (1), the following sub-section shall be substituted, namely :

(1) If the Registering Officer appointed under the Registration Act, 1908 (No. XVI of 1908), while registering any instrument finds that the market value of any property which is the subject matter of such instrument has been setforth less than the minimum value determined in accordance with any rules under this Act, he shall before registering such instrument refer the same to the Collector for the determination of the market value of such property and the proper duty payable thereon.

(1-A)Where the market value as setforth in the instrument is not less than the minimum value determined in accordance with any rules under this Act, and the Registering Officer has reason to believe that the market value has not been truely sertforth in the instrument, he shall register such instrument and there-

after refer the same to the Collector for determination of market value of such property and proper duty payable thereon."

(ii) after sub-section (3), the following sub-section shall be inserted, namely :-

"(3-A) For the purpose of inquiries under this Section, the Collector shall have the power to summon and enforce the attendance of witnesses including the parties to the instrument, or any of them and to compel the production of documents by the same means and so far as may be in the same manner, as is provided in the case of Civil Court under the Code of Civil Procedure, 1908 (Central Act No. V of 1908):-

4. Amendment of Schedule 1.A- In Schedule 1-A to the Principal Act,

(i) in Article 1, in column (2), for the words "One rupee", the words "Two rupees", shall be substituted;

(ii) In Article 8, in column (2), against cluase (b), for the words "Fifty rupees", the words "One hunderd rupees" shall be substituted ;

(iii) in Article 28, in column (2), for the words "One rupee", the words "Two rupees" shall be substituted;

(iv) in Article 35,-

(a) in clause (a) against sub-clause (vi), in column (2), for the existing entry, the following entry shall be substituted, namely:-

"The same duty as a conveyance (No. 23) for a market value equal to eight times the amount or value of the annual market rent."

(b) in clause (a) against sub-clause (vii), in column (2), for the existing entry, the following entry shall be substituted, namely:-

"The same duty as a conveyance (No. 23) for a market value equal to market rent payable in twelve and half years of the lease".

(c) against caluse (b) in column (2), after existing entry, the following proviso shall be inserted, namely:-

"Provided that, where the lease purports to be for a term exceeding thirty years or in perpetuity the duty on such lease shall be chargeable as a conveyance (No. 23) on the market value of the property leased."

(v) in Article 38, in column (2), for the words "Thirty rupees", the words "Fifty rupees" shall be substituted;

(vi) in Article 43, in column (2), against clause (a), for the words "One rupee", the words "Two rupees} shall be substituted;

(vii) in Article 65, in column (2), for the words "One rupee", the words "Two rupees" shall substituted.

परिपत्र

वित्त विभाग, म.प्र. शासन के पत्र क्र. एफ. 25/2000 पी. डब्ल्यू. सी. चार. दि. 30. 5.2000 जो उच्च न्यायालय म.प्र. ने अपने पृष्ठांकन क्र. सी/4624/ चार-9-35/76 भाग 5 दि. 07 सितम्बर 2000 को निर्गमित किया।

विषय :- सिविल सर्विसेस पेंशन नियम

संशोधन

एफ. 25/2000 पी. डब्ल्यू. सी.चार भारत के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, मध्यप्रदेश के राज्यपाल एतद् द्वारा मध्यप्रदेश सिविल सर्विसेज (पेंशन) नियम, 1976 में निम्नलिखित और संशोधन करते हैं, अर्थात :–

संशोधन

उक्त नियमों में, नियम 42 में,

(1) शीर्षक में अंक तथा शब्द "20/25" वर्ष के स्थान पर अंक तथा शब्द "20 वर्ष" स्थापित किए जाएं।

(2) उपनियम (1) के खण्ड (बी) में अंक तथा शब्द "25 वर्ष की अर्हतादायी सेवा" के स्थान पर अंक तथा शब्द "20 वर्ष की अर्हतादायी सेवा या 50 वर्ष की आयु, जो भी पूर्वतर हो", स्थापित किए जाएं।

(3) उपनियम (1) के खण्ड (बी) की टिप्पणी– 1 में,

(क) अंक तथा शब्द "25 वर्ष की अर्हतादायी सेवा" के स्थान पर अंक तथा शब्द "20 वर्ष की अर्हतादायी सेवा या 50 वर्ष की आयु" स्थापित किए जाएं।

(ख) शब्द "यदि आवश्यक हो तो, नियुक्तिकर्ता प्राधिकारी शासकीय सेवक की अर्हतादायी सेवा बाबत् महालेखाकार, मध्यप्रदेश से रिपोर्ट प्राप्त कर लें" का लोप किया जाएँ।

(4) प्रारूप 29 के स्थान पर निम्नलिखित प्रारूप स्थापित किए जाएं। अर्थात :–

"प्रारूप 29

(नियम 42 (1) (बी) देखिये)

प्रति,

.....

.....

.....

1. चूंकि आपने तारीख ..... को 20 वर्ष की अर्हतादायी सेवा/50 वर्ष की आयु पूर्ण कर ली है।

2. और चूंकि राज्य सरकार के अनुमोदन से, लोकहित में यह विनिश्चित किया गया है कि आपको मध्यप्रदेश सिविल सर्विसेस (पेंशन) नियम, 1976 के नियम 42 के

उपनियम (1) के खण्ड (बी) के अधीन तारीख ..... से सेवानिवृत्त किया जाए, तद्नुसार एतद् द्वारा इस निमित्त तीन मास की सूचना दी जाती हैं

अथवा

1. चूंकि आपने तारीख ..... को 20 वर्ष की अर्हतादायी सेवा/50 वर्ष की आयु पूर्ण कर ली है।
2. और चूंकि राज्य सरकार के अनुमोदन से, लोकहित में यह विनिश्चित किया गया है कि आपको मध्यप्रदेश सिविल सर्विसेज (पेंशन) नियम 1976 के नियम 42 के उपनियम (1) के खण्ड (बी) के अधीन तारीख ..... से सेवानिवृत्त किया जाए, तद्नुसार एतद् द्वारा इस निमित्त तीन मास से कम अवधि की सूचना दी जाती है।

अथवा

1. चूंकि आपने तारीख ..... को 20 वर्ष की अर्हतादायी सेवा/50 वर्ष की आयु पूर्ण कर ली है।
2. अतएव, मध्यप्रदेश सिविल सर्विसस (पेंशन) नियम, 1976 के नियम 42 के उपनियम (1) के खण्ड (बी) द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य सरकार के अनुमोदन से लोकहित में एतद्द्वारा आपको तत्काल अर्थात तारीख ..... से सूचना दिये बिना सेवानिवृत्त किया जाता है।

तारीख .....

.....

नियुक्तिकर्ता प्राधिकारी

जो लागू न हो उसे काट दें।

No. F-25-2-2000 PWC- IV- In exercise of the powers conferred by the proviso to Article 309 of the constitution of India, the Government of Madhya Pradesh hereby makes the following further amendments in the Madhya Pradesh Civil Services (Pension) Rules, 1976, namely:-

AMENDMENT

In the said rules, in rule 42,

(1) In the heading, for the figure and words "20/25 years" the figure and words "20 years" shall be substituted.

(2) In clause (b) of sub-rule (1) for the figure and words" 25 years qualifying service" the figures and words "20 years qualifying services or he attains the age of 50 years whichever is earlier" shall be substituted.

(3) In note I, below clause (b) of sub-rule (1).

(a) for the figure and words "25 qualifying service" the figure and words "20 years qualifying service or he attains the age of 50 years" shall be sbustituted.

(b) the words "The appointing authority may obtain report from the Accountant General, Madhya Pradesh about qualifying service of the Government servant, if necessary" shall be omitted.

(4) for FORM 29, the following FORM shall be substituted, namely :

"Form 29
(See Rule 42 (1) (B)

To,

.....
.....
.....

✦1. Whereas, you have completed 20 years qualifying service/50 years of age on .....

2. And whereas, with the approval of the State Government, it has been decided in the public interest to retire you from service with effect from ..... under clause (b) of sub rule (1) of Rule 42 of the Madhya Pradesh Civil Services (Pension) Rules, 1976, three months notice in that behalf is hereby given accordingly.

OR

1. Whereas, you have completed 20 years qualifying service/50 years of age on .....

2. And Whereas, with the approval of the State Government, it has been decided to retire you in public interest from service with effect from ..... under clause (b) of sub-rule (1) of Rule 42 of the Madhya Pradesh Civil Service (Pension) Rules, 1976 a notice short of three months in that behalf is hereby given accordingly.

OR

1. Whereas, you have completed 20 years qualifying service/50 years of age on .....

2. Now Therefore, in exercise of the power conferred by clause (b) of sub-rule (1) of Rule 42 of the Madhya Pradesh Civil Services (Pension) Rules. 1976 with the approval of the State Government you are hereby retired in public interest forthwith without notice that is to say with effect from .....

Date .....

.....
Appointing Authority

✦ Stirke out which are not applicable.

मध्यप्रदेश के राज्यपाल के नाम से तथा
आदेशानुसार

(म.प्र. राजपत्र दिनांक 16 जून 2000 भाग 4 अंतिम नियम में प्रकाशित)

परिपत्र

म.प्र. राज्य शासन, सामान्य प्रशासन विभाग द्वारा क्र. सी/5-1/96/3 एक दि. 03-6-3000 द्वारा म.प्र. सिविल सेवा (आचरण) नियम 1965 में किए संशोधन जिन्हें उच्च न्यायालय म.प्र. ने पृष्ठांकन क्र. सी/4365/दो. 15-5166 दि. 21 अगस्त 2000 को निर्गमित किया। म.प्र. राज्य राजपत्र असाधारण दि. 25 मई 2000 में प्रकाशित...

एफ. क्र. सी–5–1–96–3 एक भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, मध्यप्रदेश के राज्यपाल, एतद्द्वारा, मध्यप्रदेश सिविल सेवा (आचरण) नियम, 1965 में निम्नलिखित और संशोधन करते हैं, अर्थात :–

संशोधन

उक्त नियमों में,

1. नियम 1 के उपनियम (3) के द्वितीय परन्तुक का लोप किया जाए।
2. नियम 3 के पश्चात निम्नलिखित नियम अंतःस्थापित किए जाएं। अर्थात :–

"3 (क) तत्परता तथा शिष्ट व्यवहार–

कोई भी शासकीय सेवक

(क) अपने पदीय कृत्यों के पालन में अशिष्टता से कार्य नहीं करेगा।

(ख) जनता के साथ अपने पदीय संव्यवहार में या अन्यथा विलंबकारी कार्यनीति नहीं अपनाएगा और उसे सौंपे गए कार्य को निपटाने में जानबूझकर विलंब नहीं करेगा।

(ग) ऐसा कुछ नहीं करेगा जो अनुशासनहीनता का द्योतक हो।

(घ) शासकीय आवास को, जो उसे आवंटित किया गया है, उपभाड़े पर नहीं देगा, षट्टे पर नहीं देगा या किसी व्यक्ति द्वारा अधिलाभ के लिए अधिभोग या उपयोग को अन्यथा अनुज्ञात नहीं करेगा।

3 (ख) शासन की नीतियों का पालन –

प्रत्येक शासकीय सेवक, समस्त समय पर –

(क) विवाह की आयु, पर्यावरण के परिरक्षण, वन्य जीव और सांस्कृतिक विरासत के संरक्षण से संबंधित शासन की नीतियों के अनुसार कार्य करेगा।

(ख) महिलाओं के विरुद्ध अपराध के निवारण से संबंधित शासन की नीतियों का पालन करेगा।"

3. नियम 9 में, –

(एक) पार्श्वशीर्ष के स्थान पर निम्नलिखित पार्श्व शीर्ष स्थापित किया जाए, अर्थात:–

"प्रेस तथा अन्य मीडिया से संबंध"

(दो) उप–नियम (1) में शब्द "प्रकाशन" के स्थान पर शब्द "प्रकाशन तथा कोई अन्य मीडिया" स्थापित किया जाए।

(तीन) उप–नियम (2) में शब्द "रेडियो प्रसारण" के स्थान पर शब्द "कोई अन्य मीडिया प्रसारण" स्थापित किया जाए।

4. नियम 10 में शब्द "रेडियो प्रसारण (ब्रॉडकास्ट)" के स्थान पर शब्द "रेडियो प्रसारण (ब्रॉडकास्ट) या अन्य मीडिया प्रसारण" स्थापित किया जाए।

5. नियम 12 में निम्नलिखित स्पष्टीकरण अंत में जोड़ा जाए, अर्थात :–

स्पष्टीकरण - किसी शासकीय सेवक द्वारा (किसी न्यायालय या अधिकरण या किसी प्राधिकारी के समक्ष या अन्यथा अपने अभ्यावेदन में) किसी पत्र, परिपत्र या कार्यालय ज्ञापन या किसी अन्य शासकीय दस्तावेज का या उससे या किसी ऐसी फाईल के टिप्पणों से उद्धरण देना, जिस तक पहुंच के लिए वह प्राधिकृत नहीं है या जिसे वह अपनी वैयक्तिक अभिरक्षा में या वैयक्तिक प्रयोजनों के लिए रखने हेतु प्राधिकृत नहीं है, इस नियम के अर्थ के अन्तर्गत जानकारी की अप्राधिकृत सूचना की कोटि में आएगा।"

6. नियम 16 के स्थान पर निम्नलिखित नियम स्थापित किया जाए, अर्थात :–

(16) प्राइवेट कारोबार या नियोजन :–

(1) कोई शासकीय सेवक, उपनियम (2) के उपबंधों के अध्यधीन रहते हुए शासन के पूर्व अनुमोदन के बिना –

(क) प्रत्यक्ष या अप्रत्यक्ष रूप से वह कोई कारोबार या व्यापार नहीं करेगा, या

(ख) कोई अन्य सेवा नहीं करेगा, या

(ग) किसी निकाय में, चाहे वह निर्गमित निकाय या अनिगमित निकाय हो, कोई पद धारण नहीं करेगा या किसी निर्वाचन के लिए किसी अभ्यर्थी/ किन्हीं अभ्यर्थियों के लिए प्रचार नहीं करेगा, या

(घ) अपने कुटुम्ब के किसी सदस्य के स्वामित्व की या उसके द्वारा प्रबंधित किसी बीमा कंपनी, कमीशन एजेन्सी आदि के किसी कारोबार के समर्थन में प्रचार नहीं करेगा, या

(ड) अपने पदीय कर्तव्यों के संबंध में सिवाय, किसी बैंक या किसी अन्य कंपनी के, जो कि कंपनी अधिनियम, 1956 (1956 का अनुक्रमांक 1) या तत्समय प्रवृत्त किसी अन्य विधि के अधीन रजिस्ट्रीकृत हो, या वाणिज्यिक प्रयोजनों के लिए स्थापित किसी सहकारी सोसाईटी के संप्रवर्तन या प्रबंध में भाग नहीं लेगा।

(2) कोई भी शासकीय सेवक शासन की पूर्व अनुज्ञा अभिप्राप्त किये बिना :–

(क) किन्हीं भी सामाजिक या खैराती (चेरिटेबिल) प्रकृति के क्रियाकलापों में भाग ले सकेगा, या

(ख) किन्हीं भी साहित्यिक, कलात्मक या वैज्ञानिक प्रकृति के यदा–कदा होने वाले क्रियाकलापों में भाग ले सकेगा, या

(ग) खेल–कूद के क्रियाकलापों के अध्यवसायी के रूप में भाग ले सकेगा, या

(घ) साहित्यिक, वैज्ञानिक या पूर्व सोसाइटी या क्लबों या उसी प्रकार के अन्य संगठनों के (जिसमें कि कोई निर्वाचन पद धारण करना अंतर्वलित न हो), रजिस्ट्रीकरण, संप्रवर्तन या प्रबंध में, जिनके कि लक्ष्य या उद्देश्य खेलों/क्रीड़ाओं से संबंधी क्रियाकलापों या सांस्कृतिक अथवा आमोद–प्रमोद की प्रकृति के ऐसे क्रियाकलापों को बढ़ावा देने से संबंधित हों, और जो कि मध्यप्रदेश सोसाइटी रजिस्ट्रीकरण अधिनियम, 1973 (क्रमांक 44 सन् 1973) या तत्समय प्रवृत्त किसी अन्य विधि के अधीन रजिस्ट्रीकृत किये गये हों, भाग ले सकेगा, या

(ड) किन्हीं ऐसी सहकारी सोसाइटियों के, जो मध्यप्रदेश सहकारी सोसाइटी अधिनियम, 1960 (क्रमांक 17 सन् 1961) या तत्समय प्रवृत्त किसी अन्य विधि के अधीन रजिस्ट्रीकृत हों और जो कि सारभूत रूप से शासकीय सेवकों के फायदे के लिए स्थापित की गई हों (जिसमें कोई निर्वाचन पद धारण करना अंतर्विलित न हो) रजिस्ट्रीकरण, संप्रवर्तन या प्रबंध में भाग ले सकेगा।

परन्तु

(एक) वह ऐसे क्रियाकलापों में भाग लेना बंद कर देगा यदि शासन द्वारा उसे इस प्रकार निर्देशित किया गया हो, और

(दो) इस उपनियम के खण्ड (घ) और (ड) के अधीन न आने वाले मामलों में, उसके पदीय कर्तव्य प्रतिकूलतः प्रभावित नहीं होंगे तथा वह ऐसे क्रियाकलापों में भाग लेने के पश्चात एक मास के भीतर उसके भाग लेने की प्रकृति का ब्यौरा देते हुए, शासन को रिपोर्ट भेजेगा।

(3) यदि किसी शासकीय सेवक के कुटुम्ब का कोई सदस्य किसी कारोबार या व्यापार में लगा हुआ है या उसके कटुम्ब का कोई सदस्य किसी बीमा कंपनी या कमीशन

एजेन्सी का स्वामित्व रखता है या उसका प्रबंध करता है तो वह शासन को रिपोर्ट देगा।

(4) शासन के साधारण या विशेष आदेशों द्वारा जब तक कि अन्यथा उपबंधित न हो, कोई भी शासकीय सेवक किसी प्राईवेट संस्था या लोक निकाय या प्राइवेट व्यक्ति के लिए उसके द्वारा किए गए किसी कार्य के लिए, प्राधिकारी का अनुमोदन अभिप्राप्त किए बिना कोई विहित फीस स्वीकार नहीं करेगा।

स्पष्टीकरण - इस उपनियम के प्रयोजन के लिए शब्द "फीस" का वही अर्थ होगा जो कि मध्यप्रदेश फण्डामेण्टल रूल्स के नियम 46 (ए) में उसके लिए दिया गया है।

7. नियम 17 में, उपनियम (4) खण्ड (एक) के विद्यमान परंतुक के पश्चात निम्नलिखित परंतुक अंतःस्थापित किया जाये, अर्थात :– "परन्तु यह और भी कि इस उपनियम में अंतर्विष्ट कोई भी बात शासन के पूर्व अनुमोदन से किसी शासकीय सेवक द्वारा किये गये किन्हीं संव्यवहारों को लागू नहीं होगी।"

8. नियम 19 में,

(एक) उपनियम (3) में शब्द तथा अंक "रू. 5000–00 के स्थान पर शब्द तथा अंक रू. 10,000.00 तथा शब्द तथा अंक "रू. 2500–00" के स्थान पर शब्द तथा अंक "रू. 5000–00" स्थापित किए जाएं।

(दो) उपनियम (5) में, स्पष्टीकरण में, खण्ड (1) में, उपखण्ड (घ) के पश्चात निम्नलिखित उपखण्ड अतः स्थापित किया जाए, अर्थात :–

"(ङ) टेलीविजन सेट तथा अन्य विद्युत और इलेक्ट्रानिक वस्तुएं"

9. नियम 22 के उपनियम (2) के पश्चात निम्नलिखित उपनियम अतःस्थापित किये जाएं, अर्थात :–

"(3) कोई भी शासकीय सेवक ऐसा कोई कृत्य नहीं करेगा जो कि महिला शासकीय सेवक के यौन उत्पीड़न की कोटि में आता हो, यौन उत्पीड़न में निम्नलिखित अशिष्ट, कामुक क्रियाकलाप सम्मिलित हैं:–

(क) शारीरिक संपर्क तथा कामासक्त व्यवहार

(ख) यौन सहमति की मांग या निवेदन

(ग) कामासक्त फब्ती

(घ) अश्लील साहित्य दिखाना

(ङ) कामासक्त प्रकृति का कोई भी अन्य अशिष्ट, शारीरिक, शाब्दिक या सांकेतिक आचरण"

(4) प्रत्येक शासकीय सेवक भारत सरकार तथा राज्य सरकार के परिवार कल्याण से संबंधित नीतियों का पालन करेगा।

स्पष्टीकरण - इस उपनियम के प्रयोजन के लिए शासकीय सेवक के दो से अधिक बच्चे होने को अवचार माना जायेगा यदि उनमें से एक का जन्म 26–1–2001 को या उसके पश्चात हो।

10. नियम 23 के खण्ड (घ) के पश्चात निम्नलिखित स्पष्टीकरण अंतःस्थापित किया जाएँ, अर्थात :–

"स्पष्टीकरण- इस नियम के प्रयोजनों के लिए "सार्वजनिक स्थान" से अभिप्रेत है ऐसा कोई स्थान या परिसर (जिसमें कोई वाहन सम्मिलित है), जिसमें जनता का संदाय करने पर या अन्यथा प्रवेश है या प्रवेश के लिए अनुज्ञात है"

11. नियम 23 के पश्चात, निम्नलिखित नियम अंतः स्थापित किया जाए, अर्थात :– "23–क. 14 वर्ष कम आयु के बच्चों को रोजगार में लगाने पर प्रतिबंध–कोई भी शासकीय सेवक 14 वर्ष से कम आयु के किसी भी बच्चे को रोजगार पर नहीं लगायेगा"

न्यायालय फीस से छूट

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

अधिसूचना

भोपाल, दिनांक 01 जनवरी 1990.

पत्र क्रमांक 9/1/83/21–ब (दो) न्यायालय फीस अधिनियम, 1870 (1870 का क्र. 7) की धारा 35 द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य सरकार, एतद् द्वारा सम्पूर्ण मध्यप्रदेश राज्य में अत्याचार की शिकार महिलाओं द्वारा वादपत्र पर देय न्यायालय फीस से जो उक्त अधिनियम की अनुसूची–1 के अनुच्छेद 1–क तथा 2 और अनुसूची 2 के अनुच्छेद 5, 17 तथा 21 में विनिर्दिष्ट है, छूट प्रदान करती है।

In exercise of the powers conferred by Section 35 of the Court Fees Act, 1870 (No 7 of 1870) the State Government here by remit in the whole of the State of Madhya Pradesh the court fees specified in Article-A, 1-A and 2 of the First Schedule and Articles 5, 17 and 21 of the Second Schedule to the said Act, payable on plaint by woman victim of atrocities.

भोपाल, दिनांक 4 अगस्त 2000

क्र. 7410– इक्कीस –अ (प्रा.) – भारत के संविधान के अनुच्छेद 348 के खण्ड (3) के अनुसार में, मध्यप्रदेश आबकारी (संशोधन) अधिनियम, 2000 (क्रमांक 22 सन् 2000) का अंग्रेजी अनुवाद राज्यपाल के प्राधिकार से एतद्द्वारा प्रकाशित किया जाता है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
आर.के. सिटोके, अतिरिक्त सचिव,

MADHYA PRADESH ACT
No. 22 of 2000.

THE MADHYA PRADESH EXCISE (AMENDMENT) ACT, 2000.

TABLE OF CONTENTS

Section :

MADHYA PRADESH ACT
No. 22 of 2000.

THE MADHYA PRADESH EXCISE (AMENDMENT) ACT, 2000.

(Received the assent of the President on the 29th July, 2000 ; assent first published in the "Madhya Pradesh Gazette (Extraordinary)" dated, the 4th August, 2000)

An Act further to amend the Madhya Pradesh Excise Act, 1915.

Be it enacted by the Madhya Pradesh Legislature in the Fifty-first Year of the Republic of India as follows :-

Short Title :

1. This Act may be called the Madhya Pradesh Excise (Amendment Act, 2000.)

Amendment of Section 10.

2. In Section 10 of the Madhya Pradesh Excise Act, 1915 (No. 2 of 1915) (hereinafter referred to as the Principal Act), the existing provisio shall be omitted.

Substitution of new Section for Section 34.

3. For Section 34 of the Principal Act, the following section shall be substituted, namely :-

Penalty for unlawful manufacture, transport, possession, sale etc.

"34. (1) Whoever, in contravention of any provisions of this Act, or of any rule, notification or order made or issued thereunder, or of any condition of a licence permit or pass granted under this Act,

(a) manufactures, transports, imports, exports collects or possesses any intoxicant;

(b) save in the cases provided for in Section 38, sells any intoxicant; or

(c) cultivates bhang; or

(d) taps any foddy producting tree/or draws foddy therefrom; or

(e) constructs, or works any distillery, brewery or vintnery ; or

(f) uses, keeps or has in his possession any material, still utensil, implement or apparatus, whatsoever for the purpose of manufacturing any intoxicant other than toddy; or

(g) removes any intoxicant from any distillery, brewery, vintnery or warehouse licensed, established or contained, under this Act;

(h) Bottles any liquor;

shall subject to the provisions of sub-section (2), be punishable for every such offence with imprisonment for a term which may extend to one year and fine which shall not be less than five hundred rupees but which may extend to five thousand rupees :

Provided that when any person is convicted under this Section of any offence for a second or subsequent time he shall be punishable for every such offence with imprisonment for a term which shall not be less than two months but which may extend to twenty four months and with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees.

(2) Notwithstanding anything contained in sub-section (1), if a persons is convicted for an offence covered by clause (a) or clause (b) of sub-section (1) and the quantity of the intoxicant being liquor found at the time or in the course of detection of the offence exceeds fifty bulk litre, he shall be punishable with imprisonment for a term shall not be less than one year but which may extend to three years and with fine which shall not be less than twenty five thousand rupees but may extend to one lac rupees :

Provided that when any person is convicted under this section for an offence for second or subsequent time, he shall be punishable for every such offence with imprisonment for term which shall not

be less than two years but which may extend to five years and with fine which shall not be less than fifty thousand rupees but may extend to two lac rupees.

(3) When an offence coverd by clause (a) or clause (b) of sub-section (1) is commited and the quantity of liquor found at the time or in the course of detection of such offence exceeds fifty bulk litres, all intoxicants, articles implements, utensils, materials, conveyance etc. in respect of or by means of which the offence is committed, shall be liable to be seized and confiscated, If such an offence is committed by or on behalf of a person who holds a licence under the Act for manufacturing or stocking or storing liquor for sale on which duty at the prescribed rate has not been paid then notwithstanding anything contained in section 31 the licence granted to him shall be cancelled in case he is convicted for the offence as aforesaid.

(4) The seizure or confiscation of the intoxicants, articles, implements, utensils, materials and conveyance and the cancellation of licence as provided under subsection (2) above shall be in addition and without prejudice to any other action that may be taken under any provisions of the Act or rules made thereunder."

Amendment of Section 46.

4. In Section 46 of the Principal Act,-

(i) For sub-section (1)] the following sub-section shall be substituted, namely:-

"(1) Whenever an offence has been committed which is punishable under this Act, the intoxicant, materials, still, utensils, implements or apparatus in respect of or by means of which such offence has been committed, and the receptacles, packages and converings in which any such intoxicant materials, still utensils, implements or apparatus is or are found, and the other contents, if any, of the receptacles or packages in which the same is or are found, and the animals, carts vessels, rafts or other conveyance used in carrying the same shall be liable to confiscation.",

(ii) The existing proviso to sub-section (2) shall be omitted.

Amendment of Section 47

5. For sub section (1) of Section 47 of the Principal Act, the following sub-section and proviso shall be substituted, namely :-

"(1) Where in any case tried by him the Magistrate, decides that anything is liable to confiscation under Section 46, he shall order confiscation of the same :

Provided that where any intimation under clause (a) of sub-section (3) of Section 47-A has been received by the Magis-

trate, he shall not pass any order in regard to confiscation as aforesaid until the proceedings pending before the Collector under Section 47-A in respect of the thing as aforesaid have been disposed of, and if the Collector has ordered confiscation of the same under sub-section (2) of Section 47-A, the Magistrate shall not pass any order in this regard."

Insertion of new sections 47-A, 47-B, 47-C and 47-D

6. After Section 47 of the Principal Act, the following Sections shall be inserted, namely :-

Confiscation of seized intoxicants, articles, implements, utensils materials, conveyance etc.

"47-A.(1) Whenever any offence covered by clause (a) or (b) of sub-section (1) of Section 34 is committed and the quantity of liquor found at the time or in the course of detection of offence exceeds fifty bulk litres, every office, empowered under Section 52, while seizing any intoxicants, articles, implements, utensils, materials, conveyance etc. under sub-section (2) of Section 34 or Section 52, of the Act. shall place on the property seized a mark indicating that the same has been so seized and shall without undue delay either produce the seized property before the Collector of the District, or, where having regard to its quantity or bulk or any other genuine difficulty it is not expedient to do so, make a report containing all the details about the seizure to him.

(2) When the Collector, upon production before him of intoxicants, articles, implements, utensils, materials, conveyance etc. or on receipt of a report about such seizure as the case may be is satisfied that an offence covered by clause (a) or clause (b) of sub-section (1) of Section 34 has been committed and where the quantity of liquor found at the time or in the course of detection of such offence exceeds fifty bulk litres he may, on the ground to be recorded in writing, order the confiscation of the intoxicants, articles, implements, utensils materials. conveyance etc. so seized. He may, during the pendency of the proceedings for such confiscation also pass an order of interim nature for the custody. disposal etc. of the confiscated intoxicants, articles, implements, utensils, materials, conveyance etc. as may appear to him to be necessary in the circumstances of the case.

(3) No order under sub-section (2) shall be made unless the Collector has-

(a) sent an intimation in a form prescribed by the Excise Commissioner about initiation of proceedings for confiscation of seized intoxicants, articles, implements, utensils, materials, conveyance, etc., to the court having jurisdiction to try the offence on account of which the seizuere has been made.

(b) issued a notice in writing to the person from whom such intoxicants, articles, implements, utensils, materials, conveyance etc. have been seized and to any person staking claim to it and to any other person who may appear before the Collector to have an interest in it :

(c) afforded an opportunity to the persons referred to in clause to in clause (b) above of making a representation against proposed confiscation.

(d) given to the officer effecting the seizure under sub-section (1) and to the person or persons who have been noticed clause (b) a hearing.

Appeal against the order of confiscation.

47. (B) (1) Any person. aggrieved by an order of confiscation passed under sub-section (2) of Section 47-A may. within thirty days of such order. prefer an appeal to the Divisional Commissioner of the Concerned division or to any other officer authorised for the purpose by a notification of the Sate Government (hereinafter referred to as the Appellate Authority) Such appeal memorandum shall be accompanied by a certified copy of the order appealed against.

(2) The appellate Authority on presentation of such memorandum of appeal, issue a notice to the appellant and to any other person who is likely to be adversely affected by the order that may be passed in appeal.

(3) The Appellate Authority after hearing the parties to the appeal, shall pass an order confirming reversing or modifying the order of confiscation appealed against :

Provided that he may pass such order of interim nature for custody, disposal etc. of the confiscated articles during the pendency of appeal, as may appear to him just or proper in the circumstances of the case but he shall have no power to stay the order of confiscation appealed against during the pendency of appeal.

Revisions before the court of sessions against the order of the Appellate Authority.

47 C(1) Any party to appeal aggrieved by the final order by the Appellate Authority under subsection (3) of Section 47-B, may, within 30 days of such order submit a petition or revision solely. on the ground of illegality of such order to the court of sessions within the sessions division.

(2) The Court of sessions may, if it finds any illegality in the order of the Appellate Authority, confirm reverse or modify the order passed by the Appellate Authority :

Provided that the Court of sessions shall have no powers to stay the order of confiscation of the order passed by the Appellate Authority during pendency of the petition for revisions before it.

Bar of jurisdiction of the Court under certain circumstances

47 D. Notwithstanding anything to the contrary contained in the Act, or any other law for the time inforce, the Court having jurisdiction to try offences covered by clause (a) or (b) of sub-section (1) of Section 34 on account of which such seizure has been made, shall not make any order about the disposal, custody etc, of the intoxicants, articles, implements, utensils, materials, conveyance etc, seized after it has received from the Collector an intimation under clause (a) of sub-section (3) of Section 47-A about the initiation of the proceedings for confiscation of seized property".

Omission of Section 49-B.

7. Section 49-B of the Principal Act Shall be omitted.

Amendment of Section 52

8. For Sub-section (1) of Section (1) of Section 52 of the Principal Act, the following sub-section shall be substituted, namely :-

"(1) Any Excise Officer, or any Police Officer not below such rank as the State Government may, by notification, prescribe, or single officer or class of officers of the Revenue Department duly empowered in this behalf by notification of the State Government subject to such restrictions as the State Government may prescribe, and any other person duly empowered by notification of the State Government in this behalf,

(a) may arrest without warrant any person found committing an offence punishable under Section 23-A, 34, 35, 36, 36-A, 36-B, 36-C, 37, 38-A, 40 or 49-A" and

(b) Shall seize and detain any intoxicant or other article which he has reason to believe to be liable to confiscation under this Act or any other law for the time being infoce relating to exercise revenue, and

(c) may detain and search any person upon whom, and any vessel, craft, vehicle, animal, package, receptacle, or covering in or upon which he may have reasonable cause to suspect any such article to be."

Amendment of Section 59.

9. For sub-section (1) of Section 59 of the Principal Act, the following sub-section shall be substituted, namely :-

"(1) All offences except those specified in Section 59-A punishable under this Act shall be bailable within the the meaning of the Code of Criminal Procedure. 1973 (No. 2 of 1974)".

Insertion Section 59-A

10. After Section 59 of the Principal Act, the following section shall be inserted, namely:-

Certain offence under the Act to be non-bailable.

"59-A Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (No. 2 of 1974) or Section 59 of the Act,

(i) no application for an anticipatory bail shall be entertained by any court in respect of a persons accused of an offence punishable under Sections 49-A or in respect of a person not-being a person holding a licence under the Act or rules made thereunder who is accused of an offence covered by clause (a) or clause (b) of sub-section (1) of Section 34 with quantity of liquor found at the time or in the course of detection of such offence exceeding fifty bulk litres.

(ii) a person, accused of an offence punishable under Section 49-A or a person not being persons holding a licence under the Act or rules made thereunder who is accused of an offence covered by clause (a) or clause (b) of sub-section (1) of Section 34 with quantity of liquor found at the time or in the course of detection of such offence exceeding fifty bulk litres shall not be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release and in case such an application is opposed by the Public Prosecutor, unless the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail :

Provided that no court shall order for detention of such person in custody during the course of investigation for total period exceeding 60 days where it relates to an offence covered by clause (a) or clause (b) of sub-section (1) of Section 34 with quantity of liquor found at the time or in the course of detection of the offence exceeding fifty bulk litres and 120 days where it relates to an offence under Section 49-A and on the expiry of such period of 60 days or 120 days, as the case may be and in the event of the report of complaint not being filed the accused shall be released on furnishing bail.

(iii) the limitations for grant of bail specified in clause (ii) are in addition to limitations prescribed under the Code of Criminal Procedure, 1973 (No. 2 of 1974) or may other law for the time being in force regarding grant of bail."

NOTE :

1. Published in M.P. Rajpatra (extra ordinary) 4th Aug. 2000.
2. JOS' are requested to go through M.P. Excise (Second Amendment) Act 2000 published in the M.P. Rajptra (Extra ordinary) 16th Aug. 2000 which relates to insertion of S. 28 A regarding payment of supervision charges and Amendment of S. 62.

Reference Answered

S.C.S.T. (PA) ACT S.14 AND S. 193 CR.P.C. M. CR.NO. 1521/2000 IN RE-ASJ/SPECIAL JUDGE (S.C.S.T.) JABALPUR DECIDED ON 4.9.2000.M.P. HIGH COURT. JABALPUR

REFERENCE ANSWERED ON THE QUESTION AS TO WHAT WOULD BE THE EFFECT OF THE JUDGMENT OF THE SUPREME COURT IN THE MATTER OF ***GANGULA ASHOK VS. STATE, J.T. 2000 (1) S.C. 379 = AIR. 2000 SC PAGE 740.***

The reference is answered in the following terms :

(a) That the judgment of this Court in the matter of ***Anand Swaroop Tiwari Vs. Ramratan Jatav (1996 MPLJ 141 = 1996 JLJ 8)*** stands impliedly over-ruled :

(b) That, a Special Court constitued under the provisions of S.C. & S.T. (Prevention of Atrocities Act (33 of 1989) would continue to be a Court of Session, and would not be entitled to take cognizance unless the matter is committed to it by the Committal Court ;

(c) That, in all such cases where the challan was directly filed before the Special Court constituted under the provisions of S.C. & S.T. (Prevention of Atrocities) Act, the Special Court shall have no jurisdiction either to take cognizance, frame charge or record evidence ;

(d) That, in all such cases in which the court had taken cognizance directly shall be brought to an end immediately; the challan papers/charge sheets shall be returned back to the prosecution for its submission before a competent court, which in accordance with the law may commit the matter to the Special court for trial of the matter in accordance with the provisions of law ;

(e) That in the matters like above whether those are at the stage of taking the cognizance framing of the charge, recording of the evidence, hearing of the arguments, and/or at the stage of delivery of the judgment shall be governed by the spirit of the judgment of the Supreme Court, and in all such cases no final judgment shall be delivered by the Special Courts. However, cases which have been committed by the committal Court either before the Full Bench Judgment or subsequent to the judgement of the Supreme Court shall be tried by the Special Court.

It is, however, made clear that this Court is not making any observation about all such judgments/cases wherein he Special Court has taken direct cognizance of the matter without there being any committal proceedings and had disposed of the matters before the delivery of the judgement by the Supreme Court in the matter of Gangula Ashok (supra) In all such cases, it would be for the competent appeal Court to decide the matter in accordance with law.

Taking into consideration that the effect of this judgement would nullify all the proceedings drawn by a Special Court, the accused who have al-

ready been released on bail are likely to be taken back in custody, this court observes that such accused persons who have already enlarged on bail under the orders of the competent court that is Special Court/Sessions Court/High Court, shall continue to remain on bail, provided they furnish fresh bail/bonds if the committal court requires them to furnish the bonds afresh.

The interim order granted on 8.5.2000 is vacated.

Let all the Special Courts constitued under the provisions of S.C. & S.T. (Prevention of Atrocities) Act be informed by the Registry that the stay stands vacated and they are required to proceed in accordance with the law.

●

TIT-BITS

1. ARBITRATION ACT AND ARBIRATION AND CONCILIATION ACT (OLD & NEW) COMPARED AND JURISDICTION EXPLAINED : SECTIONS 7, 11 (12) : DEEDS AND DOCUMENTS INTERPRETATION OF :-
(2000) 4 SCC 272
WELLINGTON ASSOCIATES LTD. Vs. KIRIT MEHTA

Disputed clause should be read with other cognate clauses to find the true intention of the parties. Discretionary or mandatory clause where the document uses both "may" and "shall" to cover different situations, the choice of these words must be deemed to be with due deliberation. They should therefore be accorded their natural meaning.

The case being of general importance, please go through the whole judgment. Part of the head note is republished with the courtesy of Eastern Book Company:-

The parties used the words "may" not without reason. If one looks at the fact that clause 4 precedes clause 5, one can see that under clause 4 parties desired that in case of disputes, the civil courts at Bombay are to be approached by way of a suit. Then follows clause 5 with the words " it is also agreed" that the dispute "may" be referred to arbitration implying that parties need not necessarily go to the civil court by way of suit but can also go before an arbitrator. Thus, clause 5 is merely an enabling provision. It may also be stated that in cases where there is a sole arbitration clause couched in mandatory language, it is not preceded by a clause like clause 4 which discloses a general intention of the parties to go before a civil court by way of suit. Thus, reading clause 4 and clause 5 together shows that it is not the intention of the parties that arbitration is to be the sole remedy. It appears that the parties agreed that they can "also" go to arbitration in case the aggrieved party does not wish to go to a civil court by way of a suit. But in that event, obviously, fresh consent to go to arbitration is necessary. Further, in the present case, the same clause 5, so far as the venue of arbitration is concerned, uses the word "shall". The parties must

be deemed to have used the words "may" and "shall" at different places, after due deliberation.

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2. ARBITRATION- GENERALLY- POWER OF ARBITRATIOR REGARDING DISSOLUTION OF PARTNERSHIP FIRM:-
(2000) 4 SCC 368
V.H. PATEL AND COMPANY Vs. HIRUBHAI HIMABHAI PATEL

The Supreme Court passing a consent order stating that parties wished to refer disputes to arbitration. All parties filed claims before arbitrator. Respondent 1, Hirubhai also filed counter claim seeking dissolution of firm. Arbitrator making award. held that issue relating to dissolution is beyond jurisdiction of the Arbitrator. The High Court though confirmed the award but set aside the finding regarding the dissolution and remitted the matter to arbitration to decide issue of dissolution afresh. Power to dissolve partnership was held to be dispute between the parties and the arbitrator has such power where a clause in a partnership deed or agreement or order referring the matter to arbitration.

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3. ARBITRATION ACT (OLD), SECTION 32 : STAY OF CIVIL PROCEEDINGS WHEN REQUIRED : JURISDICTION OF THE COURT :-
2000 (2) M.P.L.J. 410
RAKSHAWATI BURMAN Vs. JASUMATI

No arbitration agreement filed by applicant and averments in application regarding arbitration agreement between parties general and vague. Proceedings of suit could not be ordered to be stayed under Section 34.

Paragraphs 7 and 5 are reproduced:

Therefore, in order to decide the application under Section 34 of the Act, it has first to be considered as to what is the nature of the arbitration clause and whether the same provides for a binding agreement between the parties to refer the dispute involved in the suit to arbitration. If that be so, the proceedings in the suit could be ordered to be stayed if other conditions of section 34 of the Act, as noted above are fulfilled. However, in the instant case, the arbitration agreement, itself was not filed and the averments in the application (document No. 2) filed by the defendant/respondent regarding the arbitration agreement between the parties are general and vague. In view of above proceedings of the suit could not be ordered to be stayed under section 34 of the Act.

Thus in order that a stay may be granted under this section, it is necessary that the following conditions should be fulfilled :-

(1) The proceedings must have been commenced by a party to an arbitration agreement against any other party to the agreement;

(2) The legal proceeding which is sought to be stayed must be in respect of a matter agreed to be referred;

(3) The applicant for stay must be a party to the legal proceeding and he must have taken no step in the proceedings after appearance. It is also necessary that he should satisfy the Court not only that he is but also was at the commencement of the proceedings ready and willing to do everything necessary for the proper conduct of the arbitration; and

(4) The Court must be satisfied that there is no sufficient reason why the matter should not be referred to an arbitration in accordance with the arbitration agreement.

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4. C.P.C. PLEADINGS GENERALLY NEW PLEA : CONSTITUTION OF INDIA, ARTICLES 136 AND 13 : PRESUMPTION OF CONSTITUTIONALITY AND ADMINISTRATIVE LAW : ULTRAVIRES :-
(2000) 4 SCC 285
MOLAR MAL Vs. KAY IRON WORKS (P) LTD

Where constitutional validity of a provision is not in challenge, the court will have to proceed on the basis that the provision is intra vires and interpret the same as such -

Paragraphs 11 and 15 are reproduced :

We will first deal with the above objection of the landlord in regard to permitting the appellant tenant to raise this question before us. It is true that in the written statement originally field, the tenant did not raise this specific contention. However, by an amendment made to the written statement the tenant did plead that the landlord has obtained possession of three other rented lands measuring 18"x45' from Atma Ram Jassa Ram; 16'x40' from Sakhuja Trunk House and 10'x40' from Kehar Singh and, as such, the application for ejectment is liable to be dismissed. The landlord has filed a rejoinder to this amended written statement wherein he contended that the three premises were got vacated by him and one of the grounds in those petition was personal necessity. He also contended that the premises were got vacated for extension of coalyard as the open space in possession of the landlord was not sufficient to meet his requirement for stocking coal, and he has sought eviction of the tenant in the present case for extension of its foundry and for storage of foundry material. It is true that inspite of these pleadings, may be because of the fact that the tenant did not specifically invoke the proviso to Section 13 (3) (b), no issue was raised by the Rent Controller. Hence, the trial court did not advert to this question. Before the appellate authority, however, the tenant raised this specific objection which came to be rejected on the ground that these evictions were obtained after filing of the instant eviction petition, consequently, the proviso in question did not apply to the facts of the case. It is also contended that since the appellate authority dismissed the eviction petition, the tenant did not have an opportunity of challenging this finding before the High Court, but while defending the order of the appellate author-

ity, a specific argument based on the said proviso was raised before the High Court but the High Court did not consider this argument in its correct perspective. Further, it was pointed out to us that in the review petition filed before the High Court, specific grounds were raised alleging that the argument based on the proviso was addressed and the Court failed to consider the same, still the High Court while rejecting the review petition did not consider this point. In this background, we are convinced that the tenant did raise this question before the courts below which ought to have been considered by the Courts below. Therefore, we deem it appropriate that the tenant be permitted to raise this question.

It is next contended on behalf of the landlord that the decisions cited above have stood the test of time since 1978 onwards, if not earlier, because of which the law is so understood in that part of the country, therefore, we should not interfere with the ratio laid down by the High Court of Punjab & Haryana in those cases so as not to create uncertainty in judicial thinking. We are unable to accept this argument advanced on behalf of the landlord. When we find that the interpretation of the proviso by the High Court is wholly contrary to the object of the statute, merely because it had remained to be interpretation of the High court for a considerable length of time, the same cannot be permitted to continue to be so when it is erroneous and it is so brought to our notice. We will be failing in our duty if we do not declare an erroneous interpretation of law by the High Court to be so, solely on the ground that it has stood the test of time. Since in our opinion, in regard to the interpretation of the above proviso, no two views are possible, we are constrained to hold that the law declared by the Punjab & Haryana High Court with reference to the proviso is not the correct interpretation and hold that the said judgment is no more a good law. On behalf of the landlord, another argument based on equity was addressed before us giving various examples of the hardship that could be caused to the landlords by the interpretation we have now given to the said proviso. We do not find that the proviso, as interpreted by us, may cause some hardship to the landlords in some cases but that is the intention of the legislature which the courts have to take to its logical end so long as it remains in the statute-book. Merely because a law causes hardship, it cannot be interpreted in a manner so as to defeat its object. We may notice at this stage that the constitutional validity of the proviso is not in challenge before us, therefore, we will have to proceed on the footing that the proviso, as it stands, is ultra vires and interpret the same as such.

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5. C.P.C., O. 21 R. 90 AND S. 115 : PETITION FOR SETTING ASIDE AUCTION SALE.
2000 (2) A.N.J. 595
KADIYALA RAMA RAO Vs. GUTALAL KAHNA RAO

Sale was confirmed and property was handed over to the purchaser.

Judgment debtor was present at the time of auction proceedings. Petition for setting aside auction sale by the judgment debtor was rejected.

On 26th August, 1978 the respondents herein filed an application to set aside the auction sale dated 31st July, 1978. The learned District Munsif Rajamundhry, however by an order dated 31st August, 1978 rejected the said application and thereafter confirmed the sale and disposed of the Execution Petition on the same day and a cheque for Rs. 4420/- was issued in favour of the Advocate for the decree holder and thereupon the full satisfaction was duly recorded. It is significant to note that the appellant took delivery of the house property on 9th November, 1978.

Subsequently, on an application filed under Section 115 of the Code of Civil Procedure before the High Court of Andhra Pradesh, the respondents herein obtained an interim stay of the proceedings on 22.11.1978 upon deposit of half of the decretal amount. On 4th April, 1980 the High Court however further directed the respondent to deposit the remaining half of the decretal amount. The records depice that the respondents duly complied with the orders of deposit. The Revision Petition thereafter upon hearing was allowed by the High Court and the appellant herein subsequently filed a Review Petition which was however, dismissed by the order dated 22nd December, 1980 by the learned Single Judge of High Court and hence the Appeal before this Court was brought.

The provisions of O. 21 R. 90 thus categorically envisage that material irregularity and fraud alone would confer jurisdiction on to the Executing Court to set aside the same. Admittedly, the Revision Petition came up for hearing on 11th April, 1980 and the sale stands confirmed on 31st July, 1978. Therefore, the impugned order in the Revision petition ex facie seems to have been passed under certain misconception of facts. The learned Judge in the order impugned has been pleased to record "whatever it is, sale is not yet confirmed" and it is on this score, strenuous submissions have been made by the parties that the factual basis of the judgment does not stand to the reality of the situation and as such the order needs to be corrected by this Court. Needless to record here that there is no evidence of fraud or material irregularity neither even an allegation in regard thereto. The only issue was of saleable interest for a period of 15 years since the deed of sale as executed by the Municipality of Rajamundhry in favour of the Judgment-debtor for a period of 15 years. It is to be noticed at this juncture that question of saleable interest does not come within the ambit of O. 21 R. 90 and as such the judgment-Debtor has no locus standi to apply to the Court for setting aside the sale. In the present factual context, statute recognises such a locus standi only in the event of material irregularity or fraud and not otherwise. Apart therefore, saleable interest can only be challenged by the purchaser and not by the Judgment-Debtor since the purchaser's right would otherwise be clouded therewith by reason of there

being no saleable interest in the property so far as the Judgment-Debtor is concerned. O. 21 R. 91 is specific on this score and a right has been conferred to the purchaser only.

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6. C.P.C., SECTION 100 r/w O. 21 R. 90 :-
2000 (2) A.N.J. 531
KHARAITI LAL Vs. REMINDER KAUR

Appellant, owner of the plot of land, had mortgaged the said land with one Col. Joginder Singh for a sum of Rs. 20,000/- after raising certain constructions thereon Col. Joginder Singh subsequently filed a suit for foreclosure in order to recover the mortgage money by sale. Preliminary decree passed directing the appellant to deposit a sum of Rs. 28,187.50 along with future interest-Amount not deposited and, therefore, Col. Joginder Singh filed an application for final decree which was passed by subordinate court. In execution proceedings, the property auctioned. Nazar Singh, now represented by the present respondents, purchased property at the auction for sum of Rs. 45,000/-. Auction sale challenged by appellant by filing an application under order 21 Rule 90, C.P.C. Objections rejected-Court confirmed auction sale. Appellant, filed two appeals in High Court. During pendency of appeals, he also deposited a sum of Rs. 47,250/-. Appeals allowed and auction sale as also its confirmation set aside. Judgment passed by Single Judge Challenged before Division Bench, which allowed appeals by the impugned judgment and set aside judgment passed by Single Judge. Present appeals. Counsel for appellant contended that if the order by which the sale was confirmed had been challenged in appeal, the sale would not be treated as confirmed unless the appeal was disposed of. Since the appellant, in the instant case, had made deposits during pendency of appeals in High Court, deposits made were valid. Sale does not become absolute or irrevocable merely on passing an order confirming the sale under order 21 Rule 92, but in would attain finality on the disposal of the appeal, if any, filed against an order refusing to set aside sale. Set aside judgment passed by Division Bench and restored judgment passed by Single Judge.

Paragraphs 8, 9, 10, 11 and 12 are reproduced:-

8. Thereafter, the Division Bench proceeded to answer the question by holding ultimately that the deposit of money, during the pendency of appeals in the High Court, could not be treated as a valid deposit under Order 34 Rule 5 C.P.C. For this purpose it placed reliance upon a decision of this Court in ***Hukamchand v. Bansilal & Ors.*** **[1976 (3) SCR 695=AIR 1968 SC 86]** The decision in Hukamchand's case (supra) was given on the particular facts of that case. It was noticed by the Court, in that case, as under:-

"Though, O. XXXIV r. 5 (1) recognises the right of the judgment-debtor to pay the decretal amount in an execution relating to a mortgage decree for sale at any time before the confirmation of sale, the rule does not give any power to the court to grant time to deposit the money after the final decree has been passed. It is not open to the court to go on fixing date after date and postponing confirmation of sale merely to accommodate a judgment-debtor."

9. The Court did not hold in that case that a deposit under Order 34 Rule 5 C.P.C. could not be made during the pendency of an appeal against the order by which the sale was confirmed.

10. The entire case law was reviewed by this Court in a recent decision in ***U. Nilan v. Kannayyan (Dead) through Lrs. [1999 (8) SCC 51= 1999 (6) Scale 358=JT 1999 (7) SC 621]*** in which also the Court had formulated the following question:-

"What is the meaning of the phrase "before the confirmation of sale" may now be considered in the light of other relevant provisions of the Code of Civil Procedure"

11. The above question is identical to the question framed by the Division Bench of the High Court in its case. This Court, on a consideration of a number of decisions, including the decision of this Court in Hukamchand's case (supra) laid down that if an appeal was pending against an order refusing to set aside the sale, the confirmation of sale as also the assurance of sale Certificate would be in a nebulous state and, consequently, it would be open to the judgment debtor to invoke the provisions of Order 34 Rule 5 C.P.C. and make the necessary deposits to save his property from being transferred to a third person or, may be, to the decree-holder, in execution of the decree passed in the mortgage suit. It may be mentioned that in U. Nilan's case (supra), reliance was also placed upon the decision of this Court in ***Maganlal & Anr. Vs. Jaiswal Industries, Neemach & Ors.*** **[1989 (4) SCC 344= 1989 (3) SCR 696= AIR 1989 SC 2113]** in which it was held that the sale does not become absolute or irrevocable merely on passing an order confirming the sale under Order 21 Rule 92, but it would attain finality on the disposal of the appeal, if any, filed against an order refusing to set aside the sale.

12. This decision, though rendered by this Court in 1989, was not noticed by the Division Bench of the High Court.

For the reasons stated above, we allow the appeals, set aside the judgment dated July 2, 1998, passed by the Division Bench and restore the judgment dated 30-8-1985, passed by the Single Judge. There shall be no order as to costs.

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7. **C.P.C. SECTION 20 (a) (b) : JURISDICTION OF THE COURT : TORT : SUIT FOR DAMAGES : JURISDICTION OF THE COURT :-**
2000 (2) M.P.L.J. 438
GULAB SINGH VS. STATE OF M.P.

Provisions of section 20 (a) and (b) have no applicability to suits against Government for damages for tort where tort is committed outside the jurisdiction. Such suits can only be filed in the Court of the place where tort is committed.

In the present case the claim for compensation for death of person who was shot at Bhopal while in police custody. Suit filed at Sagar as the Collector, Sagar was made one of the defendants even though he was not involved in commission of tort for causing the death. The Collector, Sagar was joined in official capacity and not in personal capacity. Court at Sagar had no jurisdiction to entertain the suit. Order of the trial Court directing the return of the plaint for presentation to proper Court maintained.

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8. **C.P.C. O. 30 R. 4 : PARTITION SUIT : DEATH OF THE SOLE SURVIVING PARTINER ; EFFECT OF :-**
2000 (2) M.P.L.J. 331
SHANTI DEVI SHARMA Vs. RADHESHYAM

It is not necessary to join heirs of such partner. Suit could not be dismissed for non-joinder in the circumstances.

Paragraphs 15, 16 and 17 are reproduced :

15. The effect of non-joinder of partnership firm as a party was considered by the Apex Court in its decision rendered in the case of ***Porushottam and Company Vs. Mani Lal and Sons reported in AIR 1961 SC 325*** wherein it was held that the provisions of Order 30, Rules 1 and 2 are enabling provisions to permit several persons, who are doing business as partners to sue or be sued in the name of the firm. Rule 2 would not have been in the form it is if the suit instituted in the name of the firm was not regarded as, in fact, a suit by the partners of the firm. The provisions of these rules of Order XXX being enabling provisions do not prevent the partners of a firm from suing or being sued in their individual names. In the circumstances, the Civil Court could permit, under the provisions of section 153 of the Code an amendment of the plaint to enable a proper description of the plaintiffs to appear in it in order to assist the Court in determining the real question or issue between the parties. Strictly speaking Order 1, Rule 10 (1) has no application to a case of this kind because the suit has not been instituted in the name of a wrong person, nor is it a case of there being a doubt whether it has been instituted in the name of the right plaintiff. The provisions of Order 1. Rule 10 (2) also do not apply because it is not a case of any party having been improperly joined whose name has to

be struck out or a case of adding a person or a party who ought to have been joined or whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

16. In view of the legal provision envisaged under Order 30, Rules 1 and 2, Civil Procedure Code referred hereinabove, it has been contended by the learned counsel of the appellants that either against the outgoing firm originally consitituted as partnership firm between deceased Ramswaroop Sharma and defendant-respondent No. 1. or against remaining heirs of the deceased Ramswaroop plaintiffs had not claimed any relief. They are not necessary parties to the present case and the provisions of Order 1, Rule 9, Civil Procedure Code insofar as the plaintiffs are concerned being enabling provisions, the suit cannot be dismissed for non-joinder of the said firm or remaining heirs of Ramswaroop Sharma, as a party.

17. In a decision. rendered by kerala High Court in case of ***Thomas vs. George and another,*** reported in AIR 1973 Kerala 94 wherein reliance was placed on the decision in case of **Purshotham Umed Bhai** (supra), it was held that provision of Order 30, Rule 1 is only permissive and does not prevent a partner from suing or being sued in his individual name. In a Division Bench decision of this Court rendered in case of ***Chaturbhuj vs. Namichand, reported in 1957 JLJ 1041.*** it was observed that a firm is not juristic person, but it is a compedious expression to describe the members constituting it. Order 30 of the Civil Procedure Code is an enabling provision and permits the partners to sue and be sued in the firm name. But as the individuality of the partners is not merged in that of the firm, they can still sue and be sued in their individual names. If, therefore, the partners do not choose to file a suit in the firm name, there is nothing in the Code of Civil Procedure and particularly in Order 30 thereof, which would compel them to do so. The provisions of Order 30 thereof, which would compel them to do so. The provisions of Order 30, Rule 4 can be invoked only if the suit is filed in the firm name, but not otherwise. Another ground considered by the learned trial Court in arriving at a conclusion that the suit is not maintainable with reference to the order dated 11-12-1990 of this Court. I find nothing on the point of addition or otherwise of the party in the case, but it was observed in respect of interim relief to be granted pending an application under Order 39, Rules 1 and 2 by this Court, as under :-

"Till then the supply of kerosene oil shall continue in the name of firm Vidisha Auto Service."

There is nothing in this direction so as to indicate that Vidisha Auto Service is a necessary party. Since plaintiffs are claiming themselves to be

the partners of the said firm, the Court has only to examine whether plaintiffs are entitled to claim dealership as partners of the said firm. The plaintiffs are entitled to bring a suit of this nature as against the respondent-defendants for declaration that they alone are entitled to get the dealership of the kerosene oil for a firm of which they are partners. Of course, the claim is open for challenge on various grounds raised on behalf of defendants, but the suit cannot be dismissed without examination the case of the plaintiffs on merits at this stage and by holding that firm or remaining heirs of Ramswaroop Sharma and necessary parties to the suit. The order of the learned trial Court is, therefore, found to be vitiated in law insofar as rejecting the claim of the plaintiffs for non-joinder of the parties.

COURT FEES AND SUITS VALUATION ACT, SECTION 7 (iv) (c) AND (d)

Suit for declaration and mandatory injunction by person claiming to be partner of a firm for dealership in kersosene in the name of the firm. Preliminary objection. Relief of injunction not claimed as preventive injunction but as a consequential relief in respect of declaration. Plaintiff not required to revalue the claim for injunction. Suit could not be dismissed. Opportunity to pay required fee if payable has to be granted to plaintiff.

NOTE : Judicial Officers are requested to go through the whole judgment, as this judgment decides important issue regarding Court fees which is of general importance.

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9. Cr.P.C., SECTIONS 2 (h). 24, 169, 170, 173 AND 482 : POWER OF THE COURT TO DIRECT INVESTIGATING OFFICER TO TAKE OPINION OF PUBLIC PROSECUTOR FOR FILING CHARGE-SHEET : NO SUCH POWERS :-
(2000) 4 SCC 459
R. SARALA Vs. T.S. VELU

With the courtesy of Eastern Book Company, Lucknow the facts of the case and paragraphs 6, 10, 11, 12 and 19 are reproduced :-

A young bride committed suicide in her nuptial home within seven months of her marriage. An inquiry under Section 174 (3) Cr.P.C. was held. The Sub-Divisional Magistrate conducted the inquiry and submitted a report holding that it was conclusively proved that due to mental restlessness she had committed suicide and no one is responsible and hence it was informed that her death was not due to dowry harassment. However, the police continued with the investigation and submitted a challan against the deceased's husband and his mother for the offence under Sections 304-B and 498-A IPC. The deceased's father, the first respondent, was not satisfied with the challan as the deceased's husband's sister, the appellant, and her father were not arraigned as accused. Hence he moved the High court under Section 482 Cr.P.C. A Single Judge of the High Court disposed of the petition under Section 482 directing that the papers be

placed before the Public Prosecutor "as it is without any further investigation and he shall render an impartial opinion on the matter and thereafter an amended charge-sheet shall be filed in the concerned Court". The appellant's father filed a petition before the Single Judge for recalling it on the main ground that neither he or his daughter (appellant) was heard nor were they made parties in the proceedings. But the Single Judge dismissed the petition on the main premise that Section 362 Cr.P.C. contains a bar against recalling any order passed under the Code. Hence the appellant filed the present appeal to challange both the orders. Allowing the appeal the Supreme Court held as under :

6. No Endeavour was made before us to canvass against the correctness of the view adopted by the learned Single Judge that the order dated 8-2-1999 could not be recalled by him due to the bar contained in Section 362 of the Code But even assuming it to be so. that does not bar this Court in considering the legality of that order in this appeal.

7. Mr S. Sivasubramaaniam, learned Senior Counsel who argued for the appellant contended that learned Single Judge had seriously erred in directing the investigating officer to submit the amended charge-sheet in accordance with the opinion of the Public Prosecutor. Shri V. Balachandran, learned counsel. arguing for the first respondent tried to support the impugned order on the premise that there is nothing objectionable for the investigating officer to consult the Public Prosecutor before laying a report under Section 163 (2) of the Code.

8. The question here is not simply whether an investigating officer, on his own volition or on his own initiative, can discuss with the Public Prosecutor or any legal talent. fot the purpose of forming his opinion as to the report to be laid in the court. Had that been the question involved in this case it would be unnecessary to vex our mind because it is always open to any officer, including any investigaating officer, to get the best legal opinion on any legal aspect concerning the preparation of any report. But the real question is, should the High Court direct the investigating officer to take opinion of the Public Prosecutor for filing the charge-sheet?

9. Investigation is defined in Section 2 (h) of the Code, as including

> "all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf".

We are only concerned in this case with the investigation to be conducted by a police officer and hence the latter limb of the definition has no relevance now. Chapter XII of the Code contains provisions regarding "information to the police and their powers to investigate".

10. After dealing with various aspects of the investigation from Section 154 to Section 168 of the Code, the statute says in the next two sec-

tions regarding the subsequent step. Section 169 of the Code enjoins on the officer in charge of the police station concerned to release the accused from custody on executing a bond if it appears to him that "there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate". Section 170 of the Code directs that if upon investigation.

> "it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report".

Section 173 (1) casts an obligation for completing the investigation without unnecessary delay and sub-section (2) enjoins on the officer in charge of the police station to forward to the Magistrate a report in the form prescribed by the State Government, on completion of such investigation. The aforesaid power of the officer in charge of the police station is subjected only to the supervision of superior police officers in rank as envisaged in Section 36 of the Code. There is no stage during which the investigating officer is legally obliged to take the opinion of a Public Prosecutor or any authority, except the aforesaid superior police officer in rank.

11. There is no material difference regarding general powers of investigation by the police as between the present Code and the corresponding provisions contained in Chapter XIV of the erstwhile Code of Criminal Procedure, 1898. In ***H.N. Rishbud v. State of Delhi AIR 1955 SC*** 196 a three-Judge Bench of this Court, after delineating the different steps in investigation as contemplated in the Code, has pointed out that the formation of the opinion. whether or not there is a case to place the accused no trial, should be that of the officer in charge of the police station and none else. The following observations are to be noted in this context.

> "The scheme to the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some to these steps in the investigation. the responsibility for every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in Section168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear the final step in the investigation, viz., the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Section 551.

12. A Public Prosecutor is appointed, as indicated in Section 24 of the Code, for conducting any prosecution. appeal or other proceedings in the court. He has also the power to withdraw any case from the prosecution with the consent of the court. He is the officer of the court. Thus the Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not in the scheme of the Code for supporting or sponsoring any combined operation between the investigating officer and the Public Prosecutor for filing the report in the court.

The High Court has committed an illegality in directing the final report to be taken back and to file a fresh report incorporating the opinion of the Public Prosecutor. Such an order cannot stand legal scrutiny and hence appeal allowed.

10. Cr.P.C., SECTION 439: GRANT OF BAIL IN PENDING CASES : CONSIDERATION
2000 (2) A.N.J. 656
RAM NARAYAN SINGH Vs. STATE OF BIHAR

The application for bail during trial having been rejected, the appellants approached this Court. They are facing charges under Sections 406/420/34 IPC and are in custody for more than nine months by now. The allegation is that the appellants misappropriated to the tune of Rs. 75,000/- for giving employment. The earlier order of the High Court was that if the trial does not commence within six months, they can renew the prayer for bail.

Having examined the manner in which the trial is proceeding and taking into account the fact that the appellants are already in custody for more than nine months, we think that a case for grant of bail has been made out. We accordingly direct that the appellants be released on bail to the satisfaction of the Chief Judicial Magistrate, Katihar.

11. Cr.P.C., SECTION 156 (2) : TERRITORIAL JURISDICTION FOR THE PURPOSES OF INVESTIGATION : PRINCIPLES EXPLAINED : & Cr.P.C., SECTION 482 : THE POWERS OF THE HIGH COURT :-
2000 A.N.J. 227
SATVINDER KAUR Vs. STATE (GOVT. OF N.C.T. OF DELHI) & Anr.

The proceedings of the Police Officer shall not be challenged Under S. 482 on the ground that he had no territorial power to investigate. The High Court has overlooked the Section 156 (2) Cr.P.C.

Paragraphs 9, 10 11 and 12 are reproduced excluding few portions :-

9. It is true that territorial jurisdiction also is prescribed under Sub-section (1) to the extent that the officer can investigate any cognizable

case which a court having jurisdiction over the local area within the limits of such police Station would have power to inquire into or try under the provisions Chapter XIII. However, subsection (2) makes the position clear by providing that no proceeding of a police in any such case shall at any stage be called in question on the ground that the case one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Section 168, 169 & 170 Section 170 specifically provides that if, upon an investigation, it appears to the Officer in charge of the police Station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the Investigating Officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then F.I.R. can be forwarded to the police station having jurisdiction over the area in which crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it.

10. Chapter XIII of the Code provides for "jurisdiction of the Criminal Courts in inquiries and trials" It is to be stated that under the said Chapter there are various provisions which empower the Court for inquiry or trial of a criminal case and that there is no absolute prohibition that the offence committed beyond the local territorial jurisdiction cannot be investigated, inquired or tried. This would be clear by referring to Sections 177 to 188.

"177. **Ordinary place of inquiry and trial-** Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed.

178. **Place of inquiry or trial-** (a) when it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly is one local area and partly in another, or

(c) where an offence is continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

11. A reading of the aforesaid sections would make it clear that Section 177 provides for "ordinary" place of inquiry or trial. Section 178 inter alia provides for place of inquiry or trial when it is uncertain in which of

several local areas an offence was committed or where the offence was committed partly in one local area and partly in other and where it consisted of several acts done in different local areas, it could be inquired into or tried by a court having jurisdiction over any of such local areas. Hence, at the stage of investigation, it cannot be held that S.H.O. does not have territorial jurisdiction to investigate the crime.

12. This Court in the ***State of West Bengal Vs. S.N. Basak*** **[1963 (2) SCR 52]** dealt with a similar contention.

"The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 which is in that Chapter deals with information in cognizable offences and Section 156 with investigation into such offences and under these sections the police has statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by the exercise of power under Section 439 or under the inherent power of the court under Section 561-A of Criminal Procedure Code. As to the powers of the Judiciary in regard to statutory right of the police to investigate, the Privy Council in ***King Emperor Vs. Khwaja Nazir Ahmad*** **(1944 L.R. 71 I.A. 203, 212)** observed as follows :

"The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it, and not until then. It has sometimes been thought that Section 561-A has given increased powers to the Court which it did not possess before that Section was enacted. But this is not so, the section gives no new powers, it only provides that those which the court already inherently possesses shall be preserved and is inserted as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code and that no inherent powers had survived the passing of that Act."

With this interpretation, which has been put on the statutory duties and powers of the police and of the powers of the Court, we are in accord. The High Court was in error therefore in interfering with the powers of the police in investigating into the offence which was alleged in the information sent to the Officer-in-charge of the police station."

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12. Cr.P.C., SECTION 439 (2) : CANCELLATION OF BAIL. WHO CAN APPLY :-

2000 A.N.J. 248

R. RATHINAM Vs. STATE BY DSP, DISTRICT CRIME BRANCH, MADHURAI

A representation made by some Advocates who have nothing to do with the said case, could be entertained by the High Court and disposes of it on merits as a suo motu proceedings. It was held that the Division Bench has gone wrong in holding that the petition submitted by the concerned advocates was not maintainable at all. Refusing to exercise the suo-motu powers contemplated in Section 439 (2) can not be on such a fallacious premise. The Division Bench ought to have considered the petition on merits. Appeal allowed and a direction was issued to decide the petition as a fresh in the light of observations made.

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13. Cr.P.C., SECTION 306 (4) : TENDER OF PARDON TO ACCOMPLISH : PROCEDURE

2000 (2) A.N.J. 574

RANADHIR BASU Vs. STATE

Submission that Sudipa should have been examined as witness in open court and not in the Chamber and that while she was examined, the Magistrate should have kept the accused present and afforded to than an opportunity to corss-examine Sudipa.

The contention was not accepted.

NOTE:- Judicial Officers are requested to go through S. 306 Cr.P.C. also.

I.P.C. SECTION 302 R/W SECTIONS 120-B, 201 AND 109 IPC : APPRECIATION OF EVIDENCE :-

Appellant and krishnanendu tried for committing murder of Subhash Chandra Pal, his wife, father and mother. Trial Court held that appellant committed the murders and krishnanendu aided and abetted the appellant in committing the offence. Both of them were convicted and death sentence was imposed on both of them. On appeals being filed and reference being made the High Court confirmed the conviction and sentence of appellant but gave benefit of doubt to Krishnanendu aided and abetted the appellant in committing the offence. Both of them were convicted and death sentence was imposed on both of them. On appeals being filed and reference being made the High Court confirmed the conviction and sentence of appellant but gave benefit of doubt to Krishnanendu and acquitted him. This appeal by the appellant, on careful scrutiny of Sudipa's statement it is found that she had given full and correct version of the incident, that her evidence was also consistent and that, therefore both the courts below were justified in accepting her evidence. What appears to have been overlooked by the courts below is that the appellant and Sudipa wanted only

Sudipa's mother to be removed from the world and at no point of time the appellant had planned to kill Sudipa's father and grand parents. Sudipa was ill treated by her mother and no other may could be seen for improving Sudipa's future. Events subsequent to the 'Kalogan' mixed with poison being eaten by Sudipa's mother happened unexpectedly. Considering the facts and circumstances of the case conviction of the appellant confirmed but the sentence of death reduced to the sentence of imprisonment for life.

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14. Cr.P.C., STATEMENT UNDER SECTION 161 USE OF : BY WHOM? EXPLAINED :-
2000 (2) M.P.L.J. S.N. 2
SANDEEP RAJ Vs. STATE OF M.P.

Only a prosecution witness can be confronted with his case diary statement recorded under Section 161 and not a defence witness or a Court witness.

A witness can be confronted/contradicted with his case diary statement only when such a witness is called for the prosecution. To put it differently, only a prosecution witness can be confronted/contradicted with his case diary statement, recorded under Section 161, Cr.P.C; and such statement can never be used for confronting/contradicting a defence witness or a Court witness. **AIR 1959 SC 1012** and **AIR 1975 SC 1324** relied on.

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15. Cr.P.C., SECTION 320 (8) :
2000 (2) M.P.L.J. 431
RAM KUMAR Vs. STATE OF M.P.

The accused was convicted under Section 307 of the I.P.C. but the appellate Court found that the accused had committed offence under Section 324 of the IPC, alone and permission to compound offence under Section 324 IPC granted. Effect of compounding of offence under section 324, IPC on grant of leave had the effect of acquittal as provided in section 320 (8) Cr.P.C. for all purposes removing stigma attaching to appellant cashier by judgment of trial Court.

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16. CONSTITUTION OF INDIA, ARTICLES 315, 317 AND 317 (1) : BHAVIOUR AND CIVIL PRACTICE : STANDARD OF BEHAVIOUR :-
(2000) 4 SCC 309
IN REFERENCE OF Dr. RAM ASHRAY YADAV

The Standard of behaviour (in this case) of Chairman of Public Service Commission although most sensitive standard of behaviour is expected of such a constitutional trustee, on facts, found, occasional omissions to exhibit exemplary behaviour or conduct expected of the Chairman, although amounted to lapses but did not amount to misbehaviour within the meaning of Art. 317.

With the Courtesy of Eastern Book Company, Lucknow following portion is reproduced:-

The Founding Fathers of the Indian Constitution relying upon the experience in other countries wherever democratic institutions exist, intended to secure an efficient civil service. This is the genesis for setting up autonomous and independent bodies like the Public Service Commission at the Centre and in the States. The values of independence, impartiality and integrity are the basic determinants of the constitutional conception of Public Service Commission and their role and functions. The Constitution has made provisions to protect the civil service, as far as possible, from political or personal influence and give it that position of stability and security, which is vital to its successful working as an impartial and efficient instrument of the State. To enable the Public Service Commissions to discharge their constitutional duties and obligations in full measure, the framers of the Constitution not only armed them with enhanced powers and increased functions, but also provided security of tenure for the Chairman and members by providing for a strict judicial procedure for their suspension or removal.

The Chairman of the Public Service Commission is in the position of a constitutional trustee and the morals of a constitutional trustee have to be tested in a much stricter sense than the morals of a common man in the marketplace. Most sensitive standard of behaviour is expected from such a constitutional trustee. His behaviour has to be exemplary, his actions transparent, his functioning has to be objective and in performance of all his duties he has to be fair, detached and impartial. The character and conduct of the Chairman and members of the Commission, like Caesar's wife, must therefore be above board.

The credibility of the institution of a Public Service Commission is founded upon the faith of the common man is its proper functioning. The faith would be eroded and confidence destroyed it appears that theChairman or the members of the Commission act subjectively and not objectively or that their actions are suspect. Society expects honesty, integrity and complete objectivity from the Chairman and members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that the society does not lose confidence in the Commission.

The Chairman of the Commission, Y, appears at times, did not exhibit exemplary behaviour or conduct, expected of him, but none of the allegations which have been made against him in, various charges, which may, at best, amount to lapses, can be said to be such which amount to "misbehaviour" within the meaning of Article 317 of the Constitution inviting action of his removal from office under Article 317 (1).

Since no charge of misbehaviour has been established against Y, no action is called for against him. The term of office of the then Chairman, Y has since expired and he stands relieved of his duties. There is, thus, no question of reinstatement of Y (who was under suspension), but he should be given all such dues etc. to which he is entitled to under rules.

17. CONSTITUTION OF INDIA, ARTICLE 311 r/w SECTION 25 (F) INDUSTRIAL DISPUTES ACT : TERMINATION OF SERVICES WITHOUT FOLLOWING PROCESS: PROPRIETY :-
2000 A.N.J. 430
NAR SINGH PAL Vs. UNION OF INDIA

Termination of services without following process. Validity of allegation of assaulting chowkidar. No regular enquiry conducted and only criminal case lodged. Retrenchment compensation was received. It was held that acceptance of retrenchment compensation does not mean employee surrendered his constitutional right. Termination order was set aside and reinstatement with back wages and consequential benefits ordered.

The letter addressed to the chowkidar by D.E. Phone is reproduced:

Dear,

You had beaten with iron article and had bitten with teeth to Shri Mahendra Singh, son of Shri Ratan Singh, gateman, Tax Bhawan, Agra on 20-4-92 in the evening of 8.00 p.m. who was on duty. Due to the above said conduct, you are not deserved/competent to be in the Govt. service any more and you are casual employee. Therefore, your services are terminated with immediate effect. Nevertheless, you are being paid Retrenchment benefit. The undermentioned cheque is being annexed with this letter.

Sd/-

D.E. Phone (ADM)

Paragraph 12, 13 and 14 are reproduced :-

12. The fact that the appellant was involved in a criminal case is not disputed by the appellant. What is contended by him is that he was ultimately acquitted by the court of Chief Judicial Magistrate, Agra and, therefore, involvement of the appellant in a criminal case could not have been made the basis for terminating his services. Since the appellant was acquitted, and it was a clean acquittal, the stigma attached to him of having been prosecuted in a criminal case should have been treated to have disappeared and no argument can be allowed to be raised for justifying the order of dismissal on the ground of appellant's involvement in a criminal case.

13. The Tribunal as also the High Court, both appear to have been moved by the fact that the appellant had encashed the cheque through

which retrenchment compensation was paid to him. They intended to say that once retrenchment compensation was accepted by the appellant, the chapter stands closed and it is no longer open to the appellant to challenge his retrenchment. This, we are constrained to observe, was wholly erroneous and was not the correct approach. The appellant was a casual labour who had attained the 'temporary' status after having put in ten years' of service. Like any other employee, he had to sustain himself, or, may be his family members on the wages he got on the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meagre amount of Rs. 6350/- was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondent. Fundamental Rights under the Constitution cannot be bartered away. They can not be compromised nor can there be any estoppel against the exercise of fundamental Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained.

For the reasons stated above, the appeal is allowed. The judgment dated 4-12-1997 passed by the Tribunal as also the judgment dated 30-10-1998, passed by the High Court, are set aside and the claim petition of the appellant is allowed with costs throughout. The order dated 20-5-1992, by which the services of the appellant were terminated, is quashed with the direction that the appellant shall be put back on duty on the post which he held on 20-5-1992 and shall be paid all the arrears upto date and other consequential benefits admissible under the rule.

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18. CIRCUMSTANTIAL CIRCUMSTANCES : APPRECIATION OF EVIDENCE :-
(2000) 5 SCC 197
JOSEPH Vs. STATE OF KERALA

Unless material and substantial contradictions and discrepancies are in the testimony of witnesses and are in respect of vitally relevant aspects of facts deposed, their entire testimony cannot be discarded.

Paragraph 13 of the judgment is reproduced :

Taking advantage of the discrepancies pointed out by the Sessions Judge, the learned counsel for the appellant also tried to contend that the evidence of PWs 11 to 14 is not trustworthy. It is not that every discrepancy or contradiction that matters much in the matter of assessing the reliability and credibility of a witness or the truthfulness of his version. Unless the discrepancies and contradictions are so material and substantial and that too are in respect of vitally relevant aspects of the facts deposed, the witnesses cannot be straightway condemned and their evidence discarded in

its entirety. On going through the entire evidence of PWs 11 to 14, we are unable to come to the conclusion that they are not speaking the truth or that they cannot inspire confidence in the mind of any reasonable person or authority to adjudge disputed questions of fact, so as to eschew entirely their evidence from consideration, whatsoever.

CRIMINAL TRIAL : CIRCUMSTANTIAL EVIDENCE :-

Supplying of missing link in the circumstances. Total denial of all the incriminating circumstances when the same were brought to the notice of the accused. It was held, such denial would provide a missing link for completing the chain of incriminating circumstances.

CIRCUMSTANTIAL EVIDENCE, THE PRINCIPLE WHEN CAN CONVICTION CAN BE BASED ON EXPLAINED :

Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, Courts have, from the falsity of the defence plea and false answers given to Court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed. That missing link to connect the accused-appellant in this case was provided by the blunt and outright denial of every one and all of the incriminating circumstances pointed out which, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and the cause for the death of the deceased.

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19. **CRIMINAL TRIAL : EXPLANATION OF INJURIES, FAILURE TO EXPLAIN, EFFECT AND EVIDENCES ACT, SECTIONS 145, AND 155 : PROCEDURE REGARDING DECLARING THE WITNESSES HOSTILE:-**
(2000) 4 SCC 298
RAJENDRA SINGH Vs. STATE OF BIHAR

If a witness during trial is intended to be contradicted by his previous statement made or reduced in writing then his attention has to be drawn to those parts of the statement which are required to be used for the purpose of contradicting him. If the witness disowns to have made any statement which is in consistent with his present stand, his statement on that score would not be vitiated until cross-examiner proceeds to comply with the procedure prescribed in the second limb of S. 145. Statement of a person who was injured in the incident (in which one person died) recorded by Magistrate in hospital. Therein he had stated that deceased was assaulted with bhala by Rajender and Surender and he did not see whether any other person assaulted or not. That person who had given that statement was examined by the defence as DW. In the course of trial substantive evidence of the PW was that Rajender and Triloki had assaulted the deceased.

PW had not been confronted with that part of his alleged former statement by which the defence wanted him to be contradicted. PW had merely been asked as to whether he had stated before the Magistrate that Surender had assaulted the deceased to which PW replied that he did not recall as to what he stated before the Magistrate. Though the Magistrate had stated that the statement recorded by him had been sent to CJM but he categorically admitted that there was neither any signature nor seal of CJM or his office on the statement. It was held that S. 145 was not complied with. Moreover, as regards accused Rajender there had been no variance in the so-called former statement of PW and his statement in Court.

Paragraphs 4, 5 and 6 of the judgment are reproduced :

4. So far as the question whether non-explanation of the injuries on accused Rajender ipso facto can be held to be fatal to the prosecution case, it is too well settled that ordinarily the prosecution is not obliged to explain each injury on an accused even though the injuries might have been caused in the course of the occurrence, if the injuries are minor in nature, but at the same time if the prosecution fails to explain a grievous injury on one of the accused persons then certainly the court looks at the prosecution case with a little suspicion on the ground that the prosecution has suppressed the true version of the incident. In the case in hand accused-appellant Rajender had one penetrating wound, three incised wounds and one lacerated wound and of these injuries, the penetrating wound on the left auxiliary area in the 5th intercostal space ½"x1/3x¼" was grievous in nature as per the evidence of the doctor. PW 3 who had examined him. One the basis of the evidence of PW 3 as well as PW 11 the courts have come to the conclusion that there is no room for doubt that the appellants and their men had injuries on their person on the date of the occurrence. The question. therefore, that remains to be considered is whether non-explanation of the said injuries on accused appellant Rajender can form the basis of a conclusion that the prosecution version is untrue. In ***Mohar Rai and Bharath Rai v. State of Bihar AIR 1968 SC 1281***, this Court had held that the failure of the prosecution to offer any explanation regarding the injuries found on the accused shows that the evidence of the prosecution witness relating to the incident is not true or at any rate, not wholly true and further, those injuries probabilise the plea taken by the accused persons. But in ***Lakshmi Singh v. State of Bihar. (1976) 4 SCC 394*** this Court considered ***Mohar Rai*** and came to hold that non-explanation of the injuries on the accused by the prosecution may affect the prosecution case and such non- explanation may assume greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. The question was considered by a three- Judge Bench of this Court in the case of ***Vijayee***

Singh v. State of U.P. (1990) 3 SCC 190 and this Court held that if the prosecution evidence is clear, cogent and creditworthy and the court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence and consequently the whole case and much depends on the facts and circumstances of each case. In ***Vijayee Singh case*** the Court held that non- explanation of injury on the accused person does not affect the prosecution case as a whole.

5. This question again came up before a three-Judge Bench recently in the case of ***Ram Sunder Yadav v. State of Bihar (1998) 7SC 365*** where this Court reaffirmed the statement of law made by the earlier three-Judge Bench in Vijayee Singh case3 and also relied upon another three-Judge Bench decision of the Court in ***Bhaba Nanda Sarma v. State of Assam (1977) 4 SCC 396*** and as such accepted the principle that if the evidence is clear, cogent and creditworthy then non-explanation of the injury on the accused ipso facto cannot be a basis to discard the entire prosecution case. The High Court in the impugned judgment has relied upon the aforesaid principle and examined the evidence of the four eye witnesses and agreeing with the learned Sessions Judge come to the conclusion that the prosecution witnesses are trustworthy and, therefore, non-explanation of the injury in question cannot be held to be fatal, and we see no infirmity with the said conclusion in view of the law laid down by this Court, as held earlier. We, therefore, are not persuaded to accept the first submission of Mr Mishra, learned Senior Counsel appearing for the accused-appellants.

6. So far as the second contention of Mr Mishra is concerned, it is no doubt true that on 4.7.1977 Satyanarain who has been examined as PW 8 in the course of trial had been examined by a Magistrate as he had been seriously injured and that statement has been exhibited as Exhibit B and in fact the Magistrate who had recorded the statement has been examined by the defence as DW 1. This statement of Satyanarain recorded by the Magistrate may be a former statement by Satyanarain relating to the same fact at about a time when the fight took place and when the said satyanarain was examined as PW 8 during trial it would be open for a party to make use of the former statement for such purpose as the law provides. But if the witness during trial is intended to be contradicted by his former statement then his attention has to be drawn to those parts of the statement which are required to be used for the purpose of contradicting him before the said statement in question can be proved as provided under Section 145 of the Evidence Act. Mr. Mishra, learned Senior Counsel appearing for the appellant relying upon the decision of this Court in ***Bhagwan Singh v. State of Punjab AIR 1952 SC 214*** contended before us that if there has been substantial compliance with Section 145 of the Evidence Act and if the necessary particulars of the former statement has

been put to the witness in cross-examination then notwithstanding the fact that the provisions of Section 145 of the Evidence Act is not complied with in letter i.e. by not drawing the attention of the witness to that part of the former statement yet the statement could be utilised and the veracity of the witness could be impeached. According to Mr. Mishra the former statement of PW 8 which has been exhibited as Exhibit B was to the effect that Kameshwar was assaulted with a bhala by Rajender and Surender and he did not see whether any other person had been assaulted or not, whereas in the course of trial the substantive evidence of the witness is that it is Rajender and Triloki who assaulted the deceased and, therefore, it belies the entire prosecution case, The question of contradicting evidence and the requirements of compliance with Section 145 of the Evidence Act has been considered by this Court in the Constitution Bench decision in the case of ***Tahsildar Singh v. State of U.P. AIR 1959 SC 1012*** The Court in the aforesaid case was examining the question as to when an omission in the former statement can be held to be a contradiction and it has also been indicated as to how a witness can be contradicted in the case of ***Binay Kumar Singh v. State of Bihar (1997) 1 SCC 283*** and the Court has taken note of the earlier decision in ***Bhagwan Singh AIR 1952 SC 214: 1952 SCR 812 : 1952 Cri CJ 113*** and explained away the same with the observation that on the facts of that case there cannot be a dispute with the proposition laid down therein. But in elaborating the second limb of Section 145 of the Evidence Act it was held that if it is intended to contradict him by the writing his attention must be called to those parts of it which are to be used for the purpose for contradicting him. It has been further held that if the witness disowns to have made any statement which is inconsistent with his present stand, his testimony in court on that score would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed in the second limb of Section 145 of the Evidence Act. Bearing in mind the aforesaid proposition and on scrutinising the evidence of DW 1, we find that the Magistrate who is supposed to have exhibited the document in his cross examination categorically admitted that there was neither any signature nor seal of either the Chief Judicial Magistrate or or his office on the statement, Exhibit B. If according to the Magistrate on recording the statement of Satyanarain he had sent the same to the Chief Judicial Magistrate, it is inconceivable as to how the document would not bear the signature or seal of either the Chief Judicial Magistrate or his office. The Magistrate in his examination-in-chief also does not state as to who identified Satyanarain in the hospital before recording his statement. It is under these circumstances that it is difficult to hold that Exhibit B has been legally proved to be the former statement of Satyanarain who has been examined as PW 8. Then again on a scrutiny of the evidence PW 8 it is crystal clear that the witness has not been confronted with that part of his alleged former statement by which

the defence wants him to be contradicted. The witness has merely been asked as to whether he stated before the Magistrate that accused Surender had assaulted Kameshwar to which he had replied he does not recall as to what he stated before the Magistrate. In this state of affairs it is difficult for us to hold that the provisions of Section 145 of the Evidence Act have been complied with in the case in hand. Then again, so far as accused Rajender is concerned, there has been no variance in his so-called former statement, Exhibit B and his statement in the Court when he was examined as PW 8 clearly ascerting that Rajender assaulted the deceased Kameshwar by means of a bhala. In the aforesaid premises, we are unable to accept the second submission of Mr. Mishra and the same accordingly stands rejected.

I.P.C. SECTIONS 34 & 302 : COMMON INTENTION EXPLAINED :-

Medical evidence showing that fatal injury was inflicted on deceased by accused Rajender. As regards accused Triloki, two PWs stating that he had inflicted a blow on the leg of the deceased, one PW stating that he had not inflicted any injury on the deceased and another PW failing to ascribe which assused assaulted which part of the deceased. Leaving aside the contradictions among the PWs with regard to assault by Triloki, held on facts, it is difficult to hold that he also shared the common intention with Rajender for causing murder of the deceased which developed at the spur of the moment.

I.P.C. SECTION 300 EXCEPTION 4 : INGREDIENTS OF :-

While prosecution party was ploughing their land, accused party asking them not to do so and when protested, accused fetching weapons from their nearby plot and inflicting injuries causing death of one person and injuries to other. It was held that Section 300 Exception 4 not attracted. The Supreme Court further held that the necessary ingredients of Exception 4 to Section 300 are :

(a) a Sudden fight

(b) absence of premeditation

(c) no undue advantage or cruelty

but the occasion must be sudden and not as a cloak for pre-existing malice. It is only an unpremeditated assault committed in the heart of passion upon a sudden quarrel which would come within Exception 4 and it is necessary that all the three ingredients must be found.

20. CIVIL RULES AND C.P.C., O. 20 R. 1 : JUDGMENT TO BE DELIVERED WITHIN WHAT PERIOD :-

2000 A.N.J. 181

BHAGWANDAS GATECHAND DASWANI Vs. H.P.A. INTERNATIONAL & Ors.

Appeal against judgment of Madras High Court in which hearing of appeal was concluded on **22nd March, 1989** but the judgment was delivered on **24th January, 1994.** Judgment was delivered five years after the hearing was concluded. It was held that it is correct to this extent that long delay in delivery of judgment gives rise to unnecesary speculation in the mind of the parties to the Case. The matter has been pending for a considerable period of time. The case was remitted back with the direction to decide the appeal fresh within six months.

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21. DEBT LAWS : RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993, SECTIONS 17, 18, 19, 25, 2 (g), 31 AND 34 : RECOVERED MONEYS HOW TO BE USED : MONEYS RECOVERED UNDER ACT, FOR DISTRIBUTION LAID DOWN :- PRINCIPLES
(2000) 4 SCC 406
ALLAHABAD BANK Vs. CANARA BANK

Where the debtor company has not been wound up Section 73 CPC would govern the distribution. Position of secured creditors during pendency of winding-up proceeding against the debtor were considered. Two categories of such secured creditors as are entitled to a share stated. On facts it was held that respondent Bank fell in neither category. nor did it fall under S. 73. Hence was not entitled to any share in the distribution of the sale proceeds. Sections 529 (1), (2), (3), 529-A, Companies Act, Section 73 CPC and Ss. 45 to 50 Provincial Insolvency Act also considered.

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22. ESSENTIAL COMMODITIES ACT, SECTION 6-A (1) : CONFISCATION OF VEHICLE :-
2000 A.N.J. 299
DY COMMISSIONER, DAKSHINA KANNAD DISTRICT Vs. RUDOLPH FERNANDES

The question before the Supreme Court was whether fine in lieu of confiscation contemplated under the second proviso to Section 6a (1) of E.C. Act, 1955 provides levy of fine on the basis of market value of confiscated vehicle or on the basis of market price of essential commodity sought to be carried by such vehicle? It was held that file in lieu of confiscation under second proviso to Section 6 (A) would be market price of vehicle and not of seized essential commodity. ***Shambhu Dayal Agarwala Vs. State of West Bengal and another. 1990 (3) SCC 549*** referred.

Paragraph 9 of the judgment is reproduced:

The Court observed that though the language of the aforesaid proviso is clear, the idea sought to be conveyed under the proviso to Section 6A (1) of the Act appear to be the same. In our view, the analogy drawn by the High Court is erroneous because the proviso specifically mentions that where any such conveyance is used as a means of transport in the smug-

gling of goods, the owner of any conveyance is to be given an option to pay in lieu of the confiscation of the conveyance, a fine not exceeding the market price of the goods which are sought to be smuggled. Explanation provides that market price means market price at the date when the goods are seized. As against this, Section 6 A second proviso does not refer to payment of fine not exceeding market price of the essential commodity but apparent reference is a fine not exceeding the market price of the vehicle sought to be confiscated. This appears to be obvious because in case where market price of the seized essential commodity is more than the price of the conveyance then owner of the conveyance would not come forward to take it back if he is asked to pay something more than its market price. Similarly, when the market price of the seized essential commodity is more than the price of the conveyance then owner of the conveyance would not come forward to take it back if he is asked to pay something more than its market price. Similarly, when the market price of the seized vehicle is much more than of the essential commodity, it cannot be said that instead of confiscation it should be released at a price which is less than its market price. Further it is required to be noted that under section 6B (2) no order of confiscation vehicle or other conveyance can be passed if the owner proves to the satisfaction of the competent authority that it was used in carrying the essential commodity without his knowledge or connivance.

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23. EVIDENCE ACT, SECTION 92 : ORAL EVIDENCE, TO WHAT EXTENT IT IS PERMISSIBLE : NATURE OF :-
2000 (2) M.P.L.J. 361
MADHAV PRASAD Vs. MUNNIBAI

Oral evidence admissible to show that the sale deed was sham transaction to ensure repayment of loan. Section 92 does not come in the way of proving the allegations as made. ***Mandas Vs. Manbai, 1972 MPLJ 852*** and ***Gangabai Vs. Chhabubai, AIR 1982 SC 20*** referred to.

Paragraphs 16 to 18 reproduced :

16. The question is whether in these circumstances the plea of the plaintiff that it was a transaction of loan with sale-deed as a security with consent that the property would be reconveyed to the plaintiff. Both sides have relied on a pronouncement of the division bench of this Court in ***Mandas vs. Manbai; 1972 MPLJ 852.*** In this case the purchaser had sued for possession of the land on the basis of sale-deed in his favour. The vendor pleaded that the document was not intended to convey title but was related to loan and led oral evidence about it. The vendor was an oldman of 60 years. The Court observed that the defendant could plead that the document was not intended to convey title but related to loan. The price was found to be inadequate. In these circumstances the sale deed was held to be fictitious and the suit was dismissed.

17. Learned counsel for the appellants argued that bar of section 92 Evidence Act applied against assertions raised by plaintiffs. It is urged that the plaintiff cannot go beyond the terms recorded in the sale deed and cannot prove that the sale deed was not what it purports to be but was intended to be a different transaction. This assertion is negatived by the Judgment cited by the counsel for the appellants. The Division Bench further observed in above cited case that when the vendor's plea is that the sale deed was fictitious and no interest in the property passed to plaintiff and it was intended to be only security for loan, the vendor could prove those allegations and section 92. Evidence Act did not come in way.

18. The Supreme Court dealt with the bar of section 92 in the case of ***Gangabai vs. Chhabubai; AIR 1982 SC 20.*** Their Lordships observed that bar imposed by sub-section (1) of section 92 applied only when a party seeks to rely upon the document embodying the terms of the transaction. In that event the law declares that the nature and intent of the transaction must be gathered from the terms of the document and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms. This clause is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon between the parties and that the document is a sham. Such a queston arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether not recorded in the document, was entered into between the parties.

DEED : BURDEN OF PROOF :-

Transaction where vendee could influence vendor. Vendor illiterate. Burden on vendee to establish the transaction was not unconscionable.

NOTE : Judicial Officers are requested to go through the ***Hazari Lal Vs. Gyasi Ram & others, 1975 JLJ S.N. 50.*** Please also refer to ***1973 MPLJ 610, 1957 MPLJ 669*** and ***Khargooja Bhai Vs. Jang Bahadur, 1963 SC 1203.***

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24. EVIDENCE ACT, SECTION 114 : APPRECIATION OF EVIDENCE : ADVERSE INFERENCE r/w SECTION 65 EVIDENCE ACT :-
2000 (2) M.P.L.J. 405
SUKHIA SUSHMA Vs. GAMBHIRA

Where a party had not produced the best evidence, which could have thrown light on the issue in controversy, the Court ought to draw an ad-

verse inference against him not withstanding that onus of proof did not lie on him. The party cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce the same.

It has been contended for the learned counsel of the appellant-defendant that where the plaintiff has failed to prove his possession of the basis of the alleged lease deed granted to him, he cannot be allowed to challenge the right of way accruing by long use to the defendant. I am of the considered view that the plaintiff has failed to prove the basis of his possession on account of non-production of original lease deed and also in proving it by producing any witness of the department concerned. The Apex Court in case of ***Roman Catholic Mission Vs. State of Madras,*** reported in **AIR 1966 SC 1457,** observed that where no original document was produced, no foundation was laid to establish the right to give secondary evidence. In the circumstances, copies of original documents are not admissible in evidence. Similarly in another case of ***Gopal Krishnaji Vs. Mohd. Haji Latif*** reported in **AIR 1968 SC 1413,** the Apex Court held that where a party had not produced the best evidence, which could have thrown light on the issue in controversy, the Court ought to draw an adverse inference against him notwithstanding that onus of proof does not lie on him. The party cannot rely on obstruct doctrine of onus of proof or on the fact that he was not called upon to produce it.

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25. HINDU SUCCESSION ACT, SECTION 16 r/w SECTIONS 5 AND 11 HINDU MARRIAGE ACT : TWO WIVES : PAYMENT OF FAMILY PENSION TO WHOM :-
2000 A.N.J. 198
RAMESHWARI DEVI Vs. STATE OF BIHAR

Dispute between the two wives of deceased regarding the payment of family pension, death-cum-retirement gratuity. Deceased has married second time while appellant was still alive. It was held that second marriage is void and against the provisions of Section 5 and 11 of HMA but their legitimate children are entitled to share family pension till they attain majority, and also entitled to death-cum-retirement gratuity with first wife and her children. Second wife would get nothing.

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26. I.P.C., SECTION 307 : "ATTEMPT" TO COMMIT MURDER DISTINGUISHED FROM INTENT TO COMMIT IT OR PREPARATION OF ITS COMMISSION:-
(2000) 4 SCC 454
SAGAYAM Vs. STATE OF KARNATAKA

The appellant trying to assault a police officer and to pierce with a sword but when the officer escaped and caught hold of him, he threatening to kill the officer. No injury sustained by the officer. It was held that act did not constitute attempt to murder.

I.P.C., SECTION 511 : ATTEMPT AND PREPARATION : STAGES IN COMMISSION OF CRIME REITERATED:-

The ASI (PW 2) was deputed to search the house of the appellant along with two other members of his staff. When he went to the house of the appellant along with the other officers, the accused tried to assault them. He somehow escaped from the assault. Again, the accused is said to have tried to pierce with a sword but he escaped that assault and caught hold of the accused but then the accused threatened that he would kill him.

Paragraphs 6, 7 and 8 of the judgment are reproduced:-

To justify conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. An attempt in order to be criminal need not be the penultimate act foreboding death. It is sufficient in law if there is present an intent coupled with some overt act in execution there of, such act being proximate to the crime intended and if the attempt has gone so far that it would have been complete but for the extraneous intervention which frustrated its consumation. There are different stages in a crime. First, the intention to commit it; second, the preparation to commit it; third, an attempt to commit it. If at the third stage, the attempt fails, the crime is not complete but the law punishes for attempting the same. An attempt to commit crime must be distinguished from an intent to commit it or preparation of its commission.

ASI Rajanna, PW 2 was deputed to search the house of the appellant along with two other members of his staff. When he went to the house of the appellant along with the other officers, the accused tried to assault them. He somehow escaped from the assault. Again, the accused is said to have tried to pierce with a sword but he escaped that assault and caught hold of him but then he threatened that he would kill. That is all the evidence that has been given by the ASI which would only mean that there was only a threat to assault the said Rajanna but the overt acts attributed to him would not amount to an attempt to murder, at best it can be one of attempt to assault but there is not even an injury upon the victim.

A charge of this nature when there is not even an injury upon the victim cannot lead to an inference that there was any attempt to kill when the incident took place. It is possible that the accused confronted the ASI Rajanna but that by itself would not result in coming to the conclusion that it was an attempt to murder him.

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27. I.P.C. SECTION 302/34 AND SECTION 326 : NATURE OF OFFENCE AND CONVICTION :-
2000 A.N.J. 34
RAMCHAND OHDAR Vs. STATE OF BIHAR

The appellant accused inflicted only a single blow on neck of deceased. Medical evidence was silent about the nature of injuries caused by the

appellant. No other evidence of repeated blow on record. It was held that the act of appellant falls under S. 326 and not under 302/ 34 IPC.

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28. I.P.C., SECTION 376 : AGE : DETERMINATION OF THE AGE OF THE PROSECUTRIX :-
2000 (2) M.P.L.J. 399
STATE Vs. NARENDRA KUMAR

The finding on age of prosecutrix reached by the trial Judge, as between 14 to 16 years is merely an approximation on medical examination and two years margin on either side could be given. The prosecution, therefore failed to exclusively prove that the prosecutrix was below 16 years of age. Conviction set aside.

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29. I.P.C. SECTIONS 306 AND 109 : ABETMENT TO COMMIT SUICIDE : PROOF :-
2000 (2) M.P.L.J. S.N. 23
BHOJ RAM Vs. STATE OF M.P.

Prosecution is obliged to prove that somebody committed suicide and somebody had abetted commission of such suicide.

Court below appears to have been swayed by the fact that because of the beating by the accused the deceased probably felt bad therefore he must have committed suicide. Section 109 of Indian Penal Code provides punishment of abetment, if the act abetted is committed in consequence and where no expression provision is made for his punishment. As section 306 makes a special and express provisions for punishment, the provisions of section 109 would not be applicable. For providing abetment a Court is obliged to see not only the evidence brought on record but also the definition which defines abetment. The prosecution unless proves application of either of the clauses provided under section 107, IPC would not be successful in securing the conviction of the accused. The prosecution had miserably failed in showing the application of any of the clause provided in Section 107, IPC. In absence of the positive evidence that either of the accused instigated some person to do a particular thing or engaged himself or someone for commission of the offence or for illegal omission or intentionally aided in commission of the act by their own acts or illegal omissions it would not be entitled to secure a conviction of the accused persons. The criminal jurisprudence begins with the presumption that unless otherwise proved the person facing the trial would be deemed to be an innocent. The burden to prove the ingredients constituting the offence is on the prosecution and not on the accused. If the prosecution fails to connect the act of the accused with the ultimate crime and material links which constitute the chain are missing the accused would be entitled to an acquittal.

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30. I.P.C. SECTIONS 34 AND 149 : SIMILARITY AND DIFFERENCE BETWEEN THE PROVISIONS EXPLAINED:-
(2000) 4 SCC 484
JASWANT SINGH Vs. STATE OF HARYANA AND OTHER CONNECTED CASES:-

While under Section 34 physical presence and promotion or facilitation of the crime in furtherance of common intention are essential, under S. 149 common object and membership of an unlawful assembly are sufficient. Once these ingredients are satisfied no further evidence of actual overt acts on the part of the accused persons required to convict them under these sections.

Paragraphs 23 to 25 are reproduced :

23. Both sections deal with the vicarious liability of an accused for an offence committed by another. Under Section 34 IPC :

"When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone"

Similarly Section 149 IPC provides for the guilt of every member of an unlawful assembly if in prosecution of a common object an offence is committed, or which the members know would be likely to be committed in prosecution of that object.

24. The similarity of the sections lies in the requirement of a common object or intention or a prearranged plan in furtherance of which the act is done. The difference lies in the degree of actual participation required in the criminal enterprise. The nature of participation under Section 34 IPC has been considered in the case of ***Ramaswami Ayyangar v. State of T.N. (1976) 3 SCC 779.***

"Section 34 is to be read along with the preceding Section 33 which makes it clear that the 'act' spoken of in Section 34 includes a series of acts as a single act. It follows that the words 'when a criminal act is done by several persons' in Section 34, may be construed to mean 'when criminal acts are done by several persons'. The acts committed by different confederates in the criminal action may be different but all must in one way or the other participate and engage in the criminal enterprise, for instance, one may only stand guard to prevent any person coming to the relief of the victim, or may otherwise facilitate the execution of the common design. Such a person also commits an 'act' as much as his coparticipants actually committing the planned crime. In the case of an offence involving physical violence. however, ***it is essential for the application of the Section 34 that the person who instigates or aids the commission of the crime must be physically present at the actual commission of the crime for the purpose of***

facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture. Such presence of those who in one way or the other facilitate the execution of the common design, is itself tantamount to actual participation in the 'criminal act'. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result." (emphasis supplied) The emphasis is on physical presence and promotion or facilitation of the crime.

25. As far as Section 149 IPC is concerned, in addition to the common object merely being a member of an unlawful assembly within the meaning of Section 141 IPC may be sufficient. As held in ***Lalji v. State of U.P. (1989) 1 SCC 437.***

"Once the case of a person falls within the ingredients of the section the question that he did nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined. It is not necessary that all the persons forming an unlawful assembly must do some overt act. When the accused persons assembled together. armed with lathis, and were parties to the assault on the complainant party. the prosecution is not obliged to prove which specific overt act was done by which of the accused. This section makes a member of an unlawful assembly responsible as a principal for the acts of each. and all, merely because he is a member of an unlawful assembly. While overt act and active participation may indicate common intention of the person perpetrating the crime, **the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149.** It must be noted that the basis of the constructive guilt under Section 149 is mere member ship of the unlawful assembly, with the requisite common object or knowlegde." See also ***State of A.P. Vs. Thakkidiram Reddy, (1998) 6 SCC 554.***

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31. LAND ACQUISITION ACT, SECTIONS 11-A AND 6:-
(2000) 4 SCC 322
M. RAMALINGA THEVAR Vs. STATE OF T.N.

Computation of 2 years. Award can be made after publication of declaration. It was held that of the various actions, which may be taken pursuant to the declaration, if any is stayed by order of a court, the time covered by the stay must be excluded from the two-year period. It was further held, even when claimant's dispossession alone is stayed the position remains the same. Appellant challenging notification under S. 4 (1) in a writ petition before the High Court. High Court ordered stay of dispossession of appel-

lant from property concenned on 16-7-1991. Government published declaration under Section 6 on 10-4-1992. while writ petiton was pending and passed award on 16-9-1994. The Division Bench of High Court found that award was passed within permitted 2 year period and rightly excluded the time during which proceedings for dispossession had been stayed. The Supreme Court upheld the order of the Division Bench. The contention was rejected that there was no stay in respect of passing the award, the period of two years should have been counted from the date of declaration, i.e. 10.4.1992.

Paragraph 6 of the judgment is reproduced:-

As per the Explanation the period of exclusion from the time is the period during which "any action or proceedings" to be taken in pursuance of the said declaration is stayed. We have no doubt that one of the actions contemplated pursuant to the declaration is taking possession of the land, though such action is a post-award stp in normal circumstances and in emergent circumstance it can as well be a pre-award step. None-the less, taking possession is one of the actions to be adopted as a follow-up measure pursuant to the declaration envisaged in Section 6 of the Act. The consuequence mentioned in Section 11-A is a self-operating statutory process and, therefore, it can operate only when there is fusion of all the conditions stipulated therein. If there is any stay regarding any of the actions to be taken pursuant to the declaration then the consuequence of lapse would not happen.

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32. LIMITATION ACT, SECTION 14 r/w SECTION 37 (3) AND (5) ARBITRATION ACT, (OLD) :
2000 (2) A.N.J. 489
M/S. JUPITER CHIT FUND (P) LTD. Vs. SRI SHIV NARAIN MEHTA

There was a dispute between the parties regarding nonpayment of instalments. The applicant, a Chit Fund Private Company and the respondent No. 1 was a subscriber there to. The value was to be repaid in instalment, to the named Arbitrator. Award was passed but was set aside on the ground that the reference to the arbitration was not proper. The civil suit was filed which was held to be barred by time. The contention of the appellant was that the entire period taken by it in pursuing the matter before the arbitrator ought to be excluded under S. 14 of the Limitation Act not accepted since arbitration is deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator or, where an arbitrator has already been named in the arbitration agreement, for requiring the difference to be submitted to the named arbitrator. No infirmity in the judgment passed by the High Court was found.

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33. M.P. ACCOMMODATION CONTROL ACT, SECTION 13 (1), 13 (6) : STRIKING OUT DEFENCE AT APPELLATE STAGE : EXERCISE OF POWERS : NATURE OF :-
2000 (2) M.P.L.J. 445
RAJESH Vs. SMT. MULLU

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The legislative intent underlying the provisions contained in section 13 (1) of the M.P. Accommodation Control Act as it stood amended w.e.f. 16-8-1983 is very clear. The provision casts a statutory liability on the tenant, who is a respondent in such an appeal to comply with the conditions stipulated in section 13 (1) of the Act within one month of the service of the notice of the appeal. The failure to comply with the requirements envisaged under Section 13 (1) of the Act in the event of a pending appeal filed under section 96, CPC entails serious consequences vesting the Court of appeal with ample jurisdiction to strike out the defence put in by the tenant against his eviction and proceed with the hearing of the appeal. The provisions contained in section 13 (6) of the Act vests the Appellate Court with a discretionary jurisdiction. In case, sufficient ground has been made out for condoning any default in making the deposits as envisaged under Section 13 (1) of the Act the Appellate Court could refuse to strike out the defence against eviction and proceed to hear the appeal on merits of the defence put in against eviction. This discretion of course has to be exercised not in an arbitrary manner but on sound judicial principles keeping in mind that though M.P. Accommodation Control Act is a beneficent piece of legislation to protect the interest of the tenant sufficient care has been taken under the provisions of the Act to protect the interest of the landlord as well.

The deposit of rent has to precede delivery of judgment. The merit of defence is to be considered at the time of hearing of appeal itself.

Paragraph 19 of the judgment is reproduced :

So far as the third substantial question of law is concerned, it may be noticed that the deposit of due rent by the tenant as contemplated under Section 13 (1) of the Act has to precede the date of delivery of the judgment and the deposits which are required to be made complying with the requirements envisaged under section 13 (1) of the Act as made applicable to the appeals have to be made during the period anterior to the hearing of the appeal on merits. The question as to whether the tenant has put in a defence against eviction and what is the merit in that defence has to be considered at the time of the hearing of the appeal itself. In the event of there being default in complying with the mandatory requirements stipulated in section 13 (1) of the Act, in the absence of any order condoning the default, the defence against eviction is liable to be struck out with the result that at the time of the hearing of the appeal the Appellate Court has

to proceed and decide the appeal on the basis that no defence against eviction has been put in. In a situation like this obviously the suit filed for eviction and claiming the arrears of rent cannot be dismissed on the tenants' depositing the due rent subsequent to the hearing of the appeal and the question in regard to condonation of delay in making the deposit cannot arise in such a situation. The decree for eviction even in the absence of any defence against eviction may or may not follow as it is for the plaintiff to establish the plaint case. In the event where the plaintiff has successfully established his case there can be no impediment in the grant of the decree for eviction where the defence against eviction is not available to the defendant in the circumstances envisaged under section 13 (6) of the Act. The third substantial question of law is answered accordingly.

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34. M.P. ACCOMMODATION CONTROL ACT, SECTIONS 13 (1), 13 (2) AND 12 (1) (a) :- DEFAULT IN PAYING ARREARS OF RENT:- (2000) 4 SCC 380
JAMNALAL Vs. RADHESHYAM

Where the rate of rent is not in dispute and disagreement is only with regard to amount of rent payable, it was held, there is no need for the court to hold a summary inquiry under S. 13 (2) to fix provisional rent and S. 13 (1) remains operative. Therefore, tenant remains liable to make the payments or deposits a prescribed under S. 13 (1). If the court finds that arrears of rent for any period remain unpaid the Court is obliged to pass an order for eviction. Where rate of rent and quantum of arrears both are disputed, S. 13 (1) becomes inoperative till the court fixes provisional rent under S. 13 (2). Section 13 (1) imposes twin obligations upon tenant facing eviction proceedings under S. 12 (1) : (i) he must pay or deposit within one month of service of writ of summons, arrears due for any period in the past and up to the end of the month preceding the month in which payment is made, and (ii) he must pay or deposit future rent, month by month. The two obligations are independent of each other. Compliance with second is not dependent upon carrying out of the first. The contention was rejected that use of the word "thereafter" in S. 13 (1) implies that liability as regards future rent would not arise if the first obligation could not be complied with.

APPLICABILITY OF PROVISIONS OF SECTION 13 (1) :-

Section 13 (1) applies to suits for eviction based on any of the grounds enumerated in clauses (a) to (p) of S. 12 (1), not just to clause (a), which deals with arrears of rent. Thus tenants facing eviction proceedings on grounds other than arrears of rent would still be obliged to pay or deposit future rent under S. 13 (1). Jhammanlal case reported in 1977 MPLJ 446 not approved.

There can be no debate on the proposition that the tenant is relieved of the consequences of default in payment of rent on his paying/depositing the rent under sub-section (1) at the rate last paid or at the rate fixed provi-

sionally under sub-section (2) of section 13 of the Act but if the tenant takes a false or frivolous plea in regard to the amount of rent payable by him, which does not involve fixation of provisional rent under section 13 (2), he runs the risk of suffering an order of eviction either under sub-section (6) of Section 13 or after trial under Section 12 (1) (a) of the Act.

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35. N.D.P.S., ACT, SECTIONS 42 & 50 AND 21:-
(2000) 4 SCC 465
KOLUTTUMOTTIL RAZAK Vs. STATE OF KERALA

Evidence regarding compliance with the requirements of Ss. 42 and 50. Non compliance with Section 42 would render resultant search and seizure suspect. **In such a situation evidence of the police officers required to be corroborated by independent evidence which in the present case was not done.** Evidence regarding compliance with Section 50 also based on mere ipse dixit (He or himself made the statement; a dogmatic statement resting merely on speaker's authority).

JUDICIAL PROCESS:-

Lawyer's boycott or strike. Duty of the Court to carry on with court proceedings. Adjournment not justified where appeallant was languishing in jail for a long time. Court should in such cases look into the matter itself and interfere if necessary on merits. Else Art. 21 of the Constitution may be violated.

Being an important judgment the whole judgment is reproduced

1. A request was made on behalf of the appellant to adjourn this matter as the advocates have called for a strike today. But when we considered the stark reality that this appellant has been languishing in jail for a very long time we felt it our duty to look into the matter by ourselves and if there is no scope for interference with the conviction and sentence there would be necessity to hear an advocate appointed as amicus curiae to argue for the appellant. Having gone into the matter we found that the conviction and sentence imposed can be interfered with and, therefore, we feel further, delay in disposing of the matter would be a violation of Article 21 of the Constitution. Hence, we proceed to dispose of this matter.

2. The appellant was convicted under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") for possession of five small plastic packets of brown sugar. While passing the sentence on him the trial court took into consideration an added factor that the appellant was already convicted under the same section in a different case and, therefore, he was asked to show cause why the enhanced sentence as contemplated under Section 31 of the Act should not be awarded to him. After hearing him the trial court

imposed a sentence of rigorous imprisonment for 15 years and a fine of Rs. 1,50,000 (in default of payment of fine he was directed to undergo simple imprisonment for a further period of 3 years). Thus, in all if he fails to pay the fine amount of Rs. 1,50,000, he has to undergo imprisonment for a total period of 18 years. When he filed an appeal a learned Single Judge of the High Court of Kerala has confirmed the conviction and sentence and dismissed his appeal.

3. We appointed Mr K.K. Mehrotra, Advocate as amicus curiae but when the matter came up for hearing on 14-9-1999 the said amicus curiae did not turn up and hence we removed him and in his place appointed Mrs Sheil Sethi, Advocate ad amicus curiae. When the matter came up for arguments today, the amicus curiae appointed on the second occasion is also absent. Nobody appears for the State of Kerala. Considering the fact that this appellant has been languishing in jail for a long time, we considered it necessary to dispose of this appeal.

4. There are two glaring infirmities. One is non-compliance with Section 50 of the Act and the other is non-compliance with Section 42 of the Act.

5. PW 1 was the Sub-Inspector of Police, who said that he got reliable information on the evening of 31-3-1991 that one man was selling brown sugar near the Sarada Mandiram Bus-stop. But PW 1 admitted in his cross examination that he did not reduce the information into writing nor did he inform his superior officers about it and instead he opted to proceed to the place without doing the aforesaid duty.

6. It is a mandate of Section 42 of the Act that when an officer referred to in sub-section (1) there of "has reason to believe from personal knowledge or information given by any person and ***taken down in writing***" (emphasis supplied) that any narcotic drug or psychotropic substance is kept or concealed he may detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence under the Act. The other requirement grounds for his belief shall forthwith send a copy thereof to his immediate official superior. A three-Judge Bench of this Court held in ***Abdul Rashid Ibrahim Mansuri vs. State of Gujarat 2000 2 SCC 513*** that noncompliance with the requirements of Section 42 (1) and (2) would render the resultant search and seizure suspect, though that by itself may not vitiate the proceedings.

7. In the present case, unfortunately, apart from the evidence of the police officers there is absolutely no independent evidence to ensure confidence in our mind that the search was in fact conducted by PW 1 as he has claimed. As his evidence is required to be approached with suspicion due to violation of Section 42 of the Act we may require corroboration from independent sources that is lacking in this case.

8. The Second infirmity is that PW 1 admitted that before the search was conducted no officer or Magistrate as envisaged in Section 50 of the Act was called. The excuse put forward by PW 1 for not resorting to such action was that the appellant himself told that he did not require the presence of any such officer. For that matter also we have only the ipse dixit of the police officer. None of the independent witnesses stated the said version. PW 1 in his cross-examination said that he arrested the appellant at 5.20 p.m. and the body of the appellant was searched only after that. When law requires that the appellant must be afforded with an opportunity to have the presence of a gazetted officer or a Magistrate the appellant has a right to be taken to the nearest gazetted officer or Magistrate for the purpose of conducting search in his presence. The said right cannot be sidelined as a mere formality. A Constitution Bench of this Court has highlighted the importance of such a right, the implication of non-compliance with the same and other allied matters connected with Section 50 of the Act vide ***State of Punjab v. Baldev Singh. (1999) 6 SCC 172 : 1999 SCC (Cri) 1080.***

9. In the fact- situation of the case, particularly in the absence of any corresponding entry in any of the police records it is difficult for us to believe the mere oral vibration made by PW 1 that he asked the appellant whether he should require the search to be conducted in the presence of any one of the above officers and that the appellant politely declined the offer.

10. We are of the considered view that in the light of his non-compliance with the provisions of Section 42 (1) and (2) of the Act besides non compliance with the requirement in Section 50 of the Act it is difficult to sustain the conviction and sentence of the appellant. The graver the consequences the greater must be the circumspection to be adopted. We take into account that the appellant otherwise will have to be subjected to a longer period of sentence as Section 31 of the Act was also invoked in the present situation for adopting such greater circumspection for scrutinising the evidence.

11. In the result, we allow this appeal and set aside the conviction and sentence passed on the appellant as per the impugned judgment. We direct the appellant to be set at liberty forthwith unless he is required in any other case.

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36. NEGOTIABLE INSTRUMENTS ACT : SECTION 138 : NOTICE : PRESUMPTION ABOUT DISHONOUR OF CHEQUE :
2000 A.N.J. 147
K. BHASKARAN Vs. SANKARAN VAIDHYAN BALAN

Cheque was dishonoured. Notice of dishonour and demand was is-

sued but the notice was returned with the endorsement "unclaimed". The question was whether the notice refused to be accepted by addressee presumed to have been served? It was held that 'yes'. It is well settled that notice refused to be accepted by the addressee can be presumed to have been served on him.

Cr.P.C., SECTIONS 29 (2), 357, 386 r/w N.I. ACT, SECTIONS 138 AND 142 :

The Court has ample power to award compensation to be paid to complainant. There is no limit mentioned in Section 357 regarding compensation.

It is true, if a Judicial Magistrate First Class were to order compensation to be paid to the complainant from out of the fine realised, the complainant will be loser when the amount exceeded the same limit. In such case, a complainant would get only the maximum amount of rupees five thousand.

However, the magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357 (3) of the Code. It is well to remember that this Court has emphasized the need for making liberal use of that provision. ***Hari Krishan and State of Haryana Vs. Sukhbir Singh and Ors.,*** **AIR 1988 SC 2127.** No limit is mentioned on the subsection and therefore, a magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant.

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37. OFFICIAL LANGUAGE ACT, 1957 (M.P.) SECTION 4 AND NOTIFICATION NO.1281-216- XX-CC, DATED 1ST JUNE, 1963 : HINDI, OFFICIAL LANGUAGE :-
2000 (1) JLJ 280
RAM LAKHAN RAWAT Vs. STATE OF M.P.

Official Language of M.P. state is Hindi. Text in Hindi is original text which should be relied on. ***Singh Jadon Vs, State of M.P. 1997 (1) JLJ 391*** relied on.

Paragraphs 25, 26 and 27 reproduced:

By Notification No. 1281-216-XX-CC dated 1st June, 1963 the official language of the state of Madhya Pradesh is declared as 'Hindi' u/s 4 of the Madhya Pradesh Official language Act, 1957. The items specified in the schedule to the aforesaid Notification Viz. (a) All bills to be introduced or amendment there to be moved in each House of the State Legislature; (b) All acts passed by each House of the State Legislature; (c) All ordinances promulgated under Art. 231 of the Constitution of India and (d) All orders.

rules, regulations and bye-laws issued by the State Government under the Constitution of India or under any law made by the parliament or the Legislature of the State, shall be in Hindi. Thus all orders, rules, regulations and bye-laws, issued by the State Government under Constitution of India or under any law made by the Parliament or the Legislature of the State Shall be in the official Language that is 'Hindi'.

This law has been laid down in the case of ***Satybhan Singh Jodon Vs. State of M.P. 1997 (1) JLJ 391= 1997 (2) MPLJ 487.***

In view of the aforesaid discussions, the text in Hindi is the original text and Rules framed under the Hindi text of Acts should be relied upon.

Rules framed under Section 91 of the Adhiniyam in Hindi text do not provide any remedy of appeal or revision against the proceedings of the Panchayat. Under the rules any order passed by Gram Panchayats in pursuance of the resolutions inapplicable and no revision is maintainable against the proceedings of panchayat. I a fortified in my view from the judgment in the case of ***Ramnath Kaushik Vs. State of M.P. & others, 1999 (1) JLJ 146.*** The question as to 'Resolution' or 'order' was also considered by this Court in the case of ***Ram Charan Ahirwar Vs. Sub Divisional Officer, Jatara, 1998 (2) JLJ 267.***

38. PREVENTION OF CORRUPTION ACT, 1947 Ss. 5A (1) PROVISO II, AND S. 5 (1) (e) :- SANCTION : PERMISSION TO INVESTIGATE:- 2000 (1) JLJ 293 (SC)
STATE OF M.P. Vs. SHRI RAM SINGH

In a civilised society corruption is a disease like cancer. If not detected in time it is sure to malignise policy of the country. It is a disease like Aids being incurable. It is also termed as Royal thievery. It is opposed to democracy and social order. It is not only anti people but aimed and targeted against them. Unless it is nipped in the bud at earliest it is likely to cause turbulence, shaking of socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society. The Act was enacted to make more effective provision for prevention of bribery and corruption. It must receive constrution as would advance its object and purpose. Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved.

Merely writing investigation by Superintendent of Police does not clothe with power of investigation. **1992 (1) Suppl. SCC 335** relied on.

Part of paragraph 12 is reproduced :-

In the facts and circumstances of that case this Court posed a question to itself in the following terms.

"Now what remains for consideration is whether there is any valid order of the S.P. permitting the third appellant to investigate the offence falling under clause (C) of subsection (1) of Section 5 as we have already mentioned in the earlier part of this judgment, the S.P. (the second appellant) has given the one word direction on 21.11.1987 'investigate'. The question is whether the one word direction 'investigate' would amount to an 'order' within the meaning of second proviso of Section 5A(1)".

The Court found on facts that as there was absolutely no reason given by the SP in directing the SHO to investigate, the order of SP was directly in violation of the dictum of law. The SHO was, therefore, found not clothed with the requisite legal authority within the meaning of second proviso the Section 5A (1) of 1947 Act investigate the offences under clause (e) of section (1) of the Act. This Court held that (1) as the statutory legal requirement of disclosing the reason for according the permission is not complied with, (2) as the prosecution is not satisfactorily explaining the circumstances which impelled the SP to pass the order directing the SHO to investigate the case; (3) as the said direction manifestly seems to have been granted mechanically and in a very casual manner, regardless of the principles of law enunciated by this Court and (4) as the SHO had got neither any order from the Magistrate to investigate the offences under Section 161 and 165 IPC nor any order from SP for investigation of the offence under Section 5 (1) (e) of the Prevention of Corruption Act in manner known to law, the order or direction reading only "investigate" suffered from legal infirmity. The Court found that despite quashing the direction of the SP and the investigation thereupon would not, in any manner, deter the State of Haryana to pursue the matter and direct the investigation a fresh in pursuance of the FIR, if the State so desire.

Cr.P.C. Ss. 190 AND 465 :

Cognizance can be taken on an invalid police report (the charge sheet.) illegality in investigation also does not prohibit taking of cognizance. No prejudice caused to accused. ***H.N. Rishbud and Anr. Vs. State of Delhi, AIR 1955 SCC 196, Prabhu Vs. Emperor, AIR 1944 PC 73 (C)*** and ***Lumbhardar Zutshi Vs. The King, AIR 1950 PC 26 (D)"*** relied on.

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39. PRACTICE AND PROCEDURE, GENERAL : INTERIM ORDER :- (2000) 4 SCC 440
AMRESH TIWARI Vs. LALTA PRASAD

Interim orders, even if confirmed by higher courts, would not become final and binding and would not be a bar to passing a contrary order at the stage of final hearing.

PASSING OF STRICTURES:-

Passing of strictures by higher court against the lower court/authority merely because the higher court prefers a different view not justified.

Paragraphs 11 and 16 are reproduced :

The learned Single Judge also failed to appreciate that the earlier orders were passed on the footing that the civil proceedings related to different properties and were between different parties. Subsequently, when it became clear that the civil proceedings were in respect of the same properties and between the same parties even the factual position had changed. For that reason also the earlier order would not be binding.

Before we part it must be mentioned that in the impugned order the High Court has passed strictures against the SDM. The High Court has also directed the District Magistrate to transfer the proceedings from the SDM who passed the order dated 9-6-1991. In our view the strictures were uncalled for. We hope that in future the High Court would not pass such strictures. Two views are always possible. Merely because the High Court takes a different view is no ground for passing strictures against the lower court.

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40. SERVICE LAW : RECRUITMENT RULES : THE PROCESS EXPLAINED :-
(2000) 5 SCC 262
BHUPINDERPAL SINGH Vs. STATE OF PUNJAB

With the courtesy of Eastern Book Company, Lucknow, following portion is reproduced :

On 12-1-1996, an advertisement issued inviting application latest by 15-2-1996. Upper age limit prescribed as 36 years as on 1-1-96. However, a corrignedum issued on 7-10-1996 raising upper age limit to 42 years as on 1-1-1996. Caandidates who could not applied earlier due to over age, advised to apply latest by 30-10-1996. Some candidates who did not have requisite educational qualifications as on 15-2-1996 applied. Some of them were selected for appointment. A circular was issued on 17-3-1997 conveying decision of the Government that "the candidates who have acquired requisite qualification at the time of interview and have been selected" may be given appointments though they did not have requisite educational qualification by 15-2-1996 (this circular was subsequently withdrawn). It was held that, High Court rightly discerned the law on the subject as follows : (i) if cut off date is laid down in relevant rules, it has to be followed otherwise it may be prescribed in advertisement, and (ii) if no such date is prescribed, eligibility has to be determined as on the last of receipt of applications. Further it was held that State of Punjab was following a wrong practice of determining eligibility conditions as on the date of interview. The practice

directed to be discontinued. Supreme Court, however, in the facts and circumstances and in the interest of justice invoking its power under Art. 142 and saving appointments which were otherwise wrong. Government also directed to give posting order to those had been given appointment letters but were not allowed to join.

Such loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of the interview. The authorities of the State should be tied down to the principles governing cut off date for testing eligibility qualifications, on the principles deducible from cases decided by the Supreme Court. These cases have now to be treated as settled service jurisprudence.

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41. SERVICE MATTER : PROMOTION- ADVERSE REMARKS : COMMUNICATION OF A.C. RS.- REQUIREMENT OF :-
2000 (2) M.P.L.J. 326
MADAN PAL Vs. UNION OF INDIA

Paragraph 7 and 8 of the judgment are reproduced :

7. In the present case, it is true that in the year 1992, A.C.R. of the appellant he was given 'average' and he was not recommended for promotion which has materially affected his promotion. We would have interfered in the matter on account of breach of principles of natural justice, but for the fact that he had come to know the remarks in his A.C.R. for 1992 and made representation against it in his statutory complaint. He has especially mentioned that Major Sisodia had given the adverse remarks in 1992 A.C.R. and he had fallen a victim of his displeasure. This grievance having been examined at the highest level and the statutory complaint having been rejected by the Authorities, the adverse remarks remained intact. Therefore, after going through the record, it appears that the adverse remarks were not communicated to the petitioner, but he knew the contents of the remarks and represented in the statutory complaint by making a grievance about this remark, which was rejected. In this connection our attention was invited to the case of ***Major General I.P.S.Dewan vs. Union of India and others, (1995) 3 SCC 383,*** in which it was held :

> "The aforesaid adverse remarks were made by the highest functionary in the Army hierarchy, viz., the Chief of the Army Staff. The

remarks were based not upon mere observation but upon the report of a Court of Enquiry which was appointed to go into the circumstances in which the cases against Nanda were mishandled. The Court of Enquiry held an elaborate enquiry wherein statements of the Officers concerned including the appellant were also recorded. The appellant knew fully well what was the Court of Enquiry about. It may be that the appellant was not formally charged and no regular enquiry as such was held but that was not necessary for making adverse remarks. Indeed adverse remarks, as is well known, can be made by the appropriate superior officer on the basis of mere assessment of the performance of the Officer and no enquiry or prior opportunity to represent need be provided before making such remarks unless, of course, the Rules so provide. The remedy available to the officer in such a case is to make a representation against such remarks to the appropriate authority or to adopt such other remedies as are available to him in law.

We are inclined to agree with the learned counsel for the respondents that the remarks complained of cannot be understood or interpreted as amounting to expression of "severe displeasure" within the meaning of the memorandum dated 5-1-1989 and hence it was not necessary to follow the procedure prescribed by it. They purport to be and are adverse remarks, there is no warrant for construing them as expression of "severe displeasure". Merely because the language used is strong, the adverse remarks do not cease to be adverse remarks. Be that as it may, it cannot be said that the principle of natural justice, viz., **audit alteram partem,** has been violated in this case, in as much as the appellant could, and did in fact, submit a statutory complaint against the remarks to the Central Government.

We are also satisfied on a perusal of the relevant record that the adverse remarks made by the Chief of the Army Staff against the appellant are based upon and consistent with the report of the Court of Enquiry regarding the responsibility of and the role played by the appellant in processing the cases against Nanda".

8. Before we close, it may be emphasised that it is the cardinal principle of law in service jurisprudence that before a man is considered for promotion, adverse material, including A.C. Rs. should be communicated to the incumbent so that he can make a representation and clarify the position. In the event of non-communication of the adverse remarks, consideration of the officer on the basis of adverse remarks would vitiate the whole selection process qua him. However in the present case appellant's representation against his adverse A.C.R. was rejected. Therefore, his adverse remarks remained intact. As such his consideration and supersession is not vitiated.

दंड प्रक्रिया संहिता-अजमानतीय अपराध सूची

दं.प्र.सं. 1973 के अंतर्गत अपराधों का वर्गीकरण प्रथम अनुसूची में दर्शाया है। जिसमें जमानतीय एवं अजमानतीय अपराधों का वर्गीकरण भी दर्शाया है। यहां केवल अजमानतीय अपराधों के संबंध में संक्षिप्त में वर्गीकरण दिया जा रहा है। यथा संभव प्रयत्न है कि पूर्ण शुद्धता कायम रहे। केन्द्र सरकार द्वारा प्रकाशित हिन्दी–अंग्रेजी द्विभाषा संस्करण जो सितम्बर 1984 का है, जिसे श्री राकेश श्रोतीय व्यवहार न्यायाधीश वर्ग 1 जबलपुर ने उपलब्ध कराया है, से प्रकाशित कर रहा हूं। आद्यतन स्थिति बाबत् जानकारी पीठासीन अधिकारियों ने संग्रहित करने की अपेक्षा है तथा न्यायालयीन कार्य के समय केवल अधिकृत पुस्तक के पाठ को देखें एवं स्वयं संतुष्ट हों। यहां पर जो सामग्री प्रकाशित हो रही है, स्वाभाविक रूप से अधिकृत पाठ नहीं कही जा सकती। यह प्रकाशन पूर्व में **2000 ज्योति अगस्त पृष्ठ 438** में उल्लखित टिप्पणी के अनुसार किया जा रहा है। अन्य संदर्भ ग्रंथों के रूप में रतनलाल धीरजलाल का 1996 का पुनः प्रकाशन, अंग्रेजी में दंड प्रक्रिया संहिता लेखक सोहनी का भी अंग्रेजी संस्करण 1986 के प्रकाशन का सहारा लिया है। **(संपादक)**

परिशिष्ठ 1 भाग 1

भारतीय दंड संहिता के अधीन अपराध

धारा	जमानतीय/अजमानतीय
	अध्याय 5 - दुष्प्रेरण
109	इसके अनुसार कि दुष्प्रेरित अपराध जमानतीय है या अमानतीय
110,111,113,114	यथोक्त्
115 (दोनों भाग)	अजमानतीय
116 दोनों भाग	इसके अनुसार कि दुष्प्रेरित अपराध जमानतीय है या अजमानतीय
117	यथोक्त
118 (प्रथम भाग)	अजमानतीय
119	इसके अनुसार कि दुष्प्रेरित अपराध जमानतीय है या अजमानतीय
119 दूसरा भाग	अजमानतीय
119 तीसरा भाग	जमानतीय
120	इसके अनुसार कि दुष्प्रेरित अपराध जमानतीय है या अजमानतीय
120 भाग 2	जमानतीय

अध्याय 5 क - आपराधिक षडयंत्र

120 ख	इसके अनुसार कि वह अपराध जो षड्यंत्र द्वारा उद्दिष्ट है, जमानतीय है या अजमानतीय
भाग 2	जमानतीय

अध्याय 6 - राज्य के विरूद्ध अपराध

121 से 128 एवं 130	अजमानतीय

अध्याय 7 - सेना, नौसेना और वायुसेना से संबंधित अपराध

131 से 134 तक	अजमानतीय

अध्याय 8 - लोक प्रशान्ति के विरूद्ध अपराध

149	इसके अनुसार कि अपराध जमानतीय है या अजमानतीय
150	यथोक्त
153 क	अजमानतीय
153 ख	अंग्रेजी में Non bailable लिखा है हिन्दी में इस प्रकार लिखा है कि इसके अनुसार कि अपराध जमानतीय है या अजमानतीय। सोहनी द्वारा लिखित अंग्रेजी पुस्तक के संस्करण 1986 के अनुसार अजमानतीय रतनलाल (वाधवा एंड कंपनी प्रकाशन अंग्रेजी) 1996 का पुनः प्रकाशन अनुसार अजमानतीय

अध्याय 9 - लोक सेवकों द्वारा या उनसे संबंधित अपराध

161 से 165 क	अजमानतीय
170	अजमानतीय

अध्याय 10 - लोक सेवकों के विधिपूर्ण प्राधिकार के अवमानना के विषय में

188	म.प्र. संशोधन द्वारा अजमानतीय। 1976 एम.पी.एल.टी. पृष्ठ 106 आयटम 106 पार्ट दो।

अध्याय 11 - मिथ्या साक्ष्य और लोक न्याय के विरूद्ध अपराध

194-195	अजमानतीय
196	इसके अनुसार कि ऐसा साक्ष्य देने का अपराध जमानतीय है या अजमानतीय
222	अजमानतीय हिन्दी पाठ अनुसार। अंग्रेजी अनुसार जमानतीय। शेष संदर्भों के अनुसार अजमानतीय
222 भाग दो	अजमानतीय
222 भाग तीन	जमानतीय
225 के भाग दो, तीन, चार, पांच	अजमानतीय
227	अजमानतीय

अध्याय 12 - सिक्के और सरकारी स्टाम्पों से संबंधित अपराध

231 से 258	अजमानतीय

अध्याय 13 - बाटों और नापों से संबंधित अपराध

267	अजमानतीय

अध्याय 14 - धर्म से संबंधित अपराध

295	अजमानतीय
295 क	अजमानतीय

अध्याय 16 - मानव शरीर पर प्रभाव डालने वाले अपराध

302	अजमानतीय
303	यथोक्त
304 भाग 1-2	यथोक्त
304 बी	यथोक्त
305 से 308	यथोक्त
311	यथोक्त
313 से 316	यथोक्त
326 से 329	यथोक्त
331	यथोक्त
333	यथोक्त
363 क से 369	यथोक्त
371 से 373	यथोक्त
376 (किसी पुरूष द्वारा अपनी पत्नी के साथ संभोग जिसकी आयु बारह वर्ष से कम नहीं है को छोड़कर)	यथोक्त
377	यथोक्त। **नोट :** संदर्भ पुस्तक सोहनी के अनुसार। शासकीय प्रकाशन में जमानतीय। संभवतः यह भूल इस कारण हुई है कि धारा 376 के कुछ भाग संशोधन पश्चात जमानतीय बताएं हैं।

अध्याय 17 - संपत्ति के विरूद्ध अपराध

379 से 384	अजमानतीय
386	यथोक्त
387	यथोक्त
392 से 402 तक	यथोक्त

406	यथोक्त
407 से 414	यथोक्त
420	यथोक्त
436 से 439	यथोक्त
449	यथोक्त
450	यथोक्त
451 (यदि अपराध चोरी है)	यथोक्त
452 से 461	यथोक्त

अध्याय 18 - दस्तावेजों और संपत्ति चिन्हों संबंधी अपराध

466 से 468 तक	अजमानतीय
476	यथोक्त
477 (प्रथम भाग)	यथोक्त
489 क	अजमानतीय
489 ख	यथोक्त
489 घ	यथोक्त

अध्याय 20 - विवाह संबंधी अपराध

493	अजमानतीय

अध्याय 20 क - पति या पति के नातेदारों द्वारा क्रूरता के विषय में

498 क	अजमानतीय। हिन्दी में जमानतीय लिखा है। संदर्भ ग्रन्थों में अजमानतीय

अध्याय 22 - अपराधिक अभित्रास, अपमान और क्षोभ

505	अजमानतीय
506	म.प्र. में अजमानतीय (1976 एम.पी.एल.टी पृष्ठ 106 आयटम क्र. 106 पार्ट II

अध्याय 23 - अपराधों को करने के प्रयत्न

511	इसके अनुसार कि वह अपराध जिस का अपराधी द्वारा प्रयत्न किया गया जमानतीय है या नहीं।

परिशिष्ठ 1 भाग II

अन्य विधियों के विरूद्ध अपराधों का वर्गीकरण

1.	यदि मृत्यु, आजीवन कारावास या सात वर्ष से अधिक के लिए कारावास से दंडनीय है	अजमानतीय
2.	यदि तीन वर्ष और उससे अधिक किन्तु सात वर्ष से अनाधिक के लिए कारावास से दंडनीय है	यथोक्त

टीप :- त्वरित संदर्भ हेतु राज्य शासन के परिपत्रों के कुछ अंश यहां प्रकाशित किए जा रहे हैं जो ज्योति **1996** जून पृष्ठ **21** एवं **1998** ज्योति (अप्रैल) पृष्ठ **52, 53, 54** पर प्रकाशित हो चुके हैं। वे इस प्रकार हैं :-

S. 188 AND S. 506 I.P.C. DECLARED NON-BAILABLE

Notification No. 33207-F.No. 659-74 B-XXI Dated The 19th November 1975 : In exercise of the powers conferred by sub-section (2) of section 10 of the Criminal Law Amendment Act, 1932 (No. XXIII of 1932) and in suppression of all the notifications previously issued on the subject the State Government hereby declares that any offence punishable under section 188 or 506 of the Indian Penal Code (No. XLV of 1860), when committed in any part of State of Madhya Pradesh shall be non-bailable. **1976 M.P.L.T. Part II page 106 (No. 106).**

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CERTAIN OFFENCES DECLARED COGNIZABLE

Notification No. 33205-F. No. 6-59-74 B-XXI Dated The 9th November 1975 : In Exercise of the powers conferred by sub-section (1) of section 10 of the criminal Law Amendment Act, 1932 (No XXIII of 1932) and in suppression of all the notifications previously issued on the subject, the State Government hereby declares that any offence punishable under section 186, 189, 190, 228, sub section (1) of section 505, 506 or 507 of the Indian Penal Code (No XLV of 1960) when committed in any area of the State of Madhya Pradesh, shall be cognizable. **1976 M.P.L.T. Pt. II, page 106 (No 105).**

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ARMS ACT : POSSESSION OF KNIVES ETC. ILLEGAL

Notification No. 6312-6552-II- B (i) Dated The 22nd November, 1974: Where as the State Government is of the opinion that having regard to the prevailing conditions in the State of Madhya Pradesh, it is necessary and expedient in the public interest that the acquisition possession and carrying of sharp edged weapons with a blade more than 6 inches long 2 inches wide and spring actuated knives with a blade of any size in public place should also be regulated.

Now therefore in exercise of the powers conferred by section 4 of the Arms Act, 1959, (No 54 of 1959) read with the Government of India, Ministry of Home Affairs, Notification No. G.S.R. 1309, dated the 1st October 1962, the State Government hereby directs that the said section shall apply with effect from the date of publication of this Notification in the "Madhya Pradesh Gazette" to the whole of the State of Madhya Pradesh in respect of acquisition, possession or carrying of sharp edged weapons with a baled more than -6 inches long or 2 inches wide and spring actuated knives with a blade of any size in public places only.

(Published in M.P. Rajpatra Pt. I dtd. 3-1-75 Page 20)

नम्र निवेदन : प्रकाशन हेतु लेख

इस पत्रिका में न्यायिक अधिकारी गणों द्वारा प्रेषित लेख प्रकाशित किए जा रहे हैं। उनमें से कुछ लेख भयंकर रूप से अशुद्ध भाषा में लिखे गए हैं। श तथा स शब्दों की भूल तो भूल के रूप में अनुभव ही नहीं की जाती, उसी प्रकार ब को व एवं व को ब कहने की भी भूल। इसके सिवाय जो लेख टंकित होते हैं उन्हें पढ़ा भी नहीं जाता है। लेख के भेजे जाने वाले औपचारिक पत्र से ऐसा अनुभव कराया जाता है कि मानो लेख गहन अध्ययन के बाद लिखा गया है लेकिन वस्तु स्थिति यह होती है कि वह महज लिखी गई कुछ पंक्तियां मात्र होती है चिंतन नहीं। इस सबके होते हुए भी कष्ट दायक, पीड़ा दायक व मानसिक रूप से क्लेश दायक स्थिति यह होती है कि उसका संपादन कैसा करें। यथा संभव मेरे द्वारा संपादन किया गया है लेकिन वह केवल भाषा की किसी एक सीमा तक मात्र। एक लेख में वैधानिक प्रावधानों को समझना तो इतना कठिन था कि जहां तहां उपधारा को धारा अथवा धारा को उपधारा तक कर दिया है। जैसे धारा 2 (1) है या 2 (1) का (ए) है यही समझ में नहीं आ रहा था। अतः ऐसे लेख को पढ़ते समय संबंधित प्रावधान अवश्य पढ़ लें। जो अधिकारी प्रकाशन हेतु यदा कदा लेख भेजना चाहे तो अवश्य भेजें। उनका स्वागत है। लेकिन प्रकाशन हेतु भाषा का प्रयोग, बोलचाल की भाषा एवं गांव–ठान की भाषा में आकाश पाताल का अंतर है। टंकित लेख पुनः पुनः चेक कर लें एवं विधि प्रावधानों को सुस्पष्ट लिखें। लेख का उद्देश्य उस लेख की पृष्ठ भूमि, उस लेख के विषय वस्तु से संबंधित अध्ययन होता है। लेख लिखने के पूर्व संबंधित विषय का गहरा चिंतन, विषय से संबंधित न्याय दृष्टांत क्या कहते हैं तथा संबंधित विषय को व्यवहारिक धरातल पर लागू करने में क्या कठिनाईयां आती हैं एवं संबंधित विषय का पक्ष–विपक्ष एवं अनुकूल–प्रतिकूल (Pros and Cons) आधारों का चिंतन एवं विवेचन भी आवश्यक होता है अतः लेख के रूप में कुछ या ढेर सारे पृष्ठ मात्र प्रकाशन हेतु निश्चित ही न भेजें। लेख में आत्म प्रशंसा न्यून से न्यून हो। लेखक के लेखन का मूल्यांकन पाठकों की प्रक्रिया से ही होने दें। लेख के माध्यम से यह भी प्रतिलक्षित न हो कि जो लिखा जा रहा है उसका पालन केवल लेखक मात्र करता है व शेष जनों के द्वारा न्यूनतम पालन होता है या कि वे अनभिज्ञ हैं। ये बातें केवल उन लेखकों को लिखने दीजिए जो लंबा अनुभव रखते हैं एवं समय समय पर "न्यायिक कार्य का निरीक्षण करते हैं व मार्गदर्शन कर सकते हैं या जिन्हें ऐसा करने का कर्तव्य है।

संपादक