29th Year

Pursuit of Excellence

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DECEMBER 2023

MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

JOTI JOURNAL
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EDITORIAL

Esteemed readers,

As we open this final issue of the year, it is a moment for reflection on the diverse activities and accomplishments that have shaped our institution's growth. I am delighted to report the launch of our capacity-building programme for aspiring students from marginalized communities. This programme, designed to prepare candidates for the Civil Judges (Entry Level) Recruitment Examination, was inaugurated by the Hon'ble Chief Justice Shri Ravi Malimath of the High Court of Madhya Pradesh on 07.12.2023. The Hon'ble Chief Justice at this event expressed the desire to ensure that each section of the society comes in the main stream as early as possible. This is a *pro bono* initiative taken in collaboration with Madhya Pradesh State Legal Services Authority. This step goes a long way in ensuring that the duty one owes to doing betterment of the institution is fulfilled. I express my gratitude towards the Hon'ble Chief Justice for showing us the way in which we can discharge our sacred obligation.

The Academy has twin objectives; one of enhancing the knowledge of law and secondly of that of enriching the character. It is in this view that Awareness Programme on Attributes of Judge was initiated. This in-service programme nurtures a deep value system in the Judges and revisits the conduct rules. It is always better to keep revising our deep core values for it is on these values that the quality of justice largely depends. With this objective, the Awareness Programmes on *"Attributes of a Judge: An interaction"* were conducted on 26.11.2023 at High Court of Madhya Pradesh, Bench at Indore and subsequently, on 17.12.2023, High Court of Madhya Pradesh, Bench at Gwalior.

A Refresher Course for District Judges on completion of 5 years of service was conducted from 30.10.2023 to 04.11.2023. Likewise, Conference of Chief Judicial Magistrates was also conducted on 05.11.2023. This Conference was conducted on new lines i.e. the participants were requested to voice their view points on the allotted subjects. This change introduced at the behest of the Hon'ble Chief Justice has largely been successful in identifying the underlying work issues and the best practices.

Acknowledging the importance of Advocates in the justice dispensation system, Special Workshops for Advocates having 0 to 5 years of experience and practising at the High Court were conducted on 02.12.2023 and 16.12.2023 at Jabalpur and Indore and at Gwalior on 02.12.2023 and 17.12.2023. The schedule of the Special Workshop for Advocates was prepared meticulously with a view to help the budding lawyers in honing their skills as an Advocate. In addition, the Academy also conducted online workshops on pivotal subjects such as Narcotic

Drugs & Psychotropic Substances Act, 1985 on 04.11.2023, Anti-Corruption Laws on 02.12.2023 and Offences relating to Electricity Act, 2003 on 16.12.2023. Also, the newly appointed Civil Judges, Junior Division, 2023 underwent their four weeks First Phase Induction Training from 28.11.2023 to 23.12.2023.

It is noteworthy that the Hon'ble Supreme Court expressed a deep sense of concern over the growing delay in adjudication of civil cases in ***Yashpal Jain v. Sushila Devi, 2023 INSC 94*** and issued directives to curb the delay. The same are being published herein with the hope that the same are incorporated in our day to day working. The Hon'ble High Court of Madhya Pradesh in Writ Petition No. 26176 of 2023 dated 23.11.2023 in ***Equitas Small Finance Bank Limited through its Authorized Signatory v. The State of Madhya Pradesh, Principal Secretary, Law and Legislature Affairs, Vallabh Bhawan, Bhopal (Madhya Pradesh)*** issued guidelines/directions to be followed by the DM/ADM/CJM while adjudicating applications under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. The same are mentioned in Part II of this edition.

The next legend in the OUR LEGENDS series is Hon'ble Shri Justice Shivdayal Shrivastava. His Lordship led an inspiring life and the legacy which he leaves behind is something to behold. His Lordship had issued *sutras* for the District Judiciary and also published a *Nyaya* diary to ensure effective working. Also, a QR code is generated for the readers to scan and get a glimpse of this incredible work. I hope readers draw inspiration from this legendary personality.

The Academic Calendar for this year initially planned for 57 training sessions. However, in response to evolving needs, the Academy conducted a total of 70 training programmes, significantly surpassing our initial plans. An annual report detailing these extensive and impactful activities is included in this edition, offering a comprehensive overview of the Academy's unwavering dedication and achievements throughout the year.

By the time this edition reaches you, it will have entered the New Year. I pray happiness and good health for everyone. New Year is that time of the year which offers us a brand new start. Let us embark on this journey of improvising ourselves and making each day count.

Best wishes

Krishnamurty Mishra
Director

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Hon'ble Chief Justice Shri Ravi Malimath inaugurating the Capacity Building Programme for candidates preparing for Civil Judge, Junior Division (Entry Level) Recruitment Exam on 07.12.2023

Refresher Course for the District Judges (Entry Level & Selection Grade) (on completion of 5 years service) (Group –II) (30.10.2023 to 04.11.2023)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Online workshop on – Key issues relating to the Narcotic Drugs & Psychotropic Substances Act, 1985 (04.11.2023)

Conference of Chief Judicial Magistrates (05.11.2023)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Awareness Programme on -Attributes of a Judge: An Interaction
(Bench at Indore) (26.11.2023)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Workshop on – Key issues relating to Anti-Corruption Laws (02.12.2023) (online)

Interactive Session on – Key issues relating to offences and trial under the Electricity Act, 2003 (16.12.2023) (online)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Special Workshop for Advocates (Bench at Indore) (16.12.2023)

Special Workshop for Advocates (Jabalpur) (16.12.2023)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Special Workshop for Advocates (Bench at Gwalior)
(17.12.2023)

Awareness Programme on – Attributes of a Judge: An Interaction
(Bench at Gwalior) (17.12.2023)

FIRST PHASE INSTITUTIONAL INDUCTION COURSE FOR NEWLY APPOINTED CIVIL JUDGES, JUNIOR DIVISION, BATCH 2023 (28.11.2023 to 23.12.2023)

Group-A

Group-B

HON'BLE SHRI JUSTICE RAJ MOHAN SINGH, HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV AND HON'BLE SHRI JUSTICE DUPPALA VENKATA RAMANA ASSUME CHARGE

Hon'ble Shri Justice Raj Mohan Singh, Hon'ble Shri Justice Rajendra Kumar-IV and Hon'ble Shri Justice Duppala Venkata Ramana, on their transfer from Punjab & Haryana High Court, Allahabad High Court and Andhra Pradesh High Court, were administered oath of office on 01.11.2023 as Judges and Additional Judge, respectively of the High Court of Madhya Pradesh by Hon'ble Shri Justice Ravi Malimath, Chief Justice, High Court of Madhya Pradesh in a brief Swearing-in-Ceremony held in the Court of Chief Justice, High Court of Madhya Pradesh at Jabalpur.

Hon'ble Shri Justice Raj Mohan Singh was born on 18th August, 1962. After completing LL.B from Kurukshetra University, His Lordship started practice at Punjab and Haryana High Court and had a diversified practice having good number of civil, criminal, service, labour law cases and cases relating to land laws arising out of miscellaneous local laws of Punjab and Haryana. His Lordship was elected thrice as a Member of Bar Council of Punjab and Haryana and also Honorary Secretary of Bar Council of Punjab and Haryana. His Lordship also held the position of Member, Bar Council of India (BCI), representing the States of Punjab, Haryana and Union Territory Chandigarh in the Bar Council of India. His Lordship was elevated as Additional Judge of the Punjab and Haryana High Court on 25th September, 2014 and as Permanent Judge on 23rd May, 2016.

On His Lordship's transfer to the High Court of Madhya Pradesh as Judge, took oath on 01.11.2023.

Hon'ble Shri Justice Rajendra Kumar-IV was born on 1st July, 1962. His Lordship graduated in the year 1986. His Lordship was appointed in the Higher Judicial Services in the year 2005 and promoted as District & Sessions Judge in the year 2016. His Lordship was elevated as Additional Judge of Allahabad High Court on 22nd November, 2018 and

as Permanent Judge on 20th November, 2020.

On His Lordship's transfer to the High Court of Madhya Pradesh as Judge, took oath on 01.11.2023.

Hon'ble Shri Justice Duppala Venkata Ramana was born on 3rd June, 1963. After completing LL.B from N.V.P. Law College, Visakhapatnam in 1989 and LL.M from Acharya Nagarjuna University, Guntur, His Lordship was enrolled as an Advocate in June, 1989 and joined District Bar Association, Srikakulam and practiced till June, 1990. Thereafter, His Lordship shifted practice to Visakhapatnam Bar Association and practiced till May, 1994.

His Lordship joined Andhra Pradesh Judicial Services as District Munsif in 1994 and was promoted as officiating District Judge in the year 2015.

His Lordship, as Judge of District Judiciary, worked in different capacities at various places namely, Amalapuram, Macharla, Hyderabad, Vijayawada, Tirupati, Kakinada and Gurajala. His Lordship also served as Devasthanam Law Officer, Tirumala Tirupati Devasthanams from 2015 to 2017 and solved many intricate legal issues in T.T.D. His Lordship also served as Law Secretary, Government of Andhra Pradesh from 2017 to 2019 wherein His Lordship took initiative in repealing 140 obsolete Acts and was also involved in Legislative Drafting. His Lordship also held the posts of Registrar (Management), Registrar (Recruitment) and Registrar (Administration) from June, 2019 prior to elevation.

His Lordship was elevated as an Additional Judge of the High Court of Andhra Pradesh on 4th August, 2022. On His Lordship's transfer to the High Court of Madhya Pradesh as Additional Judge, took oath on 01.11.2023.

We on behalf of JOTI Journal, wish Their Lordships a very happy and successful tenure.

I

APPOINTMENT OF JUDGES IN THE HIGH COURT OF MADHYA PRADESH

Hon'ble Shri Justice Vinay Saraf, Hon'ble Shri Justice Vivek Jain, Hon'ble Shri Justice Rajendra Kumar Vani, Hon'ble Shri Justice Pramod Kumar Agrawal, Hon'ble Shri Justice Binod Kumar Dwivedi, Hon'ble Shri Justice Devnarayan Mishra and Hon'ble Shri Justice Gajendra Singh were administered oath of office on 06.11.2023 as Judges of the High Court of Madhya Pradesh by Hon'ble Shri Justice Ravi Malimath, Chief Justice, High Court of Madhya Pradesh in a brief Swearing-in-Ceremony held in the Conference Hall of South Block of High Court of Madhya Pradesh at Jabalpur.

Hon'ble Shri Justice Vinay Saraf was born on 15th June, 1969. After obtaining degrees of B.Com. in 1987, LL.B. in 1990 from Government Arts and Commerce College, Indore and M.A. in Political Science in 1992, His Lordship was enrolled as an Advocate on 30th August, 1990 on the rolls of the State Bar Council of Madhya Pradesh and started practice alongside his father late Shri Sitaram Saraf, a distinguished Senior Advocate. His Lordship has been practicing at the Indore Bench of the High Court of Madhya Pradesh for about 32 years and handled cases before the High Court and District Court, Indore and appeared in Civil, Criminal, Constitutional matters, Election Petitions, Prevention of Corruption Act trials, Arbitration and provided legal advice to various companies and corporate entities.

His Lordship was designated as Senior Advocate on 13th May, 2017 and played a pivotal role in several significant legal matters, establishing himself as a prominent legal authority. His Lordship represented the Official Liquidator as Senior Advocate in Company Petitions and was appointed as a Special Public Prosecutor in multiple high-profile criminal trials. His Lordship also appeared as

a member of the Lok Adalat organized by the Hon'ble High Court, demonstrating his commitment to alternative dispute resolution and access to justice.

Hon'ble Shri Justice Vivek Jain was born on 30th December, 1975. After obtaining LL.B. Degree from Madhav Law College, Gwalior in 1999 and LL.M. degree from Govt. Maharani Laxmi Bai College, Gwalior in 2002, His Lordship was enrolled as an Advocate on 4th July, 1999 on the rolls of the State Bar Council of Madhya Pradesh and joined the chambers of Hon'ble Shri Justice K.K. Lahoti, former Acting Chief Justice of the High Court of Madhya Pradesh. His Lordship practiced in Service, Constitutional, Labour, Land Revenue, Arbitration, Civil and Criminal sides.

His Lordship worked as a Government Advocate for the State of Madhya Pradesh from August, 2017 to January, 2019 and was an empanelled counsel for the Central Government in January, 2015. His Lordship was also an empanelled counsel for statutory bodies like M.P. Madhya Kshetra Vidyut Vitaran Company Ltd., M.P. Poorva Kshetra Vidyut Vitaran Company Ltd., M.P. Pashchim Kshetra Vidyut Vitaran Company Ltd., M.P. Power Generating Company Ltd., M.P. Power Transmission Co. Ltd. and M.P. Power Management Company Ltd. His Lordship also represented the Indian Oil Corporation Ltd., the University Grants Commission, M.P. Professional Examination Board, Makhanlal Chaturvedi National University of Journalism, Bhopal, India Tourism Development Corporation, New Delhi, Gwalior Dughdha Sangh, M.P. State Cooperative Dairy Federation, Engineers India Limited, Bharat Petroleum Corporation Ltd., District Central Cooperative Bank, Gwalior, District Central Cooperative Bank, Shivpuri and Urban Cooperative Bank, Vidisha. His Lordship was appointed as Court Commissioner in various Public Interest Litigation petitions in matters involving illegal mining, execution of 4 laning work of a stretch of North-South corridor National Highway, etc.

Hon'ble Shri Justice Rajendra Kumar Vani was born on 18th August, 1965. After obtaining the degrees of B.Com., LL.B, His Lordship joined Madhya Pradesh Judicial Services, as a Civil Judge Grade-II on 3rd July, 1990. His Lordship was promoted to Higher Judicial Services as an officiating District Judge on 15th October, 2004. His Lordship was granted Selection Grade Scale with effect from 11th May, 2011 and Super Time Scale with effect from 1st January, 2018.

His Lordship, as Judge of District Judiciary, worked in different capacities at various places namely, Mandsaur, Narayangarh (Mandsaur), Kasrawad (Mandleshwar), Mandleshwar, Mahidpur (Ujjain), Indore, Guna, Bhopal and Ujjain. His Lordship served as Additional Secretary and Secretary, Government of Madhya Pradesh, Law & Legislative Affairs Department and Registrar General of the High Court of Madhya Pradesh. His Lordship served twice as District & Sessions Judge (as the designation then was) and Principal District & Sessions Judge, Ujjain from June 2018 to February 2019 and again from 25th February, 2022 till elevation.

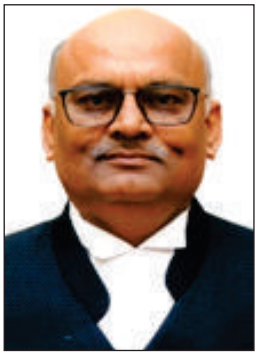
Hon'ble Shri Justice Pramod Kumar Agrawal was born on 9th November, 1964. After obtaining the degrees of B.Com., LL.B, His Lordship joined Madhya Pradesh Judicial Services as a Civil Judge Grade-II on 11th July, 1990. His Lordship was promoted to Higher Judicial Services as an officiating District Judge on 18th June, 2007. His Lordship was granted Selection Grade Scale with effect from 1st July, 2012 and Super Time Scale with effect from 13th June, 2018.

His Lordship, as Judge of District Judiciary, worked in different capacities at various places namely, Narsinghpur, Katni, Burhar (Shahdol, now in Chhattisgarh), Ashoknagar (Guna), Chhatarpur, Vidisha, Sironj (Vidisha),

Gwalior, Guna, Panna. His Lordship also served as Deputy Welfare Commissioner, Bhopal Gas Victims, Bhopal, President District Consumer Forum, Guna and Principal Judge, Family Court Court, Guna. His Lordship was Principal Registrar (Vigilance), High Court of Madhya Pradesh from 20.11.20219 till elevation.

Hon'ble Shri Justice Binod Kumar Dwivedi was born on 15th June, 1964. After obtaining the degrees of B.Sc., LL.B, His Lordship joined Madhya Pradesh Judicial Services as a Civil Judge Grade-II on 11th July, 1994. His Lordship was promoted as officiating District Judge on 18th June, 2007. His Lordship was granted Selection Grade Scale with effect from 19th October, 2012 and Super Time Scale with effect from 13th June, 2018.

His Lordship, as Judge of District Judiciary, worked in different capacities at various places namely, Satna, Garoth (Mandsaur), Sagar, Seodha (Datia), Depalpur (Indore), Indore, Dhar and Bhopal. His Lordship also served as Registrar, High Court of Madhya Pradesh, Indore Bench, President, District Consumer Forum, Mandsaur, Principal Registrar, High Court of Madhya Pradesh, Indore Bench. His Lordship was Principal Secretary, Government of Madhya Pradesh, Law & Legislative Affairs Department, Bhopal from 9th February, 2022 till elevation.



Hon'ble Shri Justice Devnarayan Mishra was born on 1st May, 1967. After obtaining the degrees of B.A, LL.B, His Lordship joined Madhya Pradesh Judicial Services as a Civil Judge Grade-II on 11th July, 1994. He was promoted as officiating District Judge on 18th June, 2007. His Lordship was granted Selection Grade Scale with effect from 19th October, 2012 and Super Time Scale with effect from 13th June, 2018.

His Lordship, as Judge of District Judiciary, worked in different capacities at various places namely, Chhatarpur, Anjad (Mandleshwar), Indore, Waidhan

(Singrauli), Bhopal, Dindori, Dewas and Ujjain. His Lordship also served as the Deputy Welfare Commissioner, Bhopal Gas Victims, Bhopal, President, District Consumer Forum, Chhatarpur and Principal Registrar, High Court of Madhya Pradesh, Gwalior Bench as also the post of District & Sessions Judge (as the designation then was), Dindori and Principal District & Sessions Judge Sagar and Rewa respectively. His Lordship was Principal Judge, Family Court, Balaghat from 10th April, 2023 till elevation.

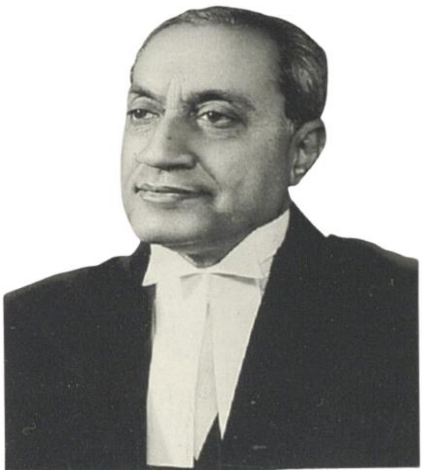
Hon'ble Shri Justice Gajendra Singh was born on 15th January, 1966. After obtaining the degrees of B.A, LL.B, His Lordship joined Madhya Pradesh Judicial Services as a Civil Judge Grade-II on 11th July, 1994. His Lordship was promoted as officiating District Judge on 16th June, 2008. His Lordship was granted Selection Grade Scale with effect from 16th June, 2013 and Super Time Scale with effect from 19th June, 2018.

His Lordship, as Judge of District Judiciary, worked in different capacities at various places namely, Rewa, Jagdalpur (now Chhattisgarh), Sagar, Khategaon (Dewas), Patan (Jabalpur), Burhanpur (Khandwa), Dewas, Ashta (Sehore), Jabalpur, Ujjain, Narsinghpur. His Lordship also served as Deputy Welfare Commissioner, Bhopal Gas Victims, Bhopal, Faculty Member, Madhya Pradesh State Judicial Academy, Registrar-cum-Secretary, High Court Legal Services Committee and President, District Consumer Forum, Ujjain. His Lordship held the post of District & Sessions Judge (as the designation then was), Bhind. His Lordship was Chairman, Madhya Pradesh State Transport Appellate Tribunal, Gwalior from 30.06.2021 till elevation.

We on behalf of JOTI Journal, wish Their Lordships a healthy, happy and successful tenure.

PART – I

OUR LEGENDS
HON'BLE SHRI JUSTICE SHIVDAYAL SHRIVASTAVA
6th CHIEF JUSTICE OF HIGH COURT OF MADHYA PRADESH



The series "Our Legends" has successfully completed its very first year with this December, 2023 edition. In the last one year through this series, we could know and learn about the legendary Chief Justices of our State. Indeed, a means to comprehend about the legacy i.e. faith, ethics and core values of the institution alongwith the legacy that comes from one's character, reputation and the life lead thereby setting an example for others and to guide their futures. Legacies often tremendously impact, encourage and leave pathways for the future generations and this edition is again in your hands with another impactful, encouraging and inspirational life story of Hon'ble Shri Justice Shivdayal Srivastava.

His Lordship was born on 28th February, 1916 at Morar, Gwalior. His Lordship's father Late Babu Shri Paremshwar Dayal was a leading lawyer of Gwalior and was a Member of Legislative Council and Assembly of Commons, Gwalior State. He received his primary education at Morar High School and thereafter, received B.Sc. Degree at the earstwhile Victoria College (now known as Maharani Laxmibai Kala evam Vanijya Mahavidhyalaya) and LL.B. degree from Agra College.

It was on 4th July, 1938 that His Lordship started to practice along with his father and got enrolled as an Advocate in Gwalior High Court in 1939. He had barely practiced for one year when his father passed away. His Lordship was left with this herculean task of coping with huge practice of his late father and simultaneously, take care of his family. His Lordship navigated through this tough task skillfully.

His Lordship's father had authored several books. One of his phenomenal work is the 'Law Dictionary'. In 1938, when the dictionary had first published, Hindi legal terms had yet to take a standard form. His Lordship was a profound scholar of Hindi, and has re-edited and revised the Law Dictionary prepared by his revered father. Since that pioneer work was published, the Government of India went on to standardizing legal terms. This book is the first authoritative dictionary giving Hindi equivalents of English terms.

Justice Shivdayal looked upto his father as the first teacher of law, who relegated the responsibilities of a law student which was to acquire as much knowledge of the subjects as possible. His Lordship also had a passion for teaching, recognizing the same, he was appointed as a part time Professor of Law at the Victoria Collage, Gwalior in August, 1948. Later on, as a teacher, His Lordship thought of his responsibilities in this role as (1) Read before you teach; (2) Teach how to read; (3) Make the student understand the subject as best as you yourself know.

His Lordship was enrolled as an Advocate of Supreme Court on 5th June, 1950. His Lordship also served as Deputy Government Advocate of Madhya Bharat on 1st November, 1949 and that of Madhya Pradesh on 1st November, 1956. The first Chief Justice of High Court of Madhya Pradesh, Hon'ble Shri Justice M. Hidayatulla, recognized His Lordship's merits and on 3rd November, 1958, he was elevated to the Bench of the High Court of Madhya Pradesh. On 11th October 1975, His lordship took oath of office of the Chief Justice of High Court of Madhya Pradesh.

His Lordship at the welcome ovation held on 15th October, 1975 at High Court of Madhya Pradesh, Jabalpur addressed the gathering and spoke about the most treasured lessons of life as:

> "The most valuable treasure, which I possess and of which I am genuinely proud is the outcome of benevolence of many who have been reminding me of my responsibilities from time to time, at different stages of my life and at the entering into every new walk of it. The first was my revered mother, *Sau* Girijeshwari Devi, who initiated me into the first and foremost course of my responsibilities through Shri Ramcharit Manas. When my mind goes as far back as it can, I recollect that the first thing that I was taught was the line.
>
> **कोसलेस दसरथ के जाये। हम पितु बचन मानि बन आये।।**

> That was my initiation into education, when I had not learnt either to read or to write even अ आ इ ई, ABCD or अलिफ वे पे ते. In this line Ram tells Hanumanji that he is son of Maharaja Dashrath; that he has come to the forest, which is in obedience to his father's command. To put it differently, he answers three questions: Who is he? Where has he come? Why has he come? Very many years later, it came as a revelation to me why I was taught that line as the first thing in life. It must not have been chosen at random. Those are the three foremost questions for self-realisation: Who am I? Where have I come? Why have I come? They initiate a man into philosophy of human life, i.e, its purpose and object and the goal he has to attain."

Justice Shivdayal studied the Ramcharitmanas of Tulsidas, not as a scholar, but as a devotee of Shri Ram. This shaped his life and led to a very rare combination wherein deep learning of law combined with high sense of morality, devotion and justice. His Lordship while referring to the impact of Ramcharitmanas on his life further said,

> "Whenever I have needed guidance, I have got it from Manas. In every moment of difficulty or trial, Manas has come to my aid and has given me relief. If there can be seen anything good in me; if there has been any success in my life, it means that to that extent I have been able to discharge my responsibilities. Everything bad in me and all my shortcomings are due only to my neglect to follow the path shown by Manas."

His Lordship summarized the essence of Shrimad Bhagavad Gita to be "योगः कर्मसु कौशलम्" which cast the responsibility to perform one's duty to the best of his ability perfection being the aim. He also emphasized that the interests of the nation are paramount and supreme and the keys to national progress are efficiency, integrity and discipline. Hon'ble Shri Justice Shivdayal served in the capacity of a Judge for 17 years and functioned as Administrative High Court Judge for 5 years and in his tenure he left no stone unturned to enforce all the three in Judicial Administration. His Lordship stressed that the function of Judiciary is to maintain and stabilize the rule of law which is essential for the successful functioning of democracy, by enforcing laws as enacted by Parliament and the State Legislature.

His Lordship's tenure of 1975 to 1978, is also known for highest number of full bench decisions, in which he was a party. His Lordship served as a Judge and

later on as Chief Justice for almost 20 years. During this time, catena of decisions was rendered by His Lordship which carried great significance. His judgments were lucid, precise and gave clarity on confusing questions of law.

For instance in ***Kamal Narayan v. Dwarika Prasad Mishra, 1970 JLJ 395,*** the then chief minister of M.P., Shri Dwarika Prasad Mishra was found to have won election of Member of Legislative Assembly by adopting corrupt practices as envisaged under section 77 of the Representatives of People's Act, 1951. This Judgment was given stamp of approval in ***D.P. Mihra v. Kamla Narayan Sharma, 1970 JLJ 685.*** In ***Ram Gopal v. Chetu, 1976 JLJ 278***, His Lordship as Chief Justice analyzed the provisions of Sections 157, 57, 250 and 257 of the Madhya Pradesh Land Revenue Code, 1959. It was held that question of title is the province of civil court and unless there is any express provision to the contrary exclusion of the jurisdiction cannot be assumed or implied. This principle is also affirmed by the Supreme Court in several decisions.

The era when the law of newly independent India was still developing, the judgments rendered by His Lordship brought conceptual and procedural clarity in the field of law. There are catena of Judgments rendered by His Lordship which created a lot of impact such as ***Devi Singh v. State of M.P., 1978 JLJ 126, Ramgopal v. Chetu, 1976 JLJ 278 (F.B.), Pancham Singh and ors. v. Dhaniram and ors., 1977 JLJ 82 (D.B.)*** **and** ***Putli Bai v. Municipal Corp. Gwalior, 1964 JLJ 464*** still hold the ground and have approved by the Apex Court and are being followed till now. On the Administrative side or better work distribution, His Lordship issued a notification that empowered Benches at Gwalior and Indore to hear the petitions and Article 226/227 of the Constitution which was later challenged on the judicial side but the Full Bench in majority upheld the validity of the said notification in the case of ***Abdul Taiyyab Abbas Bhai and Five others v. Union of India, 1976 JLJ706.***

His Lordship's prime focus was on speedy disposal of cases. It was considered to be of highest importance. In the farewell address, His Lordship expressed that it is the duty of High Court that cases in the Subordinate Court are disposed of speedily and that arrears are cleared out. Eradication of corruption from their precincts, and that parties and witnesses are not burdened with unnecessary expenses or waste of time.

It is also pertinent to mention that His Lordship is the first Judge to write some judgments in Hindi. After becoming Chief Justice, His Lordship issued a notification which empowered the Judges to pass judgments in Hindi as well. It was

only during His Lordship's tenure that the Registry started using Hindi language as well.

Justice Shivdayal also highlighted the need to make the services of Judicial officers attractive. His Lordship was of the view that the cream of our intelligentia is attracted by the Indian Administrative Service, Medicine and Engineering. It is not that brilliant boys or girls do not want to be Judges; but the scales of pay are so poor that only they think of judicial service who do not get entry elsewhere. His Lordship also emphasize that the conditions of service of Judicial Officers must be made attractive so as to attract the best talent and in so doing, no amount of expenditure on these bare necessities should be grudged.

While stressing upon the need of improving the overall standard of legal education, His Lordship emphasized the need of 5 year Law course, on similar lines of that of medicine and engineering. He recommended that the administration of the High Court Registry and the subordinate Courts shall become more efficient if the powers of the Chief Justice are distributed amongst administrative Committees of Hon'ble Judges. Later on, this suggestion found acceptance and can be reflected from present day functioning of the High Court.

His Lordship wrote quite frequently and has to his credit 39 publications. They are on variety of subjects namely, spiritual, interpretations of Ramcharitmanas, development of personality, importance of education of ladies etc. Some of his literary works are पूजा पथ (1961), भक्तिमणि (1967), साधना सूत्र (1985) amongst others.

Justice Shivdayal's legacy is not only confined to the literary works but interestingly, he had issued *Nyaya Diary* in 1978 for the Judges of District judiciary. While holding the post of Chief Justice, he gave 21 *sutras* for Subordinate Courts for dispensation of justice real speedy and cost effective which are as follows:

i. To remember, every moment, that all laws, all Courts, all Judges, all ministerial staff and all Court buildings exist only for dispensing JUSTICE to LITIGANTS.

ii. To maintain INTEGRITY, EFFICIENCY and DISCIPLINE at all levels.

iii. To do REAL JUSTICE, in SHORTEST TIME, and at MINIMUM COST.

iv. To ensure SERVICE OF PROCESSES promptly and effectively and to deal with delinquent process serving machinery (of the Court and of the Police) strictly and sternly.

v. To ensure ATTENDANCE of parties, witnesses and accused on dates of hearing by exercise of diligent means and dealing with defaulters firmly.

vi. To arrange BOARD DIARY intelligently and judiciously.

vii. To dispose of cases expeditiously, giving particular attention and priority to OLDCASES.

viii. To STUDY the case BEFORE EVERYHEARING in the Court.

ix. To frame ISSUES/CHARGES on the date fixed (no postponement).

x. To dispose of INTERLOCUTORY applications on the date of filing (or latest within a week).

xi. To be scrupulously averse ADJOURNMENTS (the greatest Devil, causing Law's delays), without being ruder rough.

xii. To act firmly against corrupt, lethargic or inefficient OFFICIALS without misplaced sympathy.

xiii. To help the poor and the backward in procuring FREE LEGAL AID in suitable cases.

xiv. To insist on furnishing by Counsel (before final hearing begins) –

- Chronological SYNOPSIS of all material facts; and
- List of CASE LAW relied on.

xv. To study the FACTS of the case thoroughly to reach the truth at the bottom.

xvi. To study the LAW deeply with –

- Standard commentaries,
- Cases cited by parties, and
- Digest Supreme Court and M.P. High Court.

xvii. To do deep THINKING quietly and contemplate for some time.

xviii. To mentally occupy the place of the parties.

xix. To apply JUDICIAL MIND without fear or favor, affection or ill will.

xx. To bear in mind that justice must not only be done, but must also appear to be done(JUDICIAL ALOOFNESS).

xxi. To deliver Judgment positively on the date fixed (no postponement).

In this Nyay Diary, His Lordship also insisted on hearing the cases after obtaining the precis from the Advocates which comprised of three parts i.e. firstly, the chronological factual matrix, secondly, indication of oral and documentary evidence on each fact in issue and thirdly, legal issues, relevant laws and citations.

After demitting the office of Chief Justice, Justice Shivdayal started practicing at the Supreme Court. He was designated as a 'Senior Advocate' by the Supreme Court. In the Apex Court, His Lordship appeared in several cases and rendered his valuable assistance on several questions of law. Justice Shivdayal left for heavenly abode on 1st October, 2003. On his demise, a full court reference was held at the Supreme Court, Mr. Soli J. Sorabjee, Attorney Journal for India while expressing his condolences spoke in great details about the exemplary qualities possessed by His Lordship.

To be fair, it is an impossible task to confine the legendary life of His Lordship in few pages of this Journal. Till date, His Lordship's literary works, case law digests, law dictionary, *Nyaya* Diary and the 21 *sutras* issued for smooth functioning of the District Judiciary continues to be a guiding light. How His Lordship navigated through the tough phase of life and went on to creating historic literary works and making valuable addition to the institution while leading a simple life devoid of any ego and arrogance is something to behold - ***Indeed a legend in every sense.***

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Courtsey: Our deepest gratitude to Hon'ble Shri Justice A.K. Srivastava, Former Judge, High Court of Madhya Pradesh who also happens to be the nephew of Hon'ble Shri Justice Shivdayal Shrivastava for providing the *Nyaya* Diary, relevant documents and insights into His Lordship's life.

Note: Readers can have access to the *Nyaya* Diary through the QR Code provided below.

ANNUAL REPORT OF THE ACADEMIC ACTIVITIES OF MADHYA PRADESH STATE JUDICIAL ACADEMY IN THE YEAR, 2023

The Governing Council, under the guidance of Hon'ble Chief Justice Shri Ravi Malimath, High Court of Madhya Pradesh and Patron of Madhya Pradesh State Judicial Academy, resolved in 2022 to include the Academy's annual report in the December Edition of the JOTI Journal. Continuing this practice, a concise report is presented here to inform readers about the Academy's academic activities in 2023.

In 2023, the Academy focused not only on deepening the understanding of law of Judicial Officers but also on their character enrichment. Guided by these dual objectives, this year's programmes were conducted. A significant development was the introduction of training programmes featuring new designs. Traditional Colloquia were replaced with specially tailored Conferences and Workshops, targeting specific groups such as Principal District Judges, Special Judges, Principal Judges of Family Courts, POCSO Act Judges, Chief Judicial Magistrates, among others. The Hon'ble Chief Justice took keen interest in designing these schedules, ensuring that participants were exposed to top-tier resource persons. The sessions involved presentations by participants on assigned topics, followed by interactive discussions and concluding remarks from the Hon'ble Chair. This innovative approach led to the identification of pressing issues, brainstorming for potential solutions and recognition of the best practices.

Last year, upon the initiative of the Hon'ble Chief Justice, the first training programmes for lawyers were launched, covering three levels: foundation level district training, regional workshops and special workshops for High Court Advocates with 0 to 5 years of experience. The success of these programmes led to their repetition this year.

Another novel aspect of the academic programmes was the flagship capacity-building initiatives. These aimed to increase representation from the Bar in higher judicial services and also focused on helping the aspirants belonging to marginalized sections of the society for Civil Judges Examination. Inaugurated by the Hon'ble Chief Justice and conducted in collaboration with Madhya Pradesh State Legal Services Authority, these sessions were taken by the faculties from MPSJA, members of the district judiciary, distinguished advocates and professors. The said programmes for Higher Judicial Services were conducted from 24.08.2023 to 14.10.2023 in which 400 participants had registered and 50 sessions were taken.

Similarly, the programme for Civil Judges Examination was conducted from 07.12.2023 to 02.01.2024 in which 1130 people had registered and 38 sessions were conducted.

The Hon'ble Chief Justice has consistently emphasized on the enrichment of character and daily self-improvement. In line with this philosophy, special in-service programmes were developed, focusing on essential judicial attributes. A series of Awareness Programmes on the Attributes of a Judge was conducted, highlighting the importance of ethics, equality, propriety, integrity, competence, diligence and bias eradication. Additionally, *Vimarsh*, a stakeholder meeting for the juvenile justice system, was organized in collaboration with the Juvenile Justice Committee of the High Court of Madhya Pradesh in September 2023.

The Hon'ble Chief Justice often quotes, "Ask not what your country can do for you, but what you can do for your country." The new initiatives, spearheaded by the Hon'ble Chief Justice, resulted in numerous success stories. Notably, the annual calendar for 2023 scheduled a specific number of training programmes, but the Academy, responding to needs and demands, conducted an even greater number throughout the year. A detailed account of the Academy's academic activities in 2023 is provided below:

Total programmes conducted – 70

- **Programmes for Judges – 50**

  [(i) Offline programmes – 37

  (ii) Online programmes – 13]

- **Programmes for other stakeholders – 24**

  [(i) Offline programmes – 16

  (ii) Online programmes – 08]

- **Programmes for Ministerial Staff at District Level – 55**

Some of the highlights of Academic Activities, 2023:

- **Training programme for Chief & Deputy Legal Aid Defense Counsels:**

  The Academy in collaboration with M.P. State Legal Services Authority imparted training to the Chief, Deputy and Assistant Legal Aid Defence Counsels under LADCS Scheme, 2022. The idea behind organizing these programmes was to strengthen and provide effective and competent legal services to eligible persons. The Training programme for Chief & Deputy Legal Aid Defense Counsels was conducted on 21.02.2023 & 22.02.2023 whereas for

Assistant Legal Aid Defense Counsels, it was conducted on 23.02.2023 & 24.02.2023.

- **Regional Workshop for Panel Lawyers:**

  Panel Lawyers have been entrusted with the task of rendering effective legal assistance on a diverse range of substantive and procedural questions of law, preparation of legal opinions, studies, reports and correspondence and tendering advice to avoid unnecessary litigation, etc. Hence, to equip the Panel Lawyers with a view to enhance capacity building and spread awareness amongst them particularly, with regard to the issues relating to marginalized sections of the society, the Academy imparted trainings to Panel Lawyers from 24.02.2023 to 26.02.2023 at SLSA.

- **eSCR outreach programme:**

  In pursuance to the directions of eCommittee, Supreme Court of India district wise eSCR outreach programme in coordination with the State Judicial Academy has to be conducted. The Academy conducted the programme in two batches; **Batch I** on 24.03.2023 for the Judicial Officers, Advocates & other stakeholders of Alirajpur, Anuppur, Ashok Nagar, Balaghat, Barwani, Betul, Bhind, Bhopal, Burhanpur, Chhatarpur, Chhindwara, Damoh, Datia, Dewas, Dhar, Dindori, Guna, Gwalior, Harda, Hoshangabad, Indore, Jhabua, Katni, Khandwa and Mandla and **Batch II** on 25.03.2023 for the Judicial Officers, Advocates & other stakeholders of Jabalpur, Mandleshwar, Mandsaur, Morena, Narsinghpur, Neemuch, Panna, Raisen, Rajgarh, Ratlam, Rewa, Sagar, Satna, Sehore, Seoni, Shahdol, Shajapur, Sheopur, Shivpuri, Sidhi, Singroli (Waidhan), Tikamgarh, Ujjain, Umariya and Vidisha.

- **Specialized Training Programme for District & Additional Sessions Judges appointed as Visitor Judges**

  The Academy introduced a Specialized Training Programme for District & Additional Sessions Judges appointed as Visitor Judges. This flagship programme, conducted on 06.05.2023 in collaboration with the Juvenile Justice Committee of the High Court of Madhya Pradesh, was aimed at sensitizing Judges to their roles in inspecting Child Care Institutions. Ensuring the well-being of children in these institutions is a duty of utmost importance thereby, committing to prepare its officers for this noble responsibility.

- **State Consultation on Child Protection "VIMARSH":**

  The Academy, in collaboration with Juvenile Justice Committee Madhya Pradesh State Legal Services Authority and UNICEF, Madhya Pradesh,

organized a two day long State Level Consultation on Child in Conflict with Laws (CICL)*"Vimarsh"* on 26.08.2023 & 27.08.2023 in the Academy. In the said programme, various stakeholder departments deliberated upon issues related with CICL so that all the collaborators evaluate and strategize and emerge from the current alarming situation. This programme was in furtherance to the earlier programme held last year *viz*. State Consultation on Effective Implementation of POCSO Act, 2012 "*Manthan"* marking 10 years of enactment of POCSO Act, 2012.

- **Orientation programme:**

  Four Orientation Programmes were organized by the Academy for the newly appointed Civil Judges, Junior Division/ District Judges (Entry Level) directly appointed from Bar. These programmes were being conducted under the directions of the Hon'ble Chief Justice as it was felt that Orientation Training be imparted for 2-3 days, prior to their joining in their respective places of posting, will guide them regarding attributes of a Judge, judicial ethics, code of conduct they have to follow, grooming their personality and also to infuse confidence in them so that they can shoulder the responsibilities of a Judge, which are very sacrosanct.

  These programmes were held for the newly appointed District Judges (Entry Level) directly from Bar from 26.06.2023 to 28.06.2023 as well as for the Civil Judges, Junior Division (Entry Level) of 2022 & 2023 batches from 21.09.2023 to 23.09.2023, 30.09.2023 to 03.10.2023 as well as 04.12.2023 to 06.12.2023, respectively.

- **Virtual sensitization programme in light of the guidelines issued by the Supreme Court in Gohar Mohammed v. UPSRTC:**

  The Academy conducted sensitization programme for the Judicial Officers of HJS cadre and other stakeholders of the justice dispensation system in compliance of the direction of Hon'ble Supreme Court in ***Gohar Mohammed v. Uttar Pradesh State Road Transport Corporation and ors***., ***(2023) 4 SCC 381*** wherein directions have been issued to sensitize Presiding Officers of Claims Tribunals, senior police officials and insurance companies for implementation of modified CTAP by the State Judicial Academies.

Thus, the Academy in all conducted 70 programmes in the year 2023; 50 programmes for the Judges and 24 programmes for other Stakeholders of the Justice Dispensation System (four programmes were held jointly) thereby imparting trainings to 4161 Judges and 3537 other stakeholders consuming around 328 days.

PROGRAMMES CONDUCTED IN THE YEAR 2023
(at a glance)

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of participants
Refresher Course for Civil Judges (Entry Level) (on completion of one year Service)					
1.	Refresher Course for Civil Judges (Entry Level)	Civil Judges (Entry Level) of 2020 batch	09.01.2023 to 14.01.2023 (one week) (Group I)	MPSJA	80
			16.01.2023 to 21.01.2023 (one week) (Group II)		71
Refresher Course for Civil Judges (on completion of 5 years service)					
2.	Refresher Course for Civil Judges	Civil Judges, Senior Division (2014-2017 Batch)	19.06.2023 to 24.06.2023 (one week) (Group I)	MPSJA	78
			26.06.2023 to 01.07.2023 (one week) (Group II)		83
Refresher Course for District Judges (Entry Level) (on completion of one year service)					
3.	Refresher Course for District Judges (Entry Level)	District Judges (Entry Level) appointed on promotion from Civil Judge Senior Division and recruited directly from Bar in 2020	10.07.2023 to 14.07.2023 (one week)	MPSJA	32
Refresher Course for the District Judges (Entry Level & Selection Grade) (on completion of 5 years service)					

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of participants
4.	Refresher Course for the District Judges	District Judges (Entry Level & Selection Grade)	03.07.2023 to 08.07.2023 (one week) (Group I)	MPSJA	48
			30.10.2023 to 04.11.2023 (one week) (Group II)	MPSJA	49
Orientation programme for the newly appointed District Judges (Entry Level) directly from Bar/ Civil Judges, Junior Division (Entry Level)					
5.	Orientation programme	Newly appointed District Judges (Entry Level) directly from Bar	26.06.2023 to 28.06.2023 (three days)	MPSJA	2
		Civil Judges, Junior Division (Entry Level) of 2023 batch	21.09.2023 to 23.09.2023 (three days)	MPSJA	137
			30.09.2023 to 03.10.2023 (three days)	MPSJA	1
		Civil Judges, Junior Division (Entry Level)	04.12.2023 to 06.12.2023 (three days)	MPSJA	5
Induction Training Course for Civil Judges (Entry Level)					
6.	Induction Training Course for Civil Judges (Entry Level)	Civil Judge Junior Division of 2020 batch (*Second Phase*)	13.02.2023 to 10.03.2023 (four weeks)	online	1

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of participants
		Civil Judge Junior Division of 2020 batch (*Final Phase*)	04.09.2023 to 13.10.2023 (four weeks)	MPSJA	1
7.	Induction Training Course for Civil Judges (Entry Level)	Civil Judges (Entry Level) of 2022 batch (*First Phase*)	13.03.2023 to 06.05.2023 (eight weeks)	MPSJA	122
		Civil Judges (Entry Level) of 2022 batch (*Second Phase*)	25.09.2023 to 20.10.2023 (four weeks)	MPSJA	120
8.	Induction Training Course for Civil Judges (Entry Level)	Civil Judges (Entry Level) of 2023 batch (*First Phase*)	28.11.2023 to 23.12.2023 (four weeks)	MPSJA	137
Institutional Foundation Training Course					
9.	Foundation Training Course for the District Judges (Entry Level) (Previous Phase)	District Judges (Entry Level) appointed directly from the Bar	28.08.2023 to 23.09.2023 (four weeks)	MPSJA	2
Institutional Advance Training Course for District Judges (Entry Level) on Promotion					
10.	Institutional Advance Training Course for District Judges (Entry Level)	District Judges (Entry Level) appointed on promotion from Civil Judge Senior Division	28.08.2023 to 23.09.2023 (four weeks)	MPSJA	2
In-Service/ Mid-Career Judicial Educational Programmes					

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of participants
11.	Symposium on – Key issues relating to Forest & Wild Life Laws	Judicial Magistrates dealing with cases under Forest & Wild Life Laws & Forest Officers	28.01.2023 & 29.01.2023 (two days)	MPSJA	45
12.	Conference of Principal District & Sessions Judges	Principal District & Sessions Judges of the State & Senior District & Additional Sessions Judges	04.02.2023 & 05.02.2023 (two days)	MPSJA	61
13.	Workshop on – Motor Accident Claim Cases	Judges dealing Motor Accident Claim Cases	04.03.2023 (one day)	online	78
14.	Interactive Session on – Key issues relating to cases under the Protection of Women from Domestic Violence Act, 2005	Judges dealing with cases under PWDVA Act	18.03.2023 (one day)	online	69
15.	Special Training	District & Additional Sessions Judge	29.04.2023	MPSJA	1
16.	Specialized training Programme	District and Additional Sessions Judges (*Nominated as Visitor Judges*)	06.05.2023	Online	62
17.	Workshop on – Key issues relating to Labour Laws	Presiding Judges of Labour Courts	07.05.2023 & 08.05.2023 (two days)	MPSJA	19

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of participants
18.	Awareness programme on – Identified Legal Issues (Subject: *Attributes of a Judge*)	Civil Judges, Senior Division of cluster of districts namely; Jabalpur, Katni, Bhopal, Sehore, Betul, Chhindwara, Sagar, Seoni, Rewa, Shahdol, Balaghat, Narsjnghpur, Raisen, Chhatarpur, Tikamgarh, Panna, Satna, Singrauli, Sidhi, Anuppur, Mandla, Dindori, Narmadapuram, Damoh, Khandwa, Burhanpur, Umaria and Harda	15.07.2023 (one day)	MPSJA	139
		Civil Judges Senior Division (Indore, Ujjain, Ratlam, Mandsaur, Rajgarh, Mandleshwar, Dhar, Barwani, Neemuch, Shajapur, Jhabua, Alirajpur and Dewas)	26.11.2023 (one day)	Conference Hall High Court of M.P., Bench, Indore	84
		Civil Judges Senior Division (Gwalior, Datia, Guna, Shivpuri, Morena, Sheopur, Bhind, Ashoknagar and Vidisha)	17.12.2023 (one day)	RTC, Gwalior	62

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of participants
19.	Conference of Family Court Judges	Principal and Additional Principal Judges of Family Courts and Judges dealing with matrimonial cases	21.07.2023 & 22.07.2023 (two days)	MPSJA	56
20.	Workshop on – Key issues relating to Motor Accident Claim Cases & Land Acquisition Laws	Judges dealing with Motor Accident Claim cases and Land Acquisition Laws	28.07.2023 & 29.07.2023 (two days)	MPSJA	47
21.	Workshop on – Commercial Courts Act, 2015	Judges of all cadre	05.08.2023 & 06.08.2023 (two days)	MPSJA	50
22.	Interactive Session on – Key issues relating to cases of dishonour of cheque under the Negotiable Instruments Act, 1881	Judicial Magistrates	19.08.2023 (one day)	Online	94
23.	State Consultation on Child Protection "*VIMARSH*" (*in collaboration Juvenile Justice Committee Madhya Pradesh State Legal Services Authority and UNICEF, Madhya Pradesh*)	Judges dealing cases under the Act	26.08.2023 & 27.08.2023 (two days)	MPSJA	22

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of participants
24.	Virtual sensitization programme in light of the guidelines issued by the Supreme Court in ***Gohar Mohammed v. UPSRTC. (2023) 4 SCC 381***	All Judicial Officers of HJS cadre (barring Special Judges), Superintendents of Police and nodal persons of insurer	02.09.2023	online	Judicial Officers of HJS cadre
25.	Workshop on – Key issues relating to Juvenile Justice	Principal Magistrates & other Stakeholders	09.09.2023 & 10.09.2023 (two days)	MPSJA	48
26.	Workshop on – Key issues relating to the Protection of Children from Sexual Offences Act, 2012	Judges dealing with cases under POCSO Act	15.09.2023 & 16.09.2023 (two days)	MPSJA	52
27.	Training of ln-charge Trainers for Supervision of Field Training of Civil Judges	Incharge trainers for newly appointed Civil Judges	07.10.2023 (one day)	online	72
28.	Conference of Special Judges dealing cases under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989	Special Judges dealing with cases under the Act	28.10.2023 (one day)	MPSJA	40
29.	Workshop on – Key issues relating to the Narcotic Drugs and Psychotropic Substances Act, 1985	Special Judges dealing with cases under NDPS Act	04.11.2023 (one day)	online	56

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of participants
30.	Conference of Chief Judicial Magistrate	Chief Judicial Magistrates of the State	05.11.2023 (one day)	MPSJA	48
31.	Workshop on – Key issues relating to Anti-Corruption Laws	Judges dealing with cases under Anti-Corruption Laws	02.12.2023 (one day)	online	58
32.	Interactive Session on – Key issues relating to offences and trial under the Electricity Act, 2003	Special Judges dealing with cases under the Electricity Act	16.12.2023 (one day)	online	134
e-Committee Special Drive Training and Outreach Programme through State Judicial Academies					
33.	E-Courts Programme at all District Headquarters ECT_16_2023)	Judicial Officers of the Districts	07.01.2023 (one day)	online	99
e-Committee Special Drive Training and Outreach Programme					
34.	eSCR outreach programme	Judicial Officers, Advocates & other stakeholders of Alirajpur, Anuppur, Ashok Nagar, Balaghat, Barwani, Betul, Bhind, Bhopal, Burhanpur, Chhatarpur, Chhindwara, Damoh, Datia, Dewas, Dhar, Dindori, Guna, Gwalior, Harda, Hoshangabad, Indore, Jhabua, Katni, Khandwa and Mandla	24.03.2023 (one day) (first batch)	online	1534 Judicial Officers

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of participants
		Judicial Officers, Advocates & other stakeholders of Jabalpur, Mandleshwar, Mandsaur, Morena, Narsinghpur, Neemuch, Panna, Raisen, Rajgarh, Ratlam, Rewa, Sagar, Satna, Sehore, Seoni, Shahdol, Shajapur, Sheopur, Shivpuri, Sidhi, Singroli (Waidhan), Tikamgarh, Ujjain, Umariya and Vidisha	25.03.2023 (one day) (second batch)		
Programmes at other Institutes					
35.	Specialized Educational Programme at State Forensic Science Laboratory	Newly appointed/ promoted Judges of HJS cadre	15.04.2023 to 17.04.2023 (three days)	Sagar	40
36.	Specialized Educational Programme at State Medico Legal Institute, Bhopal	Newly appointed/ promoted Judges of HJS cadre	25.04.2023 to 27.04.2023 (three days)	Bhopal	30
			11.07.2023 to 13.07.2023 (three days)		30
			12.09.2023 to 14.09.2023 (three days)		30

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of participants
			28.11.2023 to 30.11.2023 (three days)		30
Judicial Educational Programmes for other stakeholders					
37.	Special Workshop for Advocates	Advocates practicing at High Court of M.P., Jabalpur (*having 0-5 years practice*)	07.01.2023 (one day)	MPSJA	79
			25.02.2023 (one day)		52
			02.12.2023 (one day)		55
			16.12.2023 (one day)		58
		Advocates practicing at High Court of M.P., Bench Indore (*having 0-5 years practice*)	07.01.2023 (one day)	Conference Hall, High Court of M.P., Bench Indore	101
			25.02.2023 (one day)		68
			02.12.2023 (one day)		92
			16.12.2023 (one day)		113
		Advocates practicing at High Court of M.P., Bench Gwalior (*having 0-5 years practice*)	18.03.2023 (one day)	Regional Training Centre, Gwalior	119
			16.09.2023 (one day)		98
			02.12.2023 (one day)		62
			17.12.2023 (one day)		102
38.	Regional Workshop for Panel Lawyers	Panel Lawyers	24.02.2023 to 26.02.2023 (three days)	SLSA	99

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of participants
39.	Regional Workshop for Advocates	Advocates from districts Jabalpur, Katni, Satna, Rewa, Sidhi, Singrauli, Umaria, Dhar Shahdol, Anuppur, Dindori, Mandla, Seoni, Balaghat, Indore Dewas and Jhabua	19.05.2023 & 20.05.2023 (two days)	online	94
		Advocates from districts Bhopal, Hoshangabad, Betul Vidisha, Raisen, Sagar, Damoh, Harda, Chhatarpur, Panna, Tikamgarh, Khandwa, Chhindwara, Ratlam Mandleshwar, Alirajpur & Mandsaur	16.06.2023 & 17.06.2023 (two days)	online	96
		Advocates from the districts Gwalior, Datia, Bhind, Morena, Sheopur, Shivpuri, Guna, Ashoknagar, Rajgarh, Sehore, Shajapur, Ujjain, Narisinghpur, Neemuch, Barwani & Burhanpur	27.10.2023 & 28.10.2023 (two days)	online	130
40.	Virtual sensitization programme in light of the guidelines issued by the Supreme Court in ***Gohar Mohammed v. UPSRTC, (2023) 4 SCC 381***	All Judicial Officers of HJS cadre (barring Special Judges), Superintendents of Police and nodal persons of insurer	02.09.2023	online	56 police officers 37 nodal person of insurers

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of participants
41.	Workshop on – Key issues relating to Juvenile Justice	Principal Magistrates & other Stakeholders	09.09.2023 & 10.09.2023 (two days)	MPSJA	23 other Stake holders
e-Committee Special Drive Training and Outreach Programme through State Judicial Academies					
42.	Refresher Programme for Registry Staff of High Courts (ECT_15_2023)	High Court Staff	14.01.2023 (one day)	online	980 viewers
43.	Advocate/Advocate Clerk e-Courts Programme at Taluka/Village (ECT_7_2023) (*once in three months*)	Advocate/ Advocate Clerk	10.02.2023 (one day)	online	35
Trainings in collaboration with SLSA					
44.	Training programme for Chief & Deputy Legal Aid Defense Counsels	Chief and Deputy Legal Aid Defense Counsels appointed under LADCS Scheme of NALSA	21.02.2023 & 22.02.2023 (two days)	MPSJA	52
45.	Training programme for Assistant Legal Aid Defense Counsels	Assistant Legal Aid Defense Counsels appointed under LADCS Scheme of NALSA	23.02.2023 & 24.02.2023 (two days)	MPSJA	59
eSCR outreach programme					
46.	eSCR outreach programme	Judicial Officers, Advocates & other stakeholders of Alirajpur, Anuppur, Ashok Nagar, Balaghat, Barwani, Betul, Bhind, Bhopal, Burhanpur, Chhatarpur, Chhindwara, Damoh, Datia,	24.03.2023 (one day) (*first batch*)	online	Advocates 423 Other stakeholders 454

S. No.	Name of the Programme	Target Group	Date & Duration	Venue/ Mode of Training	No. of participants
		Dewas, Dhar, Dindori, Guna, Gwalior, Harda, Hoshangabad, Indore, Jhabua, Katni, Khandwa and Mandla			
		Judicial Officers, Advocates & other stakeholders of Jabalpur, Mandleshwar, Mandsaur, Morena, Narsinghpur, Neemuch, Panna, Raisen, Rajgarh, Ratlam, Rewa, Sagar, Satna, Sehore, Seoni, Shahdol, Shajapur, Sheopur, Shivpuri, Sidhi, Singroli (Waidhan), Tikamgarh, Ujjain, Umariya and Vidisha	25.03.2023 (one day) (*second batch*)		

S. No.	Nature of Participants	No. of Training Programmes	No. of Participants	Days consumed
1.	No. of Training Programmes conducted for Judicial Officers from January to December, 2023	50	4161	297
2.	No. of Training Programmes conducted for other stakeholders from January to December, 2023	24	3537	32
3.	No. of Training Programmes conducted for ministerial staff of the District Judiciary from January to December, 2023 (at district headquarters)	55	4826	165

In conclusion, it is pertinent to highlight the insightful address given by Hon'ble Chief Justice during the oath ceremony of the newly inducted Civil Judges Junior Division, Batch of 2023. His Lordship eloquently stated, "You are going to occupy a seat of responsibility. Being a Judge is not merely a job, but a service you render to the litigants." This philosophy of serving justice and ensuring quality judicial dispensation underpins the Academy's mission. We have endeavored to instill a deep sense of commitment in participating judges and other key players in the justice delivery system through our training programmes.

Under the guidance of the Hon'ble Chief Justice, the Academy has strived to foster an environment conducive to interactive learning and innovative thinking. A notable example of this approach is the introduction of a mandatory three-day orientation programme for newly appointed District Judiciary judges. This initiative, envisioned and established by the Hon'ble Chief Justice, has been immensely successful. It acquaints new judges with the nuances of their role and expected conduct which mentally prepares them for field training. As a result, these judges are better equipped to uphold justice. Embracing the Hon'ble Chief Justice's motto of 'pursuit of excellence,' each training programme is conducted with a commitment to excel and achieve the best. In this pursuit of excellence, the Academy continuously strives to improve and achieve its overarching goal of serving justice.

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ध्यान से ज्ञान प्राप्त होता है,
ध्यान की कमी अज्ञानता लाती है,
अच्छी तरह से जानो क्या तुम्हें आगे ले जाता है,
और क्या तुम्हें रोके रखता है,
और उस मार्ग को चुनो
जो बुद्धिमत्ता की ओर ले जाता हो।

– गौतम बुद्ध

SECTION 9 OF ARBITRATION AND CONCILIATION ACT, 1996: AN OVERVIEW

– Institutional Article

In the realm of dispute resolution, arbitration has emerged as a preferred method for resolving conflicts swiftly and efficiently outside the traditional court room setting. The Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the Act of 1996') plays a pivotal role in governing the arbitration process in India, providing legal framework that encourage parties to resolve their disputes through arbitration. One of the provisions of this Act, section 9, holds a special importance in facilitating the arbitration process by enabling parties to seek interim measures from the Courts. This provision allows parties to approach the court even before the arbitration proceedings have formally commenced. This is notable departure from the conventional legal process, where parties typically seek interim relief only after initiating law suit. In this article, we delve into the intricacies of section 9, examining its scope, key features and practical implication, thereby shedding light on the essential aspects of the crucial provision within India's arbitration landscape.

Amendment in section 9

Prior to 2015 Amendment in the Arbitration Act**,** when an Arbitral Tribunal was in function or in existence, there was no bar for making an application u/s 9 before the court. Before amendment to the Act, the power of the Court u/s 9 was much wider than the power of an Arbitral Tribunal u/s 17. Earlier, section 9 did not have any sub-section and it reads as under:

> **" Section 9: Interim measures, etc., by Court.** — A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—
>
> (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
>
> (ii) for an interim measure of protection in respect of any of the following matters, namely:—
>
> (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measures of protection as may appear to the Court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it".

But in the light of the suggestions given by the Law Commission in its 246th Report, an Amendment Act was presented which introduced significant changes in section 9 of the Act of 1996. The amendments were made with the aim to further enhance the effectiveness and efficiency of arbitration proceedings in India, to expedite the arbitration process by minimizing court intervention and delays, to provide more specific guidance on when and how interim relief can be sought from courts, ensuring greater predictability and consistency in its application and to provide greater flexibility in the types of interim measures such as injunctions, orders for the preservation of property, appointment of receivers and other necessary reliefs. As per the amendment, the existing section was renumbered as sub-section 1 and two new sub-sections were inserted as follows:

"(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the Arbitral Tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious".

The amendments to section 9 in 2015 were driven by a desire to align Indian arbitration law with international standards, enhance party autonomy, expedite the arbitration process and provide clearer guidance on the scope and application of interim relief. These changes were made to make the arbitration process more efficient, predictable and conducive to both domestic and international parties engaging in arbitration in India.

Jurisdiction of the Court

The jurisdiction of the court to decide applications u/s 9 of the Act of 1996 pertains to the power and authority of the court to entertain and adjudicate upon such applications. In the context of section 9, this refers to the court's authority to grant interim measures and relief in support of arbitration proceedings. Generally two Courts have jurisdiction to decide the applications under the Act of 1996; first as defined in section 2 (1) (e) of the Act of 1996 and the other one is the court which has supervisory power on arbitration proceeding but if the seat of arbitration is fixed in agreement or fixed by arbitrator or otherwise parties of the agreement agrees to give exclusive jurisdiction to one of the above mentioned courts then all the powers to decide application under the Act of 1996 will be vested on such court. In summary, the jurisdiction of the court to decide applications u/s 9 of the Act depends on factors such as the seat of arbitration, territorial jurisdiction, exclusive jurisdiction clauses, agreement of parties and the supervisory powers of specific courts.

Application u/s 9 – When can be entertained?

An application u/s 9 of the Act of 1996 can be entertained by the court in specific circumstances where a party seeks interim measures or urgent relief in support of arbitration proceedings. As per plain reading of Section 9 of the Act of 1996, it is clear that party to the contract having arbitration clause can come to the court for relief of interim measure under following situations:

(i) before the arbitration proceeding commenced; or

(ii) during the arbitrational proceeding; or

(iii) After the arbitral award is given but before applying for enforcement.

The aforementioned situations require some discussion. Granting of interim measures 'before the commencement of arbitration proceedings' may in some cases lead to a unique set of unintended consequences. In such cases, what has been legally contemplated is proximity between the grant of interim measures and the invocation of arbitration. Even before amendment in section 9 of the Act of 1996, the Apex Court in ***M/s Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479*** and ***Firm Ashok Traders and anr. v. Gurumukh Das Saluja and ors., 2004 (1) SCR 40*** observed that the practice of parties sitting over their interim reliefs and unscrupulously delaying invocation of arbitration proceedings should be discouraged. It was held that while filing an application for seeking interim measures, parties must demonstrate their '*manifest intention to arbitrate*' and there is a '*proximity*' contemplated between the passing of an interim order and the commencement of arbitration proceedings soon thereafter. In the event of non-compliance of the condition to invoke the arbitration proceeding may result of vacating interim order as the language of section 9 (2) of the Act of 1996 is mandatory which is held in ***Paton Construction v. Lorven, 2017 SCC OnLine Kar 3469*** and ***Velugubanti Hari Babu v. Parvathini Narasimha Rao, 2017 SCC OnLine Hyd 469***.

Next question which requires discussion is giving relief of interim measure by the Court during the arbitral proceeding because section 9 (3) is actually a proviso of section 9 (1) of the Act of 1996 which restricted the power of the court to grant interim order once the Arbitral Tribunal is constituted. The legislature has very clearly communicated its intent that the court does not have the mandate to entertain an application under section 9 after the arbitral tribunal's constitution. The words being used by the legislature are "*the Court shall not entertain*", which makes it crystal clear that once arbitration has been invoked and the Arbitral Tribunal has been constituted then court shall not entertain applications under section 9 of the Act of 1996. However, an exception to this rule has also been provided i.e. the court may entertain an application u/s 9 after the constitution of Arbitral Tribunal only under extraordinary circumstances. A harmonious reading of sub-sections (1) and (3) of section 9 of the Act of 1996 makes it amply clear that even after amendment of the 1996 Act by inserting of section 9 (3), the Court is not denuded of power to grant interim relief once an Arbitral Tribunal is constituted. In this situation the

Apex Court in ***Arcelor Mittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd., (2022) 1 SCC 712*** held that if application u/s 9 is filed in Court and before disposal of it, the Arbitral Tribunal is constituted and the remedy sought in the application may not be given efficaciously or the Court considered the application and order is yet to be passed, in both situations the court can certainly proceed to adjudicate the matter.

Last situation "after the arbitral award but before applying for enforcement" is very much different from the above two as it is very unique feature because in civil cases after the decree passed, there is no provision to grant any relief which is interim in nature but the Act of 1996 gave the power to the Court to order an interim measure after the making of the arbitral award and before it is enforced in accordance with section 36. The purpose behind this is to protect the party which has succeeded in the arbitral proceedings until the award is enforced. Such order can be passed to secure the property, goods or amount for the benefit of the party which seeks enforcement. The provision of section 9 (3) of the Act is only for those who are having arbitral award which requires enforcement but once the award has been made and a claim has been rejected, there could be no occasion to take recourse to section 9 (3) of the Act of 1996. There is no discretion left with the court to pass any interlocutory order in regard to the said award except to adjudicate on the correctness of the claim made by the applicant therein. Therefore, that being the legislative intent, any direction contrary to that, also becomes impermissible.

Who can file application?

Section 9 of the Act of 1996 started with the word "a party" who may file an application to get the order of interim measure. "Party" is defined in clause (h) of sub-section (1) of section 2 of the Act of 1996 to mean "a party to an arbitration agreement". So, the right conferred by section 9 is only on a party to an arbitration agreement. The qualification which the person invoking jurisdiction of the court u/s 9 must possess is of being a "party" to an arbitration agreement. A person not a party to an arbitration agreement cannot enter the court for protection u/s 9. This has relevance only to his *locus standi* as an applicant. This has nothing to do with the relief which is sought for from the court or the right which is sought to be canvassed in support of the relief. Any one, whether he is claimant or respondent in arbitration proceeding may file an application to seek interim relief. The reliefs which the court may allow to a party under clauses (i) and (ii) of section 9 flow

from the power vesting in the court exercisable by reference to "contemplated", "pending" or "completed" arbitral proceedings.

Against non-signatory of an arbitration agreement

U/s 9 of the Act of 1996, the court is empowered to grant interim relief against both the parties to the contract but the question is whether the courts can grant interim reliefs against third parties or non-signatories to an agreement. Though the scope of an arbitration agreement is limited to the parties who entered into it and those claiming under or through them but the last two lines of section 9 (i) of the Act of 1996 does not suggest limiting the power of the court while granting interim relief as *"the court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it"*. These lines clearly suggest that if the courts have the power to make an order against a third party for a proceeding before it, then it will have the same power under section 9 of the Act. Apart that, Hon'ble the Apex Court in ***Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641*** held that a non-signatory party could be subjected to arbitration provided these transactions were with group of companies and there was a clear intention of the parties to bind both; the signatory as well as the non-signatory parties. In other words, "intention of the parties" is a very significant feature which must be established before the scope of arbitration can be said to include the signatory as well as the non-signatory parties. In this case, the Apex Court also held that only in exceptional case a non-signatory or third party could be subjected to arbitration without their prior consent and it is up to the court to examine whether the situation falls under the category of exception or not, and if court is in a position to answer it in the affirmative then it can bind the non-signatory of the agreement to the arbitration proceeding.

Principles to decide the application

While deciding applications u/s 9 of the Arbitration and Conciliation Act, courts normally apply a set of guiding principles to ensure fairness, consistency and alignment with the overarching objectives of the arbitration process. Courts should strive to minimize interference with the arbitration process and avoid stepping into matters that fall within the scope of the arbitration agreement. The primary goal is to uphold the autonomy and efficiency of arbitration as the purpose of interim relief is to address urgent situations, courts should prioritize the timely resolution of

applications u/s 9. Delays in granting interim relief could defeat the very purpose of seeking such relief. If an application is so made, the Court should have to be satisfied first that there exists a valid arbitration agreement and the applicant intends to take the dispute to arbitration. Once satisfied, the Court will have the jurisdiction to pass orders u/s 9 giving such interim protection as the facts and circumstances warrant.

Here, it is noteworthy to refer to the decision rendered by the Apex Court in case of ***Sundaram Finance Ltd.*** (supra). In case *of* ***Arvind Construction Co Ltd. v. Kalinga Mining Corporation Ltd., AIR 2007 SC 2144***, the Apex Court held that exercise of power u/s 9 of the Act must be based on well recognized principles governing the grant of interim injunctions and other orders of interim protection or the appointment of a receiver.

Additionally, two judgments of the Delhi High Court also help us to understand the principles to be followed in deciding such application. One is ***Parsoli Motors Works Private Limited v. BMW India Private Limited, 2018 SCC OnLine Del 6556*** in which it was held that injunction which cannot be granted under section 41 of the Specific Relief Act, cannot be granted u/s 9 of the 1996 Act and other one is ***National Highways Authority of India v. Bhubaneswar Expressway Private Limited, 2021 SCC OnLine Del 2421*** in which it was held that in exercise of power u/s 9 (1) (ii) (e), no relief of final nature can be granted and no monetary claim can be allowed, howsoever urgent.

Whether *ex parte* injunction may be granted ?

It is clear from a plain reading of section 9 of the Act of 1996 that it does not contain any thing regarding *ex parte* order or any other order pending application. The concluding words of the section, '*and the court shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it'* also suggest that the normal rules that govern the court in the grant of interim orders is not sought to be jettisoned by the provision. The general principle is that when a power is conferred under a special Statute without laying down any special condition for exercise of that power, the general rules of procedure of that court would apply. In ***Jabalpur Cable Network Pvt. Ltd. v. E.S.P.N. Software India Pvt. Ltd., 1999 SCC OnLine MP 74***, the High Court of Madhya Pradesh observed that it cannot be disputed that u/s 9 of the Act,

the Court has power to grant interim injunction or to take such other interim measure of protection as may appear to the Court to be just and convenient. Thus, when an application u/s 9 is made and during pendency of such application, an *ex parte ad interim* order becomes imperative, in the facts and circumstances of the case, it is open to the Court to pass an *ad interim ex parte* order based on well recognized principles contemplated by the provisions of Order 39 Rules 1 and 2 of the Civil Procedure Code governing the grant of interim injunctions and/or other orders of interim protection or the appointment of a Receiver.

Conclusion

The scope and ambit of section 9 of the Act is a crucial remedy before or during arbitration proceedings and even after the arbitral award but before its enforcement. The basic tenet for the application of the law of arbitration is an agreement with an arbitration clause. Section 9 of the Act in this regard is no exception. It serves as a vital tool in ensuring fairness, efficiency and effectiveness of arbitration proceedings by granting parties the ability to seek interim relief from the courts. Its provisions are instrumental in upholding the rights and interest of disputing parties and fostering a conclusive environment for the resolution of disputes through arbitration. However, it also states that the parties should only approach the court seeking an interim relief after the constitution of an Arbitral Tribunal, if the remedy rendered by it u/s 17 of the Act is inefficacious. Regardless of all this, the scope of section 9 is very wide for granting an interim relief even after conclusion of an arbitration proceeding. The parties to the agreement containing arbitration clause has a right to approach the court for relief but in exceptional circumstances, the court can grant such relief against non-signatory of the agreement. In absence of any procedure laid down in the Act of 1996, the general rules of procedure of that court would apply and in the light of above, it is clear that the court considers the application using well recognised provisions of Order 39 of the Civil Procedure Code.

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LAW OF ACCOMPLICE

– Institutional Article

Introduction:

'Crime', if committed against an individual, is considered to be committed against society at large. As a result, State is always occupied in criminal jurisprudence; to maintain law and order, deter crime, punish/ rehabilitate criminals and support victims. As we know, in criminal jurisprudence, the burden of proof is on the prosecution to prove its case beyond reasonable doubt till then the accused person is considered to be innocent.

Here it is pertinent to mention that when crimes are committed either in broad-day light or secretly, criminals try to avoid detection, conceal and hide any evidence of their activities in as many ways as human ingenuity can devise, further making it difficult for investigating agencies to collect sufficient evidence of heinous crimes. That is why, the prosecution is often compelled to rely on the evidence of an accomplice turned approver i.e. a person who was involved in the crime itself and granted pardon by Court, to bring the serious/principal offenders to book. In other words, grant of pardon and accomplice evidence is admitted as a matter of necessity is such cases.

The primary considerations for the Court include the process for handling pardon applications and determining the evidentiary value of the provided testimony. This article aims to explore and address these pertinent issues.

Who is an Accomplice?

The word 'accomplice' is ordinarily used in connection with the law of evidence and rarely under the substantive law of crimes. Sections 306 and 307 of the Criminal Procedure Code (in short 'Cr.P.C.') contain important provisions regarding the tender of pardon to an accomplice by the court. Section 306 (1) of the Cr.P.C. does not explicitly use the term "accomplice," but it describes various categories of individuals eligible for pardon. This includes anyone who directly or indirectly participated in the commission of the offence under investigation, inquiry or trial. For example, this can encompass the main accused, co-accused, abettors or those who later aided the offender. Pardon may also be extended to individuals not formally charged as accused. Moreover, it is not necessary for the application of this section that the individual explicitly admits to active participation in the crime; it suffices if their statement clearly indicates involvement or support of the offence.

Black's Law Dictionary defines an "accomplice" as a person involved with another in the commission of a crime, whether as a principal in the first or second degree or as an accessory.

In the case of ***R. K. Dalmia v. Delhi Administration, 1963 SCR (1) 253***, it was observed:

> "an accomplice is one who partakes in the actual commission of the crime charged against the accused, becoming a *particeps criminis* (sharer of the crime)."

Clause (3) of Article 20 of the Constitution provides safeguard to the accused person that no person accused of any offence shall be compelled to be a witness against himself, which signifies the principle of protection against compulsion of self-incrimination. In other words, if accomplice is jointly indicted with his fellows, he is incompetent to testify, unless he is tendered a pardon.

Can an accused tender for pardon?

In the case of ***Lt. Commander Pascal Fernandes v. the State of Maharashtra, 1968 SCR (1) 695***, the Supreme Court clarified that typically, the prosecution initiates the tender of pardon. However, if an accused directly applies to the Special Judges for pardon, they must first forward their request through the prosecuting agency.

Can the Court *suo motu* tender a pardon?

In ***Lt. Commander Pascal Fernandes*** (supra), the Court also noted that:

> "It is not for the Special Judge to enter the ring as a veritable director of prosecution. The power which the Special Judge exercises is not on his own behalf but on behalf of the prosecuting agency, and must, therefore, be exercised only when the prosecution joins in the request. The State may not want that any accused be tendered pardon because it does not need approver's testimony. It may also not be like the tender of pardon to the accused because he may be the brain behind the crime or the worst offender. The proper course for the Special Judge is to ask for a statement from the prosecution on the request of the prisoner. If the prosecution thinks that the tender of pardon will be in the interests of a successful prosecution of the other offenders whose conviction is not easy without the approver's

testimony, it will indubitably agree to the tendering of pardon. The Special Judge (or the Magistrate) must not take on himself the task of determining the propriety of tendering pardon in the circumstances of the case."

In simpler terms, an accomplice is a witness to the crime who is connected to it through any unlawful act or omission, whether through active or passive participation. Such an individual admits their involvement in the crime. An accomplice who is willing to confess his own guilt and that of their associates is known as an "approver".

Applicability:

Applications for tender of pardon are maintainable only in cases triable by a Court of Special Judge under the Criminal Amendment Act of 1952. This includes offences related to the Prevention of Corruption Act, 1988 or offences triable by a Sessions Court or any offence punishable with imprisonment extending to seven years or a more severe sentence.

Conditions:

For a pardon to be considered, the individual must fully disclose all circumstances within his knowledge related to the offence and provide information about the involved parties, whether as abettors or principal related to the offence.

Competency of Court:

Section 306 Cr.P.C. enables the Chief Judicial Magistrate or a Metropolitan Magistrate to accept applications for tender of pardon at any stage of the investigation, inquiry or trial of the offence i.e. before the committal of the case. However, a Judicial Magistrate First Class may entertain such applications only after charge sheet has been presented in an inquiry or trial and cannot entertain application during investigation. Notably, before committal, tender of pardon can only be made before Magistrates and thereafter, the mandatory examination of the approver is also conducted by the Magistrate who takes cognizance of the offence u/s 306(4)(1)(a) Cr.P.C.

Section 307 Cr.P.C. empowers the Sessions Court or Special Court, post-committal, to decide on the application under the same conditions stipulated in section 306(1) Cr.P.C. In ***Narayan Chetanram Chaudhary v. State of Maharashtra, AIR 2000 SC 3352***, it was observed that if the pardon is tendered post-committal stage, the requirement of mandatory examination of the approver

u/s 306(4)(1)(a) Cr.P.C. has no application. After the tender of pardon, it is enough that the approver is examined as a witness during trial.

Procedure for Tender of Pardon:

Following steps are required to be considered while processing an application for tender of pardon:

Step 1: During the investigation, after recording the statement u/s 161 Cr.P.C., the investigating agency requests the Chief Judicial Magistrate (CJM) to record the confessional statement of the approver u/s 164 Cr.P.C.

Step 2: Upon receiving the application, the CJM assigns a Judicial Magistrate First Class (JMFC), preferably one who will not try or commit the case, to record the accomplice's confession as provided in section 281 Cr.P.C. No oath shall be administered to the accused u/s 164 (5) Cr.P.C.

Step 3: The investigating or prosecution agency files an application before the CJM for tendering pardon to the accomplice chosen for pardon.

Step 4: The CJM reviews the investigation files, including the confession recorded u/s 164 Cr.P.C. If satisfied, the CJM may record a statement from the accomplice to ascertain their willingness to comply with the condition u/s 306 (1) Cr.P.C.

(**Note**: *Section 308(2) Cr.P.C. indicates that any statement made by such a person accepting tender of pardon may be given in evidence*.)

Step 5: Every Magistrate, including the CJM, must assign reasons for accepting or rejecting the application and a copy shall be given, free of cost to the accused upon his filing of an application.

Step 6: The accomplice must accept pardon. However, pardon by itself is not sufficient to convert an accused into a witness. The acceptance must be complete, without variations from the conditions imposed by law. In the case of ***Channabasappa v. State of Karnataka, 1979 Cr.L.J. 185 (Kar)***, it was observed that however, omission to record acceptance of tender of pardon has been held to be an irregularity only.

In ***A.J. Peiris v. State of Madras, AIR 1954 SC 616***, the Apex Court held:

> "the moment an accused is granted pardon, he is presumed to have been discharged and he become a prosecution witness. No formal order of discharge is needed."

Step 7: The law does not require the Magistrate who has ordered u/s 306(3) Cr.P.C. to examine the approver as a witness u/s 306(4)(a) Cr.P.C. In case the accomplice has accepted the condition specified u/s 306(1) Cr.P.C, then he shall be examined as a witness u/s 306(4)(a) Cr.P.C. before the appropriate Magistrate entitled to take cognizance of the offence and commit it for trial or made over to CJM.

The function of the Magistrate tendering pardon is over when he tenders pardon and records the reasons for so doing and further records whether the tender was accepted or not. Thereafter, there is nothing further for the Magistrate to do. (See: ***State of Kerala v. Monu Surendran, 1989 SCC OnLine Ker 336***).

When tender of pardon is accepted by the approver and the Magistrate has recorded the same u/s 306 (3) Cr.P.C., the approver undergoes a transformation in his status. He is discharged from his position as an accused. (i.e. he ceases to be an accused) and becomes a prosecution witness [See: ***State (Delhi Admn.) v. Jagjit Singh, AIR 1989 SC 598***]

Step 8: If the tender of pardon has been accepted by the approver, he should be examined as a witness both in the court of the Magistrate taking cognizance of the offence and in subsequent trial, if any, in view of section 306 (4) (a) of Cr.P.C.

The mandatory examination of the approver u/s 306 (4) (a) Cr.P.C. at the pre-commitment stage, is insisted only if the Court taking cognizance of the offence is that of a Magistrate and not a Sessions Judge or a Special Judge under the Prevention of Corruption Act 1988.

Step 9: After examination as a witness u/s 306(4) (a) Cr.P.C. before the Magistrate taking cognizance, the court shall, without any further inquiry, commit the case if it is a sessions trial or triable by Special Judge. In other cases, the case will be made over to the CJM, who will then try the case himself.

Illustrations:

A. **If the case is pending investigation and triable by JMFC**:

Pardon to an approver can only be tendered by the CJM. After recording the statement u/s 164 Cr.P.C., the CJM may consider the statement recorded by the JMFC and upon police requisition, enter a finding as per section 306 (3) Cr.P.C.

This authority to tender pardon can be exercised by the CJM even while the case is pending inquiry or trial before the JMFC. After recording the finding u/s 306 (3) Cr.P.C., the CJM should forward all records, including the finding to the JMFC. The JMFC, upon taking cognizance of the offence, would then conduct the examination of the approver as witness u/s 306(4)(a) Cr.P.C.

B. **If the CJM is the trial court and the case is at the stage of investigation:**

Tender of pardon u/s 306(1) Cr.P.C., recording of finding u/s 306 (3) Cr.P.C. and examination of the approver u/s 306 (4)(a) Cr.P.C., among others will have to be conducted by the CJM, whereafter, the CJM will commit the case for trial to the Sessions Court, invoking power u/s 306 (5) (a) (i) r/w/s 323 Cr.P.C. While recording of confessional statement of the approver u/s 164 Cr.P.C. may be delegated to a JMFC, the remaining functions, including recording the finding u/s 306(3) Cr.P.C., have to be done by the CJM.

C. **Where the case is triable by JMFC and the tender of pardon is administered during inquiry or trial**:

The JMFC will manage the tender of pardon u/s 306 (1) Cr.P.C., record the statement of the approver, document the finding u/s 306 (3) Cr.P.C. and examine the approver u/s 306 (4) (a) Cr.P.C. However, the initial recording of the confession u/s 164 Cr.P.C., at the behest of the police, should be conducted by a different Magistrate. After examining the approver u/s 306 (4) (a) Cr.P.C., the JMFC is required to make over the case to the CJM for trial u/s 306 (5) (b) Cr.P.C.

Special Judge under PC Act:

In ***Anantha Narayana Bhatt v. CBI, 2009 SCC OnLine Ker 6561***, it was held that the CJM can exercise power to tender pardon in a case triable by the Special Judge under the Prevention of Corruption Act, 1988 whether during the investigation stage or before the Special Judge takes cognizance of the offence. Given that the Special Judge does not serve as a Magistrate for the purposes of section 306 Cr.P.C., the approver is not subject to examination u/s 306 (4) (a) Cr.P.C. thereafter. However, the CJM is precluded from tendering pardon to an accomplice during the trial stage before the Special Judge, despite section 306(1) Cr.P.C. seemingly suggesting otherwise. Post-cognizance, the Special Judge may tender pardon u/s 5(2) of the Act of 1988.

Can the Sessions Court delegate the hearing of the application after committal?

In ***A. Devendran v. State of T.N., (1997) 11 SCC 720***, it was held that under the Criminal Procedure Code of 1973, once a case is committed to the Court of Sessions, only that Court has jurisdiction to tender pardon to a person and the Chief Judicial Magistrate cannot be considered to have concurrent jurisdiction for tendering pardon after the case has been committed to the Sessions Court.

Is examination of approver mandatory before the committal Court?

A bare reading of clause (a) of sub-section (4) of section 306 Cr.P.C. indicates that every person accepting tender of pardon under sub-section (1) must be examined as a witness in the Court of the Magistrate taking cognizance of the offence, as well as in any subsequent trial. Sub-section (5) further mandates that the Magistrate, upon taking cognizance of the offence, shall commit it for trial to the appropriate court without conducting any further inquiry. Therefore, the examination of an accomplice or an approver post-acceptance of the tender of pardon is a mandatory procedure and is indispensable. Non-adherence to this requirement invalidates the trial. This provision is not merely procedural but imperative; non-compliance renders the committal order unlawful. The rationale behind this stringent provision is to safeguard the rights of the accused by ensuring the approver's testimony is disclosed early in the proceedings. It provides the accused with a critical opportunity to challenge the approver's credibility before the case progresses to trial, particularly if inconsistencies or embellishments emerge in the approver's trial testimony. Failure to examine the approver before the matter is committed to the Magistrate not only contravenes the mandatory nature of clause (a) of sub-section (4) of section 306 but also undermines the approver's obligation to fully disclose all relevant circumstances, potentially leading to miscarriage of justice.

Can co-accused cross-examine the Accused at the stage of section 306(4)(a) Cr.P.C.?

In ***Ranadhir Basu v. State of West Bengal, (2000) 3 SCC 161***, it was observed as:

> "It does not follow that the person who is granted pardon must be examined in the presence of the accused and that the accused has a right to appear and cross-examine him at that stage also. As pointed out by

this Court in that case the object is to provide an opportunity to the accused to show to the Court that the approver's evidence at the trial is untrustworthy in view of the contradictions or improvements made by him during his evidence at the trial. Considering the object and purpose of examining the person accepting tender of pardon as a witness is thus limited. The proceeding which takes place before the Magistrate at that stage is neither an inquiry nor a trial. The phrase "examination of a witness" does not necessarily mean examination and cross-examination of that witness. What type of examination of a witness is contemplated would depend upon the object and purpose of that provision. Section 202 Cr.P.C also contemplates examination of witness, yet it has been held, considering the object and purpose of that provision, that the accused has no *locus standi* at that stage".

Thus, we can say that when the approver is examined as a witness u/s 306 (4) (a) Cr.P.C which is mandatory, the other accused persons in the case do not have any right to be present or to cross-examine the approver in all situations.

If the accused was granted pardon, can they be tried for other offences?

In ***Dipesh Chandak v. Union of India, (2004) 8 SCC 511*** it was observed that Article 20(3) of the Constitution enjoins that no person can be compelled to be a witness against himself. To continue with the prosecution would thus amount to forcing the appellant to give evidence against him or to risk pardon being cancelled as he cannot make a full and complete disclosure for fear of being convicted in the other case. Thus, even though pardon may not extend to the offences of Income Tax Act cases, in our view, this is a fit case where the Government should consider not prosecuting the appellant under these sections. To insist on doing so, prosecuting may result in valuable evidence being lost in fodder fraud cases. So, if the appellant makes a full and complete disclosure, then, the prosecution under other offences should not be allowed to proceed.

Procedure before Sessions Court/Special Judge when applied after committal u/s 307 Cr.P.C.

Only the court to which a case is committed can grant pardon under this section, including the Special Court under the Prevention of Corruption Act or the Sessions Judge. In ***Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457***, the Supreme Court observed as under:

"A perusal of both the sections clearly indicates that section 306 is applicable in a case where the order of commitment has not been passed and section 307 would be applicable after commitment of the case but before the judgment is pronounced. The provisions of sub-section (4)(a) of section 306 would be attracted only at a stage when the case is not committed to the court of Sessions. After the commitment, the pardon is to be granted by the Trial Court subject to the conditions specified in sub-section (1) of section 306, i.e. approver making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof. By Criminal Law Amendment Act, 1952, old sections 337 to 339 were substituted by sections 306 to 308 of the Code of Criminal Procedure conferring the power to tender pardon only to Judicial Magistrates and the Trial Court. Section 307 – in its present form – does not contemplate the recording of the statement of the approver twice as argued. Accepting the submissions made on behalf of the appellant would amount to legislate something in section 307 which the Legislature appears to have intentionally omitted. There is no legal obligation on the Trial Court or a right in favour of the accused to insist for the compliance with the requirement of section 306 (4) of the Cr.P.C. section 307 provides a complete procedure for recording the statement of an accomplice subject only to the compliance of conditions specified in sub-section (1) of section 306. Which is the satisfaction of the court granting pardon, that the accused would make a full and true disclosure of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof?"

Hence, where pardon is tendered either by the Special Court under the Prevention of Corruption Act or by a Court of Sessions u/s 307 Cr.P.C., there is no need for examination of the approver u/s 306 (4) (a) Cr.P.C. The approver in such a case need to be examined only during the trial of the case. The rights, if any, of the other accused persons to cross-examine the approver during his mandatory examination, if any, u/s 306 (4) (a) Cr.P.C etc. can be better elucidated in sessions

trial or special court when pardon was applied after committal. The co-accused can only cross-examine the approver at the stage of trial.

Does delay in making an approver statement affect reliability?

In ***Narayan Chetanram Chaudhary*** (supra) it was observed that the words of the section "at any time after commitment of the case but before judgment is passed" are clearly indicative of the legal position which the legislature intended. No time limit is provided for recording such a statement and the delay itself is no ground to reject the testimony of the accomplice. Delay may be one of the circumstances to be kept in mind as a measure of caution for appreciating the evidence of the accomplice. The human mind cannot be expected to react in an equivalent manner under different situations. Any person accused of an offence may, at any time before the judgment is pronounced, repent for his action and volunteer to disclose the truth in the court. Repentance is a condition of the mind differing from person to person and from situation to situation.

The provisions of section 306 are framed as such that if an approver is not on bail at the time of accepting tender of pardon, he must be detained in custody until termination of the trial. During that period, there is no provision to release him on bail or otherwise. The provisions of section 306 (4) are of special nature and overrides the general provision of bail conditions as referred in section 439 Cr.P.C. In this provision, the legislature has not only used the word 'shall' but it is preceded by the words 'unless he is already on bail'. These words clearly suggest that the legislature has prohibited the court from ruling contrary orders. Mandatory judicial custody serves various purposes. It protects the approver from the wrath of the Confederates that he has chosen to expose and preserve his evidence as untampered till the termination of the trial and serve public policy by securing his person so that the prosecution is not handicapped at the time of actual trial.

In ***Dev Kishan v. State of Rajasthan, 1984 Cr.L.J 1142***, it has been observed that merely because the accused person facing trial has been released on bail is no ground to subvert or circumvent the mandatory provisions of section 306(4)(b) Cr.P.C..

In ***Noor Taki v. State of Rajasthan, 1986 Cr.L.J 1488***, Hon'ble High Court of Rajasthan has observed that however, where the trial is prolonged and the period of detention exceeds the period of sentence, had he been convicted under its inherent powers, the High Court can grant bail.

What if the accomplice does not follow the condition of pardon?

Section 308 Cr.P.C deals with the person who has accepted a tender of pardon made u/s 306 or 307 Cr.P.C. If the public prosecutor certifies that in his opinion the person who has granted pardon either by willful concealing anything essential or by giving false evidence does not comply with the condition on which tender was made then on forfeiture of such pardon, the approver is relegated to the position of an accused. Thereafter, he cannot be compelled to be a prosecution witness. His already recorded evidence becomes useless for the purposes of trial of the co-accused. Hence, no occasion arises for the defence to cross-examine him. Such a person may be tried for offence in respect of the offence for which pardon was so tendered or for any other offence of which he is guilty in connection with same matter and with offence of giving false evidence u/s 193 IPC. The only condition is that such person will not be tried jointly with other accused of the offence for which he has tendered pardon. For offence relating to giving false evidence, sanction of High Court is needed. Nothing contained in section 195 or section 340 Cr.P.C. shall apply to that offence.

Statements which were made by such person while accepting the tender of pardon like the statement made u/s 164 Cr.P.C or statement made u/s 306(4) Cr.P.C. before the Magistrate may be given in evidence against him in trial. In such a trial, the accused may plead that he has followed the conditions on which tender was granted and the prosecution must prove that he has breached the conditions. When the charge was framed, the court must ask whether he pleads that he complied with the conditions on which tender of pardon was made or not and after recording his plea, trial will commence. If it is found that he has complied the conditions, he may be acquitted from the charges.

Whether the accomplice must be examined as prosecution witness when he has failed to comply with the conditions on which pardon was granted?

In ***State (Delhi Admn.) v. Jagjit Singh, AIR 1989 SC 598***, it was observed that because of the mandate u/s 306 Cr.P.C., the State cannot withdraw the pardon from the approver, nor can the approver cast away the pardon granted to him till he is examined as a witness by the prosecution; both in the committing court as well as in the trial Court. The approver may have resiled from the statement made before the Magistrate in the committing court and may not have followed the condition on which pardon was granted to him. Still the prosecution must examine him as a

witness in the trial court. It is only when the Public Prosecutor certifies that the approver has not complied with the condition on which tender was made by willfully concealing anything essential or by giving false evidence, he may be tried u/s 308 Cr.P.C. not only for the offence in respect of which pardon was granted but also in respect of other offences.

However, in ***State of Maharashtra v. Abu Salem Abdul Kayyum Ansari, (2010) 10 SCC 179***, Hon'ble Supreme Court after discussing the law laid down in ***Jagjit Singh*** (supra) has observed that once pardon is withdrawn or forfeited on the certificate given by the Public Prosecutor that such person has failed to comply with the condition on which the tender of pardon was made, he, who had ceased to be an accused and had become a prosecution witness upon the tender of pardon, is reverted to the position of the accused. He thereupon becomes liable to be tried separately and the evidence, if any, given by him has to be ignored in *toto* and does not remain legal evidence for consideration in the trial against the co-accused although such evidence may be used against the approver in the separate trial where he gets an opportunity to show that he had complied with the condition of pardon. He cannot be compelled to be a witness. There is no question of such person being further examined for the prosecution and therefore, no occasion arises for defence to cross-examine him.

Whether evidence of accomplice always needs corroboration?

Section 133 of the Evidence Act provides that being a competent witness, the testimony of an accomplice is admissible and conviction based on the uncorroborated testimony of an accomplice is not illegal. However, considering whether the testimony of an accomplice should or should not be believed, Illustration (b) of Section 114 of the Evidence Act comes into play which advise the Court to bear in mind the presumption that an accomplice is not worthy of credit unless he is corroborated in material particulars. The relation between Section 133, which is a Rule of law and Illustration (b) to Section 114, which is merely a Rule of prudence, has been the subject of comment in large number of decisions.

In ***Mrinal Das v. State of Tripura, (2011) 9 SCC 479***, Hon'ble Apex Court observed:

> "An approver is a most unworthy friend, if at all, and he has bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves

him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. The story, if given of minute details according with reality is likely to save it from being rejected. Secondly, once hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case taking into consideration all the factors, circumstances and situations governing a particular case, conviction based on the uncorroborated evidence of an approver confidently held to be true and reliable by the Court may be permissible. Ordinarily, however, an approver's statement must be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of involvement showed by an approver appertaining directly to an accused, if reliable, by the touch stone of other independent credible evidence, would give the needed assurance for acceptance of his testimony on which a conviction may be based."

In ***Somasundaram alias Somu v. State Rep. by the Deputy Commissioner of Police, AIR 2020 SC 3327*** it was observed:

> "the accomplices are credible witnesses when the whole circumstances are borne in mind. Their evidence may not be immaculate in character. By their very nature, that is being accomplices, any such claim would be incongruous. But the test is whether it is safe to convict the accused believing such witnesses."

Conclusion:

Grant of pardon to an accomplice can be justified by stating it to be a case of refraining from prosecution of one accused in the interest of successful prosecution of certain other persons and getting the best evidence possible against them. Thus, conditional pardon facilitates the law enforcement agencies in nabbing criminals who would have otherwise escaped liability due to lack of evidence.

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विधिक समस्याएं एवं समाधान

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

1. किसी लोक न्यास द्वारा संचालित धर्मस्थलों के रखरखाव के संबंध में प्रारंभिक अधिकारिता वाले जिला न्यायाधीश को क्या अधिकार प्राप्त हैं?

धारा–92, सिविल प्रक्रिया संहिता लोकपूर्त कार्य के संबंध में आरंभिक अधिकारिता वाले प्रधान सिविल न्यायालय या राज्य सरकार द्वारा इस निमित्त सशक्त किये गये किसी अन्य न्यायालय जिसकी अधिकारिता की सीमाओं के अंतर्गत न्यास की सम्पूर्ण विषय वस्तु या उसका कोई भाग स्थित है, को इस धारा में उल्लिखित कार्य के लिये डिक्री प्रदान करने की अधिकारिता प्रदान करती है। ऐसे कार्य के लिये वाद प्रस्तुत करने की अधिकारिता महाधिवक्ता या न्यास में हित रखने वाले दो से अधिक व्यक्ति जिन्होंने न्यायालय से इस हेतु अनुमति प्राप्त कर ली है, को होगी ।

लोक न्यास द्वारा संचालित संपत्तियों जिनमें धर्मस्थल शामिल हैं, में जाने वाले दर्शनार्थियों को आने वाली कठिनाइयों, प्रबंधन में कमियां, स्वच्छता की व्यवस्था, दान में प्राप्त चढ़ावे का उचित उपयोग एवं न्यास की संपत्ति के संरक्षण के संबंध में भी जिला न्यायाधीश को निरीक्षण का अधिकार प्राप्त है। माननीय सर्वोच्च न्यायालय ने ***मृणालनी पाधी वि0 यूनियन ऑफ इंडिया, (2018) एससीसी 785*** की कंडिका 21 में इस संबंध में भारत के सभी जिला न्यायाधीशों को यह निर्देश दिया है कि यदि कोई श्रृद्धालु उनके समक्ष उपरोक्त के संबंध में कोई शिकायत प्रस्तुत करता है तब ऐसा जिला न्यायाधीश इस संबंध में स्वयं अथवा किसी अन्य न्यायालय को इस संबंध में अधिकारिता प्रदान करते हुए जांच कर अपनी रिपोर्ट उच्च न्यायालय को प्रेषित करेगा। इसी निर्णय की कंडिका 30.9 में यह आदेशित किया गया है कि जिला न्यायाधीश द्वारा प्रेषित ऐसी रिपोर्ट को उच्च न्यायालय जनहित याचिका मानते हुए सभी आवश्यक निर्देश जारी कर सकेगा।

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2. लोक अदालत में समझौता होने की स्थिति में न्यायालय शुल्क वापसी के संबंध में क्या प्रावधान है?

विधिक सेवा प्राधिकरण अधिनयम, 1987 की धारा 16 यह प्रावधान करती है कि लोक अदालत में किसी प्रकरण के समझौते के आधार पर निराकरण होने की स्थिति में संबंधित पक्षकार न्यायालय शुल्क वापस प्राप्त करने का अधिकारी होगा । इस संबंध में अपील स्तर पर प्रकरण में राजीनामा होने पर न्यायालय शुल्क की वापसी के संबंध में यह दुविधा उत्पन्न होती थी कि क्या पक्षकार सभी स्तरों पर

अर्थात् विचारण न्यायालय और अपील न्यायालय के स्तर पर प्रस्तुत न्यायालय शुल्क की वापसी का अधिकार रखेगा अथवा उसे केवल उसी स्तर की न्यायालय शुल्क की वापसी का अधिकार होगा जहां पर समझौते की कार्यवाही हुई है ।

माननीय मध्यप्रदेश उच्च न्यायालय ने इस बिंदु पर ***प्रेमकिशोर मीना वि. ओमप्रकाश नायक एवं अन्य द्वितीय अपील क्रमांक 1856/2021 निर्णय दिनांक 07.02.2023*** में विचार किया । इस प्रकरण में द्वितीय अपील के स्तर पर हुए समझौते के आधार पर प्रकरण का निराकरण हुआ था जिसके पश्चात् प्रत्येक स्तर पर प्रस्तुत न्यायालय शुल्क की वापसी के संबंध में विवाद होने पर माननीय मध्यप्रदेश उच्च न्यायालय ने विचारण न्यायालय, प्रथम अपीलीय न्यायालय और द्वितीय अपीलीय न्यायालय में पृथक–पृथक प्रस्तुत संपूर्ण न्यायालय शुल्क वापिस करने के आदेश पारित किए जिसके आलोक में यह निष्कर्ष दिया जा सकता है कि समझौते के आधार पर निराकृत प्रकरणों में प्रत्येक स्तर पर प्रस्तुत सम्पूर्ण न्यायालय शुल्क संबंधित पक्षकार को वापिस की जाएगी।

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इंतजार करने वालों को सिर्फ उतना ही मिलता है जितना कोशिश करने वाले छोड़ देते हैं।

– डॉ. ए.पी.जे. अब्दुल कलाम

PART – II

215. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 12(1)(e) Eviction – *Bona fide* requirement – Date of institution of suit is a crucial date for ascertaining *bona fide* need – Subsequent event which affects the need should be such that it may over shadow the *bona fide* need.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धारा 12(1)(ड़)
निष्कासन – वास्तविक आवश्यकता – वाद संस्थित करने की तिथि वास्तविक आवश्यकता अभिनिर्धारित करने हेतु निर्णायक तिथि है – पश्चातवर्ती घटना जो आवश्यकता को प्रभावित करती है, ऐसी होनी चाहिए जो वास्तविक आवश्यकता के महत्व को निष्प्रभावी कर दे।

Krishna Gopal Khandelwal v. Poonamchand Paharia (dead) through LRs. Smt. Prabhawati and ors.

Judgment dated 20.04.2023 passed by High Court of Madhya Pradesh in Second Appeal No. 510 of 2000, reported in 2023 (3) MPLJ 622

Relevant extracts from the judgment:

The crucial date for ascertaining the bonafide need is the date of institution of suit. However, the subsequent events should be such which may overshadow the bonafide need. Further this Court should not forget that the Civil Appeal was already decided in the year 2000 and this appeal is pending for the last 23 years. This Court cannot lose sight of the fact that act of Court should not prejudice any one. It was the appellant who approached this Court and prayed for stay on execution of the Judgment and Decree. It is not the case of the appellant, that the plaintiff has only one son namely Dr. Rakesh Pahadia, on the contrary, the appellant himself has pleaded in the written statement that the family of the plaintiff consists of six members. The respondent in reply to application for taking subsequent events on record has specifically stated that the subsequently purchased two duplexes are in possession of his other two major sons. The plaintiff/landlord cannot be compelled to squeeze in a small accommodation along with his children and he cannot be compelled to wait for decision by spending his life in such a pathetic condition. If the plaintiff is compelled to make certain arrangements for the settlement of his family, then he cannot be non-suited for the same.

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216. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 12(1)(f) Availability of alternative vacant non-residential accommodation and its unsuitability – When necessarily required to be pleaded? Only when some alternate non-residential accommodation of the landlord is vacant and available at the time of filing of the suit.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धारा 12(1)(च)
वैकल्पिक रिक्त अनिवासिक स्थान की उपलब्धता और इसकी अनुपयुक्तता – कब अभिवचन किया जाना आवश्यक है ? केवल तभी जब प्रकरण प्रस्तुत करते समय भू–स्वामी का कोई वैकल्पिक अनिवासिक स्थान रिक्त और उपलब्ध हो।

Tejmal Karnawat v. Chandrakanta Kashyap & anr.

Order dated 25.03.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 87 of 2021, reported in ILR 2023 MP 1397

Relevant extracts from the order:

In ***Gyasi Nayak v. Gyan Chandra Jain, (2010) 3 MPLJ 203*** it was held in paragraphs 20 and 21 as under:-

> "20. It is apparent from the aforesaid admission of the respondent that he is in possession of some vacant alternate non-residential accommodation of his own in the same building but the same has not been stated in the pleadings of the application. In order to show the bona fide for the alleged need the landlord is duty bound to plead the available vacant accommodation with him and also the circumstance how the same are not suitable to him for the alleged need. It is settled proposition of law that no evidence can be led on a plea not raised in the pleadings and no amount of evidence can cure defect in 10 the pleadings as laid down by the Apex Court in the matter of ***Ravinder Singh v. Janmeja Singh, (2000) 8 SCC 191.***
>
> 21. The law is well settled on this question that the landlord is obliged under the law to put forth the account of available alternate accommodation of his own and regarding unsuitability of the same for the alleged need in his pleadings. In the absence of such pleading in view of availability of such alternate accommodation with the

landlord the alleged need of the landlord regarding disputed premises could not be held to be bona fide or genuine for passing the decree of eviction against the tenant."

Thus, what has been held in ***Gyasi Nayak*** (supra) is that landlord is obliged under the law to put forth the account of available alternate accommodation of his own and regarding unsuitability of the same for his alleged need. Thus, what necessarily follows is that when the plaintiff is not possessed of alternate vacant accommodation he is not obliged under the law to put forth the account of such accommodation and regarding unsuitability of the same for his alleged need in the pleadings. It is only when some alternate accommodation of the plaintiff is vacant and available at the time of filing of the suit, that he is required to plead regarding its availability and unsuitability otherwise he is not enjoined to plead so.

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217. ARBITRATION AND CONCILIATION ACT, 1996 – Section 34 (3) Application for setting aside award – Delay – Condonation – Arbitral award passed on 24.08.2016, the period of three months limitation prescribed u/s 34 (3) of the Act expired on 23.11.2016, the discretionary period of 30 days under the proviso to section 34 (3) was up to 24.12.2016 – The Trial Court was closed on account of vacation from 19.12.2016 to 01.01.2017 – Application to challenge the arbitral award with condonation of delay was filed on 02.01.2017 – Held, condonation cannot be granted after the extended period of 30 days – The benefit of Limitation Act and General Clauses Act available only when application is filed within 30 days of extended period.

माध्यस्थम् और सुलह अधिनियम, 1996 – धारा 34 (3)
पंचाट को अपास्त कराने हेतु आवेदन – विलंब – क्षमा – माध्यस्थम पंचाट दिनांक 24.08.2016 को पारित किया गया। अधिनियम की धारा 34 (3) में वर्णित तीन माह की परिसीमा अवधि दिनांक 23.11.2016 को समाप्त हो गई थी। धारा 34 (3) के परन्तुक के अंतर्गत 30 दिनों की वैवेकिक अवधि दिनांक 24.12.2016 तक थी। अवकाश के कारण विचारण न्यायालय दिनांक 19.12.2016 से 01.01.2017 तक बंद था। विलंब की क्षमा के साथ माध्यस्थम अवार्ड को चुनौती देने वाला आवेदन दिनांक 02.01.2017 को प्रस्तुत किया गया – अभिनिर्धारित, विलम्ब 30 दिवस की बढ़ी हुई अवधि के पश्चात अनुमत नहीं किया जा सकता। परिसीमा अधिनियम और साधारण खण्ड अधिनियम का लाभ

केवल तब उपलब्ध है जब आवेदन 30 दिवस के बढ़ी हुई अवधि के भीतर किया गया हो।

Bhimashankar Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Limited (WIL)

Judgment dated 04.10.2023 passed by the Supreme Court in Civil Appeal No. 6810 of 2022, reported in (2023) 8 SCC 453

Relevant extracts from the judgment:

Whether the benefit of Section 4 of the Limitation Act, 1963 is available to a party when the "prescribed period" of 3 months for filing a petition under Section 34(3) of the Arbitration Act has already expired and the discretionary period of 30 days under the proviso to Section 34(3) falls on a day when the Court is closed?

Whether the benefit of Section 10 of the General Clauses Act, 1897 is separately available to a party in such circumstances?

Now, so far as the applicability of Section 4 of the Limitation Act is concerned, it is vehemently submitted by learned Senior Counsel for the respondent that Section 4 of the Limitation Act shall not be applicable to the 30 days' discretionary condonable period contemplated under proviso to Section 34(3) of the Arbitration Act. It is submitted that Section 34(3) of the Arbitration Act stipulates that an application under Section 34(1) of the Arbitration Act challenging an arbitral award may not be made after a period of three months from the date on which the party making the application had received the arbitral award. The proviso to Section 34(3) gives limited powers to the Court, on sufficient cause being shown, to condone delay in filing the application under Section 34(1) only for a maximum period of 30 days, but not thereafter. It is submitted that in the case of ***Union of India v. Popular Construction Co., (2001) 8 SCC 470*** (Paras 10, 12, 14 and 16), this Court has observed that usage of words "but not thereafter" in the proviso to Section 34(3) amounts to an express exclusion within the meaning of Section 29(2) of the Limitation Act. Therefore, the Court would have no discretion to condone the delay in excess of 30 days. Section 5 of the Limitation Act was, therefore, held to be inapplicable to Section 34(1) of the Arbitration Act.

It is submitted that Section 4 of the Limitation Act is only applicable when the last date of the "prescribed period" falls on a day on which the Court is closed. It is submitted that the term, "prescribed period" is defined in Section 2(j) of the Limitation Act as being the period of limitation computed in accordance with the provisions of the Limitation Act.

It is submitted that this Court in the case of ***Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Limited, (2012) 2 SCC 624*** (Paras 10 to 14) has held that "prescribed period" under Section 34(3) of the Arbitration Act is three months. It is submitted that "further period" of 30 days mentioned in the proviso to Section 34(3) of the Arbitration Act cannot be said to be the "period of limitation" and therefore, would not be the "prescribed period" for the purposes of making an application for setting aside the arbitral award. It is submitted that thus, in the said decision, this Court has categorically held that Section 4 of the Limitation Act which applies only to "prescribed period" is not attracted when the last date of the "further period" of 30 days mentioned in Section 34(3) of the Limitation Act falls on a day on which the Court is closed. It is submitted that the facts of the case in ***Assam Urban*** (supra) are identical to the facts of the present case. It is submitted that decision of this Court in the case of ***Assam Urban*** (supra) has been affirmed by Three Judges' Bench of this Court in the case of ***Sagufa Ahmed and ors. v. Upper Assam Polywood Products Private Limited and ors.,(2021) 2 SCC 317***.

It is further submitted that right under Section 34 of the Arbitration Act is a restricted right to challenge an award on extremely limited ground. The proviso to Section 34(3) of the Arbitration Act further excludes the general power of the Court under Section 5 of the Limitation Act and imposes a strict timeline for presentation of a petition under Section 34. In such circumstances, acceptance of appellant's argument will have the effect of providing an unduly enlarged time period (beyond the statutory 30 day discretionary period) for delayed presentation of a petition under Section 34, which would be contrary to the scheme and intent of the Arbitration Act.

Now, so far as the applicability of Section 10 of the General Clauses Act, 1897 as per the case of the appellant is concerned, it is vehemently submitted that as such the contention is untenable in light of the proviso to Section 10 of the General Clauses Act, 1897, which specifically excludes the application of this section to any Act or proceeding to which the Indian Limitation Act applies. It is submitted that reference to 1877 Act will now have to be read as reference to Limitation Act, 1963 in view of section 8 of the General Clauses Act, 1897. It is submitted that it is no longer res integra that the Limitation Act, 1963 applies to arbitrations and court proceedings arising out of the arbitrations in light of Section 41(3) of the Arbitration Act. Reliance is placed upon the decision of this Court in the case of ***State of Maharashtra v. Borse Brothers Engineers and Contractors Pvt. Ltd., (2021) 6 SCC***

460 and ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and ors., (2008) 7 SCC 169***. It is submitted that therefore in light of the application of the Limitation Act, 1963 applicable to the proceedings under the Arbitration Act (both in Court and in arbitration), Section 10 of the General Clauses Act, 1897 is specifically excluded, and therefore, cannot be relied upon by the appellant.

Therefore, the central question in the present appeal is whether when the last day of condonable period of 30 days (under Section 34(3) of the Arbitration Act) falls on holiday or during the Court vacation, would the benefit of Section 10 of the General Clauses Act, 1897 be available?

Now, so far as the reliance placed upon the decision of this Court in the case of ***Sridevi Datla v. Union of India, (2021) 5 SCC 321*** relied upon on behalf of the appellant is concerned, at the outset it is required to be noted that in the said decision, this Court has not noticed the decision in the case of ***Assam Urban*** (supra) and there is no discussion on distinction between "prescribed period" and the "discretionary condonable period". On the other hand, the binding decision of this Court in the case of ***Assam Urban*** (supra) is directly on point.

In view of the above and for the reasons stated above, applying the law laid down by this Court in the case of ***Assam Urban*** (Supra), it cannot be said that the High Court and the learned III Additional District & Sessions Judge, Vijaypur have committed any error in refusing to condone the delay caused in preferring application under Section 34 of the Arbitration and Conciliation Act, 1996 which was beyond the period prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996.

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218. CIVIL PROCEDURE CODE, 1908 – Section 54, Order 6 Rule 4, Order 20 Rule 18 and Order 21 Rules 97 to 101

(i) Suit for partition – Preliminary decree – Merely declaring shares that parties are entitled to – Does not confer right to trade in such share of properties.

(ii) Dispute as to title – Such dispute cannot be resolved in a partition suit, unless the same is incidental to fundamentals of claim – Title cannot be decided in favour of parties claiming partition *qua* strangers – Same logic would apply to the claim petitioners *qua* the State Government.

(iii) Enquiry under Order 21, Rules 97 to 101, CPC – Scope – Executing Court cannot decide questions of title setup by third parties (not claiming through or under the parties to the suit or their family members), who assert independent title in themselves – All that can be done in such cases at the stage of execution, is to find out *prima facie* whether the obstructionists or claim petitioners have a *bonafide* claim to title, independent of the right of the parties to the partition suit – If independent claim to the title found, then holder of decree for partition cannot be allowed to defeat the rights of the third parties in these proceedings.

सिविल प्रक्रिया संहिता, 1908 – धारा 54, आदेश 6 नियम 4, आदेश 20 नियम 18 एवं आदेश 21 नियम 97 से 101

(i) विभाजन का वाद – प्रारंभिक डिक्री – केवल अंश की घोषणा करती है, जिसके लिए पक्षकार हकदार हैं – संपत्ति के उस अंश पर व्यापार के अधिकार को प्रदान नहीं करती।

(ii) स्वत्व के संबंध में विवाद – ऐसे विवाद का निराकरण विभाजन के वाद में नहीं किया जा सकता, जब तक कि वह दावे के आधारों से आनुषंगिक न हो – ऐसे पक्षकारों के पक्ष में स्वत्व निराकृत नहीं किया जा सकता, जो अपरिचित की हैसियत से विभाजन का दावा करते हैं – यही तर्क राज्य सरकार की हैसियत से दावा करने वाले याचिकाकर्ताओ के लिए भी लागू होगा।

(iii) आदेश 21 नियम 97 से 101 व्य.प्र.सं. के अधीन जाँच – विस्तार – निष्पादन करने वाला न्यायालय तीसरे पक्षकार (जो दावे के पक्षकार अथवा उनकें कुटुंब के सदस्यों के माध्यम से अथवा उनके अधीन दावा नहीं कर रहे) जो स्वयं में स्वतंत्र स्वत्व होने का दावा करते हैं, के द्वारा प्रस्तुत स्वत्व सम्बन्धी प्रश्न का निराकरण नहीं कर सकता – ऐसे मामलों में निष्पादन के प्रक्रम पर सब कुछ जो किया जा सकता है, वह प्रथम दृष्ट्या यह पता करना है कि क्या आपत्तिकर्ताओं अथवा दावा याचिकाकर्ताओं का विभाजन के वाद के पक्षकारों के अधिकारों से स्वतंत्र स्वत्व सम्बन्धी कोई सद्भाविक दावा है – यदि स्वत्व के संबंध में स्वतंत्र दावा पाया जाता है, तब विभाजन की डिक्री के धारक को ऐसी कार्यवाहियों में तीसरे पक्षकारों के अधिकारों को विफल करने की अनुमति नहीं दी जा सकती।

M/s. Trinity Infraventures Ltd. and ors. etc. v. M.S. Murthy and ors. etc.

Judgment dated 15.06.2023 passed by the Supreme Court in Civil Appeal No. 4049 of 2023, reported in AIR 2023 SC 3361

Relevant extracts from the judgment:

In a suit for partition, the Civil Court cannot go into the question of title, unless the same is incidental to the fundamental premise of the claim.

In an enquiry under Order XXI, Rules 97 to 101, CPC, the Executing Court cannot decide questions of title set up by third parties (not claiming through or under the parties to the suit or their family members), who assert independent title in themselves. All that can be done in such cases at the stage of execution, is to find out prima facie whether the obstructionists/claim petitioners have a bona fide claim to title, independent of the rights of the parties to the partition suit. If they are found to have an independent claim to title, then the holder of the decree for partition cannot be allowed to defeat the rights of third parties in these proceedings.

If in a suit for partition, the title to a property cannot be decided in favour of the parties claiming partition qua strangers, the same logic would apply even to the claim petitioners qua the State Government.

A preliminary decree in a suit for partition merely declares the shares that the parties are entitled to in any of the properties included in the plaint schedule and liable to partition. On the basis of a mere declaration of the rights that take place under the preliminary decree, the parties cannot trade in, on specific items of properties or specific portions of suit schedule properties.

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219. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17 and Order 8 Rule 1

(i) Amendment in written statement – Withdrawal of admission – By way of amendment, defendant submitted a counter-claim and virtually withdrew the admission of execution of sale deed and receipt of sale consideration – Amendment cannot be brought on record.

(ii) Document – Filed in support of amendment application – If the proposed amendment application has been declined, document filed in support of such application cannot be taken on record.

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17 एवं आदेश 8 नियम 1

(i) लिखित कथन में संशोधन – स्वीकृति वापस लेना – संशोधन के माध्यम से प्रतिवादी ने प्रतिदावा प्रस्तुत कर विक्रय विलेख के निष्पादन और विक्रय प्रतिफल की प्राप्ति की स्वीकृति वापिस ले ली – संशोधन अभिलेख पर नहीं लाया जा सकता ।

(ii) दस्तावेज – संशोधन आवेदन के समर्थन में प्रस्तुत – यदि प्रस्तावित संशोधन आवेदन अस्वीकृत किया जा चुका है तब ऐसे आवेदन के समर्थन में प्रस्तुत दस्तावेज को अभिलेख पर नहीं लिया जा सकता ।

Mohammad Shafi and ors. v. Chand Khan and ors.

Order dated 09.05.2023 passed by High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 300 of 2023, reported in 2023 (3) MPLJ 631

Relevant extracts from the order:

The plaintiffs filed the suit in the year 2014 challenging the sale deed executed by defendant No.1 to 3 in favour of respondent No.4 on the basis of oral Hiba. The defendant No.1 to 3 filed written statement specifically admitting the sale of land to the defendant No.4 by way of registered sale deed and receipt of Rs. 3,43,73,000/-. The written statement was filed in the year 2014-15. Thereafter, the issues were framed, the plaintiffs have examined their witnesses and they were cross examined. At the stage of defendants' evidence, now the present application under Order 6 Rule 17 of CPC has been filed virtually withdrawing the admission of execution of sale deed and receipt of sale consideration. The learned Civil Court has rightly placed reliance upon the judgment passed by Apex Court in case of ***Modi Spinning & Weaving Mills Co. v. Ladha Ram & Co., (1976) 4 SCC 320*** that the provision Order 6 Rule 17 of CPC prohibits for bringing a new case by way of amendment and written statement. The learned Court has also rightly placed reliance upon the judgment ***Shiromani Gurdwara Prabhandak v. Jaswant Singh, (1991) 11 SCC 690*** that at the belated stage the defendant cannot be permitted for inconsistence and contrary averment.

The learned senior counsel appearing for the respondent No.3 submits that now by way of amendment, the present petitioners are trying to create controversy with defendant No.4 and virtually a counter claim against the defendant No.4 in suit filed by the respondent No.1 and 2 plaintiffs. The Apex Court in its recent judgment passed in case of ***Damodhar Narayan Sawale (d) through LRs. v. Tejrao Bajirao***

Mhaske, 2023 SCC Online SC 566 has held that the defendant could not be permitted to raise counter-claim against the co-defendant because by virtue of Order VIII Rule 6A, it could be raised by defendant against the claim of the plaintiff. Relevant portion of the judgment is reproduced below:

> Thus, a careful scanning of the impugned judgment would reveal that virtually, the High Court considered the validity of the sale deed dated 04.07.1978 executed by the second defendant in favour of the first defendant under the provisions of the Fragmentation Act without precisely framing an issue precisely on the same and then, decided the validity of the sale deed dated 21.04.1979 executed by the second defendant in favour of the plaintiff. We have already taken note of the decision of this Court in ***Rohit Singh and ors. v. State of Bihar, (2006) 12 SCC 734*** wherein it is observed that a defendant could not be permitted to raise counter-claim against co-defendant because by virtue of Order VIII Rule 6A, CPC it could be raised by a defendant against the claim of the plaintiff. Be that as it may, in the instant case, no such counter-claim, which can be treated as a plaint in terms of the said provision and thereby, enabling the court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim, was filed by the second defendant. That apart, indisputably, the second defendant did not dispute the execution of the registered sale deed dated 04.07.1978 by him in favour of the first defendant and in his written statement the second defendant had only stated that according to the provisions of the Fragmentation Act the plaintiff was not entitled to any relief. When that be so, legally how can the High Court hold the sale deed dated 04.07.1978 executed by the second defendant in favour of the first defendant, void under the provisions of the Fragmentation Act without precisely framing an issue and then, based on it, going on to consider the validity of Ext. 128 sale deed dated 21.04.1979 executed by the second defendant in favour of the plaintiff, even-after noting the finding of the First Appellate Court that as relates the sale of one acre of land under Ext.128 sale deed the second defendant did not have any grievance and then, observing, in tune with the same, that the second defendant did not dispute that he sold one acre of land to the plaintiff as per Ext.128 sale deed for the

consideration of Rs. 3000/- and had shown readiness and willingness to deliver the possession of it to the plaintiff. To make matters worse, the High Court has failed to consider the crucial issue whether the plaintiff is entitled to possession of the suit land on the strength of the registered Ext.128 sale deed executed by the defendants.

The long and short of this long discussion is that for all the reasons mentioned above, the decision of the High Court on the validity of the sale transaction covered under the sale deed dated 04.07.1978 executed by the second defendant in favour of the first defendant, in terms of the provisions under the Fragmentation Act (when that question was not legally available to be considered in the subject suit) and the virtual declaration of the said sale as void, are absolutely unsustainable. It is the product of erroneous assumption of jurisdiction and also erroneous and perverse appreciation of evidence. It being the foundation for holding the registered sale deed dated 21.04.1979 (Ext.128) as void under Sub-section (1) of Section 9 of the Fragmentation Act, it is unsustainable. The various reasons mentioned above would support our conclusion as above.

Now, what remains to be looked into is the grievance of the second respondent with respect to the balance extent of 2 acres and 20 guntas involved in the transaction. In the context of the contentions raised by the second defendant viz., the first respondent in this appeal, what is relevant and crucial is not only the factum of registration of Ext.128 and its execution by the second defendant but also the admission of execution of sale deed dated 04.07.1978 by him in favour of the first defendant. True that the second defendant contended that it was executed as a collateral security for a money lending transaction. We have noted earlier, by referring to the decision in Rohit Singh's case (supra) that a defendant could not be permitted to raise counter-claim against a codefendant as by virtue of Order VIII Rule 6A, CPC, it could be raised by a defendant only against the claim of the plaintiff. Evidently, the High Court did not frame the validity of the sale deed dated 04.07.1978 executed by the second defendant in favour of the first defendant as a question of law though the trial Court also arrived at a finding on this issue

without framing it as a specific issue. The indisputable fact is that the said sale deed dated 04.07.1978 was admittedly, executed and registered about nine (9) months prior to the execution and registration of Ext. 128 sale deed. Ext. 128 would reveal that it involves the entire extent of 3 acres 20 guntas in Survey No. 20/2 of Gangalgaon village and the first defendant is also an executant of the same. The observation and finding of the High Court in the first limb of paragraph 24 of the impugned judgment that the second defendant did not dispute the sale of one acre of land to the plaintiff as per Ext. 128 for the consideration of Rs. 3000/- would indicate that the balance amount of Rs. 7000/- was the consideration for the balance extent of land covered under Ext. 128. Since the validity of the sale deed dated 04.07.1978 was not an issue/question that could be raised by the second defendant against the first defendant in the subject suit and was rightly, not raised as an issue, the first defendant not only did not dispute the sale of such extent to the plaintiff but admitted the joint execution of Ext. 128 and receipt of sale consideration, as incorporated in Ext. 128 and since the second defendant got no case that he had assailed the validity of the sale deed dated 04.07.1978 either before any competent authority or competent Civil Court this question needs no further elaboration. An inter-se dispute on the validity of the sale deed dated 04.07.1978, if at all between the second and first defendants, could not have been considered in the subject-suit, for the reasons already mentioned as it would amount to adjudication of right or a claim, by way of counter-claim by one defendant against his co-defendant. Finding on its voidness under the Fragmentation Act was already held as unsustainable by us."

Thus, the learned Senior counsel for the respondent has rightly submitted that by way of amendment, now the defendant No.1 to 3 have submitted a counter claim against the defendant No.4 by disputing the execution of sale deed and receipt of sale consideration. Such amendment cannot be permitted to be brought on record. The document filed alongwith an application under Order 8 Rule 1 of CPC to support the proposed amendment. Since the proposed amendment have been declined, therefore, said documents are also not liable to be taken on record.

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220. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11

Rejection of plaint – Non-disclosure of cause of action – Failure to demonstrate clear right to claim relief – Mere possibility that a right may be infringed without any legitimate basis for that right would not disclose a cause of action – Plaint can be rejected.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11

वादपत्र नामंजूर किया जाना – वाद कारण प्रकट न किया जाना – अनुतोष प्राप्त करने के स्पष्ट अधिकार को प्रदर्शित करने में विफलता – बिना किसी विधिसंगत आधार के केवल इस बात की संभावना कि किसी अधिकार का उल्लंघन किया जा सकता है, वाद कारण को प्रकट नहीं करेगा – वादपत्र नामंजूर किया जा सकता है।

Pradeep Singh Sengar and ors. v. Dilip Budhani and ors.

Order dated 09.02.2023 passed by High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 200 of 2021, reported in 2023 (3) MPLJ 613

Relevant extracts from the order:

A perusal of the pleadings of the plaintiff clearly reveals that on one hand it is the case of the plaintiff that the defendants have no right, title or interest in the disputed land, and on the other hand plaintiff itself has filed a suit for execution of the sale deed against the defendants in respect of the same land. In such circumstances, testing the facts of the case on the anvil of the aforesaid decisions of the supreme court in the cases of ***Dahiben v. Arvindbhai Kalyanji Bhanushali (GAJRA) dead through LRs. and ors., (2020) 7 SCC 366*** and ***Colonel Shrawan Kumar Jaipuriyar alias Sarwan Kumar Jaipuriyar v. Krishna Nandan Singh and anr, (2020) 16 SCC 594***, this court is of the considered opinion that it is a case of clever drafting only, as the plaintiff has also failed to demonstrate its right to claim the relief as sought in the plaint, as has been aptly held by the Supreme Court in the case of ***Colonel Shrawan Kumar Jaipuriyar*** (supra), that a mere contemplation or possibility that a right may be infringed without any legitimate basis for that right, would not be sufficient to hold that the plaint discloses a cause of action.

So far as the decision in the case of ***P.V. Guru Raj Reddy represented by GPA Laxmi Narayan Reddy and anr. v. P. Neeradha Reddy, (2015) 8 SCC 331*** is concerned, the relevant paras of the same reads as under:-

Original Suits Nos. 71 and 72 of 2002 were filed by the plaintiffs (the appellants herein) for declaration of title and possession. The case of the plaintiffs in both the suits was more or less similar. According to the plaintiffs as they were living abroad they had reposed trust and faith in Defendants 1 and 2 who are their close relatives (sister and brother-in-law of Plaintiff 1) to purchase immovable property in Hyderabad in the name of Plaintiff 2. According to the plaintiffs, they had made funds available to Defendants 1 and 2 for the said purpose and had entirely relied on them.

The specific case of the plaintiffs in Original Suit No. 71 of 2002 is to the effect that the property belonging to one Professor N.S. Iyengar was identified for purchase and an agreement was drawn up with the said person. According to the plaintiffs, they were informed by the defendants that Professor Iyengar has resiled from the agreement which required filing a suit for specific performance. According to the plaintiffs when they visited Hyderabad in November/December 1999, they could notice some construction activity in the plot belonging to Professor Iyengar. It is at that point of time that they had made enquiries and could come to know that though the suit for specific performance filed by the defendants was decreed, the sale deed was executed in the name of Defendant 4 who is the brother-in-law of Defendant 1. It is thereafter that the suit being Original Suit No. 71 of 2002 was filed.

x x x

Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the

suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

x x x

Both the suits were filed in July 2002 which is well within three years of the date of knowledge, as claimed by the plaintiffs, of the fact that the property had not been transferred in the name of Plaintiff 2 by Defendants 1 and 2. The aforesaid averments made in the plaint will have to be accepted as correct for the purposes of consideration of the application under Order 7 Rule 11 filed by Defendants 1 and 2. If that be so, the averments in the plaint would not disclose that either of the suits is barred by limitation so as to justify rejection of the plaint under Order 7 Rule 11 CPC.

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***221. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11**

(i) Rejection of plaint – Objection on limitation – Despite the fact that objection of limitation is mixed question of fact and law, if Court comes to the conclusion that on averment of plaint, suit is barred by limitation, plaint can be rejected.

(ii) Application to reject plaint – Can be dismissed if it is not drafted in clear and simple manner by limiting it to averments made in plaint only – Lengthier the application, there is a likelihood of being dismissed as it leads to arena of disputed question of facts.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11

(i) वादपत्र नामंजूर किया जाना – परिसीमा पर आक्षेप – इस तथ्य के बावजूद कि परिसीमा का आक्षेप विधि एवं तथ्य का मिश्रित प्रश्न है यदि न्यायालय इस निष्कर्ष पर पहुंचता है कि वादपत्र के प्रकथन पर वाद परिसीमा द्वारा वर्जित है, वादपत्र नामंजूर किया जा सकता है।

(ii) वादपत्र नामंजूर करने हेतु आवेदन – यदि आवेदन, वादपत्र में किए हुए प्रकथनों तक सीमित रहते हुए स्पष्ट तथा सहज रीति से लिखित न हों, तो खारिज किया जा सकता है – आवेदन के विस्तृत होने पर तथ्यों के विवादित प्रश्न उद्भूत हो जाने से इसके खारिज होने की संभावना होगी।

Sunil v. Bashir Khan and ors.

Order dated 01.04.2023 passed by High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 478 of 2022, reported in 2023 (3) MPLJ 682

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222. CIVIL PROCEDURE CODE, 1908 – Order 16 Rules 2 and 3

(i) Summoning of relevant witness – Delay – In every case, an application to summon a relevant witness cannot be rejected on the ground of delay – It depends on facts and circumstances of case as well as the necessity and relevance of witness sought to be introduced.

(ii) Procedural law – Object – It is the brain child of law makers in order to advance the cause of justice and therefore, all the rules of procedure are made with the object to attain justice.

सिविल प्रक्रिया संहिता, 1908 – आदेश 16 नियम 2 एवं 3

(i) सुसंगत साक्षी को समन – विलंब – हर मामले में किसी सुसंगत साक्षी को समन करने के आवेदन को विलंब के आधार पर खारिज नहीं किया जा सकता – यह मामले के तथ्य और परिस्थितियों के साथ–साथ पेश किए जाने वाले साक्षी की आवश्यकता और सुसंगतता पर निर्भर करता है।

(ii) प्रक्रियात्मक विधि – उद्देश्य – यह न्याय के उद्देश्य को आगे बढ़ाने के लिए विधि निर्माताओं के दिमाग की उपज है और इसलिए प्रक्रिया के सभी नियम न्याय के उद्देश्य की पूर्ति के लिये बने हैं।

Hasananand v. Vinod & anr.

Order dated 27.02.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 6463 of 2022, reported in ILR 2023 MP 1391

Relevant extracts from the order:

This is trite that procedural law is brain child of law makers in order to advance the cause of justice. This is trite that all the rules of procedure are the handmaid of justice. The Apex Court in ***Sangram Singh v. Election Tribunal, Kotah, AIR 1955 SC 425*** opined that a code of procedure must be regarded as such. It is "procedure", something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against. The Apex Court in

Sushil Kumar Sen v. State of Bihar, (1975) 1 SCC 774 opined that the mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudenceprocessual, as much as substantive. In ***State of Punjab v. Shamlal Murari, (1976) 1 SCC 719*** the Apex Court held that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. In ***Ghanshyam Dass v. Dominion of India, (1984) 3 SCC 46*** the Apex Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle. In ***Kailash v. Nanhku, (2005) 4 SCC 480*** the Apex Court held that the provisions of Civil Procedure Code or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice. (See: ***Dataram Singh and ors. v. Brindawan Singh and ors., 2014 (3) MPLJ 612***).

Thus, as a straight jacket formula, it cannot be said that in every case where there is a delay on the part of plaintiff to prefer an application under Order 16 Rule (1)(3) of C.P.C., the application must be thrown on the ground of delay. It depends on the facts and circumstances of the case as well as the necessity and relevance of the witnesses sought to be introduced / requisitioned.

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223. CIVIL PROCEDURE CODE, 1908 – Order 21 Rules 97 to 101
Execution – Decree of possession – Judgment debtor claimed that the suit land is not in his possession – Suit land was allegedly in possession of an encroacher/third party – It is the duty of executing court to issue warrant of possession for effecting delivery of the suit land to the decree holder – In the event resistance is offered to the execution of the decree then, the same is to be decided as per Order 21 Rules 97 to 101 of the Code – Order dismissing execution application on the ground that encroachers were not party to the suit and as decree was unexecutable, was set aside.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 97 से 101
निष्पादन – आधिपत्य की आज्ञप्ति – निर्णीत ऋणी ने दावा किया कि दावा संपत्ति उसके आधिपत्य में नहीं है – दावा संपत्ति किसी अतिक्रमणकारी/तृतीय पक्ष के आधिपत्य में होना आक्षेपित – निष्पादन न्यायालय का यह कर्तव्य है कि वह आधिपत्य का वॉरंट जारी कर दावा संपत्ति का आधिपत्य आज्ञप्तिधारी को प्रदान कराए – यदि आज्ञप्ति के निष्पादन में बाधा उत्पन्न की जाती है तो उसका निराकरण संहिता के आदेश 21 नियम 97 से 101 के अनुसार किया जाना चाहिए – निष्पादन आवेदन को इस आधार पर निरस्त करने का आदेश कि अतिक्रमणकारी को पक्षकार न बनाए जाने से आज्ञप्ति निष्पादन योग्य नहीं, अपास्त किया गया।

Smt. Ved Kumari v. Municipal Corporation of Delhi through its commissioner

Judgment dated 24.08.2023 passed by the Supreme Court in Civil Appeal No. 5409 of 2023, reported in AIR 2023 SC 4155

Relevant extracts from the judgment:

In ***Sameer Singh and anr. v. Abdul Rab and ors., (2015) 1 SCC 379***, this Court again observed that the Executing Court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties including the claim of a stranger who apprehends dispossession from the immovable property. This is provided to avoid multiplicity of proceedings and if a court declines to adjudicate by stating that it lacks jurisdiction, that by itself would occasion failure on part of the Executing Court to exercise the jurisdiction vested in it.

In most recent judgment in ***Jini Dhanrajgir and anr. v. Shibu Mathew and anr., (2023) SCC Online SC 643***, the legal position has been reiterated that Rules 97 to 103 of Order 21 of the CPC provide the sole remedy both to the parties to a suit as well as to a stranger to the decree put to execution.

In view of the settled legal position, as noted (supra), it was the duty of the Executing Court to issue warrant of possession for effecting physical delivery of the suit land to the decree-holder in terms of suit schedule property and if any resistance is offered by any stranger to the decree, the same be adjudicated upon in accordance with Rules 97 to 101 of Order 21 of the CPC. The Executing Court could not have dismissed the execution petition by treating the decree to be inexecutable merely on the basis that the decree holder has lost possession to a third

party/encroacher. If this is allowed to happen, every judgment-debtor who is in possession of the immoveable property till the decree is passed, shall hand over possession to a third party to defeat the decree-holder's right and entitlement to enjoy the fruits of litigation and this may continue indefinitely and no decree for immovable property can be executed.

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224. CIVIL PROCEDURE CODE, 1908 – Order 39 Rule 2-A

Disobedience of order of temporary injunction – Injunction granted only in respect of alienation of suit property and to restrain respondent from creating third party right – Agreement of license for 5 years was executed by defendant after order of injunction – As order for maintaining *status quo* was not specific, it cannot be extended to the other things beyond prayer made in original application – No disobedience by defendant as suit property is not alienated.

सिविल प्रक्रिया संहिता, 1908 – आदेश 39 नियम 2–क

अस्थायी निषेधाज्ञा के आदेश की अवज्ञा – निषेधाज्ञा केवल विवादित संपत्ति के हस्तांतरण के संबंध में और प्रतिवादी को तीसरे पक्ष के हक में अधिकार सृजित करने से रोकने के लिए दी गई – निषेधाज्ञा के आदेश के बाद प्रतिवादी द्वारा 5 साल के लिए लाइसेंस का करार निष्पादित किया गया – यथास्थिति बनाए रखने का आदेश विशिष्ट नहीं था, इसे मूल आवेदन में की गई प्रार्थना से परे अन्य सहायता तक विस्तारित नहीं किया जा सकता – प्रतिवादी द्वारा कोई अवज्ञा नहीं की गई क्योंकि विवादित संम्पत्ति का अंतरण नहीं किया गया।

Vikram Shrivastava v. Rampur Finance Corporation Pvt. Ltd. and ors.

Order dated 24.04.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Civil Case No. 354 of 2021, reported in ILR 2023 MP 1501

Relevant extracts from the order:

Perusal of IA No.16313/2016 and 16316/2016 filed in FA No.174/2013 shows that the appellant/applicant has made prayer of temporary injunction only in respect of alienation of the suit property and has prayed injunction restraining the respondent from creating third party right.

Upon consideration of the aforesaid two IAs, this Court vide order dated 13.12.2016 had in presence of both the parties, ordered that "However, up to next date of hearing it is ordered that the respondent shall maintain status-quo in regard to 1/6th share of the suit property up to the extent of appellant."

With support of copy of agreement dated 16.01.2021, it has been stated in paragraph 22 of the application under Order 39 Rule 2-A CPC that the respondents have alienated the property in question but apparently the agreement dated 16.01.2021 is nothing but only an agreement of license for five years w.e.f. 20.01.2021, therefore, it cannot be said that the respondents have alienated the suit property. However, except this agreement (Annexure P/9), no document has been placed on record to show that the property has been alienated by the respondent(s).

So far as the argument of learned senior counsel, to the effect that in the light of order of status-quo the respondents were bound not to raise any construction and even to execute the agreement of licence, is concerned, this Court is of the considered opinion that when the order of status-quo is not specific, then it should be read and construed only in relation to the prayer made by way of application(s) for temporary injunction and the scope of order of status-quo connot be expanded to the other things beyond the prayer made in the aforesaid two applications under Order 39 Rule 1 and 2 CPC.

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225. CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 22

(i) Appeal against original decree – Remedies available to respondent – Right to file cross-objection and cross - appeal exist – Respondent may also opt to fully support the original decree.

(ii) Cross-objection – Duty – Appellate court must consider cross-objection in full while deciding appeal, as it has all the trapping of regular appeal.

सिविल प्रक्रिया संहिता, 1908 – आदेश 41 नियम 22

(i) मूल डिक्री के विरूद्ध अपील – प्रत्यर्थी को उपलब्ध उपचार – प्रत्याक्षेप एवं प्रति-अपील के अधिकार का होना – प्रत्यर्थी मूल डिक्री के पूर्ण समर्थन के विकल्प को भी चुन सकता है।

(ii) प्रत्याक्षेप – कर्तव्य – अपीलीय न्यायालय को अपील का निराकरण करते समय प्रत्याक्षेप को पूर्ण रूप से विचार में अवश्य लेना चाहिए, क्योंकि उसमें नियमित अपील के सभी लक्षण होते हैं।

Dheeraj Singh v. Greater Noida Industrial Development Authority and ors.

Judgment dated 04.07.2023 passed by the Supreme Court in Criminal Appeal No. 4172 of 2023, reported in AIR 2023 SC 3110

Relevant extracts from the judgment:

In cases where the decree passed by the court of first instance is in favor of the respondent in whole, in such circumstance, no remedy exists in favour of the respondent to appeal such decree, since no right to appeal can be vested onto a party, which is successful.

However, in cases where the decree given by the court of first instance, is partly in favour of the respondent, but is also partly against the respondent, two remedies within Order 41 Rule 22 remain with the respondent, which are (i) To file their cross-objections and, (ii) To support the decree in whole. A third remedy in law also exists, which is the right to file a cross appeal.

In cases where the opposing party files a first appeal against part or whole of the original decree, and the respondent in the said first appeal, due to part or whole of the decree being in their favour, abstains from filing an appeal at the first instance, in such cases, to ensure that the respondent is also given a fair chance to be heard, he is given the right to file his cross-objections within the appeal already so instituted by the other party, against not only the contentions raised by the other party, but also against part or whole of the decree passed by the Court of first instance.

In a similar circumstance, where the other party in the first instance has preferred an appeal, apart from the remedy of cross-objections, the respondent can also file a cross appeal within the limitation period so prescribed, which in essence is a separate appeal in itself, challenging part or whole of the original decree, independent of the appeal filed by the other party. The respondent also has the right to fully support the original decree passed by the lower Court in full.

It must be noted that while cross-objections, unlike a regular appeal, are filed within an already existing appeal, however, as per Order 41 Rule 22 of the CPC, cross-objections have all the trappings of a regular appeal, and therefore, must be considered in full by the court adjudicating upon the same.

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226. CIVIL PROCEDURE CODE, 1908 – Order 41 Rules 23 to 29

(i) Non-joinder of necessary party at appellate stage – Defendants raised the plea of non-joinder of necessary party in written statement – Specific issue was framed by trial Court – Ample opportunity was available to the plaintiff at trial stage to rectify the defect, but failed to implead the necessary party – Seeking impleadment at appellate stage not permissible.

(ii) Remand – Power and procedure – Suit was decided by trial Court on the basis of finding recorded on all issues – Appellate Court allowed plaintiffs' application filed under Order 1 Rule 10 and Order 6 Rule 17 CPC and remanded the matter to the trial Court for deciding afresh – Appellate Court ought not to remand the matter only upon allowing the applications, Court is bound to consider the entire matter and to adjudicate the same upon merits including the applications filed.

सिविल प्रक्रिया संहिता, 1908 – आदेश 41 नियम 23 से 29

(i) अपीलीय स्तर पर आवश्यक पक्षकार का असंयोजन – प्रतिवादीगण ने लिखित कथन में आवश्यक पक्षकार के असंयोजन की आपत्ति उठाई – विचारण न्यायालय द्वारा विनिर्दिष्ट वाद प्रश्न निर्मित किया गया – त्रुटि सुधार के लिए विचारण के प्रक्रम पर वादी के पास पर्याप्त अवसर उपलब्ध था, किन्तु आवश्यक पक्षकार को संयोजित करने में असफल रहा – अपील प्रक्रम पर पक्षकार संयोजित किये जाने की माँग करना अनुमत नहीं।

(ii) प्रतिप्रेषण – शक्ति और प्रक्रिया – सभी वाद प्रश्नों पर अंकित किये गए निष्कर्षो के आधार पर विचारण न्यायालय द्वारा वाद निराकृत किया गया – अपीलीय न्यायालय द्वारा वादी की ओर से प्रस्तुत आवेदन अंतर्गत आदेश 1 नियम 10 और आदेश 6 नियम 17 सीपीसी को स्वीकार कर प्रकरण विचारण न्यायालय को नए सिरे से निर्णय करने हेतु प्रतिप्रेषित किया – अपीलीय न्यायालय को केवल आवेदन पत्रों को स्वीकार कर मामले को प्रतिप्रेषित नहीं करना चाहिये था, न्यायालय सम्पूर्ण मामले पर विचार करने और प्रस्तुत आवेदन पत्रों सहित उसे गुण–दोष के आधार पर निराकृत करने हेतु बाध्य है।

Sureshchandra and ors. v. Girirajsingh and ors.

Judgment dated 04.04.2022 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Appeal No. 2576 of 2021, reported in ILR 2023 MP 1405

Relevant extracts from the judgment:

Before the trial Court a specific objection had been raised by defendants 1 to 3 as regards the suit being bad for non-joinder of necessary parties. On such a plea issue had specifically been framed by the trial Court in that regard. The defect as regards the suit being bad for non-joinder of necessary parties had been brought to the notice of the plaintiffs by defendants 1 to 3 at the very outset and plaintiffs had ample opportunities of remedying the said defect. They however failed to implead the necessary parties and persisted in not joining them despite pleadings of defendants 1 to 3. The plaintiffs thus took the risk of going ahead with their suit despite the objections having been taken as regards non-joinder of necessary parties hence it was too late for them to have attempted to rectify the said mistake at the appellate stage. The same was impermissible but has illegally been permitted by the appellate court.

The fact that such a course was not permissible to plaintiffs also finds support from the decision of the Hon'ble Apex Court in ***Kanakarathanammal v. V.S. Loganatha Mudaliar and anr., AIR 1965 SC 271*** in which it was held in paragraph No.15 as under :-

> "15. It is unfortunate that the appellant's claim has to be rejected on the ground that she failed to implead her two brothers to her suit, though on the merits we have found that the property claimed by her in her present suit belonged to her mother and she is one of the three heirs on whom the said property devolves by succession under Section 12 of the Act. That, in fact, is the conclusion which the trial Court had reached and yet no action was taken by the appellant to bring the necessary parties on the record. It is true that under Order 1 Rule 9 of the Code of Civil Procedure no suit shall be defeated by reason of the mis-joinder or non-joinder of the parties, but there can be no doubt that if the parties who are not joined are not only proper but also necessary parties to it, the infirmity in the suit is bound to

be fatal. Even in such cases, the Court can under Order 1 Rule 10, sub-rule 2 direct the necessary parties to be joined, but all this can and should be done at the stage of trial and that too without prejudice to the said parties' plea of limitation. Once it is held that the appellant's two brothers are coheirs with her in respect of the properties left intestate by their mother, the present suit filed by the appellant partakes of the character of a suit for partition and in such a suit clearly the appellant alone would not be entitled to claim any relief against the respondents. The estate can be represented only when all the three heirs are before the Court. If the appellant persisted in proceedings with the suit on the basis that she was exclusively entitled to the suit property, she took the risk and it is now too late to allow her to rectify the mistake. In ***Naba Kumar Hazra v. Radheshyam Mahish, AIR 1931 PC 229*** the Privy Council had to deal with a similar situation. In the suit from which that appeal arose, the plaintiff had failed to implead co-mortgagors and persisted in not joining them despite the pleas taken by the defendants that the co-mortgagors were necessary parties and in the end, it was urged on his behalf that the said co-mortgagors should be allowed to be impleaded before the Privy Council. In support of this plea, reliance was placed on the provisions of Order 1 rule 9 of the Code. In rejecting the said prayer, Sir George Lowndes who spoke for the Board observed that "they are unable to hold that the said Rule has any application to an appeal before the Board in a case where the defect has been brought to the notice of the party concerned from the very outset of the proceedings and he has had ample opportunity of remedying it in India."

Order 1 Rule 9 of the CPC stipulates that no suit shall be defeated by reason of mis-joinder or non-joinder of parties but the proviso states that the said Rule shall not apply to non-joinder of a necessary party. Order 1 Rule 13 states that all objections as regards non-joinder of parties shall be taken at the earliest possible opportunity. In the present case the defendants 1 to 3 had taken such an objection in their written statement itself. The plaintiffs thus were aware of the risk of the suit being defeated for non-joinder of necessary parties yet went ahead with the trial

and at the appellate stage have attempted to rectify the said defect. Their application for impleadment of necessary parties has been allowed only on the ground that they appear to be such necessary and proper parties. However, the fact whether such impleadment can be considered at the appellate stage has not at all been taken into consideration.

The lower appellate Court has not even entered into the merits of the case and has remanded the matter only upon allowing the application under Order 1 Rule 10 (2) and Order 6 Rule 17 of the CPC filed by plaintiff No.1. The said course in my opinion was wholly impermissible and illegal. As the matter had been decided on all issues on merits by the trial Court, the lower appellate Court was bound to consider the entire matter on merits and to have adjudicated the same upon merits including the application filed by plaintiff No.1.

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227. CONTEMPT OF COURTS ACT, 1971 – Section 2 (b)

(i) Civil contempt – "Undertaking given to the court" and "consent order" or "order passed on compromise petition" – Distinction explained – Held, failure of a party to comply with terms of compromise does not constitute contempt – However, wilful breach of an assurance in the form of an undertaking given by advocate on behalf of his client amounts to "civil contempt".

(ii) Contempt of court – Undertaking given by appellant that disputed property shall not be transferred during the pendency of suit – Despite the undertaking, disputed property was sold – Act falls within the ambit of 'wilful disobedience' – Meaning explained.

(iii) Civil contempt – Necessary parties – Beneficiaries of any contumacious transaction have no right to be heard on the ground that they are bonafide purchasers for value – Contempt is between the court and the contemnor – Third party cannot claim himself to be a necessary party.

न्यायालय अवमानना अधिनियम, 1971 – धारा 2(ख)

(i) सिविल अवमानना – ''न्यायालय को वचन देना'' एवं सहमति आदेश अथवा राजीनामा आवेदन पर आदेश – अंतर समझाया गया – अभिनिर्धारित, पक्षकार की समझौते की शर्तों का अनुपालन करने में

विफलता अवमानना गठित नहीं करती – परन्तु पक्षकार की ओर से अधिवक्ता द्वारा वचन के रूप में दिये गये आश्वासन की जानबूझकर की गई अवहेलना को ''सिविल अवमानना'' माना जाएगा।

(ii) न्यायालय की अवमानना – अपीलार्थी ने न्यायालय में यह वचन दिया कि वह विवादित संपत्ति वाद लंबन के दौरान अंतरित नहीं करेगा – ऐसे वचन के उपरांत भी विवादित संपत्ति का विक्रय कर दिया गया – आचरण 'जानबूझकर की गई अवज्ञा' की श्रेणी में आता है – अर्थ समझाया गया।

(iii) सिविल अवमानना – आवश्यक पक्षकार – किसी भी अवमाननापूर्ण संव्यवहार के हिताधिकारी को इस आधार पर सुनवाई का अधिकार नहीं है कि वह सद्भावी क्रेता है – अवमानना की कार्यवाही न्यायालय एवं अवमाननाकारी के मध्य की है – तृतीय पक्ष स्वयं के आवश्यक पक्षकार होने का दावा नहीं कर सकता।

Balwantbhai Somabhai Bhandari v. Hiralal Somabhai Contractor (deceased) Rep. by LRs.

Judgment dated 06.09.2023 passed by the Supreme Court in Civil Appeal No. 4955 of 2022, reported in AIR 2023 SC 4390

Relevant extracts from the judgment:

We may summarise our final conclusion as under:

(i) We hold that an assurance in the form of an undertaking given by a counsel / advocate on behalf of his client to the court; the wilful breach or disobedience of the same would amount to "civil contempt" as defined under Section 2(b) of the Act 1971.

(ii) There exists a distinction between an undertaking given to a party to the lis and the undertaking given to a court. The undertaking given to a court attracts the provisions of the Act 1971 whereas an undertaking given to a party to the lis by way of an agreement of settlement or otherwise would not attract the provisions of the Act 1971. In the facts of the present case, we hold that the undertaking was given to the High Court and the breach or disobedience would definitely attract the provisions of the Act 1971.

(iii) Although the transfer of the suit property pendente lite may not be termed as void ab initio yet when the court is looking into such transfers in contempt proceedings the court can definitely declare such transactions to be void in order to maintain the majesty of law. Apart from punishing the contemnor, for his

contumacious conduct, the majesty of law may demand that appropriate directions be issued by the court so that any advantage secured as a result of such contumacious conduct is completely nullified. This may include issue of directions either for reversal of the transactions by declaring such transactions to be void or passing appropriate directions to the concerned authorities to ensure that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or any one claiming under him.

(iv) The beneficiaries of any contumacious transaction have no right or locus to be heard in the contempt proceedings on the ground that they are bona fide purchasers of the property for value without notice and therefore, are necessary parties. Contempt is between the court and the contemnor and no third party can involve itself into the same.

(v) The apology tendered should not be accepted as a matter of course and the court is not bound to accept the same. The apology may be unconditional, unqualified and bona fide, still if the conduct is serious, which has caused damage to the dignity of the institution, the same should not be accepted. There ought not to be a tendency by courts, to show compassion when disobedience of an undertaking or an order is with impunity and with total consciousness.

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228. CRIMINAL PROCEDURE CODE, 1973 – Section 154
INDIAN PENAL CODE, 1860 – Section 302
EVIDENCE ACT, 1872 – Section 3

(i) Murder – Ante-timing of FIR – Interpolation in the time of lodging of FIR – Chick FIR sent with 4 days delay to the Court – Such infirmities cast doubt on the authenticity of FIR.

(ii) Murder – Proof – Accused persons on being chased allegedly run away from the spot leaving behind their blanket and cycle – Said articles recovered by I.O. but not produced in Court and their belonging not proved – Conduct and behaviour of near relatives who had allegedly seen the incident is highly unnatural – Eyewitnesses who tried to save the deceased not examined – Presence of accused at place of occurrence becomes doubtful – Prosecution failed to prove case beyond doubt – Conviction set aside.

दण्ड प्रक्रिया संहिता, 1973 – धारा 154
भारतीय दण्ड संहिता, 1860 – धारा 302
साक्ष्य अधिनियम, 1872 – धारा 3

(i) हत्या – समय पूर्व एफ.आई.आर. – एफ.आई.आर. के दायर होने के समय में छेड़छाड़ – चिक एफ.आई.आर. 4 दिन के विलंब से न्यायालय को प्रेषित की गई – ऐसी कमियां एफ.आई.आर. की प्रामाणिकता पर संदेह उत्पन्न करती हैं।

(ii) हत्या – प्रमाण – अभिकथन कि पीछा करने पर अभियुक्तगण अपना कम्बल और साईकिल छोड़कर मौके से भाग गए – अन्वेषण अधिकारी द्वारा उक्त सामग्री जप्त की गई किंतु न्यायालय में प्रस्तुत नहीं एवं अभियुक्तगण की होना प्रमाणित नहीं – निकट संबंधी, जिनके द्वारा घटना देखा जाना अभिकथित, का आचरण एवं व्यवहार अत्यधिक अस्वाभाविक – मृतक को बचाने का प्रयास करने वाले प्रत्यक्षदर्शी साक्षी का परीक्षण नहीं – घटनास्थल पर अभियुक्त की उपस्थिति संदेहास्पद हो जाती है – अभियोजन संदेह से परे मामले को प्रमाणित करने में असफल – दोषसिद्धि अपास्त की गई।

Mohd. Muslim v. State of Uttar Pradesh (Now Uttarakhand)
Judgment dated 15.06.2023 passed by the Supreme Court in Criminal Appeal No. 1089 of 2011, reported in AIR 2023 SC 3086

Relevant extracts from the judgment:

The FIR (Exh. Ka-8) dated 04.08.1995 is stated to have been lodged at 9:00 AM. It is evident from naked eye that '1' has been converted into '9' and '5' has been rounded off to make '0' whereas 'PM' has been converted into 'AM'. In other words, 1:50 PM has been changed to 9:00 AM. This is abundantly clear from the FIR and there cannot be two opinions on that.

The chick FIR report was sent to the Court on 08.08.1995 with the delay of about 4 days. It is worth mentioning that FIR in a criminal case and particularly in a murder case is a vital and a valuable piece of evidence especially for the purpose of appreciating the evidence adduced at the trial. It is for this reason that the infirmities, if any, in the FIR casts a doubt on its authenticity. The FIR in such cases may also lose its evidentiary value.

It has come on record that the accused appellants on being chased had run away towards the jungle leaving behind their 'loi' (blanket) and cycle. Both these items were recovered by the Investigating Officer and were marked as Exh. Ka-10

and Exh. Ka-11 respectively. None of these two items were produced before the Court and were got identified by the accused appellants. There is no evidence on record which may establish that in fact the said loi and the cycle belonged to the accused appellants. This gives strength to the defence of the accused appellants that they have been unnecessarily roped into the offence and that they were not even present at the site. The presence of the accused appellants could have been easily proved by the prosecution, had the above two items recovered from the spot were produced and established to be that of the accused appellants. There is no reason or explanation for not producing the above things in Court or for withholding the same.

The son and the nephew of the deceased Altaf Ahmed were following him on their own cycle but the defence has doubted their presence. The conduct and behaviour of both of them appear to be unnatural inasmuch as, had their father been assaulted in the manner alleged, they would have been the first person to intervene so as to save him, but there is no evidence to indicate that upon seeing the accused appellants assaulting deceased Altaf Hussain they had rushed to the spot which was hardly at some distance from them rather two other persons came on the spot and tried to save deceased Altaf Hussain upon hearing the alarm raised by them. The son and nephew of deceased Altaf Hussain did not even care to take him to the hospital though one of them went to lodge an FIR, the other did not even feel like staying with the deceased and instead went away to the village. Therefore, the conduct of these two persons amply supports the defence version that they may not be present at the place of event.

The other eye witness to the incident was Tahir, who came on the spot and tried to save deceased Altaf Hussain but he was not asked to come into the witness box and depose about the incident.

The totality of the facts and circumstances especially the unnatural behaviour and conduct of the son and nephew of the deceased Altaf Hussain, ante–timing of the FIR and that the 'loi' (blanket) and the cycle (Exh. Ka–10 and Exh. Ka–11) alleged to be that of the accused appellants left behind at the site of the incident were not produced before the Court, compels us to doubt the presence of the son and nephew of the deceased Altaf Hussain at the site. Thus, in the absence of any credible eye witness to the incident and the fact that the presence of the accused appellants at the place of incident is also not well established, we are constrained to accord benefit of doubt to both the accused appellants.

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229. CRIMINAL PROCEDURE CODE, 1973 – Sections 156 (3) and 190

(i) Information regarding commission of cognizable/non-cognizable offence furnished to police – No action taken – Four different independent remedies available to informant/victim to initiate prosecution. (*Shweta Bhadauria v. State of M.P. and ors., 2017 (1) MPLJ (Cri) 338* followed)

(ii) Application u/s 156 (3) CrPC – Maintainability – Can be directly filed before Magistrate without filing a criminal complaint u/s 190 CrPC.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 156 (3) एवं 190

(i) संज्ञेय/असंज्ञेय अपराध कारित किये जाने के संबंध में पुलिस को सूचना उपलब्ध कराई गई – कार्यवाही नहीं की गई – सूचनाकर्ता/पीड़ित के पास अभियोजन प्रारंभ करने के लिए चार भिन्न स्वतंत्र उपचार उपलब्ध हैं। (*श्वेता भदौरिया विरूद्ध स्टेट ऑफ मध्यप्रदेश एवं अन्य, 2017 (1) एमपीएलजे (क्रिमिनल) 338 अनुसरित*)

(ii) धारा 156 (3) सी.आर.पी.सी. के अंतर्गत आवेदन – पोषणीयता – धारा 190 सी.आर.पी.सी. के अंतर्गत परिवाद दायर किये बिना सीधे मजिस्ट्रेट के समक्ष प्रस्तुत किया जा सकता है।

Dilip Kumar Puri v. State of M.P. and anr.

Order dated 01.03.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Criminal Case No. 9922 of 2023, reported in ILR 2023 MP 1508

Relevant extracts from the order:

Following the aforesaid judgments passed by the Apex Court, similar view has been taken by the Division Bench of this Court in the case of ***Shweta Bhadoriya v. State of M.P. and ors., 2017 (1) MPLJ (Cri) 338***. It has been held that there are 4 different remedies available under Criminal Procedure Code for the informant/victim to initiate prosecution in respect of the cognizable/non-cognizable offence which is alleged in the first information furnished which fails to invoke response from the police. The relevant paras of the said judgment reads as under:-

> "The Code of Criminal Procedure provides various avenues before the informant/victim to initiate criminal prosecution. The first avenue is of lodging of FIR under Section 154(1)/154(3) which can be availed by the victim and as well as a stranger to the offence, provided the first information discloses commission of cognizable offence. The lodging

of FIR under Section 154 Cr.P.C. sets the investigative machinery into motion without prior permission of the Magistrate as is otherwise required for non-cognizable offences.

The second avenue available to the victim and as well as a stranger to the cognizable offence, is under section 156(3) by approaching the concerned Magistrate by informing commission of cognizable offence. The Magistrate can then conduct an enquiry himself or direct the concerned police station to register the offence alleged, thereby triggering the investigation.

The third avenue available is under Section 190 Cr.P.C empowering the competent Magistrate to take cognizance of any offence upon receipt of complaint of facts containing allegation constituting the offence, or upon a police report of such facts or upon information received from any person other than a police officer, or upon his own knowledge of commission of cognizable and as well as non-cognizable offence, except offences punishable under Chapter XX of IPC, for which procedure prescribed u/s 198 Cr.P.C. is to be adhered to.

The fourth avenue is under Section 200 Cr.P.C where a complaint, oral or in writing if made before the competent Magistrate leads to hearing by the Magistrate on the question of taking cognizance of offence or not and if it is found that complaint discloses commission of any offence punishable in law then the Magistrate issues summons to the proposed WA.247/2016 ***Shweta Bhadauria v. State of M.P. and Ors.*** accused on appearance of whom statements of rival parties are recorded and the Magistrate decides on the question of framing of charge or discharging the accused. If charges are framed then trial proceeds."

In view of the aforesaid, I do not find any merit in the contention of the counsel for the applicants that the application under Section 156(3) Cr.P.C. was not maintainable without filing a complaint before the Magistrate. All the remedies available to the complainant are independent remedies and, therefore, the application under Section 156(3) could have been directly filed before the Magistrate without filing criminal complaint under Section 190 Cr.P.C. There is no illegality in the impugned order, hence, both the petitions under Section 482 Cr.P.C. are dismissed.

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230. CRIMINAL PROCEDURE CODE, 1973 – Sections 173 and 272
Charge-sheet filed in English language – Prayer to supply it in language of the Court – No provision in the Code to file charge-sheet in the language of Court or furnishing translated copy of the charge-sheet – Where Code requires a particular act to be done in the language of the Court but is done in any other language – Such act will not vitiate the proceedings unless it has caused failure of justice – Accused duly represented by an advocate who understands English – No failure of justice caused – Request to supply translated copy of charge-sheet was disallowed.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 173 एवं 272
अभियोगपत्र अंग्रेजी भाषा में प्रस्तुत – उसे न्यायालय की भाषा (हिन्दी) में प्रदाय किये जाने की प्रार्थना की गई – संहिता में अभियोगपत्र को न्यायालय की भाषा में अथवा अभियोगपत्र के अनुवाद की प्रति प्रस्तुत करने का प्रावधान नहीं – जहां संहिता यह प्रावधानित करती है कि कोई कृत्य न्यायालय की भाषा में किया जाना चाहिए परन्तु वह किसी और भाषा में किया जाता है – ऐसा कृत्य कार्यवाही को दूषित नहीं करेगा जब तक कि उसके कारण न्याय की विफलता न हुई हो – अभियुक्त का प्रतिनिधित्व ऐसे अधिवक्ता द्वारा किया जा रहा था जो कि अंग्रेजी समझता था – न्याय की विफलता नहीं हुई – अभियोगपत्र के अनुवाद की प्रति देने का निवेदन अस्वीकार किया गया।

Central Bureau of Investigation v. Narottam Dhakad
Judgment dated 25.08.2023 passed by the Supreme Court in Criminal Appeal No. 2592 of 2023, reported in AIR 2023 SC 4066

Relevant extracts from the judgment:

In a given case, if something which CrPC specifically requires to be done in the language of the Court is done in any other language, per se, the proceedings will not be vitiated unless it is established that the omission has resulted in failure of justice. While deciding the issue of whether there is a failure of justice, the Court will have to consider whether the objection was raised at the earliest available opportunity.

Now, coming to the issue of the language of the final report/charge sheet under Section 173, there is no specific provision in Cr. P.C. which requires the investigating agency/officer to file it in the language of the Court determined in accordance with Section 272 of Cr.P.C. Even if such a requirement is read

into Section 173, per se, the proceedings will not be vitiated if the report is not in the language of the Court. The test of failure of justice will have to be applied in such a case as laid down in Section 465 of Cr.P.C.

Under Section 207, it is the obligation of the learned Judicial Magistrate to supply a copy of the report and other documents as provided in Section 207 to the accused. In a case tribal by the Court of Sessions, Section 208 provides for the learned Magistrate to provide copies of the statements and documents to the accused including the statements and confessions recorded under Section 164 of Cr.P.C. When a copy of the report and the documents are supplied to the accused under Section 207 and/or Section 208, an opportunity is available for the accused to contend that he does not understand the language in which the final report or the statements or documents are written. But he must raise this objection at the earliest. In such a case, if the accused is appearing in person and wants to defend himself without opting for legal aid, perhaps there may be a requirement of supplying a translated version of the charge sheet and documents or the relevant part thereof concerning the said accused to him. It is, however, subject to the accused satisfying the Court that he is unable to understand the language in which the charge sheet is submitted. When the accused is represented by an advocate who fully understands the language of the final report or charge sheet, there will not be any requirement of furnishing translations to the accused as the advocate can explain the contents of the charge sheet to the accused. If both the accused and his advocate are not conversant with the language in which the charge sheet has been filed, then the question of providing translation may arise. The reason is that the accused must get a fair opportunity to defend himself. He must know and understand the material against him in the charge sheet. That is the essence of Article 21 of the Constitution of India. With the availability of various software and Artificial Intelligence tools for making translations, providing translations will not be that difficult now. In the cases mentioned aforesaid, the Courts can always direct the prosecution to provide a translated version of the charge sheet. But we must hasten to add that a charge sheet filed within the period provided either under Section 167 of Cr.P.C. or any other relevant statute in a language other than the language of the Court or the language which the accused does not understand, is not illegal and no one can claim a default bail on that ground.

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231. CRIMINAL PROCEDURE CODE, 1973 – Section 319

Summoning of additional accused – When permissible? Evidence produced by prosecution was not beyond suspicion – No eye witness of occurrence – It is only stated by a witness that there was some dispute between appellant and deceased regarding money – Material produced was not even sufficient for conviction of accused against whom charge-sheet was filed – Held, power to be exercised sparingly and only in cases where strong and cogent evidence is led and not in casual and cavalier manner. (*Hardeep Singh v. State of Punjab, (2014) 3 SCC 92* followed)

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

अतिरिक्त अभियुक्त को समन – कब अनुमत? अभियोजन द्वारा प्रस्तुत साक्ष्य संदेह से परे नहीं थी – घटना का कोई चक्षुदर्शी साक्षी नहीं – एक साक्षी द्वारा केवल यह कथन किया गया कि अपीलार्थी और मृतक के बीच धन को लेकर कुछ विवाद था – प्रस्तुत सामग्री उन अभियुक्तों के खिलाफ भी दोषसिद्धि करने के लिए पर्याप्त नहीं थी जिनके विरूद्ध अभियोगपत्र प्रस्तुत किया गया था – अभिनिर्धारित, शक्ति का प्रयोग संयमित ढंग से और केवल उन मामलों में किया जाना चाहिए जहां मजबूत और अकाट्य साक्ष्य दी गई हो, न कि आकस्मिक और लापरवाहीपूर्ण तरीके से। (*हरदीप सिंह विरूद्ध स्टेट ऑफ पंजाब, (2014) 3 एससीसी 92 अनुसरित*)

Vikas Rathi v. State of Uttar Pradesh and anr.

Judgment dated 01.03.2023 passed by the Supreme Court in Criminal Appeal No. 644 of 2023, reported in (2023) 6 SCC 702

Relevant extracts from the judgment:

The Constitution Bench in ***Hardeep Singh and ors. v. State of Punjab and ors., (2014) 3 SCC 92*** opined as under:

> "Power u/s 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the magistrate or the sessions judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence laid before the court that such power should be exercised and not in a casual and cavalier manner.

> Thus we hold that though only a prima facie case is to be established from the evidence laid before the court, not necessarily tested on the anvil of cross-examination, it requires much strong evidence that near probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power u/s 319 CrPC".

In ***Sagar v. State of U.P. and anr., (2022) 6 SCC 389***, it is stated as under:

> "The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as notice above has to be applied is one which is more that prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction…."

If the evidence already on record produced by the prosecution is considered on the touchstone of law laid down by the Constitution Bench of this Court in ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92,*** it does not go beyond suspicion. There is no eye-witness to the occurrence. All what has been stated by PW-2 (brother of the deceased) is that the deceased who was working with the appellant as Manager though claimed to be a partner by the complainant, that there was some dispute regarding money between the appellant and the deceased. Rajesh Sharma whose statement was got recorded by police under Section 164 of the Cr.P.C. also retracted therefrom while appearing in court as PW-5. He stated that it was recorded by the police under threat of involvement in some false case. He also did not raise any finger towards the appellant. Rather he was the first person to visit the house of the deceased after the murder and informed the appellant to reach there. He was working as part time cook with the family of the deceased. Without any material brought on record, the widow of the deceased merely stated that she is sure that the appellant had committed murder of her husband as there was no other enemy. One of the brothers of the deceased who appeared as PW-1, who was not present at the spot, did not utter a single word against the appellant.

The aforesaid material was not sufficient if examined in the light of the law laid down by this Court for summoning of an additional accused in exercise of power under Section 319 of the Cr.P.C. to establish complicity of the appellant in the crime.

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232. CRIMINAL PROCEDURE CODE, 1973 – Sections 438 and 439

(i) Grant of anticipatory bail – Factors to be considered – Principles restated – Directions issued for ensuring that Police Officers do not arrest the accused unnecessarily and Magistrate do not authorize detention casually and mechanically.

(ii) Accused co-operated throughout investigation – Charge-sheet filed and there was no impediment on the part of the accused – Yet, the Court mechanically rejected the bail application and directed the accused to surrender and seek regular bail before the trial court – As the impugned order does not found to be sustainable, set aside. (*Arnesh Kumar v. State of Bihar, (2014) 8 SCC 2* followed).

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 438 एवं 439

(i) अग्रिम जमानत प्रदान करना – विचारणीय तत्व – सिद्धांत दोहराए गये – यह सुनिश्चित करने के लिए निर्देश जारी किए गए कि पुलिस अधिकारीगण अनावश्यक रूप से अभियुक्त को गिरफ्तार नहीं कर सकते और मजिस्ट्रेट सामान्य और यंत्रवत रूप से निरोध प्राधिकृत नहीं करेगा।

(ii) संपूर्ण अन्वेषण के दौरान अभियुक्त ने सहयोग किया – अंतिम प्रतिवेदन प्रस्तुत किया गया और अभियुक्त की ओर से कोई अवरोध नहीं – फिर भी न्यायालय ने यंत्रवत रूप से जमानत आवेदन निरस्त किया और अभियुक्त को समर्पण करने और विचारण न्यायालय के समक्ष नियमित जमानत की प्रार्थना करने के लिए निर्देशित किया – आलोच्य आदेश स्थिर रखने योग्य नहीं पाया गया इसलिए अपास्त किया गया। *(अर्नेश कुमार विरूद्ध बिहार राज्य, (2014) 8 एससीसी 2 अनुसरित)*

Md. Asfak Alam v. State of Jharkhand and anr.

Judgment dated 31.07.2023 passed by the Supreme Court in Criminal Appeal No. 2207 of 2023, reported in AIR 2023 SC 3610

Relevant extracts from the judgment:

In the present case, this Court is of the opinion that there are no startling features or elements that stand out or any exceptional fact disentitling the appellant to the grant of anticipatory bail. What is important is not that the matrimonial relationship soured almost before the couple could even settle down but whether allegations levelled against the appellant are true or partly true at this stage, which at best would be matters of conjecture, at least for this Court. However, what is a matter of record is that the time when the anticipatory bail was pending can be divided into two parts – firstly, when there was no protection afforded to him through any interim order (between April 2022 and 8.8.2022). Secondly, it was on 8.8.2022 that the High Court granted an order effectively directing the police not to arrest him during the pendency of his application under Section 438CrPC. Significantly, the investigation was completed, and charge-sheet was filed after 8.8.2022, and in fact cognizance was taken on 1.10.2022 by the Sessions Judge. These factors were of importance, and though the High Court has noticed the factors but interpreted them in an entirely different light. What appears from the record is that the appellant cooperated with the investigation both before 8.8.2022, when no protection was granted to him and after 8.8.2022, when he enjoyed protection till the filing of the charge-sheet and the cognizance thereof on 1.10.2022. Thus, once the charge-sheet was filed and there was no impediment, at least on the part of the accused, the court having regard to the nature of the offences, the allegations and the maximum sentence of the offences they were likely to carry, ought to have granted the bail as a matter of course. However, the court did not do so but mechanically rejected and, virtually, to rub salt in the wound directed the appellant to surrender and seek regular bail before the trial court. Therefore, in the opinion of this Court, the High Court fell into error in adopting such a casual approach. The impugned order of rejecting the bail and directing the appellant, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside. Before parting, the court would direct all the courts ceased of proceedings to strictly follow the law laid down in ***Arnesh Kumar v. State of Bihar, (2014) 8 SCC 2*** reiterated the directions contained thereunder, as well as other directions:

> "I. 11.Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrates do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-AIPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41CrPC;

11.2. All police officers be provided with a checklist containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the checklist duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-ACrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-AIPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine."

II. The High Court shall frame the above directions in the form of notifications and guidelines to be followed by the Sessions Courts and all other and criminal courts dealing with various offences.

III. Likewise, the Director General of Police in all States shall ensure that strict instructions in terms of the above directions are issued. Both the High Courts and the DGPs of all States shall ensure that such guidelines and Directives/Departmental Circulars are issued for guidance of all lower courts and police authorities in each State within eight weeks from today.

IV. Affidavits of compliance shall be filed before this Court within ten weeks by all the States and High Courts, through their Registrars.

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233. CRIMINAL PROCEDURE CODE, 1973 – Section 438 (2)

(i) Anticipatory bail – Grant of – Condition(s) that may/may not be imposed – Nature of dispute is predominantly civil – Direction to deposit money before grant of anticipatory bail – Held, improper – However, in cases involving misappropriation of public money, the alleged amount misappropriated may be directed to be deposited.

(ii) Whether complainant has *'locus standi'* at the time of deciding anticipatory bail application? Held, No – Complainant has no right of audience unless the situation for compounding with permission of court arises.

दण्ड प्रक्रिया संहिता, 1973 – धारा 438 (2)

(i) अग्रिम जमानत – दिया जाना – शर्तें जो लगाई/नहीं लगाई जा सकती – विवाद की प्रकृति मुख्यतः सिविल – अग्रिम जमानत देने से पहले राशि

जमा करने का निर्देश, – अभिनिर्धारित, अनुचित – तथापि सार्वजनिक धन के दुर्विनियोजन से जुड़े मामलों में कथित दुर्विनियोग की गई राशि जमा करने हेतु निर्देशित किया जा सकता है।

(ii) क्या अग्रिम जमानत आवेदन निराकृत करते समय परिवादी को सुनवाई का अधिकार है? अभिनिर्धारित, नहीं – जब तक कि न्यायालय की अनुमति से शमन करने की स्थिति उत्पन्न न हो, परिवादी को सुनवाई का कोई अधिकार नहीं है।

Ramesh Kumar v. State of NCT of Delhi

Judgment dated 04.07.2023 passed by the Supreme Court in Criminal Appeal No. 1741 of 2023, reported in (2023) 7 SCC 461

Relevant extracts from the judgment:

In ***Bimla Tiwari v. State of Bihar, (2023) 11 SCC 607*** this is what the Court said:

> "We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.
>
> We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.
>
> We would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings."

Law regarding exercise of discretion while granting a prayer for bail under section 438 of the Cr. PC having been authoritatively laid down by this Court, we cannot but disapprove the imposition of a condition of the nature under challenge. Assuming that there is substance in the allegation of the complainants that the appellant (either in connivance with the builder or even in the absence of any such connivance) has cheated the complainants, the investigation is yet to result in a charge-sheet being filed under section 173(2) of the Cr. PC, not to speak of the alleged offence being proved before the competent trial court in accordance with the settled procedures and the applicable laws. Sub-section (2) of section 438 of the Cr. PC does empower the high court or the court of sessions to impose such conditions while making a direction under sub-section (1) as it may think fit in the light of the facts of the particular case and such direction may include the conditions as in clauses (i) to (iv) thereof. However, a reading of the precedents laid down by this Court referred to above makes the position of law clear that the conditions to be imposed must not be onerous or unreasonable or excessive. In the context of grant of bail, all such conditions that would facilitate the appearance of the accused before the investigating officer/court, unhindered completion of investigation/trial and safety of the community assume relevance. However, inclusion of a condition for payment of money by the applicant for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is really not the purpose and intent of the provisions for grant of bail.

We may, however, not be understood to have laid down the law that in no case should willingness to make payment/deposit by the accused be considered before grant of an order for bail. In exceptional cases such as where an allegation of misappropriation of public money by the accused is levelled and the accused while seeking indulgence of the court to have his liberty secured/restored volunteers to account for the whole or any part of the public money allegedly misappropriated by him, it would be open to the concerned court to consider whether in the larger public interest the money misappropriated should be allowed to be deposited before the application for anticipatory bail/bail is taken up for final consideration. After all, no court should be averse to putting public money back in the system if the situation is conducive therefor. We are minded to think that this approach would be in the larger interest of the community. However, such an approach would not be warranted in cases of private disputes where private parties complain of their money being involved in the offence of cheating.

We hold that at this stage, the complainants have no right of audience before this Court or even the High Court having regard to the nature of offence alleged to have been committed by the appellant unless, of course, a situation for compounding of the offence under Section 420, IPC, with the permission of the Court, arises.

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234. CRIMINAL PROCEDURE CODE, 1973 – Section 439

(i) Bail – Factors to be considered by a Court – Requirement of recording reasons – Principles reiterated.

(ii) Bail – Cancellation of – The allegation against the accused persons is not only that they were involved in a conspiracy to kill the deceased but also that they actively participated in murder – Only on the basis of testimony of one hostile witness – Bail granted – Having considered seriousness of the allegations, possibility of accused influencing other witnesses and tampering with the evidence, impugned orders of granting bail are set aside.

दण्ड प्रक्रिया संहिता, 1973 – धारा 439

(i) जमानत – न्यायालय द्वारा विचार योग्य तत्व – कारण अभिलिखित किये जाने की आवश्यकता – सिद्धांत पुनरूद्धित।

(ii) जमानत – निरस्त किया जाना – अभियुक्तगण के विरूद्ध न केवल यह आक्षेप हैं कि वे मृतक को मारने के लिए षडयंत्र में शामिल रहे थे बल्कि यह भी कि हत्या किए जाने में वे सक्रिय रूप से भागीदार थे – केवल एक पक्षद्रोही साक्षी की साक्ष्य के आधार पर जमानत दी गई – आक्षेपों की गंभीरता, अन्य साक्षियों को अभियुक्त द्वारा प्रभावित किए जाने और साक्ष्य के साथ छेड़–छाड़ किये जाने की संभावना को विचार में लेते हुए जमानत प्रदान किये जाने संबंधी आलोच्य आदेश अपास्त किये गये।

Rohit Bishnoi v. State of Rajasthan and anr.

Judgment dated 24.07.2023 passed by the Supreme Court in Criminal Appeal No. 2078 of 2023, reported in AIR 2023 SC 3547

Relevant extracts from the judgment:

This Court has, on several occasions discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which

must be placed at balance while deciding the grant of bail are : (i) The seriousness of the offence; (ii) The likelihood of the accused fleeing from justice; (iii) The impact of release of the accused on the prosecution witnesses; (iv) Likelihood of the accused tampering with evidence. While such a list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its discretion, vide ***Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh, AIR 1978 SC 429, Prahlad Singh Bhati v. NCT Delhi, (2001) 4 SCC 280*** and ***Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129.***

This Court has also ruled that an order granting bail in a mechanical manner, without recording reasons, would suffer from the vice of non-application of mind, rendering it illegal, vide ***Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598, Prasanta Kumar Sarkar v. Ashish Chaterjee, (2010) 14 SCC 496, Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli), (2021) 6 SCC 230*** and ***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497.***

Reference may also be made to recent decisions of this Court in ***Manoj Kumar Khokhar v. State of Rajasthan, AIR 2022 SC 364*** and ***Jaibunisha v. Meharban, (2022) 5 SCC 465,*** wherein, on engaging in an elaborate discussion of the case law cited supra and after duly acknowledging that liberty of individual is an invaluable right, it has been held that an order granting bail to an accused, if passed in a casual and cryptic manner, de hors reasoning which would validate the grant of bail, is liable to be set aside by this Court while exercising power under Article 136 of the Constitution of India.

The allegation against the respondents-accused is not only that they were involved in a conspiracy to kill the deceased, Vikash Panwar, but also that they actively participated in his murder. The alleged incident is stated to be an instance of honour killing.

In the present case, it cannot be said that the accusations against the respondents-accused are *prima-facie* wholly false, frivolous or vexatious in nature, so as to justify grant of bail. We observe, while not expressing any opinion on the merits of the case, that the prosecution has brought on record adequate material that would *prima-facie* point towards the guilt of the accused. Details as to the manner in which the deceased, Vikash Panwar and Nirma were traced by the accused, the

acts of reconnaissance that were carried out by the accused before the alleged fateful incident and the manner in which each of the accused participated in the alleged crime have been brought on record. Therefore, we are not inclined to hold at this juncture that the prosecution has not established a *prima-facie* case as to the guilt of the accused.

One of the prosecution witnesses, namely Nirma, turned hostile. Therefore, in the absence of any evidence as to the circumstances under which she turned hostile, we cannot rule out the possibility of the respondents-accused influencing other witnesses, tampering with the evidence, if they continue to remain on bail.

Having considered the aforesaid facts of the present case in light of the law cited above, we do not think that this case is a fit case for the grant of bail to the respondents-accused, given the seriousness of the allegations against them. We find that the High Court was not right in allowing the applications for bail filed by the respondents-accused. Hence, the impugned judgments dated 14 February, 2022 and 02 February, 2023 passed by the High Court of Rajasthan at Jodhpur are set aside.

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235. CRIMINAL PROCEDURE CODE, 1973 – Section 439

(i) Bail – Cancellation of – Minor girl was allegedly gang raped – One of the accused was son of sitting MLA who was dropped from the chargesheet – Accused was later added by the court on the application moved by prosecutrix – Prosecutrix had constantly been complaining that accused had threatened her and other witnesses – Apprehension of tampering with evidence was found to be justified especially when accused was in a dominating position – While granting bail, Court did not consider prosecutrix's statement recorded under sections 161 and 164 of the Code, her testimony and allegations in the FIR – Order granting bail was set aside.

(ii) Bail – Grant of – Discretion has to be exercised cautiously – It depends on the facts of the matter – Guiding parameters laid down.

दण्ड प्रक्रिया संहिता, 1973 – धारा 439

(i) जमानत – निरस्त किया जाना – अवयस्क बालिका पर सामूहिक बलात्संग किया जाना आक्षेपित – एक अभियुक्त मौजूदा विधायक का पुत्र था जिसे अभियोग पत्र से हटा दिया गया था – अभियुक्त को पश्चात्वर्ती प्रक्रम पर

अभियोक्त्री द्वारा आवेदन प्रस्तुत किये जाने पर संयोजित किया गया – अभियोक्त्री निरंतर यह शिकायत कर रही थी कि अभियुक्त ने उसे तथा अन्य साक्षीगण को धमकाया है – अभियुक्त प्रभुत्व रखने की स्थिति में था इसलिए साक्ष्य से छेड़–छाड़ की आशंका को उचित पाया गया – जमानत देते समय न्यायालय ने अभियोक्त्री के संहिता की धारा 161 एवं 164 के कथन, उसकी अभिसाक्ष्य एवं प्रथम सूचना रिपोर्ट में वर्णित आक्षेप पर विचार नहीं किया – जमानत देने का आदेश अपास्त किया गया।

(ii) जमानत – स्वीकार किया जाना – विवेकाधिकार का प्रयोग सावधानी पूर्वक किया जाना चाहिए – यह मामले के तथ्यों पर निर्भर करेगा – मार्गदर्शक मापदण्ड बताए गए।

Bhagwan Singh v. Dilip Kumar

Judgment dated 23.08.2023 passed by the Supreme Court in Criminal Appeal No. 2560 of 2023, reported in AIR 2023 SC 4165

Relevant extracts from the judgment:

There cannot be any exhaustive parameters set out for considering the application for grant of bail. However, it can be noted that:

(a) While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entails a conviction and the nature of evidence in support of the accusations;

(b) Reasonable apprehensions of the witnesses being tempered with or the apprehension of there being a threat for the complainant should also weight with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.

(d) Frivility of prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to have an order of bail.

We may also profitably refer to a decision of this Court in ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav, (2004) 7 SCC 528*** where the parameters to be taken into consideration for grant of bail by the Courts has been explained in the following words:

"The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious of-fence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(*a*) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(*b*) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(*c*) Prima facie satisfaction of the court in support of the charge".

(See: ***Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598*** and ***Puran v. Rambilas, (2001) 6 SCC 338)***

It is also required to be borne in mind that when a prayer is made for the cancellation of grant of bail cogent and overwhelming circumstances must be present and bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it in conducing to allow fair trial. This proposition draws support from the Judgment of this Court in ***Daulat Ram v. State of Haryana, (1995) 1 SCC 349, Kashmira Singh v. Duman Singh, (1996) 4 SCC 693*** and ***xxx v. State of Telangana, (2018) 16 SCC 511***.

This Court in ***Daulat Ram's*** *case* (supra) has held that the cancellation of the bail has to be dealt on a different footing in comparison to a proceeding for grant of bail. It has also been held that there can be supervening circumstances which may develop post the grant of bail and are non-conducive to the fair trial, making it necessary to cancel the bail and this principle has been reiterated time and again and more recently in the Judgment of ***Ms. X v. State of Telangana*** (supra).

This Court in ***Vipin Kumar Dhir v. State of Punjab, 2021 SCC OnLine SC 854*** has added caveat to the above principles and has further held that bail can also

be revoked where the Court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system.

No doubt each case would have unique facts peculiar to its own and the same would hold key for adjudication of bail matters including cancellation thereof. There may be circumstances where interference to or attempt to interfere with the course of administration of justice or evasion or attempt to evade to due course of justice are abuse of concession granted to the accused in any manner.

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236. EVIDENCE ACT, 1872 – Sections 6 and 24
INDIAN PENAL CODE, 1860 – Section 302 r/w/s 34

(i) Criminal trial – Circumstantial evidence – When conviction can be based? Principles restated.

(ii) Extra-judicial confession – When extra-judicial confession can be relied upon? Circumstances clarified.

(iii) Murder – Alleged murder of son by step mother by using double barrel gun – Two gun shot wounds found on the body of deceased – Credibility of witnesses doubtful with regard to last seen theory and extra-judicial confession – Ballistic expert also not examined – Serious defect found in the prosecution case – Suspicion cannot take the place of proof – Conviction set aside – Principles reiterated. *(Munna Kumar Upadhyay v. State of A.P.,* (*2012) 6 SCC 174* followed)

साक्ष्य अधिनियम, 1872 – धाराएं 6 और 24
भारतीय दण्ड संहिता, 1860 – धारा 302 सहपठित धारा 34

(i) दांडिक विचारण – परिस्थितिजन्य साक्ष्य – कब दोषसिद्धी आधारित की जा सकती है – सिद्धांत पुनः बताये गये।

(ii) न्यायिकेत्तर संस्वीकृति – कब न्यायिकेत्तर संस्वीकृति पर विश्वास किया जा सकता है – परिस्थितियॉं स्पष्ट की गई।

(iii) हत्या – डबल बैरल गन से सौतेली माता द्वारा पुत्र की कथित हत्या – मृतक के शरीर पर दो गोलियों के घाव पाये गये – न्यायिकेत्तर संस्वीकृति तथा अंतिम बार देखे जाने के सिद्धांत के संबंध में साक्षीगण की विश्वसनीयता संदेहास्प्रद – बैलिस्टिक विषेशज्ञ का परीक्षण भी नहीं कराया गया – अभियोजन मामले में गंभीर त्रुटियॉ पाई गईं – संदेह सबूत का स्थान नहीं ले सकता – दोषसिद्धि अपास्त की गई। *(मुन्ना कुमार उपाध्याय विरूद्ध आंध्रप्रदेश राज्य, (2012) 6 एससीसी 174 अनुसरित)*

Pritinder Singh alias Lovely v. State of Punjab

Judgment dated 05.07.2023 passed by the Supreme Court in Criminal Appeal No. 1635 of 2010, reported in (2023) 7 SCC 727

Relevant extracts from the judgment:

It can be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned "must or should" and not "may be" established. It has been held that there is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". It has been held that the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

The law with regard to extra-judicial confession has been succinctly discussed in the case of ***Munna Kumar Upadhyay alias Munna Upadhyaya v. State of Andhra Pradesh through Public Prosecutor, Hyderabad, Andhra Pradesh, (2012) 6 SCC 174,*** wherein this Court has also referred to its earlier judgments, which read thus:

> "This Court has had the occasion to discuss the effect of extra-judicial confessions in a number of decisions. In ***Balwinder Singh***

v. State of Punjab, 1996 SCC (Cri) 59 this Court stated the principle that:

> An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance."

In ***Pakkirisamy v. State of T.N., (1997) 8 SCC 158,*** the Court held that:

> " … It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession."

Again, in ***Kavita v. State of T.N., (1998) 6 SCC 108*** the Court stated the dictum that:

> "There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made."

While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in ***State of Rajasthan v. Raja Ram, (2003) 8 SCC 180*** stated the principle that:

> "An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made."

The Court further expressed the view that:

> " … Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused…."

In ***Aloke Nath Dutta v. State of W.B., (2007) 12 SCC 230***, the Court, while holding that reliance on extra-judicial confession by the lower courts in absence of other corroborating material, was unjustified, observed:

> "Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.
>
> "A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof."

Accepting the admissibility of the extra-judicial confession, the Court in ***Sansar Chand v. State of Rajasthan, (2010) 10 SCC 604*** held that:

> "There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. ***Vide Thimma and Thimma Raju v. State of Mysore, (1970) 2 SCC 105, Mulk Raj v. State of U.P., AIR 1959 SC 902, Sivakumar v. State, (2006) 1 SCC 714, Shiva Karam Payaswami Tewari v. State of Maharashtra, (2009) 11 SCC 262*** and ***Mohd. Azad v. State of W.B., (2008) 15 SCC 449"***

In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872.

Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in ***Rameshbhai Chandubhai Rathod v. State of Gujarat, (2009) 5 SCC 740*** held as under:

> "It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true."

Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra- judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. Ref. ***Sk. Yusuf v. State of W.B., (2011) 11 SCC 754*** and ***Pancho v. State of Haryana, (2011) 10 SCC 165.***

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237. EVIDENCE ACT, 1872 – Sections 8, 9 and 27
CRIMINAL PROCEDURE CODE, 1973 – Sections 54A and 162

(i) Test Identification Parade – Whether accused can refuse to participate in test identification parade? Held, No – Section 54A of the Code obligates an accused to stand for test identification – Accused may challenge the proceedings subsequently but cannot deny participation.

(ii) Eye-witness identified the accused in the court during evidence – Accused challenged such identification on the ground that such statement was made for the first time in court – Accused had refused to participate in identification parade on the ground that he was already shown to the eye-witnesses – Challenge to the identification is not open to the accused who has denied participation in the identification parade.

(iii) Disclosure statement – Accused made a statement regarding weapon of offence – Accused pointing to the police officer, the place where he had concealed the weapon, is relevant fact of his conduct u/s 8 of the Evidence Act.

साक्ष्य अधिनियम, 1872 – धाराएं 8, 9 एवं 27

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 54क एवं 162

(i) शिनाख्त परीक्षण परेड – क्या अभियुक्त शिनाख्त परीक्षण परेड में सम्मिलित होने से इंकार कर सकता है? अभिनिर्धारित, नहीं – संहिता की धारा 54क अभियुक्त को शिनाख्त परीक्षण में सम्मिलित होने हेतु बाध्य करती है – अभियुक्त प्रक्रिया को पश्चात्वर्ती प्रक्रम पर चुनौती दे सकता है परन्तु शिनाख्त परीक्षण परेड में सम्मिलित होने से इंकार नहीं कर सकता।

(ii) चक्षुदर्शी साक्षी ने अभियुक्त को साक्ष्य के दौरान न्यायालय में पहचाना – अभियुक्त ने ऐसी शिनाख्ती को इस आधार पर चुनौती दी कि ऐसा कथन प्रथम बार न्यायालय में किया गया है – अभियुक्त ने शिनाख्त परेड में सम्मिलित होने से इस आधार पर इंकार किया था कि उसे चक्षुदर्शी साक्षी को पूर्व में दिखा दिया गया है – पहचान कार्यवाही को वह अभियुक्त चुनौती नहीं दे सकता जिसने शिनाख्त परेड में सम्मिलित होने से इंकार कर दिया था।

(iii) प्रकटीकरण कथन – अभियुक्त ने अपराध के आयुध के संबंध में कथन किया – अभियुक्त का पुलिस अधिकारी को वह स्थान बताना जहाँ उसने आयुध छुपाया था, साक्ष्य अधिनियम की धारा 8 के अंतर्गत उसके आचरण का सुसंगत तथ्य है।

Mukesh Singh v. State (NCT of Delhi)

Judgment dated 24.08.2023 passed by the Supreme Court in Criminal Appeal No. 1554 of 2015, reported in AIR 2023 SC 4097

Relevant extracts from the judgment:

The newly inserted Section 54A provides for the identification of the arrested person where it is considered necessary for the purpose of investigation by the officer-in-charge of a police station. The said Section empowers the court, on the request of the officer-incharge of a police station, to direct for placing the accused at test identification parade for identification by any person or persons in such manner as the court may deem fit. It is provided in the "objects and reasons":

> "This clause seeks to insert a new section 54A to empower the Court to direct specifically the holding of the identification of the arrested person at the request of the prosecution."

First Proviso: Identifier mentally or physically disabled. When the person identifying the suspect is mentally or physically disabled, the process of identification must 15 be under the supervision of a Judicial Magistrate. This

mandatory requirement of law has been incorporated in the statute by the amending Act 13 of 2013 w.e.f. 03.02.2013. It is the duty of the Magistrate supervising TIP to take appropriate steps to ensure that such identifier identifies the suspect using methods to which he was comfortable with. The Magistrate cannot discharge his duty lightly or in a slip-shod manner.

Second Proviso: Identification when suspect is mentally or physically disabled. The second proviso to Section 54A has been inserted in the statute by the amending Act 13 of 2013 w.e.f. 03.02.2013. It relates to identification of a suspect who is mentally or physically disabled. It appears that the requirements specified in the first proviso are not attracted for the second proviso. But it is obligatory that the process of identification of the person arrested shall have to be video graphed. Unless this requirement is complied with, the identification shall fall to the ground and no reliance can be placed on it at any stage of the trial.

This Section is restricted to identification of persons only. So this Section has no application where the question of identification of articles arises. TIP is part of investigation and the investigation of a case is to be conducted by the investigating agency and it is their statutory prerogatives. There was no statutory provision authorizing the accused to pray for placing him in the test parade. Some High Courts approved this right, while some other High Courts took a contrary view. In ***State of Uttar Pradesh v. Rajju, AIR 1971 SC 708***, this Court observed,

> "If the accused felt that the witnesses would not be able to identify them─they should have requested for an identification parade."

This observation indirectly approves the right to ask for test parade by the accused. In another case, the accused voluntarily accepted the risk of being identified in a parade but he was denied that opportunity. This Court observed that this was an important point in his favour (***Shri Ram v. State of U.P., (1975) 3 SCC 495***).

This provision for giving directions by the Court as to the manner in which test parade is to be conducted may be viewed as treating the Court as part of the investigating agency. Without having any provision like Section 54A there has been so long no difficulty in holding test identification parades. There are plenty of judicial pronouncements to show the safeguards to be followed while holding identification parade.

Thus we are of the view that after the introduction of Section 54A in the Cr.P.C. referred to above, an accused is under an obligation to stand for identification parade. An accused cannot resist subjecting himself to the TIP on the

ground that he cannot be forced or coerced for the same. If the coercion is sought to be imposed in getting from an accused evidence which cannot be procured save through positive volitional act on his part, the constitutional guarantee as enshrined under Article 20(3) of the Constitution will step in to protect him. However, if that evidence can be procured without any positive volitional evidentiary act on the part of the accused, Article 20(3) of the Constitution will have no application. The accused while subjecting himself to the TIP does not produce any evidence or perform any evidentiary act. As explained very succinctly by the learned Judges of the Calcutta High Court as above, it may be a positive act and even a volitional act, but only to a limited extent, when the accused is brought to the place where the TIP is to be held. It is certainly not his evidentiary act. The accused concerned may have a legitimate ground to resist facing the TIP saying that the witnesses had a chance to see him either at the police station or in the Court, as the case may be, however, on such ground alone he cannot refuse to face the TIP. It is always open for the accused to raise any legal ground available to him relating to the legitimacy of the TIP or the evidentiary 16 value of the same in the course of the trial. However, the accused cannot decline or refuse to join the TIP.

Even if we have to discard the evidence of discovery on the ground that no independent witnesses were present at the time of discovery, still the fact that the appellant herein led the police party to his house and handed over the ice pick used at the time of the assault, would be reflective of his conduct. By virtue of Section 8 of the Evidence Act, the conduct of an accused is relevant, if such conduct influences or influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where he had concealed the weapon of offence i.e. ice pick, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the appellant convict contemporaneously with or antecedent to such conduct falls within the purview of Section 28 27 of the Evidence Act or not. Even if we hold that the discovery statement made by the appellant convict referred to above is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8 of the Evidence Act.

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238. EVIDENCE ACT, 1872 – Section 45

DNA test – Permissibility of – Conducting DNA test is violative of privacy of a person – Unless the Court reaches a conclusion that without DNA test it is not possible to come to the truth then only such permission should be granted.

साक्ष्य अधिनियम, 1872 – धारा 45
डीएनए परीक्षण – अनुज्ञेयता – डीएनए परीक्षण किया जाना किसी व्यक्ति की निजता का उल्लंघन है – जब तक न्यायालय इस निष्कर्ष पर न पहुंचे कि डीएनए परीक्षण के बिना सत्य तक पहुंचना संभव नहीं है, केवल तभी ऐसे परीक्षण की अनुमति प्रदान की जानी चाहिए।

Raghuvansh and ors. v. Ramkali and ors.

Judgment dated 06.02.2023 passed by High Court of Madhya Pradesh in Second Appeal No. 513 of 2019, reported in 2023 (3) MPLJ 655

Relevant extracts from the judgment:

The defendants had not disputed the marriage of Mudhuni with the defendant No.1. However, they have claimed that the plaintiffs are the children born out of the illicit relationship of Ramsundar Patel and Mudhuni. Thus, the defendants have specifically admitted that Mudhuni is the Biological mother of the plaintiffs.

Section 112 of the Evidence Act provides that if any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other.

In the present case, the case of the plaintiffs was that when they were 5 and 3 years old respectively, they were turned by the defendant No.1 out of his house. It is not the case of the defendants that the marital tie of defendant No.1 with Mudhuni was broken, therefore the continuance of valid marriage between the defendant No.1 and Mudhuni is an undisputed fact.

Direction for conducting a DNA test should not be given in a very light manner and should be directed only when a very strong prima facie case is made out pointing out an eminent need for the same. Conducting a DNA test is also violative of privacy of a person. Unless and until the Court comes to a conclusion that without DNA test, it will not be possible for it to come to the truth, the DNA test should not be directed.

Under these circumstances, this Court is of the considered opinion that if the First Appellate Court rightly did not direct for holding the DNA test, and therefore, it cannot be said that any illegality was committed by it. Further the legitimacy of children should not be questioned frivolously. Their right to live their lives with dignity has to be maintained.

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239. EXCISE ACT, 1915 (M.P.) – Sections 47, 47A and 47D
CRIMINAL PROCEDURE CODE, 1973 – Sections 451 and 457

(i) Confiscation proceedings – Jurisdiction of Collector – Proceedings for confiscation of vehicle and trial have to proceed simultaneously – Collector can pass order of confiscation even if trial is pending before Criminal Court.

(ii) Intimation to Court – Magistrate has no jurisdiction to pass order of confiscation or release of vehicle, if intimation has been sent by the Collector.

आबकारी अधिनियम, 1915 (म.प्र.) – धाराएं 47, 47क एवं 47घ
दण्ड प्रक्रिया संहिता, 1973 – धाराएं 451 एवं 457

(i) अधिहरण की कार्यवाही – कलेक्टर का क्षेत्राधिकार – वाहन के अधिहरण की कार्यवाही और विचारण एक साथ चलेंगे – कलेक्टर अधिहरण का आदेश पारित कर सकता है भले ही दाण्डिक न्यायालय के समक्ष विचारण लंबित हो।

(ii) न्यायालय को सूचना – यदि सूचना कलेक्टर द्वारा प्रेषित की गई है तो मजिस्ट्रेट को वाहन को अधिहरित करने या छोड़ने का आदेश पारित करने का क्षेत्राधिकार नहीं है।

Danish Rayin v. State of M.P. and ors.

Order dated 12.05.2023 passed by the High Court of Madhya Pradesh in Writ Petition No. 28700 of 2022, reported in ILR 2023 MP 1378

Relevant extracts from the order:

Petitioner has placed reliance on an order which has been passed in case relating to The M.P. Govansh Vadh Pratishedh Adhiniyam, 2004. In said order reliance was placed by Court in judgment passed in case of ***Premdas v. State of M.P., 2013 (I) MPJR SN 10***. Court while considering order of confiscation passed by Collector in these two cases took into consideration MP Govansh Vadh Pratishedh Adhiniyam, 2004 and MP Vanopaj (Vyapar Viniyaman) Adhiniyam, 1969. Confiscation of vehicle belonging to petitioner is not being taken under aforesaid Acts. Case of petitioner is to be examined in view of statutory provision of MP Excise Act, 1915. Relevant provision which is necessary for adjudication of this case is Section 47 of the Act which is quoted as under:

> " **47. Order of confiscation –** (1) Where in any case tried by him the Magistrate, decides that anything is liable to 2 confiscation under Section 46, he shall order confiscation of the same:

Provided that where any intimation under clause (a) of sub0section (3) of Section 47-A has been received by the Magistrate, 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 thing as aforesaid have been disposed of, and if the Collector has ordered confiscation of the same under sub-section 92) of Section 47-A, the Magistrate shall not pass any order in this regard."

On going through the said provision, it is clear that when Magistrate receives an intimation under Section 47-A of the MP Excise Act, 1915, he shall not pass any order in regard to confiscation as aforesaid until proceeding pending before Collector under Section 47-A of the Act has been disposed of. This part shows that Magistrate has to wait for passing order on confiscation till case in respect of confiscation is pending before District Magistrate and if District Magistrate/Collector has ordered confiscation then Magistrate shall not pass any order in this regard. This shows that order of District Magistrate so far as it relates to confiscation of vehicle is final, Magistrate has no jurisdiction to pass order of confiscation or release of vehicle if intimation has been sent by Collector to Magistrate. Bar has also been created under Section 47-D. On Courts having jurisdiction to try the offence for disposal of property seized after intimation has been received from Collector. Proceedings for confiscation and trial have to proceed simultaneous. Act gives exclusive jurisdiction to Collector to pass order of confiscation and Magistrate has to wait for passing order of confiscation if Collector is seized with the matter, therefore, it is clear that Collector can pass order of confiscation even if trial is pending before criminal Court. Collector is nt dependent on the order passed by trial Court for passing order of confiscation.

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240. HINDU MARRIAGE ACT, 1955 – Section 13 (1A)

Irretrievable breakdown of marriage – Divorce on this ground is not a right but a discretion to be exercised with great caution – Parties were not living together for the past decade and a half – Relationship is as good as terminated – Neither of the party is willing to reside together – No need to continue the agony of a mere marital status – Case for divorce was made out.

हिन्दु विवाह अधिनियम, 1955 – धारा 13 (1क)
विवाह का अपूर्णीय विघटन – इस आधार पर विवाह-विच्छेद एक अधिकार नहीं है किन्तु विवेकाधिकार है, जिसका प्रयोग अत्यंत सावधानीपूर्वक किया जाना चाहिए – पक्षकार विगत डेढ़ दशक से साथ में निवास नहीं कर रहे थे – संबंध विच्छेदित हो जाने के समान है – कोई भी पक्षकार साथ में निवास करने हेतु इच्छुक नहीं – मात्र वैवाहिक स्थिति की पीड़ा को बनाए रखना उपयुक्त नहीं – विवाह-विच्छेद हेतु प्रकरण उचित पाया गया।

Smt. Roopa Soni v. Kamalnarayan Soni

Judgment dated 06.09.2023 passed by the Supreme Court in Civil Appeal No. 5700 of 2023, reported in AIR 2023 SC 4186

Relevant extracts from the judgment:

The ratio laid down by a Constitution Bench of this Court in ***Shilpa Sailesh v. Varun Sreenivasan, 2023 (6) SCALE 402*** would be applicable on all fours:

V. Bhagat v. D. Bhagat, (1994) 1 SCC 337, which was pronounced in 1993, 18 years after the decision in ***N.G. Dastane, (1975) 2 SCC 326,*** gives a life-like expansion to the term 'cruelty'. This case was between a husband who was practicing as an Advocate, aged about 55 years, and the wife, who was the Vice President in a public sector undertaking, aged about 50 years, having two adult children - a doctor by profession and an MBA degree holder working abroad, respectively. Allegations of an adulterous course of life, lack of mental equilibrium and pathologically suspicious character were made against each other. This Court noticed that the divorce petition had remained pending for more than eight years, and in spite of the directions given by this Court, not much progress had been made. It was highlighted that cruelty contemplated under Section 13(1)(i-a) of the Hindu Marriage Act is both mental and physical, albeit a comprehensive definition of what constitutes cruelty would be most difficult. Much depends upon the knowledge and intention of the defending spouse, the nature of their conduct, the character and physical or mental weakness of the spouses, etc. The sum total of the reprehensible conduct or departure from normal standards of conjugal kindness that causes injury to health, or an apprehension of it, constitutes cruelty. But these factors must take into account the temperament and all other specific circumstances in order to decide that the conduct complained of is such that a petitioner should not be called to endure it. It was further elaborated that cruelty, mental or physical, may be both intentional or unintentional. Matrimonial obligations and responsibilities vary in degrees. They differ in each household and to each person,

and the cruelty alleged depends upon the nature of life the parties are accustomed to, or their social and economic conditions. They may also depend upon the culture and human values to which the spouses assign significance. There may be instances of cruelty by unintentional but inexcusable conduct of the other spouse. Thus, there is a distinction between intention to commit cruelty and the actual act of cruelty, as absence of intention may not, in a given case, make any difference if the act complained of is otherwise regarded as cruel. Deliberate and wilful intention, therefore, may not matter. Paragraph 16 of the judgment in ***V. Bhagat*** (supra) reads as under:

> "Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."
>
> XXX
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> "Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the

> marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration."

The Trial Court and the High Court adopted a hyper-technical and pedantic approach in declining the decree of divorce. It is not as if the respondent-Husband is willing to live with the appellant–Wife. The allegations made by him against her are as serious as the allegations made by her against him. Both the parties have moved away and settled in their respective lives. There is no need to continue the agony of a mere status without them living together.

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241. HINDU SUCCESSION ACT, 1956 – Sections 6 and 8

Division of share – Mitakshara co-parcenary property – Male Hindu dies intestate after commencement of the Act of 1956 – Coparcener had one son and two daughters – Son was a coparcener in his own right and entitled to a share by birth – Son was entitled to 1/2 share by birth in the 1/3 share of the coparcenary property allotted to his father on partition effected in 1964 – Remaining 1/2 share would devolve upon the three class 1 heir as per section 8 of the Act – Daughters being class 1 heirs would be entitled to 1/6 share each and the son 4/6 (1/2 +1/6) share.

हिन्दू उत्तराधिकार अधिनियम, 1956 – धाराएं 6 एवं 8

अंश का विभाजन – मिताक्षरा सहदायिकी संपत्ति – अधिनियम, 1956 के आरंभ होने के पश्चात् हिन्दू पुरूष की निर्वसीयत मृत्यु हुई – सहदायिक का एक पुत्र एवं दो पुत्री थी – पुत्र अधिकार स्वरूप सहदायिक था एवं जन्म से अंश प्राप्त करने का अधिकारी था – सन् 1964 में प्रभावशील हुए विभाजन पर उसके पिता को सहदायिक संपत्ति में आबंटित 1/3 अंश में से उसे 1/2 अंश जन्म से ही प्राप्त करने का अधिकार था – शेष 1/2 अंश अधिनियम की धारा 8 के अनुसार वर्ग–1 के तीन उत्तराधिकारियों को न्यागत होगा – प्रत्येक पुत्री वर्ग एक की उत्तराधिकारी होने से 1/6 अंश एवं पुत्र 4/6 (1/2 +1/6) का अंश प्राप्त करने के अधिकारी हैं।

Derha v. Vishal and anr.

Judgment dated 01.09.2023 passed by the Supreme Court in Civil Appeal No. 4494 of 2010, reported in AIR 2023 SC 4180

Relevant extracts from the judgment:

Section 8 of the Act of 1956 elaborates on intestate succession in the case of males. It provides that a property of a male Hindu, dying intestate, shall devolve firstly, upon Class I heirs; secondly, upon Class II heirs; thirdly, if there is no heir of any of the two Classes, upon the agnates of the deceased; and lastly, if there is no agnate, then upon the cognates of the deceased.

In ***Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum***, ***(1978) 3 SCC 383,*** a 3-Judge Bench of this Court dealt with Section 6 of the Act of 1956 in depth. It was held therein that, in order to ascertain the shares of the heirs in the property of a deceased coparcener, the first step is to ascertain the share of the deceased himself in the coparcenary property and Explanation 1 to Section 6

provides a fictional expedient, namely, that his share is deemed to be the share in the property that would have been allotted to him if a partition had taken place immediately before his death. It was pointed out that once that assumption has been made for the purpose of ascertaining the share of the deceased, one cannot go back on the assumption and ascertain the shares of the heirs without reference to it, and all the consequences which flow from a real partition have to be logically worked out, which means that the shares of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the life-time of the deceased. In effect, the Bench held that the inevitable corollary of this position is that the heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death, in addition to the share which he or she received or must be deemed to have received in the notional partition.

This principle finds affirmation in ***Shyama Devi (Smt) v. Manju Shukla (Mrs), (1994) 6 SCC 342*** and several other decisions of this Court and various High Courts across the country.

Applying this principle, the share of Phannuram would first have to be determined as on the date of his death. He seems to have had two brothers and would have been entitled to a $1/3^{rd}$ share in the coparcenary properties, if a partition had been effected before his death. In fact, such a partition was actually effected in 1964 and Phannuram's $1/3^{rd}$ share was allotted to his only son, Vishal. However, Vishal was a coparcener in his own right in a separate coparcenary with his father and would be entitled to a share in that coparcenary property by birth. Therefore, he would be entitled to a half-share by birth in the $1/3^{rd}$ share of the coparcenary properties that was allotted as Phannuram's share. The other half-share therein belonged to Phannuram and as he died intestate, it would firstly devolve upon his Class I heirs, in terms of Section 8 of the Act of 1956. His Class 1 heirs, as on the date of his death, were Kesar Bai, Vishal and Keja Bai, his three children. His half-share would therefore be divided equally amongst the three of them, i.e., $1/6^{th}$ each. In consequence, the final division of the $1/3^{rd}$ share of Phannuram in the coparcenary properties would be as follows: Vishal would be entitled to $4/6^{th}$ share (1/2+1/6) therein, while his sisters, Kesar Bai and Keja Bai, would each get $1/6^{th}$ share therein, as they would be entitled to lay claim only to the half-share of Phannuram.

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242. INDIAN PENAL CODE, 1860 – Sections 148, 300 Exception 4, 302, 304 Part II and 323 r/w/s 149

(i) Criminal Trial – Sentencing process – Adequate sentence – Principle of proportionality should guide the sentencing process – Reformatory, deterrent and punitive aspects of punishment should be taken into consideration while determining the question of awarding appropriate sentence. *(B.G. Goswami v. Delhi Admn., (1974) 3 SCC 85* followed*).*

(ii) Sentencing – Eight accused persons convicted for murder – High court converted the conviction from 302 r/w/s 149 to 304 Part 2 r/w/s 149 and sentenced them to imprisonment for a period already undergone by them – Role played by each accused in the offence was indistinguishable – Huge disparity in the period of imprisonment served by the accused – A-1 had undergone 9 years, 5 months and 4 days; A-2 underwent 3 years,1 month and 1 day and A-3 had suffered 1 year, 11 month and 27 days – Sentence set aside – All accused persons are sentenced to 5 years rigorous imprisonment.

भारतीय दंड संहिता, 1860 — धाराएं 148, 300 अपवाद 4, 302, 304 भाग दो एवं 323 सहपठित 149

(i) आपराधिक विचारण — दंडादेश प्रक्रिया — पर्याप्त दंडादेश — दंडादेश प्रक्रिया आनुपातिकता के सिद्धांत से मार्गदर्शित होनी चाहिए — समुचित दंडादेश देने संबंधी प्रश्न का विनिश्चय करते समय दंड के सुधारात्मक, निवारक एवं दंडात्मक पहलुओ को विचार में लिया जाना चाहिए *(बी.जी. गोस्वामी बनाम दिल्ली प्रशासन (1974) 3 एससीसी 85* अनुसरित*)*।

(ii) दंडादेश — आठ अभियुक्त व्यक्तियों को हत्या के लिए दोषसिद्ध किया गया — उच्च न्यायालय ने दोषसिद्धि को धारा 302 सहपठित 149 से 304 भाग दो सहपठित 149 में परिवर्तित कर उन्हें भुगत चुके कारावास के दंड से दण्डित किया — अपराध में प्रत्येक अभियुक्त की भूमिका प्रभेद किये जाने योग्य नहीं थी — अभियुक्तगण द्वारा भोगी गई कारावास की अवधि में अत्यधिक असमानता — ए-1 ने 9 वर्ष 5 माह एवं 4 दिन; ए-2 ने 3 वर्ष 1 माह एवं 1 दिन एवं ए-3 ने 1 वर्ष 11 माह एवं 27 दिन का कारावास भोगा था — दंडादेश अपास्त किया गया — सभी अभियुक्त व्यक्तियों को 5 वर्ष के कठिन कारावास से दण्डित किया गया।

Uggarsain v. State of Haryana and ors.

Judgment dated 03.07.2023 passed by the Supreme Court in Criminal Appeal No. 1378 of 2023, reported in (2023) 8 SCC 109

Relevant extracts from the judgment:

This court has, time and again, stated that the principle of proportionality should guide the sentencing process. In ***Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat, 2009 (8) SCR 719*** it was held that the sentence should "deter the criminal from achieving the avowed object to (sic break the) law," and the endeavour should be to impose an "appropriate sentence." The court also held that imposing "meagre sentences" "merely on account of lapse of time" would be counterproductive. Likewise, in ***Jameel v. State of U. P., 2009 (15) SCR 712*** while advocating that sentencing should be fact dependent exercises, the court also emphasised that –

> "the law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration."

Again in ***Guru Basavaraj v. State of Karnataka, 2012 (8) SCR 189*** the court stressed that it "is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order" and that sentencing includes "adequate punishment". In ***B.G. Goswami v. Delhi Administration, 1974 (1) SCR 222,*** the court considered the issue of punishment and observed that punishment is designed to protect society by deterring potential offenders as well as prevent the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law-abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question of awarding appropriate sentences.

The impugned judgment, in this Court's opinion, fell into error in not considering the gravity of the offence. Having held all the accused criminally liable, under Section 304 Part II read with section 149 IPC and also not having found any

distinguishing feature in the form of separate roles played by each of them, the imposition of the "sentence undergone" criteria, amounted to an aberration, and the sentencing is for that reason, flawed. This court is, therefore, of the view that given the totality of circumstances (which includes the fact that the accused have been at large for the past four years), the appropriate sentence would be five years rigorous imprisonment.

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243. INDIAN PENAL CODE, 1860 – Section 180

Refusal from signing statement – Offence when constituted? Only where public servant is legally competent to obtain signature on the statement – Signature of person making the statement during investigation is not required u/s 162 of the Code – Offence not constituted.

भारतीय दण्ड संहिता, 1860 – धारा 180

कथन पर हस्ताक्षर करने से इंकार – अपराध कब गठित होगा – केवल वहीं जहां लोक सेवक कथन पर हस्ताक्षर प्राप्त करने के लिए विधिक रूप से सक्षम है – संहिता की धारा 162 के अंतर्गत अन्वेषण के दौरान कथन देने वाले व्यक्ति के हस्ताक्षर आवश्यक नहीं है – अपराध गठित नहीं ।

Supriya Jain v. State of Haryana and anr.

Judgment dated 04.07.2023 passed by the Supreme Court in SLP (Cri.) No. 3662 of 2023, reported in (2023) 7 SCC 711

Relevant extracts from the judgment:

We are aghast to note that an officer of the rank of DSP could be so irresponsible while swearing an affidavit which is proposed to be filed before this Court. An officer, who is a DSP, ought to know that in terms of section 162, Cr.PC, no statement made by a person to a police officer in the course of any investigation under Chapter XII of the Cr. PC, which is reduced to writing, is required to be signed by the person making the statement and that section 180 of the IPC gets attracted only if a statement is refused to be signed which a public servant is legally competent to require the person making the statement to sign. That is not the case here. Since the deponent has not been heard by us, we do not propose to take the issue further but warn him to be cautious in future.

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244. INDIAN PENAL CODE, 1860 – Sections 201 and 302
CRIMINAL TRIAL:

(i) Circumstantial evidence – Proof – Suspicion cannot form basis of guilt of accused – Conditions required to be fulfilled before conviction of accused – Principles reiterated.

(ii) Allegation that appellant murdered his wife and disappeared the dead body by dumping it into the well – Circumstances connecting the appellant with the murder not proved beyond reasonable doubt – Investigating officer not examined – Rendered entire prosecution case doubtful – It is bounden duty of the courts to ensure that miscarriage of justice is avoided at all costs and the benefit of doubt, if any, be given to the accused.

भारतीय दण्ड संहिता, 1860 – धाराएं 201 एवं 302
आपराधिक विचारण:

(i) परिस्थितिजन्य साक्ष्य – प्रमाण – संदेह अभियुक्त की दोषिता का आधार नहीं बन सकता – अभियुक्त की दोषसिद्धि के पूर्व पालन किये जाने हेतु शर्तें – सिद्धांतों को दोहराया गया।

(ii) अपीलार्थी पर अपनी पत्नी की हत्या कर उसके शव को कुएं में फेंककर गायब करने का आरोप – अपीलार्थी को हत्या से संबद्ध करने वाली परिस्थितियां युक्ति-युक्त संदेह से परे प्रमाणित नहीं – अन्वेषण अधिकारी का परीक्षण नहीं कराया गया – पूरे अभियोजन मामले को संदेहास्पद बनाता है – न्यायालय का यह आवश्यक कर्तव्य है कि यह सुनिश्चित करे कि हर कीमत पर न्याय की विफलता को रोका जाए और संदेह का लाभ, यदि कोई हो, तो अभियुक्त को दिया जाए।

Guna Mahto v. State of Jharkhand

Judgment dated 16.03.2023 passed by the Supreme Court in Criminal Appeal No. 108 of 2012, reported in (2023) 6 SCC 817

Relevant extracts from the judgment:

Non-examination of the Investigating Officer attains significance. It is not that the Investigating Officer was not available or that the factum and manner of investigation was deposed by his colleague who was also associated with the same. Non-examination of the Investigation Officer has, in the attending circumstances rendered the prosecution case to be doubtful if not false. The offence under Section 201 IPC could not have been proven without his examination.

The Courts below presumptively, proceeded with the acquired assumption of the guilt of the accused for the reason that he was lastly seen with the deceased, and lodged a false report, forgetting that as per the version of the father of the deceased, father of the accused had himself apprised him of his missing daughter, at least two days prior to the incident. Doubt and suspicion cannot form basis of guilt of the accused. The circumstances linking the accused to the crime are not proven at all, much less beyond reasonable doubt.

We may reiterate that suspicion howsoever grave it may be, remains only a doubtful pigment in the story canvassed by the prosecution for establishing its case beyond any reasonable doubt. ***Venkatesh v. State of Karnataka, 2022 SCC OnLine SC 765***, ***Shatrughna Baban Meshram v. State of Maharashtra, (2021) 1 SCC 596***, ***Pappu v. State of Uttar Pradesh, (2022) 10 SCC 321***. Save and except for the above, there is no evidence: ocular, circumstantial or otherwise, which could establish the guilt of the accused. There is no discovery of any fact linking the accused to the crime sought to be proved, much less, established by the prosecution beyond reasonable doubt.

It is our bounden duty to ensure that miscarriage of justice is avoided at all costs and the benefit of doubt, if any, given to the accused. ***Hanumant Govind Nargundkar v. State of M.P. (1952) 2 SCC 71***.

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245. INDIAN PENAL CODE, 1860 – Sections 300 Exception 4 and 302

(i) When benefit of Exception 4 can be claimed? Essential ingredients – Sudden quarrel, absence of premeditation and the offender should not have taken undue advantage or acted in a cruel or unusual manner.

(ii) Sudden quarrel and absence of premeditation established – Appellant repeatedly gave seven brutal blows by axe on upper vital parts of the body of deceased – Taken undue advantage and acted in a cruel and unusual manner – Whether benefit of Exception 4 is available? Held, No, as appellant had caused injuries with the intention of causing death – Appellant rightly convicted u/s 302 IPC.

भारतीय दण्ड संहिता, 1860 – धाराएं 300 अपवाद 4 एवं 302

(i) अपवाद 4 के लाभ का दावा कब किया जा सकता है? आवश्यक तत्व – अचानक झगड़ा, पूर्वचिन्तन का अभाव और अपराधी को असम्यक् फायदा नहीं उठाना चाहिए या क्रूर या असामान्य तरीके से कार्य नहीं करना चाहिए।

(ii) अचानक झगड़ा और पूर्वचिन्तन का अभाव स्थापित – अपीलार्थी ने मृतक के शरीर के ऊपरी मर्म हिस्सों पर बार–बार कुल्हाड़ी से सात क्रूर वार किए – उसने अनुचित लाभ उठाया और क्रूर और असामान्य तरीके से कार्य किया – क्या अपवाद 4 का लाभ उपलब्ध है? अभिनिर्धारित नहीं, क्योंकि अपीलार्थी ने मत्यु कारित करने के आशय से चोट पहुंचाई है – अपीलार्थी को आईपीसी की धारा 302 के अंतर्गत सही दोष सिद्ध किया गया।

Babla v. State of M.P.

Judgment dated 01.03.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 1450 of 2012, reported in ILR 2023 MP 1437 (DB)

Relevant extracts from the judgment:

The main ingredient of Exception 4 of Section 300 of IPC is the incident being the result of a sudden quarrel, without premeditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of exception.

On perusal of statement of Ratni Bai (PW-4), it appears that the appellant is son of the deceased. There was no old animosity between the appellant and the deceased, it also appears that at the time of the incident the appellant had gone on the spot without carrying any weapon. The deceased was cutting bamboo by an axe, the appellant asked for axe to cut the bamboo himself to which the deceased had denied, then the appellant snatched the axe from the hands of deceased and gave 7 brutal blows on the upper vital parts of the body of deceased. Due to injuries on vital part, the deceased died. Therefore, it appears that there was sudden quarrel between the appellant and the deceased in furtherance of cutting bamboo and appellant had no premeditation to cause death of the deceased, but it is clear that the appellant inflicted injuries on the neck, face and head of the deceased and muscles and vessels were cut in all the injuries. There were fractures in left orbital bone, zygomatic bone, temporal bone and left lower jaw bone, therefore, it is clear that the appellant had taken undue advantage and acted in a cruel manner. The

appellant had repeatedly given 7 blows on the vital part of the body of the deceased, hence, it is clear that the appellant caused injuries on the body of the deceased with an intention to cause his death. Hence, death of the deceased comes under culpable homicide amounting to murder and is punishable under Section 302 of IPC. Therefore, act of the appellant does not come under Exception 4 of Section 300 of IPC.

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246. INDIAN PENAL CODE, 1860 – Sections 300, 302 and 304 Part 1 and Part 2

(i) Culpable homicide and murder – Distinction – Intention or knowledge to kill – How to determine? Case falls under which clause of Section 299 and whether Part 1 or Part 2 of section 304 would apply? Test to determine – Principles reiterated and law summarized.

(ii) Culpable homicide not amounting to murder – On the day of the incident, the father and son were working in their agricultural field – They wanted to transport the crop, however the deceased did not allow the driver of the lorry to use the disputed pathway – This led to a verbal altercation between the accused and the deceased – After quite some time the accused hit a blow on the head of the deceased with weed axe resulting in his death – In such circumstances, the case does not fall within clause thirdly of Section 300 of the IPC – Conviction of accused u/s 304 Part I of the IPC is altered to one u/s 304 Part II of the IPC.

भारतीय दण्ड संहिता, 1860 – धाराएं 300, 302 एवं 304 भाग 1 एवं भाग 2

(i) आपराधिक मानववध और हत्या – विभेद – मृत्यु कारित करने का आशय या ज्ञान – कैसे विनिश्चय किया जाए? प्रकरण धारा 299 के किस खण्ड के अन्तर्गत आता है और क्या धारा 304 का भाग 1 या भाग 2 प्रयोज्य होगा? विनिश्चय की कसौटी, सिद्धांत पुनरूद्धित और विधि सारांशित की गई।

(ii) हत्या की कोटि में न आने वाला आपराधिक मानववध – घटना के दिन पिता और पुत्र अपनी कृषि भूमि पर कार्य कर रहे थे – वे अपनी फसल का परिवहन करना चाहते थे लेकिन मृतक ने वाहन के चालक को विवादित रास्ते का प्रयोग की अनुमति नहीं दी – इसके कारण अभियुक्त और मृतक के बीच मौखिक तकरार हुई – इसके काफी समय बाद अभियुक्त ने खरपतवार साफ करने वाली कुल्हाड़ी से मृतक के सिर पर आघात किया जिसके परिणामस्वरूप उसकी मृत्यु हुई – ऐसी परिस्थितियों में प्रकरण

भारतीय दण्ड संहिता की धारा 300 के खण्ड तीन के अंतर्गत नहीं आएगा – अभियुक्त की दोषसिद्धि धारा 304 भाग 1 से परिवर्तित कर भारतीय दण्ड संहिता की धारा 304 के भाग 2 के अंतर्गत की गई।

Anbazhagan v. State Represented by the Inspector of Police
Judgment dated 20.07.2023 passed by the Supreme Court in Criminal Appeal No. 2043 of 2013, reported in AIR 2023 SC 3660

Relevant extracts from the judgment:

Few important principles of law discernible from the discussion may be summed up thus:

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate: 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC,

if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never

established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.

We once again recapitulate the facts of this case. On the fateful day of the incident, the father and son were working in their agricultural field early in the morning. They wanted to transport the crop, they had harvested and for that purpose they had called for a lorry. The lorry arrived, however, the deceased did not allow the driver of the lorry to use the disputed pathway. This led to a verbal altercation between the appellant and the deceased. After quite some time of the verbal altercation, the appellant hit a blow on the head of the deceased with the weapon of offence (weed axe) resulting in his death in the hospital.

Looking at the overall evidence on record, we find it difficult to come to the conclusion that when the appellant struck the deceased with the weapon of offence, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. The weapon of offence in the present case is a common agriculture tool. If a man is hit with a weed axe on the head with sufficient force, it is bound to cause, as here, death. It is true that the injuries shown in the post mortem report are fracture of the parietal bone as well as the temporal bone. The deceased died on account of the cerebral compression i.e. internal head injuries. However, the moot question is - whether that by itself is sufficient to draw an inference that the appellant intended to cause such bodily injury as was sufficient to cause death.

We are of the view that the appellant could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death. It is in such circumstances that we are inclined to take the view that the case on hand does not fall within clause thirdly of Section 300 of the IPC.

In the aforesaid view of the matter and more particularly bearing the principles of law explained aforesaid, the present appeal is partly allowed. The conviction of the appellant under Section 304 Part I of the IPC is altered to one under Section 304 Part II of the IPC. For the altered conviction, the appellant is sentenced to undergo rigorous imprisonment for a period of five years.

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247. INDIAN PENAL CODE, 1860 – Sections 300 and 304A

Culpable homicide or causing death by negligence – Accused and deceased were posted in the same police station – While on duty deceased was talking on the official telephone for a long time – Accused advised him to end the call who at that time was carrying a Semi Automatic Fire (SAF) carbine – Scuffle took place between both of them – In between SAF got entangled in the chain attached to the appellant's belt which led to the accidental firing of five rounds from the weapon – Bullets hit the deceased resulted in his death – Prosecution has failed to prove motive or guilty intention on the part of accused for causing death – Culpable homicide not proved – However, accused found to be gross negligent in not keeping the change lever in safety position – Accused, therefore guilty of lesser offence punishable u/s 304 A of IPC.

भारतीय दण्ड संहिता, 1860 – धाराएं 300 एवं 304क

आपराधिक मानववध या उपेक्षा द्वारा मृत्यु कारित करना – अभियुक्त और मृतक दोनों एक ही पुलिस थाने में पदस्थ थे – कर्तव्य के दौरान मृतक कार्यालयीन फोन से लंबे समय तक बात कर रहा था – अभियुक्त ने उसे कॉल खत्म करने की सलाह दी जो उस समय सेमी ऑटोमेटिक फायर (एस.ए.एफ.) कार्बाइन रखे हुये था – उन दोनों के बीच हाथापाई हुई – इस दौरान अभियुक्त के बैल्ट के साथ जुड़ी हुई चैन में एस.ए.एफ. फंस गयी जिससे पॉच राउंड की दुर्घटनात्मक फायरिंग हुई – गोली मृतक को लगी परिणामस्वरूप उसकी मृत्यु हुई – अभियोजन अभियुक्त के भाग पर मृत्यु कारित करने का हेतु या दुराशय

प्रमाणित करने में असफल रहा – आपराधिक मानववध प्रमाणित नहीं – तथापि चैंज लीवर को सुरक्षित अवस्था में नहीं रखने के कारण अभियुक्त का घोर उपेक्षावान रहना पाया गया – परिणामस्वरूप अपीलार्थी 304–क भारतीय दण्ड संहिता के लघुत्तर अपराध हेतु दोषी पाया गया।

Arvind Kumar v. State of NCT, Delhi

Judgment dated 17.07.2023 passed by the Supreme Court in Criminal Appeal No. 2390 of 2010, reported in AIR 2023 SC 3653

Relevant extracts from the judgment:

The prosecution has failed to prove that the appellant had either any intention of causing the death of the deceased or the intention of causing such bodily injury to the deceased which was likely to cause his death. Assuming that when the appellant approached the deceased to stop him from using the telephone, he was aware that the change lever was not in a safety position, it is not possible to attribute knowledge to him that by his failure to keep SAF in the safety position, he was likely to cause the death of the deceased. The knowledge of the possibility of the deceased who was himself a policeman pulling SAF carbine cannot be attributed to the appellant. In fact, the appellant could not have imagined that the deceased would do anything like this. Thus, by no stretch of the imagination, it is a case of culpable homicide as defined under Section 299 IPC as the existence of none of the three ingredients incorporated therein was proved by the prosecution. (This extract is taken from ***Arvind Kumar v. State (NCT of Delhi), (2023) 8 SCC 208***)

However, there is a failure on the part of the appellant who was holding a sophisticated automatic weapon to ensure that the change lever was always kept in a safety position. This was the minimum care that he was expected to take while he approached the deceased. Thus, there is gross negligence on the part of the appellant which led to a loss of human life. Due to his rash and negligent act, the deceased lost his life. Therefore, the appellant is guilty of a lesser offence punishable under Section 304-AIPC for which the maximum sentence is imprisonment for two years. The appellant has undergone a sentence of more than eight years.

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248. INDIAN PENAL CODE, 1860 – Sections 300 Exception 1, 302 and 304 Part I

Murder or culpable homicide not amounting to murder – On the day of incident, daughter of accused/mother demanded some money from her father – On the refusal of the deceased to provide money, altercation ensued between accused and deceased – During the course of quarrel, accused gave blows with a stick on the head and legs of her husband causing injuries which led to his death – Weapon used in the crime cannot be said to be a deadly weapon – Possibility of the appellant causing death while being deprived of the power of self control, due to the provocation on account of the deceased not agreeing to pay money to daughter, cannot be ruled out – Case falls under Exception I of section 300 IPC – Conviction, therefore altered from section 302 to section 304 Part I of IPC.

भारतीय दण्ड संहिता, 1860 – धाराएं 300 अपवाद 1, 302 एवं 304 भाग-I हत्या या हत्या की कोटि में न आने वाला आपराधिक मानववध – घटना के दिन अभियुक्त/माँ की पुत्री ने अपने पिता से कुछ पैसों की मांग की – मृतक द्वारा पैसे दिए जाने से इंकार करने पर अभियुक्त और मृतक के बीच बहस शुरू हो गई – झगड़े के दौरान अभियुक्त ने लाठी से अपने पति के सिर और पैर पर चोट पहुचाई और ऐसी चोटों से उसकी मृत्यु हुई – अपराध में प्रयुक्त आयुध को खतरनाक आयुध नहीं कहा जा सकता – इस संभावना से इंकार नहीं किया जा सकता कि मृतक द्वारा पुत्री को राशि देने के लिए सहमत न होने से उत्पन्न हुए प्रकोपन के आवेश में आकर अभियुक्त ने स्वयं पर नियंत्रण खो दिया हो और मृत्यु कारित की हो – प्रकरण भारतीय दण्ड संहिता की धारा 300 के अपवाद 1 के अंतर्गत आता है – परिणामस्वरूप दोषसिद्धि धारा 302 से परिवर्तित कर भारतीय दण्ड संहिता की धारा 304 भाग 1 में की गई।

Nirmala Devi v. State of Himachal Pradesh

Judgment dated 01.08.2023 passed by the Supreme Court in Criminal Appeal No. 2232 of 2023, reported in AIR 2023 SC 3683

Relevant extracts from the judgment:

It is not in dispute that the relations between the deceased on one hand, and the other members of the family consisting of the appellant, wife of the deceased,

his son, the original accused, and Priyanka (PW-1) daughter of the deceased, on the other hand, were not cordial. If the testimony of PW-1 is read as a whole, it would reveal that her father and mother often quarreled. PW-1, in her evidence, has stated that the deceased Mast Ram fractured the leg of her mother during one of such quarrels, and a criminal case was also pending against him for the said offence. Her testimony would show that her father was residing separately in the old house whereas the three other members were residing separately. It is stated that, on the date of the incident, she got up at about 07.00 o'clock in the morning and asked her father to give Rs. 500/- as she wanted to take part in the NCC Camp. Her father refused to provide the said amount. PW-1 narrated the said incident to her mother. Her mother asked her father to give the said amount to her. Even then, the father did not provide the said amount. Thereafter, a quarrel started between her father and mother. Her mother gave blows with a stick on the head and legs of her father. Her father sustained injuries, which led to his death.

It is to be noted that the weapon used in the crime is a stick which was lying in the house, and which, by no means, can be called a deadly weapon. Therefore, the possibility of the appellant causing the death of the deceased while being deprived of the power of self-control, due to the provocation on account of the deceased not agreeing to pay Rs. 500/- to PW-1, cannot be ruled out.

In our considered view, the appellant is entitled to benefit of doubt, inasmuch as the offence committed shall fall under Exception I of Section 300 IPC. Thus, the conviction under Section 302 IPC needs to be altered into Part-I of Section 304 IPC.

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249. INDIAN PENAL CODE, 1860 – Sections 300 Exception 4, 302 and 304 Part I

EVIDENCE ACT, 1872 – Section 3

Murder or culpable homicide not amounting to murder – Accused and deceased consumed liquor at the time of dinner – Afterwards, there was a heated exchange of words between the accused and the deceased on the issue of seniority – Upon sudden quarrel, in the heat of passion accused snatched the weapon of the deceased – Out of 20 rounds of the rifle, he fired only one bullet – Moreover, the accused did not run away

from the spot and accompanied the deceased to the hospital – These facts brought on record shows that there was no intention on his part to kill the deceased – Exception 4 to Section 300 was attracted – Therefore, the accused is held guilty of culpable homicide not amounting to murder and conviction of the accused for the offence u/s 302 of IPC is altered to one under part I of Section 304 of IPC.

भारतीय दण्ड संहिता, 1860 – धाराएं 300 अपवाद 4, 302 एवं 304 भाग-I
साक्ष्य अधिनियम, 1872 – धारा 3
हत्या या हत्या की कोटि में न आने वाला आपराधिक मानववध – अभियुक्त और मृतक ने रात्रि भोजन के समय शराब का सेवन किया – इसके बाद वरिष्ठता के विषय को लेकर मृतक और अभियुक्त के बीच उत्तेजक वार्तालाप हुआ – अचानक हुए झगड़े से उत्पन्न आवेश की तीव्रता में अभियुक्त ने मृतक का आयुध छीन लिया – राईफल की मैगजीन के 20 राउंड में से उसने केवल एक फायर किया – इतना ही नहीं अभियुक्त मौके से नहीं भागा और मृतक के साथ अस्पताल गया – अभिलेख पर लाये गये यह तथ्य दर्शित करते हैं कि उसका मृतक की हत्या करने का कोई आशय नहीं था – धारा 300 का अपवाद 4 आकर्षित – अतः अभियुक्त को हत्या की कोटि में न आने वाले आपराधिक मानववध के लिए दोषी पाया गया और अभियुक्त की धारा 302 भारतीय दण्ड संहिता के अपराध में की गई दोषसिद्धि को धारा 304 भाग 1 में परिवर्तित किया गया।

No.15138812YL/Nk Gursewak Singh v. Union of India and anr.
Order dated 27.07.2023 passed by the Supreme Court in Criminal Appeal No. 1791 of 2023, reported in AIR 2023 SC 3569

Relevant extracts from the order:

The appellant did not have a weapon at that time and he used the weapon of the deceased. Out of 20 rounds in the magazine of the rifle, he fired only one bullet. Moreover, after the incident, the appellant did not run away and he along with PW -13 lifted the deceased and laid him by the side of the road. He frankly disclosed his version of the incident to PWs 13 and 14. The appellant along with two other army men, lifted the deceased for putting him in the ambulance and he accompanied the deceased to the hospital. These facts brought on record show that there was no premeditation on the part of the appellant. Both the appellant and the deceased had consumed liquor. There was a fight between him and the deceased over the issue of seniority. In fact, when the appellant told the deceased to bring water for him,

the deceased refused to do so on the ground that he was senior to the appellant. In a disciplined force like Army, the seniority has all the importance. Therefore, there is every possibility that the dispute over seniority resulted in the appellant doing the act in a heat of passion. It appears that in the heat of passion, the appellant snatched a rifle held by the deceased and fired only one bullet. If there was any premeditation on the part of the appellant or if he had any intention to kill the deceased, he would have fired more bullets at the deceased. Hence, there was no intention on his part to kill the deceased. Whether the appellant had done a cruel act or not, has to be appreciated after considering three facts. Firstly, the appellant was a soldier on guard duty, secondly, the appellant and the deceased had a fight over the seniority and thirdly, though there were 20 rounds in the rifle of the deceased, he fired only one round. There was a sudden fight over seniority when the appellant and the deceased had consumed liquor. There was no premeditation. The appellant, in the facts of the case, cannot be said to have acted in such a cruel manner which will deprive him of the benefit of exception 4 to Section 300 of IPC. The term cruel manner is a relative term. Exception 4 applies when a man kills another. By ordinary standards, this itself is a cruel act. The appellant fired only one bullet which proved to be fatal. He did not fire more bullets though available. He did not run away and he helped others to take the deceased to a hospital. If we assign a meaning to the word 'cruel' used in exception 4 which is used in common parlance, in no case exception 4 can be applied. Therefore, in our view, exception 4 to Section 300 was applicable in this case. Therefore, the appellant is guilty of culpable homicide not amounting to murder. The appellant snatched the rifle from the hands of the deceased and fired one bullet at the deceased. This act was done with the intention of causing such bodily injury to the deceased as was likely to cause death. Therefore, the first part of Section 304 of IPC will apply in this case. Under the first part of Section 304 of IPC, an accused can be punished with imprisonment for life or with imprisonment for a term which may extend to 10 years.

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250. INDIAN PENAL CODE, 1860 – Section 302
EVIDENCE ACT, 1872 – Sections 3, 8, 24, 27, 101 and 106

(i) Murder – Circumstantial evidence – Burden of proof – Primary burden is on prosecution to prove the prosecution case beyond reasonable doubt – Only thereafter question arises of placing the burden on accused to prove his innocence – Before proof of

foundational facts, provision as contained in section 106 of the Evidence Act cannot be made applicable.

(ii) Last seen theory – Long time gap when deceased was last seen and when dead body was found – Autopsy report raising doubt that death might have occurred much later after deceased was last seen alive – No evidence as to when accused left the place of incidence and that no one else could have entered that place – Last seen circumstance becomes inconclusive.

(iii) Recovery of weapon – Denied by accused – Not supported with serologist report to connect it with the crime – In such a situation recovery of weapon had very little value to sustain conviction on its own.

(iv) Extra-judicial confession – Reliability – No evidence to demonstrate that accused had any prior relations with Panchayat Member and that the accused hoped for or sought any help from him and therefore, made the confession to him – Weak type of evidence – Conviction on sole basis of extra-judicial confession is not ordinarily permissible.

(v) Credibility of witness – Prior enmity with accused – Not proved – Not having much relevance in cases based on circumstantial evidence which have settled mode of proof.

भारतीय दण्ड संहिता, 1860 – धारा 302
साक्ष्य अधिनियम, 1872 – धाराएं 3, 8, 24, 27, 101 एवं 106

(i) हत्या – परिस्थितिजन्य साक्ष्य – सबूत का भार – अभियोजन मामले को युक्तियुक्त संदेह से परे प्रमाणित करने का प्राथमिक भार अभियोजन पर – केवल इसके उपरांत ही अभियुक्त पर उसकी निदोर्षिता प्रमाणित करने के भार का प्रश्न उत्पन्न होता है – आधारभूत तथ्यों के प्रमाणित होने के पूर्व, साक्ष्य अधिनियम की धारा 106 में वर्णित प्रावधान प्रयोज्य नहीं किया जा सकता।

(ii) अंतिम बार देखा गया का सिद्धांत – मृतक के अंतिम बार देखे जाने और मृत शरीर के मिलने के मध्य लंबा समय अंतराल – शव परीक्षण प्रतिवेदन संदेह उत्पन्न कर रहा है कि मृतक के अंतिम बार जीवित देखे जाने के बहुत बाद मृत्यु हुई होगी – कोई साक्ष्य नहीं कि अभियुक्त कब घटना स्थल को छोड़कर गया एवं यह कि अन्य कोई उस स्थान पर प्रवेश नहीं कर सकता था – अंतिम बार देखे जाने की परिस्थिति अनिश्चायक हो जाती है।

(iii) आयुध की जब्ती – अभियुक्त द्वारा इंकार – अपराध से संबंद्ध करने हेतु सीरम विज्ञानी की रिपोर्ट से समर्थित नहीं – ऐसी स्थिति में आयुध की जब्ती अपने आप में दोषसिद्धि के लिए बहुत कम महत्व रखेगी।

(iv) न्यायिकेत्तर संस्वीकृति – विश्वसनीयता – यह दर्शाने के लिए कोई साक्ष्य नहीं कि अभियुक्त के पंचायत सदस्य से कोई पूर्व संबंध थे और यह कि अभियुक्त ने उससे किसी सहायता की आशा की थी अथवा मांग की एवं इसलिए उसके समक्ष संस्वीकृति की – कमजोर प्रकृति की साक्ष्य – मात्र न्यायिकेत्तर संस्वीकृति के आधार पर दोषसिद्धि सामान्यतः अनुज्ञात नहीं।

(v) साक्षी की विश्वसनीयता – अभियुक्त से पूर्व रंजिश – प्रमाणित नहीं – परिस्थितिजन्य साक्ष्य पर आधारित मामलों में अधिक सुसंगत नहीं, जिन्हें प्रमाणित करने का स्थापित तरीका हैं।

State of Punjab v. Kewal Krishan

Judgment dated 21.06.2023 passed by the Supreme Court in Criminal Appeal No. 2128 of 2014, reported in AIR 2023 SC 3226

Relevant extracts from the judgment:

The alleged date and time when the deceased was last seen alive was at quite a distance from the date and time when the deceased was found dead. Indisputably the deceased was found dead in his own house where the accused did not reside. The deceased was allegedly last seen alive in the company of the accused in the evening at around 7 pm of 10.12.1998 whereas the body of the deceased was found 2 days later, on 12.12.1998. Autopsy report, based on autopsy conducted at around 4.15 pm on 12.12.1998, noted occurance of rigor mortis in the lower limbs, which gives rise to a possibility of death being within 30 hours of the autopsy, meaning thereby that death might have occurred much after 7 pm of 10.12.1998. In such circumstances, bearing in mind that the deceased was found dead in his own house, where the accused did not reside, and there was no evidence as to when the accused left the house and that no one else could have entered the house in the interregnum, other intervening circumstances including hand of some third person in the crime was not ruled out by the prosecution evidence.

As regards recovery of the *Khanjar* (knife) is concerned, the same was denied by the accused and there was no serologist report to connect it with the crime. Therefore, it had very little incriminating value to sustain conviction on its own basis.

Insofar as the evidence of extra judicial confession made by the accused is concerned, the same was provided by PW–3, a member of the Panchayat wherein the deceased resided. Ordinarily a person makes a confession either to absolve oneself of the burden of guilt or to seek protection under the hope that the person to whom confession is made would protect him. Normally a confession to absolve oneself of the guilt is made to a person on whom the confessor reposes confidence. The High Court noticed that there was no evidence to demonstrate that the accused had any prior relations with PW–3 or that the accused hoped for, or sought, any help from PW–3 and, therefore, made the confession to him. Notably, the accused denied making any such confession. Otherwise also, an extra judicial confession is a very weak type of evidence and solely on its basis a conviction is not ordinarily to be recorded.

The argument that the accused has failed to discharge his burden under section 106 of the Evidence Act and, therefore, his conviction was justified is misconceived. Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, the question arises of considering facts of which the burden of proof would lie upon the accused.

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251. INDIAN PENAL CODE, 1860 – Sections 302 and 304 Part-I

(i) Premeditation and intention – Incident had taken place suddenly – Appellant caused single injury – Premeditation on the part of appellant, could not be established – Conviction of appellant deserves to be modified from section 302 IPC to section 304 Part-I of IPC.

(ii) Recovery of weapon – Merely because blood stained iron rod recovered from open space, its recovery does not become doubtful in absence of any reasonable explanation.

(iii) Credibility of eye witness – He took refuge behind *imli* tree in order to witness the incident – Human behavior cannot be measured on any golden scale – In the given fact situation of danger, the response may vary from person to person – Conduct of eyewitness is to be judged on the basis of facts and circumstances of each case.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 304 भाग–1

(i) पूर्वचिन्तन एवं आशय – घटना अचानक घटित हुई थी – अपीलार्थी ने एकल चोट पहुंचाई – अपीलार्थी द्वारा पूर्व-चिंतन किया जाना, स्थापित नहीं किया जा सका – अपीलार्थी की दोषसिद्धि धारा 302 आईपीसी से धारा 304 भाग– 1 आईपीसी में परिवर्तित किये जाने योग्य है।

(ii) हथियार की बरामदगी – केवल इसलिए कि खून से सनी लोहे की छड़ खुली जगह से बरामद हुई, किसी उचित स्पष्टीकरण के अभाव में उसकी बरामदगी संदिग्ध नहीं हो जाती।

(iii) प्रत्यक्षदर्शी साक्षी की विश्वसनीयता – उसने घटना को देखने के लिए इमली के पेड़ के पीछे शरण ली – मानव व्यवहार को किसी भी सुनहरे पैमाने पर नहीं मापा जा सकता है – खतरे की स्थिति में, एक व्यक्ति की प्रतिक्रिया दूसरे व्यक्ति में भिन्न हो सकती है – प्रत्यक्षदर्शी के आचरण का मूल्यांकन प्रत्येक मामले के तथ्य एवं परिस्थितियों के आधार पर किया जाना चाहिए।

Kamod Singh v. State of M.P.

Judgment dated 24.02.2023 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 1495 of 2015, reported in ILR 2023 MP 1421 (DB)

Relevant extracts from the judgment:

The incident had taken place suddenly. The prosecution could not establish that there was any premeditation on the part of appellant. Appellant caused single injury. In absence of establishing any intention, the conviction of appellant deserves to be modified to Section 304-I of IPC and he must undergo actual sentence of 10 years (if not already undergone).

The next contention was that the conduct of Rambhola was unnatural. As per the evidence on record, Rambhola (PW-10) was at a distance of about 500 meters from his deceased father. Incident had taken place suddenly. The human behaviour cannot be measured on any golden scale. In a given fact situation of danger, the response may vary from person to person. One may be courageous enough to reach to the place of incident immediately and interfere in the matter, whereas another may hide to save himself and therefore, it cannot be said that conduct of Rambhola (PW-10) was unnatural. In the facts and circumstances of this case, the judgment of this Court in ***Gaurav Pandey v. State of M.P., CRA.119 /2016*** cannot be pressed into service.

The iron rod was recovered from the appellant. Merely because it was recovered from an open place, its recovery does not become doubtful. It is profitable to refer to ***State of Himachal Pradesh v. Jeet Singh, (1994) 4 SCC 370*** wherein it was held as under:-

> "26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others."

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252. INDIAN PENAL CODE, 1860 – Sections 302 and 304 Part-II
Murder or culpable homicide not amounting to murder – Determination – Deceased and accused were in a relationship – Being unhappy with the conduct of accused, deceased broke the relationship – At the time of incidence, deceased was speaking to some other person – Agitated with the said turn of events, accused trespassed in the house of the deceased – Altercation took place between accused and deceased – Accused banged the head of the deceased against the wall – This was the only assault done by the accused at the spur of the moment and in a fit of rage – Held, this conduct does not indicate that the intention of the accused was to cause murder – Conviction was altered from section 302 to section 304 Part II of the Code.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 304 भाग–2
हत्या अथवा हत्या की कोटि में न आने वाला आपराधिक मानववध – निर्धारण – मृतक एवं अभियुक्त के मध्य संबंध थे – अभियुक्त के आचरण से दुखी होकर मृतक ने संबंध समाप्त कर दिये – घटना के समय मृतक किसी अन्य व्यक्ति से बात कर रही थी – उक्त घटनाक्रम से विचलित हो कर अभियुक्त ने मृतक के घर में अतिचार किया – अभियुक्त एवं मृतक के मध्य विवाद हुआ – अभियुक्त ने मृतक का सिर दीवार पर मार दिया था – अभियुक्त ने गुस्से में एवं तात्कालिक समय में सिर्फ यही हमला किया था – अभिनिर्धारित, अभियुक्त का यह आचरण मृत्यु कारित करने का आशय दर्षित नहीं करता – दोषसिद्धि को संहिता की धारा 302 से 304 भाग–2 में परिवर्तित किया गया।

N. Ramkumar v. State Rep. by Inspector of Police
Judgment dated 06.09.2023 passed by the Supreme Court in Criminal Appeal No. 2006 of 2023, reported in AIR 2023 SC 4246

Relevant extracts from the judgment:

It emerges from the case law ***Anbazhagan v. The State represented by the Inspector of Police, AIR 2023 SC 3660*** for converting the sentence imposed under Section 302 to Section 304 Part II the facts unravelled during trial will have to be seen. In the facts of the case on hand, it is discernible that there was no premeditation to cause death or the genesis of occurrence and the single assault by the accused and duration of entire episode, were factors to adjudge the intention. The offence can be brought clearly within the ambit of Section 304 Part-II IPC.

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253. INDIAN PENAL CODE, 1860 – Sections 302 and 376
EVIDENCE ACT, 1872 – Section 106

(i) Circumstantial evidence – Rape and murder of minor – Absence of DNA/ medical examination – Effect of – Failure of prosecution to produce such evidence will certainly create a gaping hole in case of prosecution and give rise to serious doubt – Accused not medically examined – No report of FSL obtained regarding blood/semen stains found on salwar worn by the victim – In case when victim is dead, medical examination of accused assumes greater importance.

(ii) Circumstantial evidence – To invoke section 106 of the Evidence Act, prosecution must prove that the victim was last seen in company of accused – In heinous offence, court is required to put material evidence under higher scrutiny.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 376
साक्ष्य अधिनियम, 1872 – धारा 106

(i) परिस्थितिजन्य साक्ष्य – नाबालिग से बलात्कार और हत्या – डीएनए/चिकित्सीय परीक्षण का अभाव – प्रभाव – ऐसा साक्ष्य प्रस्तुत करने में अभियोजन की विफलता निश्चित रूप से अभियोजन के मामले में एक बड़ी कमी उत्पन्न करेगी और गंभीर संदेह को जन्म देगी – अभियुक्त का चिकित्सीय परीक्षण नहीं कराया गया – पीड़िता द्वारा पहनी गई सलवार पर पाये गये खून/वीर्य के धब्बों के बारे में एफएसएल की कोई रिपोर्ट प्राप्त नहीं की गई – ऐसे मामले में जब पीड़िता की मृत्यु हो गई हो, तब अभियुक्त का चिकित्सीय परीक्षण अत्यधिक महत्व रखता है।

(ii) परिस्थितिजन्य साक्ष्य – साक्ष्य अधिनियम की धारा 106 का अवलम्ब लेने के लिए, अभियोजन पक्ष को यह साबित करना होगा कि पीड़िता को आखिरी बार अभियुक्त के साथ देखा गया था – जघन्य अपराध में, न्यायालय द्वारा तात्विक साक्ष्य का सूक्ष्म परीक्षण किया जाना आवश्यक है।

Chotkau v. State of Uttar Pradesh

Judgment dated 28.09.2022 passed by the Supreme Court in Criminal Appeal No. 361 of 2018, reported in (2023) 6 SCC 742 (3 Judge Bench)

Relevant extracts from the judgment:

In cases where the victim of rape is alive and is in a position to testify in court, it may be possible for the prosecution to take a chance by not medically examining the accused. But in cases where the victim is dead and the offence is sought to be established only by circumstantial evidence, medical evidence assumes great importance. The failure of the prosecution to produce such evidence, despite there being no obstacle from the accused or anyone, will certainly create a gaping hole in the case of the prosecution and give rise to a serious doubt on the case of the prosecution. We do not wish to go into the question whether Section 53A is mandatory or not. Section 53A enables the prosecution to obtain a significant piece of evidence to prove the charge. The failure of the prosecution in this case to subject the appellant to medical examination is certainly fatal to the prosecution case especially when the ocular evidence is found to be not trustworthy.

Their failure to obtain the report of the Forensic Sciences Laboratory on the blood/semen stain on the salwar worn by the victim, compounds the failure of the prosecution.

Both the Courts below found the evidence of P.Ws. 1 to 3 acceptable. The seriously inherent contradictions in the statements made by them have not been duly taken note of by both the courts. When the offence is heinous, the Court is required to put the material evidence under a higher scrutiny. On a careful consideration of the reasoning of the Trial Court, as confirmed by the High Court, we find that sufficient care has not been taken in the assessment of the statements made by P.Ws. 1 to 3. No one spoke as to who sent the FIR to the court and when it was sent. Strangely even the copy of the post-mortem report was admittedly received by SHO on the 13.03.2012 though the post mortem was conducted on the 09.03.2012. It was the same date on which the FIR reached the Court. These factors certainly create a strong suspicion on the story as projected by the prosecution, but both the Courts have overlooked the same completely. This erroneous approach on the part of the Sessions Court and the High Court has led to the appellant being ordained to be dispatched to the gallows.

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254. INDIAN PENAL CODE, 1860 – Sections 390, 395, 504 and 506

(i) When theft is not robbery? If hurt, is caused at the time of the commission of the theft but for an object other than the one referred to in section 390 of IPC, theft would not amount to robbery.

(ii) Intentional insult – Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit breach of the peace.

(iii) Criminal intimidation – Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause harm to the complainant.

भारतीय दण्ड संहिता, 1860 – धाराएं 390, 395, 504 एवं 506

(i) चोरी कब लूट नहीं है? – यदि उपहति चोरी का अपराध कारित करते समय कारित की गई हो परन्तु वह भारतीय दण्ड संहिता की धारा 390 में वर्णित उद्देश्य से भिन्न उद्देश्य हेतु हो तब वह लूट नहीं मानी जाएगी।

(ii) साशय अपमान – केवल अपशब्द, अशिष्ट व्यवहार, असभ्यता या बेअदबी मात्र भारतीय दण्ड संहिता की धारा 504 की परिभाषा के अंतर्गत साशय अनादर के तुल्य नहीं होती जब तक कि किसी व्यक्ति को लोक शांति भंग करने के लिए प्रकोपित करने के आशय से साशय अपमान न किया गया हो।

(iii) आपराधिक अभित्रास – आपराधिक अभित्रास का अपराध गठित करने के लिए यह स्थापित करना आवश्यक है कि अभियुक्त का आशय परिवादी को भयभीत करना था।

Mohammad Wajid and anr. v. State of U.P. and ors.

Judgment dated 08.08.2023 passed by the Supreme Court in Criminal Appeal No. 2340 of 2023, reported in AIR 2023 SC 3784

Relevant extracts from the judgment:

Theft amounts to 'robbery' if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. Before theft can amount to 'robbery', the offender must have voluntarily caused or attempted to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. The second necessary ingredient is that this must be in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft. The third necessary ingredient is that the offender must voluntarily cause or attempt to cause to any person hurt etc., for that end, that is, in order to the committing of the theft or for the purpose of committing theft or for carrying away or attempting to carry away property obtained by the theft. It is not sufficient that in the transaction of committing theft, hurt, etc., had been caused. If hurt, etc., is caused at the time of the commission of the theft but for an object other than the one referred to in Section 390, IPC, theft would not amount to robbery. It is also not sufficient that hurt had been caused in the course of the same transaction as commission of the theft.

Ordinarily, if violence or hurt is caused at the time of theft, it would be reasonable to infer that violence or hurt was caused for facilitating the commission of the theft or for facilitating the carrying away of the property stolen or for facilitating the attempt to do so. But there may be something in the evidence to

indicate that hurt or violence was caused not for this purpose but for a different purpose. We are of the view that prosecution has blindfoldedly and without understanding the true purport of the offence of "dacoity" registered the FIR for the offence punishable under Section 395 of the IPC and proceeded to even prepare charge sheet for the offence of dacoity.

Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant. In ***King Emperor v. Chunnibhai Dayabhai, (1902) 4 Bom LR 78***, a Division Bench of the Bombay High Court pointed out that:—

> "To constitute an offence under Section 504, I.P.C. it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. Public peace can be broken by angry words as well as deeds."

A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant.

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255. INDIAN PENAL CODE, 1860 – Sections 420, 463, 465, 468, 471 r/w/s 120 B

REPRESENTATION OF PEOPLES ACT, 1951 – Section 29A (5)

(i) Offence of Cheating – *Prima facie* case – Mere allegation that false affidavit was submitted by accused for registration of the party claiming therein that it adheres to secularism, against its memorandum which restricts membership on religious basis – No question of deceiving any person fraudulently or dishonestly to deliver any property to any person – Essential ingredients not satisfied – No offence made out.

(ii) Offence of Forgery – Essential ingredients – Making false document is *sine qua non* – Making false claim and creating false document are both different and distinct – Law explained.

भारतीय दण्ड संहिता, 1860 – धाराएं 420, 463, 465, 468, 471 सहपठित 120ख

लोक प्रतिनिधित्व अधिनियम, 1951 – धारा 29क (5)

(i) छल का अपराध – प्रथम दृष्टया मामला – केवल यह अभिकथन कि अभियुक्त द्वारा पार्टी के पंजीयन हेतु मिथ्या शपथपत्र उसमें यह दावा करते हुए प्रस्तुत किया गया कि पार्टी पंथ निरपेक्षता का पालन करती है, जबकि पार्टी का विधान उसकी सदस्यता को धार्मिक आधार पर सीमित करता है – किसी व्यक्ति को संपत्ति परिदत्त करने हेतु कपटपूर्वक अथवा बेईमानी से प्रवंचित करने का कोई प्रश्न नहीं – आवश्यक संघटक की संतुष्टि नहीं – कोई अपराध गठित नहीं होता।

(ii) कूटरचना का अपरध – आवश्यक संघटक – मिथ्या दस्तावेज रचना अनिवार्य है – मिथ्या दावा करना एवं मिथ्या दस्तावेज रचना दोनों भिन्न और पृथक हैं – विधि की व्याख्या की गई।

Sukhbir Singh Badal v. Balwant Singh Khera and ors.

Judgment dated 28.04.2023 passed by the Supreme Court in Criminal Appeal No. 1116 of 2023, reported in AIR 2023 SC 3053

Relevant extracts from the judgment:

Looking to the averments and allegations in the complaint, it is not appreciable at all, how the appellants are alleged to have committed the offence of cheating. The ingredients for the offence of cheating are not at all satisfied. There is no question of deceiving any person, fraudulently or dishonestly to deliver any property to any person…… Therefore, even on bare reading of the averments and allegations in the complaint, no case even remotely for the offence under Section 420 IPC is made out.

For the offence of forgery, there must be making of a false document with intent to cause damage or injury to the public or to any person. Therefore, making the false documents is sine qua non.

In the present case, no false document has been produced. What was produced was the Memorandum and no other documents were produced. Even according to the original complainant, the Memorandum and the claim made at the time of registration of the Party that it has adopted a Memorandum accepting the secularism, the same was contrary to the Constitution of the Party produced before

the Gurudwara Election Commission. Making a false claim and creating and producing the false document both are different and distinct. Under the circumstances to continue the criminal proceedings against the appellants-accused arising out of the complaint and to face the trial by the accused as per the summoning order is nothing but an abuse of process of law and court and this is a fit case to quash the entire criminal proceedings.

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256. LIMITATION ACT, 1963 – Article 54
SPECIFIC RELIEF ACT, 1963 – Section 20
Suit for specific performance – Bar of limitation of 3 years when no time is fixed for performance of contract – Plaintiff had filed suit for injunction restraining the defendant from selling the disputed property in the year 1991 – Plaintiff had sufficient written notice from defendant of their refusal to execute sale deed – Plaintiff had filed suit for specific performance of contract in the year 1995 – Time period shall run from the date plaintiff had noticed that the performance was refused by defendant – Suit was held to be barred by limitation.

परिसीमा अधिनियम, 1963 – अनुच्छेद 54
विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20
विनिर्दिष्ट अनुपालन हेतु वाद – संविदा के अनुपालन हेतु जहां कोई समय निश्चित नहीं है वहां परिसीमा काल तीन वर्ष है – वादी ने प्रतिवादी को वादग्रस्त संपत्ति विक्रय करने से निषेधित करने हेतु सन् 1991 में वाद प्रस्तुत किया – वादी को यह लिखित सूचना थी कि प्रतिवादी ने विक्रय-पत्र निष्पादित करने से इंकार कर दिया है – वादी ने संविदा के विनिर्दिष्ट अनुपालन हेतु वाद सन् 1995 में प्रस्तुत किया – समय सीमा तब से आरंभ होगी जब वादी को यह ज्ञात हुआ कि प्रतिवादी ने अनुपालन से इंकार कर दिया है – वाद अवधि बाह्य निर्धारित किया गया।

A. Valliammai v. K.P. Murali and ors.

Judgment dated 12.09.2023 passed by the Supreme Court in Civil Appeal No. 5342 of 2023, reported in AIR 2023 SC 4375

Relevant extracts from the judgment:

The three year limitation period to file a suit for specific performance commenced as early as when the K. Sriram had filed suit for injunction on 15.07.1991. A. Valliammai's reply dated 09.08.1991 (Exhibit A-7) or reply to

rejoinder dated 16.09.1991 (Exhibit S-14) were again sufficient written notice to K. Sriram of her refusal and unwillingness to perform the agreement to sell (Exhibit A-1). The limitation period of three years under the second part of Article 54, which is from the date when the party had notice of the refusal by the other side, had expired when the suit for specific performance was filed on 27.09.1995. Suit in O.S. No. 21 of 2004 is barred by limitation.

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257. LIMITATION ACT, 1963 – Article 65
LAND REVENUE CODE, 1959 (M.P.) – Section 110
HINDU SUCCESSION ACT, 1956 – Section 6 (5)

(i) Adverse possession – Article 65 of Limitation Act would not apply to property belonging to undivided joint Hindu family – Every co-sharer is deemed to be in constructive possession – No *animus* or hostile possession against co-sharer – Title of co-sharer will not extinguish even if such sharer is not in actual possession – Claim on such property on basis of adverse possession cannot be accepted.

(ii) Mutation – Effect – Entry in revenue record neither creates nor extinguishes any right or title – Merely because co-sharer did not take steps to get her name mutated, would not deprive her from her share or title in property.

परिसीमा अधिनियम, 1963 – अनुच्छेद 65
भू–राजस्व संहिता, 1959 (म.प्र.) – धारा 110
हिन्दु उत्तराधिकार अधिनियम, 1956 – धारा 6 (5)

(i) प्रतिकूल कब्जा – अनुच्छेद 65 अविभक्त संयुक्त हिंदू परिवार की संपत्ति पर लागू नहीं होगा – प्रत्येक सह-अंशधारी को आन्वयिक कब्जे में समझा जाएगा – सह–अंशधारी के विरूद्ध कोई विद्वेष अथवा प्रतिकूल कब्जा नहीं हो सकता – सह-अंशधारी का स्वत्व कभी भी समाप्त नहीं होगा भले ही अन्य सह-अंशधारी वास्तविक आधिपत्य में न हो – ऐसी संपत्ति पर प्रतिकूल कब्जें के आधार पर दावा स्वीकार नहीं किया जा सकता।

(ii) नामान्तरण – प्रभाव – राजस्व अभिलेखों में की गई प्रविष्टि किसी अधिकार अथवा हक को न तो सृजित करेगी और न ही समाप्त करेगी – केवल इस कारण से कि सह-अंशधारी ने स्वयं का नामांतरण कराने हेतु कोई कदम नहीं उठाया, उसे संपत्ति में उसके अंश अथवा स्वामित्व से वंचित नहीं किया जा सकता।

Subhanshu Soni v. State of M.P. and ors.

Order dated 13.02.2023 passed by High Court of Madhya Pradesh in Miscellaneous Petition No. 572 of 2020, reported in 2023 (3) MPLJ 685

Relevant extracts from the order:

Since the period of limitation for recovery of possession is 12 years, therefore, counsel for the respondent no.5 was requested to argue on the question of adverse possession. Unfortunately, counsel for the respondent no.5 was unable to point out even a single ingredient of the doctrine of adverse possession. However, the counsel for the respondent no.5 was all the time insisting that his all arguments should be considered and should be dealt with. Therefore, he was further directed to argue on the issue as to whether each and every co-sharer of undivided joint Hindu family property can be treated to be in joint possession or not. His submission was that the actual possession has to be seen and not the constructive possession. Accordingly, the counsel for the respondent no.5 was directed to argue on the doctrine of ouster and to point out as to whether there is an element of ouster in the present case. The counsel for the respondent no.5 kept mum and was not in a position to argue that under what circumstances, the doctrine of ouster can be applied against the co-owner/co-sharer. Although this court was not inclined to highlight the level of arguments of counsel for the respondent no.5; but all the time he was insisting that his each and every argument should be considered.

The crux of the matter is that the respondent no.6 is the sister of the respondent no.5 and the property in dispute belonged to their father late Badri Prasad. It is also not in dispute that after the death of Badri Prasad, name of respondent no.5 and his mother Kesharbai were recorded; but, the name of respondent no.6 was not recorded. It is well established principle of law that mutation entry will neither create nor extinguish any right or title. A mutation entry is not a document of title. Merely because the respondent no.6 did not take any step to get her name mutated would not deprive her from her title or share in the property in dispute. Furthermore, Article 65 of the Limitation Act would not apply to the undivided joint Hindu family property. It is well established principle of law that every co-sharer is deemed to be in constructive possession irrespective of the fact as to whether he is in actual possession or not unless and until it is successfully shown by the co-sharer that one of the co-sharer was ousted from the property in dispute or the property was partitioned. There cannot be any animus or hostile possession

against a co-sharer. As respondent no.5 cannot claim that he had perfected his title by way of adverse possession, this court is of the considered opinion that the share of the respondent no.6 in the disputed land will never extinguish.

It is not the case of respondent no.5 that respondent no.6 was made a party to the mutation proceedings which were started after the death of Badri Prasad. Once the respondent no.6 was not noticed and was not made known about the mutation of name of respondent no.5 along with his mother Kesharbai and as respondent no.6 was living separately in her matrimonial house at a different place then her contention that she was not aware of non-mutation of her name in the revenue records cannot be said to be incorrect or false. Accordingly, the S.D.O. Rajnagar committed material illegality by dismissing the appeal filed by the respondent no.6 as barred by limitation.

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258. MOTOR VEHICLES ACT, 1988 – Section 166

Assessment of permanent disability – At the time of accident appellant aged 50 years 5 months was working as a gunman in a hotel – Due to accident his right leg above the knee was amputated and thereby terminated from service – A person with his right leg amputated cannot perform the duty of a gunman – This is his functional disability – Considering the aforesaid facts the loss of earning capacity of the appellant assessed by Tribunal as 100%, held proper.

मोटरयान अधिनियम, 1988 – धारा 166

स्थाई निर्योग्यता का आकलन – दुर्घटना के समय 50 वर्ष 5 माह की आयु वाला आवेदक होटल में गनमैन के रूप में कार्यरत था – दुर्घटना के कारण दाहिना पैर घुटने के ऊपर से विच्छेदित हुआ – उसकी सेवा समाप्त की गई – एक व्यक्ति जिसका दाहिना पैर विच्छेदित हुआ हो गनमैन के रूप में अपना कार्य नहीं कर सकता – यह उसकी कार्यात्मक अयोग्यता है – उपरोक्त तथ्यों को विचार में लेते हुए आवेदक की अर्जन क्षमता में हानि अधिकरण द्वारा सौ प्रतिशत उचित ही निर्धारित की गई।

Sarnam Singh v. Shriram General Insurance Co. Ltd. and ors.

Order dated 04.07.2023 passed by the Supreme Court in Civil Appeal No. 3900 of 2023, reported in AIR 2023 SC 3601

Relevant extracts from the order:

We find that the appellant herein was working as a gunman with Bharat Hotel Limited. On account of amputation of his right leg above the knee, he was terminated from service w.e.f. 31-5-2015. It is not a matter of dispute that a person with his right leg amputated cannot perform the duty of a gunman. This is his functional disability. He was 50 years & 5 months old at the time of accident. Considering the aforesaid facts, in our view, the Tribunal was right in assessing the loss of earning capacity of the appellant at 100% and assessing the compensation accordingly. The High Court was in error in reducing the loss of earning capacity to 80%, relying upon the judgment of ***Shri Ram General Insurance Co. Ltd. v. Sarnam Singh, 2017 SCC OnLine Del 13011*** of the High Court, despite there being a judgment of this Court available on the issue.

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259. MOTOR VEHICLES ACT, 1988 – Section 166

(i) Motor vehicle accident – Quantum of compensation in injury cases – Injured boy aged 19 years suffered compressed fracture of cervical vertebrae resulting in paraplegia and disfunction in male organs – Injury on vital parts of body and suffered 85% permanent disability – Unfit for employment hence loss of income assessed at 100% – Reduction on account of uncertainties of life and deduction towards personal expenses disallowed – Compensation granted under heads of loss of marriage prospect, future medical expenses, attendant charges, pain and suffering along with compensations in other heads.

(ii) Computation of compensation – Deceased employed as Principal in a Law College was aged between 50 to 60 years – Claimants were wife of deceased and four children – Income assessed relying upon statement of accountant of Law College along with additional income from checking examination copies – Awarded Rs. 40,000/– to each claimant for loss of consortium plus compensation in other conventional heads.

मोटर यान अधिनियम, 1988 – धारा 166

(i) मोटर यान दुर्घटना – उपहति के मामलों में प्रतिकर का परिमाण – 19 वर्षीय आहत युवक को सर्वाईकल वरटीब्रा में कम्प्रेस्ड फ्रेक्चर, परिणामस्वरूप पैराप्लेजिया एवं पुरुष अंगों में निष्क्रियता – शरीर के महत्वपूर्ण हिस्सों पर

चोट एवं 85 प्रतिशत स्थायी निर्योग्यता – रोजगार के लिए अयोग्य, इसलिए आय की 100 प्रतिशत हानि का आकलन किया गया – जीवन की अनिश्चितताओं और व्यक्तिगत खर्चो की कटौती नहीं – विवाह की संभावना की हानि, भविष्य के चिकित्सा व्यय, परिचारक शल्क, दर्द और पीड़ा के साथ –साथ अन्य मदों में प्रतिकर दिया गया ।

(ii) प्रतिकर की गणना – मृतक लॉ कालेज के प्रिंसिपल के रूप में कार्यरत जिसकी आयु 50–60 वर्ष के बीच – दावेदार मृतक की पत्नि और चार बच्चे – लॉ कॉलेज के अकाउंटेंट के बयान के आधार पर आय का आकलन किया गया साथ ही परीक्षा की कॉपी की जॉच से अतिरिक्त आय – साहचर्य की हानि के लिए प्रत्येक दावेदार को रु 40,000/– प्रदाय किया गया और अन्य पारंपरिक मदों में भी प्रतिकर दिया गया ।

Rahul Ganpatrao Sable v. Laxman Maruti Jadhav (dead) through LRs. and ors.

Judgment dated 05.07.2023 passed by the Supreme Court in SLP (C) No. 26871 of 2019, reported in (2023) ACJ 1465

Relevant extracts from the judgment:

The five injuries which are permanent in nature apparently make him unfit for any employment even though the disability may be 60% or 85%. The compression fractures of seven cervical vertebra resulting into Paraplegia and further loss of bladder function make it absolutely impossible for a person to work and be gainfully employed. Considering the nature of disability, loss of income is, thus, held to be 100% and not 50% as held by the High Court.

The High Court deducted 1/3rd towards uncertainties of life, but this has been disapproved in the case of ***Leela Gupta v. State of Uttar Pradesh, 2010 ACJ 2717 (SC)*** as the same is covered while applying the multiplier. Therefore, this deduction by the High Court is held to be incorrect and no deduction should be made for uncertainties in life. We hold accordingly. The income is thus held to be Rs. 25,000/- per month.

The High Court deducted 50% of compensation towards personal expenses. The present case being not of death and the claim not being made by the dependents, but the same being by a survivor in the accident with severe injuries resulting into permanent disability, there could not be any justification for deduction of personal expenses. We do not approve the said deduction in view of the judgment of this Court in the case of ***Lalan D. v. Oriental Insurance Co. Ltd., 2020 ACJ 2517 (SC).***

The appellants had produced the Accountant of the Law College where the deceased was working. He had given specific statements that at the time of his death, the deceased was in the Pay Scale of Rs.3700 – 5700/- and his basic salary was Rs.5250/-. The total salary payable to the deceased was Rs.12235/- in accordance to the UGC scale applicable since 01.01.1986. According to him, the 5th Pay Commission was also made applicable w.e.f. 01.01.1996. According to which, the Pay Scale of Principal would be Rs.12000-18,300/-. He also produced records relating to arrears of pay given to the dependents of the deceased and also gave details regarding the pension being paid to the family of the deceased. In the cross examination, nothing fruitful was elicited. The Courts below have relied upon the statement of C.W.-1, widow of the deceased and also Ext.52 for determining the monthly salary of the deceased to be Rs. 8100/-. We do not find any discussion with regard to the statement of the Accountant which was very specific that at the relevant time, the salary drawn was Rs.12,235/- per month. He had also stated that the UGC scale was applicable and further that the 5th Pay Commission was made applicable from 01.01.1996. The arrears of pay etc. were given to the dependents accordingly and the pension was also fixed accordingly. In view of the above, we do not find any reason not to accept the statement of the Accountant that the salary of the deceased was Rs.12235/- on the date of the accident. We, thus, hold accordingly.

In the present case, the MACT had granted a meagre amount of Rs.5,000/- towards loss of consortium. However, the High Court granted a total amount of Rs.70,000/- as consolidated amount under all conventional heads, which included loss of consortium, loss of estate and funeral expenses. In the case of ***National Insurance Co. Ltd. v. Pranay Sethi, 2017 ACJ 2700 (SC),*** Constitution Bench of this Court had provided that all dependents should be separately awarded towards loss of consortium and had actually awarded Rs.40,000/- to each of the dependents. Considering the same, an amount of Rs.40,000/- each is awarded to each of the four dependents towards loss of consortium.

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260. MOTOR VEHICLES ACT, 1988 – Section 168
CRIMINAL PROCEDURE CODE, 1973 – Section 173 (8)

(i) Motor vehicle accident – Claim petition – Compensation – Final report filed in criminal case – Effect – Opinion in the final report would not have bearing on the claim petition – Claim petition to be considered on its own merits.

(ii) Burden of proof – Father of deceased filed claim petition alleging negligence on the part of the driver of the offending vehicle – As per final report, incident was unavoidable accident that occurred while claimant's son tried to overtake pick-up van and collided with offending vehicle – Burden of proving negligence lies on the claimant – Motor vehicle accident claims must be decided on basis of preponderance of probabilities and not on the basis of proof beyond reasonable doubt.

मोटर यान अधिनियम, 1988 – धारा 168
दंड प्रक्रिया संहिता, 1973 – धारा 173 (8)

(i) मोटरयान दुर्घटना – दावा याचिका – प्रतिकर – दांडिक मामले में प्रस्तुत अंतिम प्रतिवेदन – प्रभाव – अंतिम प्रतिवेदन में दी गई राय दावा याचिका पर कोई प्रभाव नहीं रखेगी – दावा याचिका अपने स्वयं के गुण-दोष पर विचार की जाएगी।

(ii) सबूत का भार – मृतक के पिता ने दुर्घटनाकारी वाहन के चालक की उपेक्षा का अभिकथन करते हुए दावा याचिका प्रस्तुत की – अंतिम प्रतिवेदन के अनुसार घटना अपरिहार्य दुर्घटना थी, जो दावाकर्ता के पुत्र द्वारा पिक-अप वैन को ओवरटेक करने का प्रयास करते समय एवं दुर्घटनाकारी वाहन से टकराने के कारण हुई थी – उपेक्षा प्रमाणित करने का भार दावाकर्ता पर होता है – मोटर यान दुर्घटना दावों का निराकरण संभावनाओं की प्रबलता के आधार पर किया जाना आवश्यक है, न कि युक्तियुक्त संदेह से परे प्रमाणित किये जाने के आधार पर।

Mathew Alexander v. Mohammed Shafi and anr.

Judgment dated 13.07.2023 passed by the Supreme Court in Criminal Appeal No. 1931 of 2023, reported in AIR 2023 SC 3349

Relevant extracts from the judgment:

Insofar as the claim petition filed by the appellant herein is concerned, alleged neglige nce on the part of the driver of the tanker lorry and pickup van in causing the accident has to be proved. That is a matter which has to be considered on the basis of preponderance of the possibilities and not on the basis of proof beyond reasonable doubt. It is left to the parties in the claim petitions filed by the Appellant herein or other claimants to let in their respective evidence and the burden is on them to prove negligence on the part of the driver of the Alto car, the tanker lorry or pickup van, as the case may be, in causing the accident. In such an

event, the claim petition would be considered on its own merits. It is needless to observe that if the proof of negligence on the part of the drivers of the three vehicles is not established then, in that event, the claim petition will be disposed of accordingly.

Thus, the opinion in the final report would not have a bearing on the claim petition for the aforesaid reasons. This is because the Appellant herein is seeking compensation for the death of his son in the accident which occurred on account of the negligence on the part of the driver of the tanker lorry, causing the accident on the said date. It is further observed that in the claim petitions filed by the dependents, in respect of the other passengers in the car who died in the accident, they have to similarly establish the negligence in accordance with law.

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261. NATIONAL HIGHWAYS ACT, 1956 – Section 3H (4)

(i) Acquisition of land – Apportionment of compensation – Jurisdiction – Special Land Acquisition Officer determined compensation – Dispute arose between claimants with respect to apportionment – Held, dispute on apportionment of compensation or payment to any person can only be decided by the Principal Civil Court of original jurisdiction, i.e. District Judge – Procedure of referral, explained.

(ii) Apportionment of compensation – General principles – Apportionment is not revaluation but distribution of value already fixed among interested persons as per Rule, which needs to be formulated in each case.

राष्ट्रीय राजमार्ग अधिनियम, 1956 – धारा 3ज (4)

(i) भूमि का अर्जन – प्रतिकर का प्रभाजन – क्षेत्राधिकार – विशिष्ट भूमि अर्जन अधिकारी ने प्रतिकर निर्धारित किया – दावेदारों के मध्य प्रभाजन को लेकर विवाद उत्पन्न हुआ – अभिनिर्धारित किया गया कि प्रतिकर के प्रभाजन अथवा किसी व्यक्ति को भुगतान के संबंध में विवाद का निपटारा केवल मूल क्षेत्राधिकार के प्रधान सिविल न्यायालय अर्थात जिला न्यायाधीश द्वारा किया जा सकता हैं – निर्दिष्ट करने की प्रक्रिया समझाई गयी।

(ii) प्रतिकर का प्रभाजन – सामान्य सिद्धांत – प्रभाजन पुनर्मूल्यांकन नहीं हैं अपितु हितबद्ध व्यक्तियों के मध्य निर्धारित निश्चित मूल्य का नियम अनुसार वितरण है, जिसे प्रत्येक मामले में प्रतिपादित किया जाना आवश्यक है।

Vinod Kumar and ors. v. District Magistrate, Mau and ors.
Judgment dated 07.07.2023 passed by the Supreme Court in Civil Appeal No. 5107 of 2022, reported in AIR 2023 SC 3337

Relevant extracts from the judgment:

The only general principle one could state is that apportionment under sub-clause (4) of Section 3H of the Act 1956 is not a revaluation but a distribution of the value already fixed among the several persons interested in the land acquired in accordance with the nature and quantum of the respective interests. In ascertainment of those interests, the determination of their relative importance and the manner in which they can be said to have contributed to the total value fixed are questions to be decided in the light of the circumstances of each case and the relevant provisions of law governing the rights of the parties. The actual rule for apportionment has to be formulated in each case so as to ensure a just and equitable distribution of the total value or compensation among the persons interested in the land.

Our final conclusion is as under: If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, then, the competent authority shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. The competent authority possesses certain powers of the Civil Court, but in the event of a dispute of the above nature, the summary power, vesting in the competent authority of rendering an opinion in terms of sub–section (3) of Section 3H,will not serve the purpose. The dispute being of the nature triable by the Civil Court that the law steps in to provide for that to be referred to the decision of the Principal Civil Court of original jurisdiction. The dispute regarding apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, would then have to be decided by that Court.

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262. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 (c) and 141(1) Offence by Company – Requirement to implead Director as accused – Importance of the word "and" in the section – To implead Director, who is other than Managing Director or signatory of the cheque, it

should be averred that he was in charge of the company and was responsible for the conduct of the company – Both conditions cannot be read disjunctively and in absence of any one of them, is not sufficient to attract offence u/s 141(1).

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 (ग) एवं 141(1)
कंपनी द्वारा अपराध – निदेशक को अभियुक्त के रूप शामिल करने हेतु आवश्यकताएं – धारा में ''और'' शब्द का महत्व – निदेशक जो प्रबंध निदेशक या चैक के हस्ताक्षरकर्ता से भिन्न है, को पक्षकार बनाने हेतु यह प्रकथित किया जाना चाहिए कि वह कंपनी का प्रभारी था और कंपनी के संचालन हेतु जिम्मेदार था – दोनों शर्तों को अलग–अलग नहीं पढ़ा जा सकता और इनमें से किसी भी एक का अभाव धारा 141(1) के अंतर्गत अपराध गठित नहीं करता।

Ashok Shewakramani and ors. v. State of Andhra Pradesh and anr.

Judgment dated 03.08.2023 passed by the Supreme Court in Criminal Appeal No. 879 of 2023, reported in (2023) 8 SCC 473

Relevant extracts from the judgment:

Sub-section (1) of Section 141 of the NI Act required the complainant to aver that the present appellants at the time of the commission of the offence were in charge of, and were responsible to the company for the conduct of the business of the company. In the present case, all that the second respondent has alleged is that the appellants were liable for transactions of the company and that they were fully aware of the issuance of the cheques and dishonor of the cheques.

Therefore, even if we decide to take a broad and liberal view of the pleadings in the complaint, we are unable to draw a conclusion that compliance with the requirements of sub-section (1) of Section 141 N.I. Act was made by the second respondent. The most important averment which is required by sub-section (1) of Section 141 of the NI Act is that the directors were in charge of, and were responsible for the conduct of the company. The appellants are neither the signatories to the cheques nor are whole time directors. The decision in the case of ***S.P. Mani and Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685*** will have no application as in the present case, the statutory notice was admittedly not served to the accused. Obviously, the High Court has not adverted to aforesaid two glaring deficiencies in the complaint.

After having considered the submissions, we are of the view that there is non-compliance on the part of the second respondent with the requirements of sub-section (1) of Section 141 of the NI Act. We may note here that we are dealing with the appellants who have been alleged to be the Directors of the accused No.1 company. We are not dealing with the cases of a Managing Director or a whole time Director. The appellants have not signed the cheques. In the facts of these three cases, the cheques have been signed by the Managing Director and not by any of the appellants.

Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section (1) of Section 141 are satisfied. The Section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence under Section 138 of the NI Act.

In the light of sub-section (1) of Section 141, we have perused the averments made in the complaints subject matter of these three appeals. The allegation in paragraph 1 of the complaints is that the appellants are managing the company and are busy with day to day affairs of the company. It is further averred that they are also in charge of the company and are jointly and severally liable for the acts of the accused No.1 company. The requirement of sub-section (1) of Section 141 of the NI Act is something different and higher. Every person who is sought to be roped in by virtue of sub-section (1) of Section 141 NI Act must be a person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company. Merely because somebody is managing the affairs of the company, *per se*, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. For example, in a given case, a manager of a company may be managing the business of the company. Only on the ground that he is managing the business of the company, he cannot be roped in based on sub-section (1) of Section 141 of the NI Act. The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the company. This is hardly relevant in the context of sub-section (1) of Section 141 of the NI Act.

The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the Company. This is hardly relevant in the context of sub-section (1) of Section 141 of the NI Act. The allegation that they are in charge of the company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also responsible to the company for the conduct of the business. Only by saying that a person was in charge of the company at the time when the offence was committed is not sufficient to attract sub-section (1) of Section 141 of the NI Act.

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263. PREVENTION OF CORRUPTION ACT, 1988 – Sections 7, 13 (1)(d) and 13 (2)

(i) Illegal gratification – Proof of demand – Money was recovered from almirah – Complainant not stated that appellant kept money in pocket and thereafter, put it in almirah – Complainant neither applied for opening of the road before appellant nor before competent authority – Appellant has no reason to make demand – No voice recorded conversation seized – Trap becomes doubtful, benefit of doubt given to appellant.

(ii) Recovery of money – Mere recovery of money by itself cannot prove the charges – It has to be proved beyond reasonable doubt that accused voluntarily accepted the money knowing it to be bribe.

भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 7, 13 (1)(घ) एवं 13(2)

(i) अवैध परितोषण – मांग का प्रमाण – धन राशि अलमारी से बरामद की गई – शिकायतकर्ता का यह कथन नहीं कि अपीलार्थी ने धन राशि जेब में रखी और उसके बाद उसे अलमारी में रखा – शिकायतकर्ता ने न तो अपीलार्थी के समक्ष न ही सक्षम प्राधिकारी के समक्ष सड़क खोलने के लिए आवेदन किया – अपीलार्थी के पास मांग करने का कोई कारण नहीं – बातचीत की रिकॉर्डिंग जब्त नहीं की गई – ट्रैप संदिग्ध हो गया, संदेह का लाभ अपीलार्थी को दिया गया।

(ii) धन राशि की बरामदगी – केवल धन की बरामदगी ही आरोपों को प्रमाणित नहीं कर सकती – यह युक्ति-युक्त संदेह से परे प्रमाणित करना होगा कि अभियुक्त ने स्वेच्छापूर्वक यह जानते हुए कि यह रिश्वत है, धन राशि को स्वीकार किया।

Chandra Shekhar v. State of M.P.

Judgment dated 15.03.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 387 of 1999, reported in ILR 2023 MP 1462

Relevant extracts from the judgment:

According to the prosecution case, the tainted money was recovered from Almirah. The complainant has not stated that he gave the money and the appellant kept it in the pocket and thereafter, put it in the Almirah, as per the contents of the sanction letter for prosecution against the appellant. Therefore, the benefit of the doubt goes in favour of the appellant, that he has been falsely implicated by the complainant because he had a grudge against him in respect of opening a way from his land. Instead of resorting to any legal remedy, or he was aware that he could not get any relief legally, he made a complaint to the Superintendent of Police, Special Police Establishment, Lok Ayukta, Indore.

It is important to mention here that the complainant did not apply under the code for the opening of the road either before the appellant or before the competent authority, hence the appellant had no reason to make a demand from him. Therefore, the demand for a bribe by the appellant has not been established by the prosecution. The Apex court in the case of ***Nishan Singh v. State of Punjab [Criminal Appeal No . 1227 of 2005 decided on 16.11.2010*** has held as under:

> "The question that arises for our consideration is as to whether the appellant entered the details of the order granted by the Court on 02.07.1986 itself and if such an entry was made on 02.07.1986, was there any occasion by the appellant demanding the money from PW-5 on 18.07.1986. The High Court while adverting to this aspect of the matter clearly recorded a finding that from the perusal of the Rapat Roznamcha "it does appear that entry with regard to stay was entered on 02.07.1986". The High Court having referred to that finding further proceeds to observe that the appellant making the entry on 02.07.1986 itself is of no consequence and he cannot be absolved with the charge framed against him. The reasoning given by the High Court is that in spite of making entry about the stay order in the Roznamcha the appellant required the PW-5 complainant to come after a week on the pretext that he was busy and will make the

> entry only after 2-3 days. It is on 18.07.1986, according to the High Court when the PW-5 returned to the appellant a demand of bribe was made. It is difficult to believe that PW-5 was not aware of the fact that such an entry was made by the appellant on 02.07.1986 itself. In fact there is a positive finding by the High Court that the entry was made on 02.07.1986 itself. In such view of the matter it becomes difficult to accept the story set up by the prosecution that a bribe was demanded by the appellant on 18.07.1986 and PW-5 complainant agreed to give that bribe. Once it is accepted that entry was made on 02.07.1986 itself, the whole story of the prosecution becomes unbelievable and unacceptable. For the aforesaid reasons, we are of the opinion that the High Court has committed a grave error in upholding the finding of the Trial Court."

In order to convict a public servant under Sections 7 and 20 of the Prevention of Corruption Act, mere recovery by itself cannot prove the charge against the accused. It has to be proved beyond reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. In the case of ***B. Jayaraj v. State of Andhra Pradesh, (2014) 13 SCC 55,*** the Apex Court has held that insofar as an offence under section 7 is concerned, it is a settled position of law that the demand of illegal gratification is a sine a qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubts that the accused voluntarily accepted the money knowing it to be a bribe. This judgment has recently been followed by the Apex Court in the case of ***N. Vijayakumar v. State of Tamil Nadu (Cr. Appeal Nos. 100-101 of 2021 decided on 03.02.2021)*** also reported in 2021 SCC Online SC 53. Para 12 of the said judgment is reproduced below:

> "12. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in the case of ***C.M. Girish Babu v. CBI, Cochin, High Court of Kerala, (2009) 3 SCC 779*** and in the case of ***B. Jayaraj v. State of Andhra Pradesh, (2014) 13 SCC 55***. In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1) (d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that accused voluntarily accepted

money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court. The relevant paragraphs 7, 8 and 9 of the judgment in the case of ***B. Jayaraj (***supra***)*** read as under :

"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in ***C.M. Sharma v. State of A.P., (2010) 15 SCC 1*** and ***C.M. Girish Babu v. CBI, (2009) 3 SCC 779.***

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P11cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused

without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

The above said view taken by this Court, fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cell phone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is "possible view" as such the judgment of the High Court is fit to be set aside. Before recording conviction under the provisions of Prevention of Corruption Act, courts have to take utmost care in scanning the evidence. Once conviction is recorded under provisions of Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record."

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264. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 3(a), 4, 5(m) and 6 r/w/s 2(1)(a)

Offence against children – Sentencing policy – POCSO Act was enacted to provide more stringent punishments in such offences – Minimum punishments are prescribed for deterrent effect on society – Sentence lesser than the minimum prescribed cannot be imposed even though the accused may have moved ahead in life.

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धाराएं 3(क), 4, 5(ड़) और 6 सहपठित धारा 2 (1)(क)

बालकों के विरूद्ध अपराध – दण्ड नीति – पॉक्सो अधिनियम इस प्रकार के अपराधों में अधिक कठोर दण्ड प्रदान करने के लिए अधिनियमित किया गया था – समाज पर निवारक प्रभाव के लिए न्यूनतम दण्ड निर्धारित किया गया है – न्यूनतम निर्धारित दण्ड से कम दण्ड नहीं दिया जा सकता, भले ही अभियुक्त जीवन में आगे बढ़ गया हो।

State of Uttar Pradesh v. Sonu Kushwaha

Judgment dated 05.07.2023 passed by the Supreme Court in Criminal Appeal No. 1633 of 2023, reported in (2023) 7 SCC 475

Relevant extracts from the judgment:

The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal provision uses the phraseology "shall not be less than…..", the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence. However, we find no such provision in the POCSO Act.

Therefore, notwithstanding the fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. Apart from the fact that the law provides for a minimum sentence, the crime committed by the respondent is very gruesome which calls for very stringent punishment. The impact of the obnoxious act on the mind of the victim child will be life long. The impact is bound to

adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident. Therefore, we have no option but to set aside the impugned judgment of the High Court and restore the judgment of the Trial Court.

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265. SPECIFIC RELIEF ACT, 1963 – Sections 10 and 15 (b)

Suit for specific performance of contract – Conditional sale deed registered with right to repurchase – Enforceable – Right of repurchase always assignable or transferable and cannot be treated as personal to the vendor, unless provided in the terms of the sale-deed itself – Implied prohibition of transfer or assignment cannot be inferred – However, assignment of obligation is not possible without the consent of the other party – Law discussed and explained.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 10 एवं 15 (ख)

संविदा के विनिर्दिष्ट पालन के लिए वाद – पुनः क्रय के अधिकार के साथ सशर्त विक्रय विलेख रजिस्टर्ड – प्रवर्तनीय – पुनः क्रय का अधिकार हमेशा समनुदेशनीय अथवा अंतरणीय होता हैं एवं इसे विक्रेता का व्यक्तिगत अधिकार होना मान्य नहीं किया जा सकता, जब तक कि विक्रय विलेख की शर्तों में ही इसका उल्लेख न हो – अंतरण अथवा समनुदेशन की विवक्षित रोक का अनुमान नहीं लगाया जा सकता – तथापि, दायित्व का समनुदेशन दूसरे पक्षकार की सहमति के बिना संभव नहीं – विधि पर विचार कर स्पष्ट किया गया।

Indira Devi v. Veena Gupta and ors.

Judgment dated 04.07.2023 passed by the Supreme Court in Civil Appeal No. 9833 of 2014, reported in (2023) 8 SCC 124

Relevant extracts from the judgment:

The condition of right to repurchase in sale deed will not be personal to the vendor unless the terms in the documents specifically state so. Such a right can always be assigned and the contract containing such condition shall be enforceable. The only exception being that such a right should not be personal in nature. The assignment of obligations in a document is not possible without the consent of the other party. No implied prohibition of transfer or assignment can be inferred in a

document. The benefit of contract is assignable in cases where it does not make any difference to the person on whom the obligations lies, to which of two persons he is to discharge.

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266. SPECIFIC RELIEF ACT, 1963 – Section 34

(i) Suit for declaration – Plaintiffs had executed power of attorney in favour of the defendant no. 2 for developing the property in question into smaller plots – Plaintiffs alleged that additional clause of authorizing defendants to sell the plots was added by misrepresentation – Defendants pleaded that power of attorney and sale deeds were not sought to be declared void – Held, where document of sale is void, then no cancellation would be necessary – Cancellation of sale deed was necessary only where it is alleged to be *voidable* on facts.

(ii) Legal maxim *non est factum* explained.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34

(i) घोषणा हेतु वाद – वादीगण ने प्रतिवादी क्रमांक 2 के पक्ष में विवादित संपत्ति को छोटे प्लॉट में विकसित करने हेतु मुख्तारनामा निष्पादित किया था – वादीगण ने आक्षेपित किया कि प्रतिवादीगण ने प्लॉट विक्रय करने का अतिरिक्त खण्ड दुर्व्यपदेशन कर जोड़ दिया है – प्रतिवादीगण ने यह अभिवाक् किया कि मुख्तारनामा एवं विक्रय पत्रों को शून्य घोषित करने की मांग नहीं की गई – अभिनिर्धारित, जहां विक्रय विलेख शून्य है वहां उसे रद्द कराने की आवश्यकता नहीं होगी – जहां तथ्यों से विक्रय विलेख शून्यकरणीय होना आक्षेपित है वहीं उसका रद्द कराया जाना आवश्यक है।

(ii) लीगल मैग्जिम *नॉन एस्ट फैक्टम* को समझाया गया।

Ramathal and ors. v. K. Rajamani (Dead) through LRs. and anr.

Judgment dated 17.08.2023 passed by the Supreme Court in Civil Appeal No. 8830 of 2012, reported in AIR 2023 SC 3978

Relevant extracts from the judgment:

It is specifically averred in paragraph No.6 of the plaint that only intention for executing the Power of Attorney in favour of defendant No.2 was for developing the property in question into smaller plots and to get necessary approvals for the

same from the relevant authorities. In paragraph 10 of the plaint, it is clearly stated that the plaintiffs were illiterate and had no means to get the above exercise carried out and as the defendant No.2 was well versed in dealing with Government Authorities, he could have helped them in developing the plots. Further, it was specifically stated in paragraph 10 that after reading the documents in 1991, the plaintiffs realized that the defendant had two additional clauses incorporated authorizing him to sell, gift, settle the plots in question and also to execute wherever necessary transfer of Patta Deeds. This was never the intention. These two additional rights recorded in the Power of Attorney deed was never intended nor conveyed nor informed. It is also stated in the plaint that taking advantage of illiteracy and simplicity of the plaintiffs, such rights have been incorporated in the Power of Attorney.

In the present case, the defendant respondent had taken a plea which the High Court had given due consideration that the plaintiff appellant had not sought any relief either for declaration of the Power of Attorney as void as also the cancellation of the sale deeds. Law is well settled that where it is alleged that the document of sale is void, then no cancellation would be necessary and such a document can be ignored under law. Cancellation of a sale deed would be necessary only where it is alleged to be voidable on facts. The present case the fraudulent misrepresentation was not only to the contents of the document but also to the character of the document. Thus, the reasoning given by the High Court contrary to the settled legal position cannot be sustained.

The aforementioned test for a successful plea of non est factum requires that: A. The person pleading non est factum must belong to "class of persons, who through no fault of their own, are unable to have any understanding of the purpose of the particular document because of blindness, illiteracy or some other disability". The disability must be one requiring the reliance on others for advice as to what they are signing.

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267. SPECIFIC RELIEF ACT, 1963 – Sections 34 and 38
Suit for declaration and permanent injunction – Registered sale deed executed by Power of Attorney holder (defendant) in favour of his son – Power of Attorney also executed without consideration – Plaintiff

claiming fraudulent execution of sale deed without consideration – Presumption of valid execution of registered document and proof of contents of the same are two different aspects – As plaintiff is not a signatory to the deed, burden of proof lies on defendant to prove due execution of registered sale deed and payment of consideration.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 34 एवं 38

घोषणा एवं शाश्वत व्यादेश के लिए वाद – पॉवर ऑफ अटॉर्नी धारक (प्रतिवादी) द्वारा अपने पुत्र के पक्ष में रजिस्टर्ड विक्रय विलेख निष्पादित – पॉवर ऑफ अटॉर्नी भी बिना प्रतिफल से निष्पादित – वादी ने बिना प्रतिफल कपटपूर्वक विक्रय विलेख के निष्पादन का दावा किया – रजिस्टर्ड दस्तावेज के उचित निष्पादन की उपधारणा एवं उसकी अंतर्वस्तु का प्रमाणन दो पृथक पहलू है – रजिस्टर्ड विक्रय विलेख के उचित निष्पादन एवं प्रतिफल के भुगतान को साबित करने का भार प्रतिवादी पर है, क्योंकि वादी उक्त विलेख का हस्ताक्षरकर्ता नहीं है।

T.R. (Tulsiram) Kori v. Raja Singh

Judgment dated 10.05.2023 passed by the Supreme Court in Second Appeal No. 571 of 2023, reported in AIR 2023 MP 113

Relevant extracts from the judgment:

Where the document is a registered document, then a presumption can be drawn that the registered document was validly executed and therefore, a registered document would be prima facie valid in law. Valid execution of a document and the proof of the contents of the same are two different aspects.

Since the power of attorney, Ex.P–7 was allegedly executed without there being any consideration amount, therefore it was obligatory on the part of the defendant No.1 to prove that an amount of ₹ 5,50,000/- which was received by him before the execution of the sale–deed was passed on to the plaintiff.

Merely because a registered sale-deed was executed would not mean that even the contents of the same would stand proved. The defendant No.1 has not explained as to what prompted him to execute the sale-deed in favour of his own son only. This conduct of the defendant No.1 clearly establishes that his only intention was to somehow grab the property of the plaintiff.

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268. TRANSFER OF PROPERTY ACT, 1882 – Section 54
REGISTRATION ACT, 1908 – Section 17
EVIDENCE ACT, 1872 – Sections 17 and 103

(i) Suit for possession on the basis of title which was acquired through registered sale deed – Burden of proof – Plaintiff claiming execution of sale deed by defendants – Defendants claiming it to be a sham transaction without challenging execution – Legal impact and effect of registered sale deed – Sale deed duly executed and registered, having endorsement of payment of consideration amounting to full transfer of ownership.

(ii) Burden of proof – Registered sale deed whose execution is not in dispute, carries presumption that transaction was genuine – Only dispute regarding nature of transaction – Burden lies on defendant to establish that it did not reflect the true nature of transaction.

(iii) Counter-claim – Defendant could not be permitted to raise Counter-claim against a co-defendant – Therefore, *interse* dispute on validity of sale deed between defendants, could not be considered in a suit filed by plaintiff for possession on the basis of sale deed.

संपत्ति अंतरण अधिनियम, 1882 – धारा 54
रजिस्ट्रेशन अधिनियम, 1908 – धारा 17
साक्ष्य अधिनियम, 1872 – धाराएं 17 एवं 103

(i) रजिस्टर्ड विक्रय पत्र के माध्यम से अर्जित स्वत्व पर आधारित कब्जे का वाद – सबूत का भार – वादी का दावा कि प्रतिवादी गण ने विक्रय विलेख निष्पादित किया – प्रतिवादी गण ने निष्पादन को चुनौती दिए बिना मिथ्या संव्यवहार का दावा किया – रजिस्टर्ड विक्रय पत्र का विधिक प्रभाव एवं परिणाम – उचित रूप से निष्पादित और रजिस्टर्ड विक्रय विलेख जिसमें प्रतिफल के भुगतान की टीप है, वह स्वत्व के पूर्ण अंतरण के समान है।

(ii) सबूत का भार – रजिस्टर्ड विक्रय पत्र, जिसका निष्पादन विवादित नहीं है, के साथ उपधारणा रहती हैं कि अंतरण वास्तविक था – विवाद केवल संव्यवहार की प्रकृति से सम्बंधित – यह स्थापित करने का भार प्रतिवादी पर हैं कि वह संव्यवहार की वास्तविक प्रकृति को नहीं दर्शाता।

(iii) प्रतिदावा – प्रतिवादी को सहप्रतिवादी के विरुद्ध प्रतिदावा करने के लिए अनुज्ञात नहीं किया जा सकता – इसलिए विक्रय विलेख के आधार पर वादी द्वारा प्रस्तुत कब्जे के वाद में विक्रय विलेख की वैधता के संबंध में प्रतिवादी गण के मध्य के विवाद पर विचार नहीं किया जा सकता।

Damodhar Narayan Sawale (D) through LRs. v. Tejrao Bajirao Mhaske and ors.

Judgment dated 04.05.2023 passed by the Supreme Court in Civil Appeal No. 930 of 2023, reported in AIR 2023 SC 3319

Relevant extracts from the judgment:

The well-nigh settled position of law is that one could be permitted to let in evidence only in tune with his pleadings. We shall not also be oblivious of the basic rule of law of pleadings, founded on the principle of *secundum allegata et probate*, that a party is not allowed to succeed where he has not set up the case which he wants to substantiate.

There can be no doubt with respect to the position that where a deed of sale had been duly executed and registered, its delivery and payment of consideration have been endorsed thereon it would amount to a full transfer of ownership so as to entitle its purchaser to maintain a suit for possession of the property sold. The very object of the mandate for registration of transfer of an immovable property worth more than Rs.100/– u/s 54 of the Transfer of Property Act, 1882 r/w/s 17 of the Indian Registration Act, is primarily to give certainty to title. When execution is challenged, registration by itself is no proof of execution and proof of complying with section 67 of the Evidence Act is necessary. There can be no reason to disbelieve a recital contained in a registered sale deed regarding payment of consideration, executed by the vendor. Hence, if it is said to have already been paid, going by the registered sale deed, certainly it is for the vendor asserting non–passing of consideration to prove the said asserted fact.

Since it is a registered sale deed and its execution is not in dispute it must carry a presumption that the transaction was a genuine one. Thus, evidently, the dispute is only in regard to the nature of transaction.

A defendant could not be permitted to raise counter–claim against a co–defendant as by virtue of Order 8 Rule 6A, CPC, it could be raised by a defendant only against the claim of the plaintiff.

The need to take into consideration the surrounding circumstances and the conduct of parties in deciding the passing of title would arise only if the recitals in the document are indecisive and ambiguous.

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269. WORKMEN'S COMPENSATION ACT, 1923 – Sections 2 (1) and 4(1)(b)

Assessment of compensation – Unskilled labour – Compound fracture in left arm resulting in loss of movement of fingers – Medical Board assessed 50% permanent disability – Criteria of assessment under the Act – Functional disability and not physical disability – Unskilled workman incapacitated to work as a labourer as the loading/unloading work requires both hands – Claimant not skilled for performing any other work with one hand thereby suffering 100% loss of earning capacity – Compensated accordingly.

कर्मचारी प्रतिकर अधिनियम, 1923 – धाराएं 2(1) और 4(1)(ख)

प्रतिकर का आकलन – अकुशल श्रमिक – कम्पाउण्ड फ्रेक्चर के परिणामस्वरूप बाएं हाथ की उंगलियों के चलन में कमी – मेडिकल बोर्ड ने 50 प्रतिशत स्थायी निर्योग्यता का आकलन किया – अधिनियम के अंतर्गत आकलन का मानदंड कार्यात्मक अयोग्यता है न की शारीरिक निर्योग्यता – लोडिंग/अनलोडिंग कार्य के लिए दोनों हाथों की आवश्यकता होती है अतः अकुशल श्रमिक के रूप में काम करने में असमर्थ – दावेदार एक हाथ से कोई अन्य कार्य करने के लिए कुशल नहीं है, दावेदार को कुल कार्यात्मक निर्योग्यता के परिणामस्वरूप अर्जन क्षमता का 100 प्रतिशत नुकसान हुआ है – तद्नुसार प्रतिकर दिया गया।

Indra Bai v. Oriental Insurance Co. Ltd. and anr.

Judgment dated 17.07.2023 passed by the Supreme Court in Civil Appeal No. 4492 of 2023, reported in (2023) ACJ 1473

Relevant extracts from the judgment:

In light of the definition of the term "total disablement" as provided by clause (l) of sub-section (1) of section 2 of the Act, it is the functional disability and not just the physical disability which is the determining factor in assessing whether the claimant (i.e., workman) has incurred total disablement. Thus, if the

disablement incurred in an accident incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement, the disablement would be taken as total for the purposes of award of compensation under section 4(1)(b) of the Act regardless of the injury sustained being not one as specified in Part I of Schedule I of the Act. The proviso to clause (l) of sub-section (1) of Section 2 of the Act does not dilute the import of the substantive clause. Rather, it adds to it by specifying categories wherein it shall be deemed that there is permanent total disablement.

In the instant case, on the basis of medical certificate provided by the Board, the Commissioner found the appellant unfit for labour inasmuch as there was complete loss of grip in appellant's left hand. Prior to the accident, the appellant worked as a loading/unloading labourer. Even if she could use her right hand, the crux is whether she could be considered suitable for performing her task as a loading/unloading labourer. Such a task is ordinarily performed by using both hands. There is no material on record from which it could be inferred that the appellant was skilled to perform any kind of job by use of one hand. It is also not a case where the appellant had the skill to perform her job by using machines which the appellant could operate by using one hand. In such circumstances, when the Board had certified that the appellant was rendered unfit for labour, there was no perversity in the decision of the Commissioner in awarding compensation by treating the disability as total on account of her functional disability.

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"A Judge must be of sterner stuff. His mental equipoise must always remain firm and undetected. He should not allow his personal prejudice to go into the decision making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined."

— **G.S. Singhvi, J.** *in P.D. Dinakaran (1) v. Judges Inquiry Committee, (2011) 8 SCC 380, para 41.*

PART – IIA

GUIDELINES ISSUED BY HON'BLE SUPREME COURT TO BE FOLLOWED IN CIVIL MATTERS

Hon'ble Supreme Court in ***Yashpal Jain v. Sushila Devi, 2023 INSC 948*** expressed it's disappointment in the delay caused in adjudication of cases, held that:

> "The time for procrastination is long past, for justice cannot be a casualty of bureaucratic inefficiency. We must act now, for the hour is late, and the call for justice is unwavering. Let us, as guardians of the law, restore the faith of our citizens in the promise of a just and equitable society. Let us embark on a journey of legal reform with urgency, for the legacy we leave will shape the destiny of a nation. In the halls of justice, let not the echoes of delay and pendency drown out the clarion call of reform. The time is now, and justice waits for no one."

In furtherance of the same, the following directions were issued to ensure 'speedy justice':

(i) All courts at district and taluka levels shall ensure proper execution of the summons and in a time bound manner as prescribed under Order V Rule 2 of CPC and same shall be monitored by Principal District Judges and after collating the statistics, they shall forward the same to be placed before the Committee constituted by the High Court for its consideration and monitoring.

(ii) All courts at district and taluka levels shall ensure that written statement is filed within the prescribed limit namely as prescribed under Order VIII Rule 1 and preferably within 30 days and to assign reasons in writing as to why the time limit is being extended beyond 30 days as indicated under proviso to sub-Rule (1) of Order VIII of CPC.

(iii) All courts at districts and talukas shall ensure after the pleadings are complete, the parties should be called upon to appear on the day fixed as indicated in Order X and record the admissions and denials and the court shall direct the parties to the suit to opt for either mode of the settlement outside the court as specified in sub-section (1) of Section 89 and at the option of the parties, shall fix the date of appearance before such forum or authority and in the event of the parties opting to any one of the modes of settlement, directions be issued to appear on the date, time and venue fixed and the parties shall so appear before such authority/forum without any further notice at such designated place and time and it shall also be made clear in the reference order that trial is fixed beyond the period of two months making it clear that in the event of ADR not being fruitful, the trial would commence on the next day so fixed and would proceed on day-to-day basis.

(iv) In the event of the party's failure to opt for ADR namely resolution of dispute as prescribed u/s 89(1) the court should frame the issues for its determination within one week preferably, in the open court.

(v) Fixing of the date of trial shall be in consultation with the learned advocates appearing for the parties to enable them to adjust their calendar. Once the date of trial is fixed, the trial should proceed accordingly to the extent possible, on day-to-day basis.

(vi) Learned trial Judges of District and taluka Courts shall as far as possible maintain the diary for ensuring that only such number of cases as can be handled on any given day for trial and complete the recording of evidence so as to avoid overcrowding of the cases and as a sequence of it would result in adjournment being sought and thereby, preventing any inconvenience being caused to the stakeholders.

(vii) The counsels representing the parties may be enlightened of the provisions of Order XI and Order XII so as to narrow down the scope of dispute and it would be also the onerous responsibility of the Bar

Associations and Bar Councils to have periodical refresher courses and preferably by virtual mode.

(viii) The trial courts shall scrupulously, meticulously and without fail comply with the provisions of Rule 1 of Order XVII and once the trial has commenced it shall be proceeded from day to day as contemplated under the proviso to Rule (2).

(ix) The courts shall give meaningful effect to the provisions for payment of cost for ensuring that no adjournment is sought for procrastination of the litigation and the opposite party is suitably compensated in the event of such adjournment is being granted.

(x) At conclusion of trial the oral arguments shall be heard immediately and continuously and judgment be pronounced within the period stipulated under Order XX of CPC.

(xi) The statistics relating to the cases pending in each court beyond 5 years shall be forwarded by every Presiding Officer to the Principal District Judge once in a month who (Principal District Judge/District Judge) shall collate the same and forward it to the review Committee constituted by the respective High Courts for enabling it to take further steps.

(xii) The Committee so constituted by the Hon'ble Chief Justice of the respective States shall meet at least once in two months and direct such corrective measures to be taken by concerned court as deemed fit and shall also monitor the old cases (preferably which are pending for more than 05 years) constantly.

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GUIDELINES TO BE FOLLOWED IN MATTERS PERTAINING TO SARFAESI ACT

The Hon'ble High Court of Madhya Pradesh in ***Equitas Small Finance Bank Limited through its Authorized Signatory v. The State of Madhya Pradesh, Principal Secretary, Law and Legislature Affairs Vallabh Bhawan Bhopal (Madhya Pradesh)*** 23rd of November, 2023 writ petition no. 26176 of 2023 issued guidelines/directions to be followed by the DM/ADM/CJM while passing orders for deciding applications u/s 14 of the SARFAESI Act. The same are reproduced below:

(i) DM/ADM/CJM have to determine whether secured assets fall within their territorial jurisdiction.

(ii) Whether notice u/s 13(2) of the SARFAESI Act has been furnished by the secured creditor and also whether the case of secured creditor falls under any of the exceptions provided u/s 31 of the SARFAESI Act?

(iii) DM/ADM/CJM is not at all required to hear the application u/s 14 of the SARFAESI Act for the purpose of registration of the case.

(iv) DM/ADM/CJM acting u/s 14 of the SARFAESI Act is not required to give notice either to the borrower or to the 3rd party.

(v) The DM/ADM/CJM shall ensure that the secured creditor should file an affidavit declaring that the terms and conditions prescribed u/s 14(1) of the SARFAESI Act are satisfied.

(vi) DM/ADM/CJM should ensure that application filed u/s 14 of the SARFAESI Act shall be decided as expeditiously as possible, preferably within 45 days from the date of filing of such an application.

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PART - III

CIRCULARS/NOTIFICATION

NOTIFICATION DATED 22.11.2023 OF THE HIGH COURT OF MADHYA PRADESH REGARDING AMENDMENT IN CIVIL COURT RULES, 1961

No. A-6844. – In exercise of powers conferred by Article 227 of the Constitution of India read with Section 122 of the Code of Civil Procedure, 1908 (5 of 1908) and Section 23 of the Madhya Pradesh Civil Courts Act, 1958 (No. 19 of 1958), the High Court of Madhya Pradesh, hereby, makes the following amendment in Madhya Pradesh Civil Courts Rules, 1961, namely: –

AMENDMENT

In the said rules, in Chapter XVI, after Rule 354, the following rule shall inserted, namely : –

"354-A. Records of motor vehicle accident claim cases disposed of by way of settlement in Lok Adalat under the Madhya Pradesh Motor Vehicle Rules, 1994, be preserved for a period of one year from the date of final award and in other cases, be preserved for a period of four years from the date of final award / order subject to the entire record being scanned"

MANOJ KUMAR SHRIVASTAVA,
Registrar General.

"CORRIGENDUM"

No. D-4964.- in the notification No. A-6844 Jabalpur, dated 22nd November, 2023 which was published in the Part 4 (ग) of M.P. Rajpatra, No. 47, Bhopal, dated 24th November, 2023 relating to amendment in the Madhya Pradesh Civil Court Rules, 1961.

1. अध्याय 16, नियम 354–क में शुरूआत में शब्द मध्यप्रदेश मोटरयान नियम, 1994 के अधीन को विलोपित किया जाए एवं शब्द ''निराकृत किए गए'' एवं शब्द ''मोटरयान दुर्घटना'' के बीच में शब्द ''मध्यप्रदेश मोटरयान नियम, 1994 के अधीन के'' अन्तःस्थापित किया जाए।

2. "In Chapter XVI, in Rule 354-A, between the words "claim cases" and "disposed of" the words "Under Madhya Pradesh Motor Vehicle Rules, 1994" shall be inserted and between the words "lok Adalat" and "be preserved", the words and comma "under the Madhya Pradesh Motor Vehicle Rules, 1994," Shall be deleted."

MANOJ KUMAR SHRIVASTAVA,
Registrar General.

Carefully watch your thoughts, for they become your words. Manage and watch your words, for they will become your actions. Consider and judge your actions, for they have become your habits. Acknowledge and watch your habits, for they shall become your values. Understand and embrace your values, for they become your destiny.

– Mahatama Gandhi

जिला एवं सत्र न्यायालय, छिन्दवाड़ा (म.प्र.)

जिला एवं सत्र न्यायालय, दमोह (म.प्र.)

मध्यप्रदेश उच्च न्यायालय, जबलपुर

मध्यप्रदेश राज्य न्यायिक अकादमी

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