29th Year

Pursuit of Excellence

JOTI JOURNAL

(BI-MONTHLY)

FEBRUARY 2023

MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

JOTI JOURNAL FEBRUARY, 2023

SUBJECT – INDEX

PART-III
(CIRCULARS/NOTIFICATIONS)

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EDITORIAL

Warm greetings to all the readers,

I feel honored to present this first edition of the year 2023. The Academy in its *pursuit of excellence* always strives to cater to the curious mindsets of the participants by providing them with the best possible content from all the sources.

This brings us to the question as to what can we do to achieve excellence. In my humble view, excellence means doing our best at whatever we do and doing our best requires competence which comes only by making sincere and continuous efforts. Excellence is enhancing our own abilities and competing with ourselves. It is about becoming passionate and enthusiastic about our work and displaying the highest standards at all times. Excellence is not an act but a habit. Once we form the habit of striving for excellence, it becomes our inherent quality and we start to pursue excellence consciously. People who strive for excellence are not fearful of change or challenges but will make things happen despite all odds. In this context, I would like to quote Swami Vivekanand:

> ***"Teach yourselves, teach everyone his real nature, call upon the sleeping soul and see how it awakes. Power will come, glory will come, goodness will come, purity will come, and everything that is excellent will come when this sleeping soul is roused to self conscious activity."***

The initial two months of the year witnessed a lot of academic activities and Academy was in its full bloom with the constant influx of participants. I would like to begin with the mention of the highlight event; the Conference for Principal District & Sessions Judges, which was conducted on 4th& 5th February 2023. This conference was inaugurated by Hon'ble Chief Justice and was conducted in a new format at his behest. His Lordship while addressing the participants laid emphasis on the crucial role of the Principal District Judges in the administration of Justice and implored upon them to ensure swift functioning of their respective Districts.

It is noteworthy that the Academy in collaboration with the Madhya Pradesh State Legal Services Authority conducted a two day programme for the Chief & Deputy Legal Aid Defense Counsels on 20th& 21st February 2022. The Hon'ble Chief Justice inaugurated the workshop and advocated the need for being passionate towards extending just defense to the accused. Following this

programme, another workshop for the Assistant Chief Legal Aid Defense Counsels was also conducted.

Furthermore, I would like to add that while inaugurating the Regional Workshop for Panel Lawyers on 24th February 2022, Hon'ble Chief Justice expressed:

"Rich man pays but poor man praises"

This quote of His Lordship impacted the gathering on several levels and urged us to be more sensitive towards the cause of legal aid. This workshop aimed at imparting training to the Panel Lawyers so as to attain the larger goal of providing qualitative legal aid to the marginalized litigants.

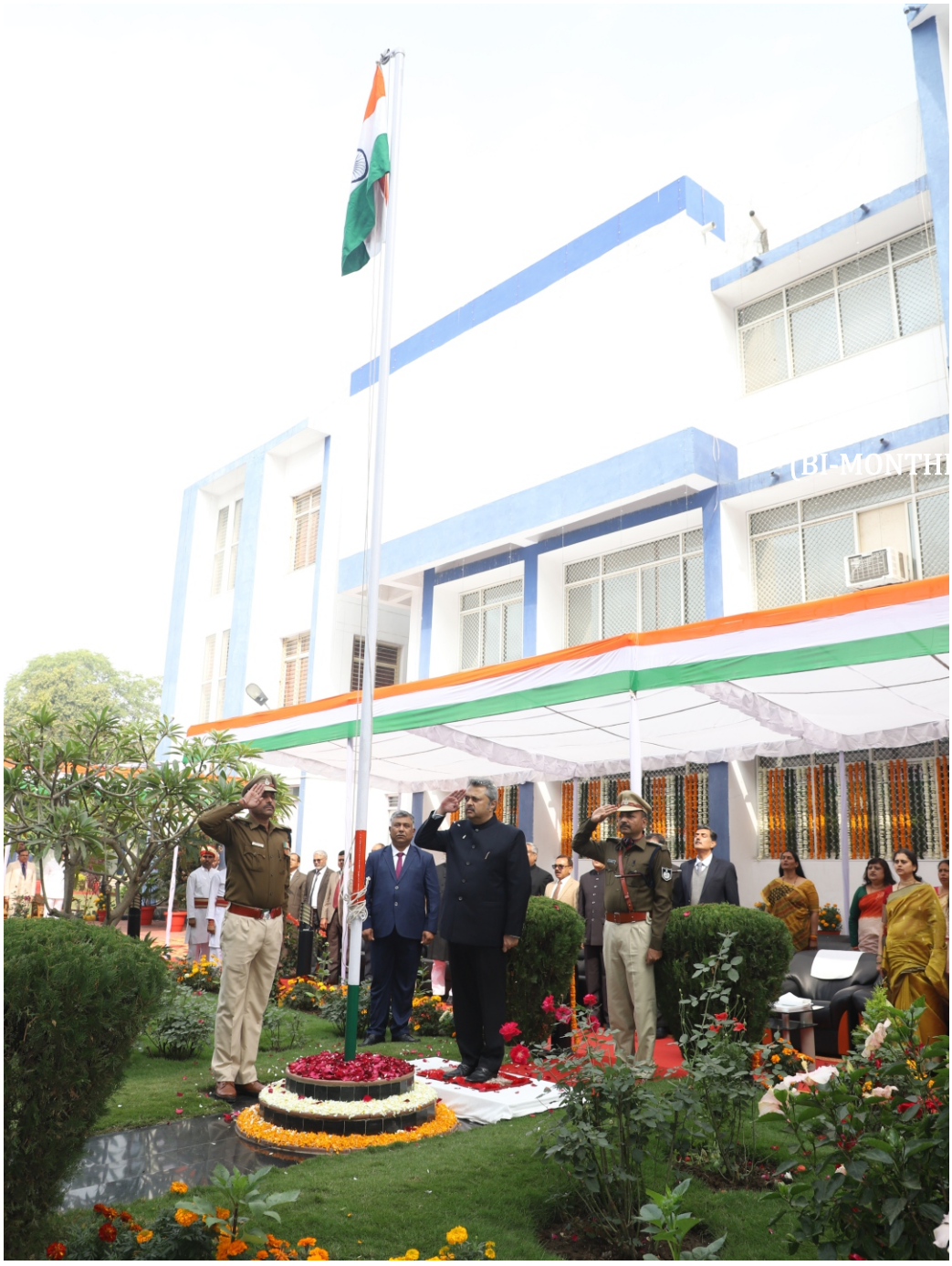
The Academy also conducted Refresher courses for Civil Judges Junior Division 2020 batch. Furthermore, a dedicated two day symposium was also conducted on issues relating to Forest & Wild Life Laws. Under the directions of e-committee of Hon'ble Supreme Court, Academy has successfully completed the target of conducting 14 e-committee Special Drive Training and Outreach Programmes with the last programme conducted on 10th February 2022. These programmes not only targeted the Judges but reached out to the other stakeholders of the justice dispensation system as well. The Academy also successfully concluded the series of six Special Workshop for Advocates practicing in the High Court of Madhya Pradesh having experience between 0-5 years, on 25th February 2023.

This edition, the 1st of 2023, also carries a new cover page. I would like to highlight a new addition to the content of JOTI Journal. From this edition, we are commencing a new series 'OUR LEGENDS' which will be a brief description of the life of various legal luminaries. This new addition is being introduced with the hope to rekindle the bond with our history and to draw inspiration from the life journey of our stalwarts. I sincerely hope that the esteemed readers shall relish the experience of reading about our legends.

I would like to conclude by mentioning that the Republic Day message of Hon'ble Chief Justice is being included in this edition. His Lordship's message is reflective of the path-breaking achievements and simultaneously, establishes the vision for the upcoming year. Let us all strive to work together in this spirit.

Krishnamurty Mishra,
Director

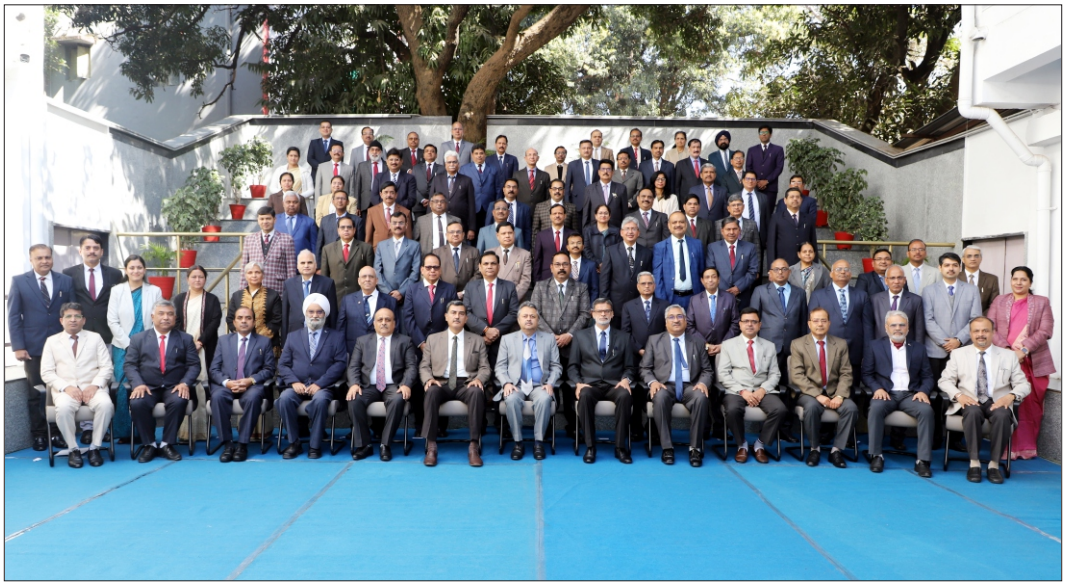
MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR



Unfurling of National Flag by Hon'ble Chief Justice on Republic Day (26.01.2023)

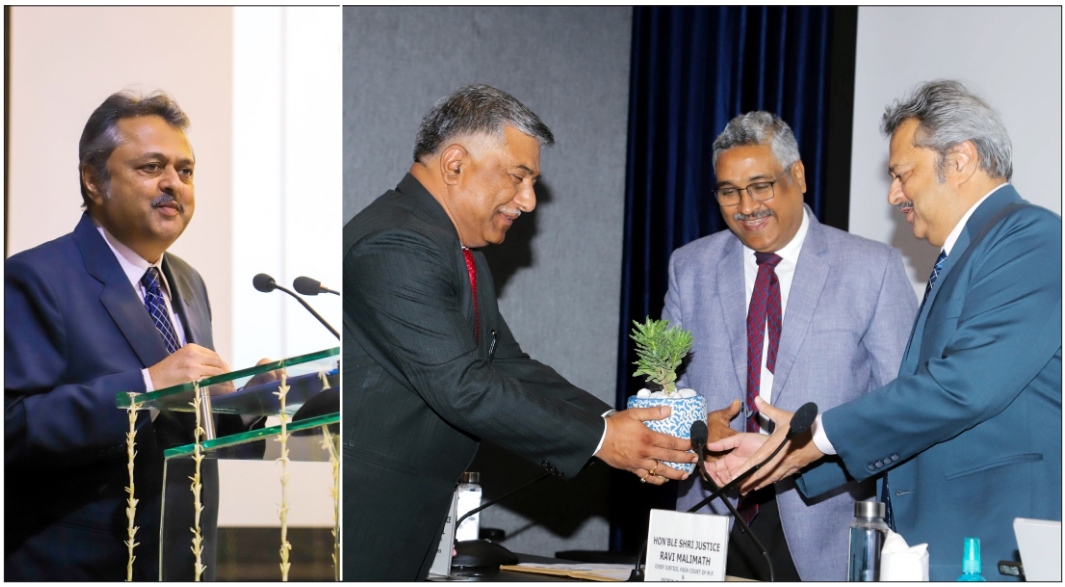
GLIMPSES OF CONFERENCE OF PRINCIPAL DISTRICT AND SESSION JUDGES

Hon'ble Shri Justice Ravi Malimath, Chief Justice, High Court of Madhya Pradesh addressing the August gathering

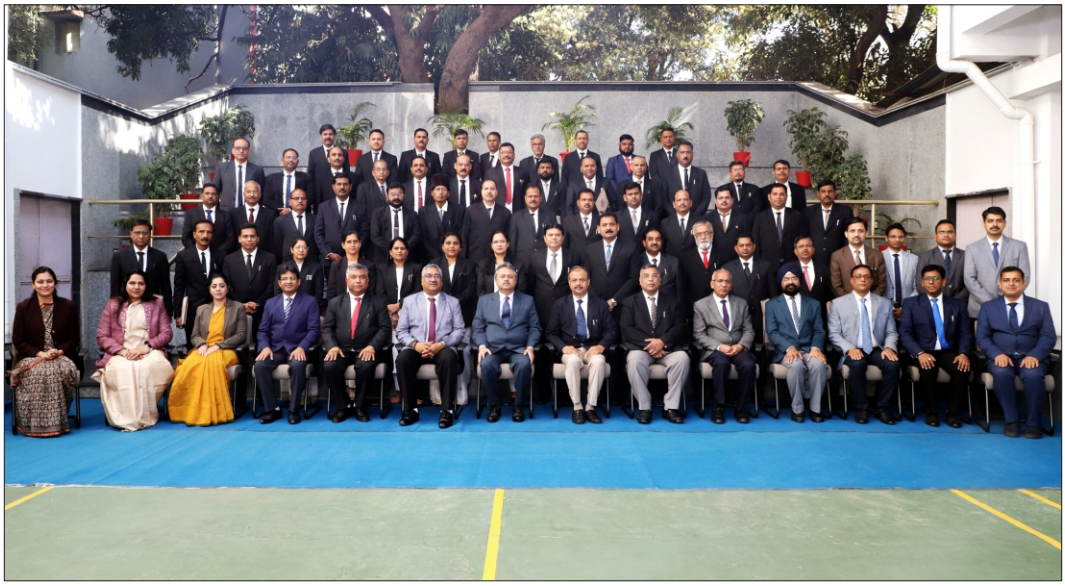


Conference of Principal District & Sessions Judges
(04.02.2023 – 05.02.2023)

TRANING PROGRAMME OF LEGAL AID DEFENSE COUNSELS AT A GLANCE

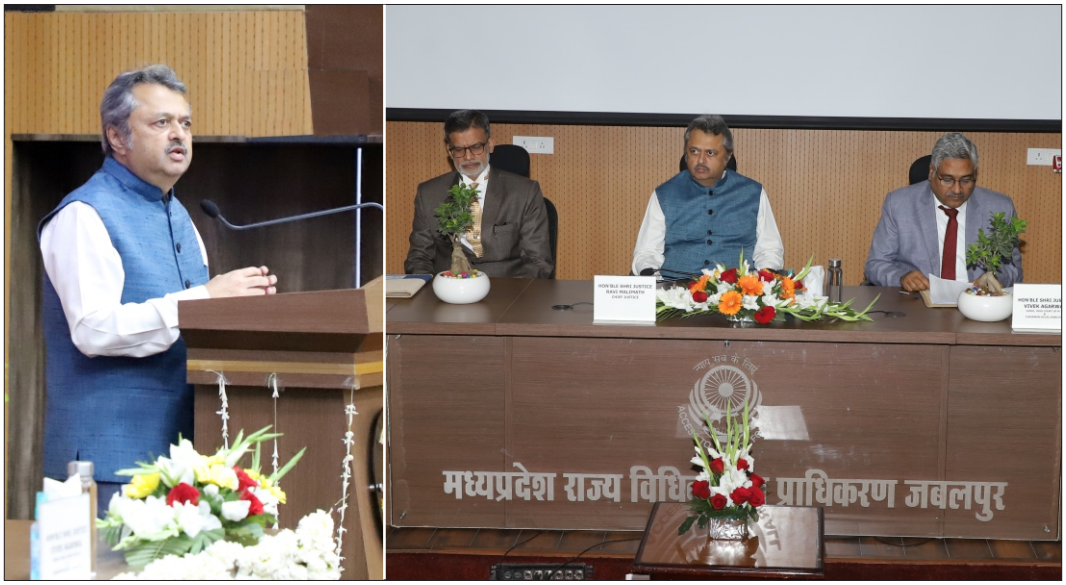


Memorable Moments of The Inaugural Programme



Legal Aid Defense Counsel System & Training Programme of
Legal Aid Defense Counsels (21.02.23 – 22.02.2023)

GLIMPSES OF REGIONAL WORKSHOP FOR PANEL LAWYERS



Hon'ble Shri Justice Ravi Malimath, Chief Justice, High Court of Madhya Pradesh
Delivering Keynote Address and Hon'ble Dignitaries gracing the Inaugural Event

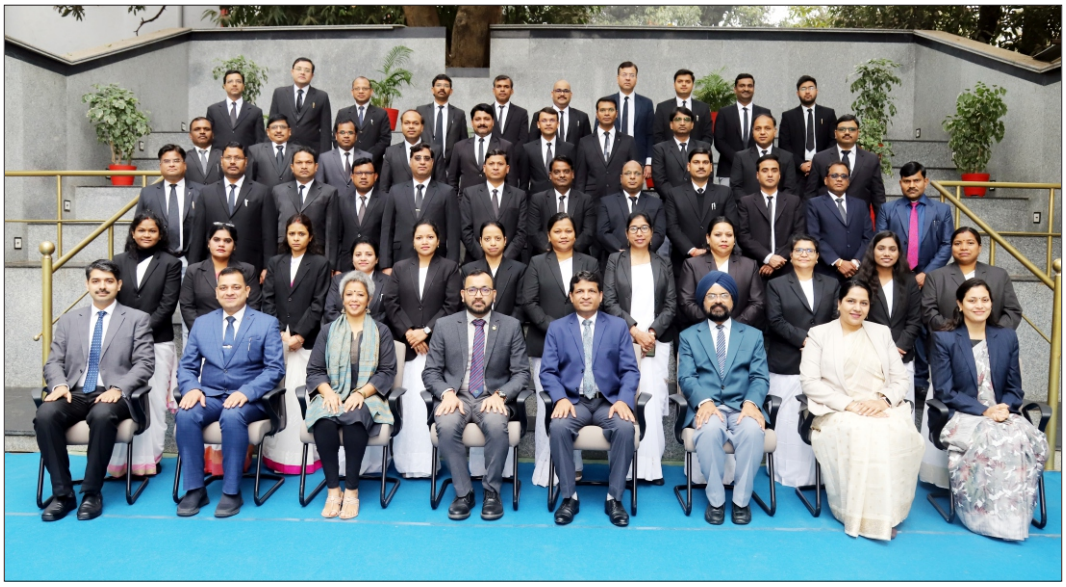
Regional Workshop for Panel Lawyers at MPSLSA
(24.02.2023 – 26.02.2023)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

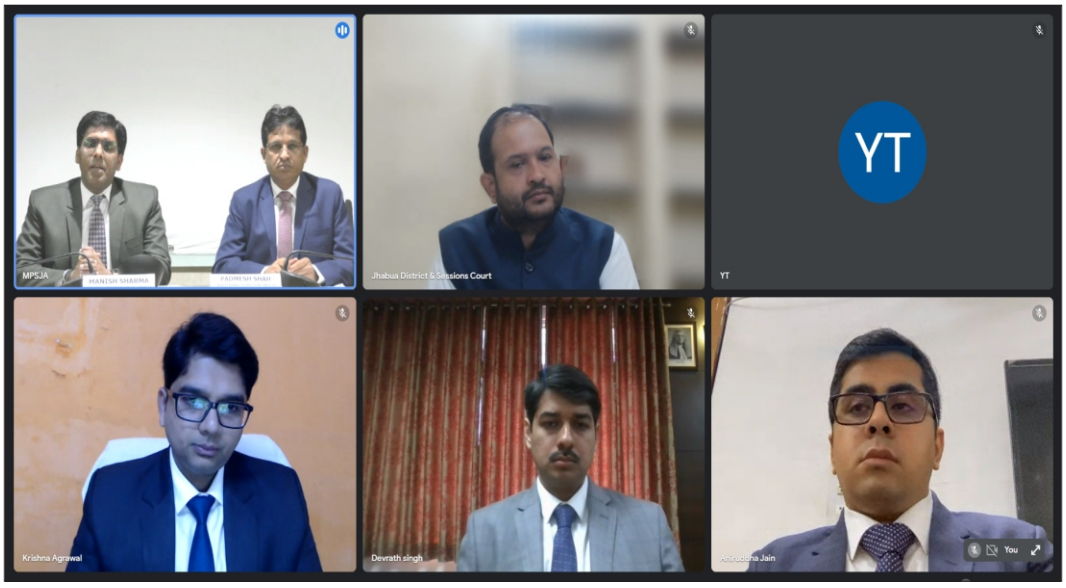
Refresher Course for Civil Judges (Entry Level) of 2020 batch (Group – I)
(09.01.2023 – 14.01.2023)

Refresher Course for Civil Judges (Entry Level) of 2020 batch (Group – II)
(16.01.2023 – 21.01.2023)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR



Symposium on Key issues relating to Forest & Wild Life Laws
(28.01.2023 & 29.01.2023)



Special programme for Advocates e-Court Programme at
Village/ Taluka (ECT_7_2022)
(10.02.2023)

PART I

REPUBLIC DAY MESSAGE OF
HON'BLE CHIEF JUSTICE SHRI RAVI MALIMATH
DELIVERED AT HIGH COURT OF MADHYA PRADESH

My esteemed Sister & Brother Judges,

Shri Prashant Singh, Advocate General, State of Madhya Pradesh,

Shri Pushpendra Yadav, Assistant Solicitor General, Union of India,

Shri R.K. Saini, Vice Chairman, State Bar Council of Madhya Pradesh,

Shri Sanjay Verma, President, High Court Advocate's Bar Association, Jabalpur,

Shri Aditya Adhikari, Senior Advocate & Secretary, Senior Advocates' Council, Jabalpur,

The Registrar General and other Officers of the Registry,

Learned Member of the Bar,

Ladies and Gentlemen,

At the outset, I congratulate each one of you on this momentous occasion of the 74th Republic Day. We have, indeed, come a long way since the country declared itself as a Republic with the Constitution of India being brought into effect on 26th January, 1950. We shall always remember the sacrifices made by our revered forefathers, not only in the freedom struggle, but, also for the formation of the new Republic of India. It is, on an occasion like this, above all else, that we need to remember, and show our gratitude to those who have helped build India into a strong and independent country.

This day also serves as a vital reminder to renew our commitment to upholding the values enshrined in the Constitution. The judiciary is one of the three pillars of the Indian democracy. Each pillar is designed to uphold and protect the Constitutional values. The primary duty of the judiciary is to ensure that justice is rendered through the timely adjudication of cases, without fear or favour, affection or ill will. Society looks up to the judiciary with faith and confidence. It is this faith and confidence that we must retain and strengthen. Society needs to be aware of what the judiciary is doing. We need to be transparent. We need to be accountable.

The live streaming of cases provides an insight into the daily workings in the court hall. However, society is generally unaware of the work that happens outside the court hall. Without a robust mechanism to fix each chink in the armour of the justice delivery system outside the court hall, it is not possible to reduce the pendency effectively inside the court hall. I am of the firm belief that the judiciary is accountable for work done inside the court hall as well as work done outside the court hall. It is for this reason that I place before you, an overview of certain key work undertaken in 2022 for improving the justice delivery system in Madhya Pradesh.

Over the past year, a lot has been done in this regard. Insofar as the High Court is concerned, certain important actions that have been undertaken are as follows:-

1. 1,21,041 cases have been disposed off in the year 2022. The oldest case that has been disposed off was of the year 1968. Two cases which were 35-40 years old, of the years 1984 and 1987 were disposed off. Four cases which were pending for 30-35 years were disposed off. 144 cases pending for 25-30 years, 1,039 cases pending for 20-25 years, 1,565 cases pending for 15-20 years, 2,400 cases pending for 10-15 years, 6,670 cases pending for 5-10 years and as many as 1,09,216 cases pending since the last five years were disposed off;

2. Since the reopening day of January, 2022, all 3 benches of the High Court have been functioning for an additional period of 30 minutes, leading to a consequential increase in the disposals;

3. Numerous posts which were essential for the smooth functioning of the High Court had been lying vacant. A special drive was initiated for the purpose of making regular appointments to such posts. 95 such appointments were made across various posts such as junior judicial assistants, personal assistants, stenographers, junior judicial translator and other employees. In addition to this, 7 appointments were made on compassionate grounds and 12 appointments were made on a contractual basis to retired employees keeping in view the paucity of staff at all 3 Benches. A recruitment drive to fill up 119 vacancies is currently on going and will be completed shortly;

4. Promotions were being held up for a considerable period. To resolve this, the process of streamlining the departmental promotions was taken up and 212 regular promotions were made across all 3 Benches. Earlier,

departmental promotions were being granted on an annual basis but keeping in mind the right of the employees for being promoted, a new scheme was envisaged for posts to be filled up on the date the promotions became due. Thus, all promotions are now being made on the day the posts fall vacant. As on 31st December, 2022, apart from 9 posts which could not be filled up due to administrative reasons, there are no vacant posts to be filled up by promotion;

5. The publication of Indian Law Reports (ILRs) had fallen back by a significant period of four months. The advocates were finding it difficult to keep abreast of the latest judgments. In order to help the members of the Bar, this backlog was cleared and measures were put in place to ensure the printing and distribution of the ILRs on a regular basis. By the end of December, 2022, the ILRs are being published and distributed on time, before the 5th of every month. As a result of the punctuality in releasing the ILRs, the subscriptions increased by around 2.5 times the original subscriptions and have been steadily increasing since. The design of the ILR was also modified to make it cost effective resulting in the reduction of the annual subscription fee from Rs.1500/- in 2021, to Rs.1200/- in 2022;

6. The plan of the High Court annexe building was finalized and submitted to the State. Approval is expected shortly.

Keeping in mind the various problems faced by young advocates and in order to ensure a strong foundation for their career, a new training programme was envisaged to train such advocates through the Madhya Pradesh State Judicial Academy. A special workshop for advocates practicing for less than 5 years was inaugurated on 10th September, 2022. A total of 646 lawyers at the High Court have benefitted from the programme. It is an ongoing programme and more sessions are in the pipeline.

In so far as information technology is concerned, numerous softwares/e-services were developed and implemented. A few of the IT related measures are:-

(1) Development & Implementation of the bail application module, e-Vakalatnama, Online paperless Scrutiny Module and the NISARG Smart Monitoring App;

(2) Development and implementation of QR code in the CMIS software for quick file tracking and provision of case information;

(3) Development & Implementation of the module for instantly viewing High Court Case details/status with the respective District Courts details and infructuous cases verification system;

(4) Integration of case status with ILR software, integration of MP-ILR with mobile app of the High Court, integration of MP-ILR with SCC Online software;

(5) Implementation of *Wi-Fi* Networks at District Courts, implementation of the Virtualization Software and IT Infrastructure Monitoring System;

(6) Integration and setup of Virtual Court for traffic challan management/e-challan;

(7) Establishment of e-Sewa Kendra;

(8) Implementation of face recognition system (FRS) at all 3 benches of the High Court;

(9) Development of software for tentative calculation of compensation in motor accident claim cases;

(10) A State of the Art Video Conferencing Centre was inaugurated on 20th November, 2022 at MGM, Medical College, Indore under the e-Court project to enable the recording of evidence of Doctors online across various Courts of the Country. It has resulted in ease of recording evidence and consequently, speedy disposal of pending cases;

So far as the legal services authority is concerned, a few of the key actions that have been undertaken are:-

a. From October, 2021 to December, 2022, five National Lok Adalats were held in which 4,699 cases were disposed off by granting compensation to 20,197 persons to the tune of Rs.32,48,14,642/-;

b. 126 advocates have been selected for the panel of the High Court Legal Services Authority, Jabalpur for providing legal aid;

c. One ADR centre at Umariya and 11 mediation centres at Maihar, Chourai, Khachrod, Alot, Baihar, Niwas, Pathariya, Garoth, Bhanpura, Seetamau and Narayangarh were inaugurated;

d. Since no trained mediator was available in certain districts, a 40 hour online mediation training was organized from 28th October, 2022 to 4th November, 2022 for 57 Advocates from the districts of Alirajpur,

Balaghat, Bhind, Burhanpur, Dhar, Dindori, Jhabua, Katni, Khandwa, Mandla, Mandleshwar, Rajgarh, Ratlam and Singrauli;

e. To strengthen the mediation mechanism, a refresher programme was organized for trained mediators at all 3 Benches wherein a total of 65 advocates participated;

f. As a special drive, legal literacy camps and special medical camps were organized in all the jails of the State;

g. A state wide plantation drive was conducted from 11th July, 2022 and 2,05,000 saplings were planted throughout the State;

h. As a unique measure, with the involvement of the Legal Services Authority, a Permanent Centre For Manufacturing Artificial Limbs at MGM Medical College Indore was inaugurated on 20th November 2022. Due to this initiative, artificial limb fitment, appliances etc. would be provided free of cost to the needy. A three day camp was also inaugurated at MY Hospital, Indore wherein beneficiaries across 19 districts were identified. A total of 320 identified beneficiaries have benefitted by the provision of 93 Artificial Limbs, 36 Calipers, 65 Hand Paddled Tricycle, 21 Wheel Chair, 39 Crutches, 43 Hearing Aids, 14 Hand and 9 Sticks;

i. Keeping in mind the difficulty faced by the specially abled persons, an 'Equal Opportunity Policy' was framed for providing facilities to the specially-abled persons or advocates in the High Court premises.

The above measures were primarily pertaining to the High Court. In so far as the District Judiciary is concerned, certain key actions that have been undertaken are:-

i. 1,86,578 cases which had been pending for more than 5 years were disposed off during the year 2022. This is probably the highest ever disposal of five year old cases;

ii. It was observed that the older cases which had been pending for many years were not being taken up or adjudicated. Older cases were being shelved while other cases were being heard and disposed off. To solve this issue and keeping in mind the huge pendency of cases in the district judiciary, a special programme '25 DEBT' was envisaged. The term alludes to the fact that each and every case is a debt on the judiciary which needs to be discharged. Directions were given to every judge of the district judiciary to dispose off 25 oldest cases in each court on a regular basis.

The scheme commenced on 18th October, 2021. Tremendous success has been achieved. The oldest case to be disposed off was of the year 1969. Three cases which were 50 years old and of the year 1976 were disposed off. 17 cases which remained pending for 41-45 years were disposed off. 29 cases which were pending for 36-40 years, 46 cases pending for 31-35 years, 99 cases pending for 26-30 years, 379 cases pending for 21-25 years, 2420 cases pending for 16-20 years, 11210 cases pending for 11-15 years, 57437 cases pending for 6-10 years, 25427 cases pending for 1-5 years and 85 cases of the year 2022 were disposed off. Thus, through the '25 DEBT' scheme, a total of 97,153 cases were disposed off as of 31st December, 2022. The total disposal of cases for the year 2022, with respect to the district judiciary, including the '25 DEBT' cases, was 13,03,962. This is the second highest disposal in the last decade;

iii. The State Legal Services Authority organized 5 Lok Adalats from December, 2021 to November, 2022 for the disposal of pending cases in the district judiciary wherein 1,56,867 cases were disposed off and 5,64,982 persons received a settlement amount of Rs.17,71,70,19,043.

Matters of recruitment and promotions were expedited in order to ensure that all posts are filled up. As a consequence where of:-

a. 137 civil judges (junior division) were appointed during the year. Two judges were promoted as district judges through the limited competitive exam. 29 civil judges (senior division) were promoted to the post of district judges. 324 district judges, who were under probation, were confirmed as district judges. 51 district judges were granted super time scale. Refixation of pay revision was granted to 189 fast track judges even without their asking for the same. 79 district judges were granted revision of super time scale of pay on the consequential modification of the seniority list. Therefore, in all, 643 judicial officers were granted the benefit of enhanced pay scale;

b. 794 persons were appointed towards the contingency posts of Class-IV employees for 49 districts;

c. 14 district legal aid officers were appointed;

d. 428 persons were promoted to Class-III as well as in Class-IV posts throughout the State;

e. 88 compassionate appointments were made in various districts and 39 existing appointments were upgraded to higher posts, based on eligibility;

There has always been a complaint with regard to the delay in completion of the ACRs. To resolve this, a decision was taken by The Full Court to fix a timeline for completion of the ACRs of all the judicial officers as well as the employees in a time bound manner.

The problems pertaining to the family courts are sensitive and unique. Keeping this in mind, three judges were nominated for each of the zones at Jabalpur, Gwalior and Indore to monitor the family courts in the respective zones. The judges would independently scrutinize and advise in all matters pertaining to family courts within their jurisdiction. This will indeed go a long way in addressing the sensitive issues arising out of the family courts.

Keeping in mind the huge pendency of cases in the family courts as well as the courts dealing with the cases of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989a request was made to the State for the creation of additional courts. The State has approved establishment of 5 new family courts and has consented to establishing 18 new exclusive courts for trial of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Child friendly courts were inaugurated at Umariya on 2nd April, 2022 and at Itarsi on 30th June, 2022. A court complex at Manpur, District Umariya consisting of two court halls with requisite facilities was inaugurated on 2nd April, 2022. A new court complex at Gotegaon District Narsinghpur with two court halls and requisite amenities was inaugurated on 2nd April, 2022. A new court complex at Maihar, District Satna consisting of 10 court halls with requisite amenities was inaugurated on 19th April, 2022. Foundation stone for construction of three court halls with requisite amenities was laid on 31st August 2022 at Garhakota, District Sagar.

A new court complex at Agar consisting of 10 court halls with all requisite amenities is almost 98% complete. A new court complex at Sonkatch, wherein two courts have been functioning in a rented premises, is 98% complete. The new court complex will consist of 5 court halls along with requisite facilities. Child friendly courts at Tonkkhurd and Khategaon, Dewas are almost 98% complete.

As many as 68 residential quarters for judicial officers at Bhind, Dewas, Tonkkhurd, Shivpuri, Karera, Kolaras, Ujjain, Sabalgarh and Gairatganj have been completed.

In addition to this, 403 court halls and 75 residential accommodations for judicial officers are under various stages of completion across the State.

The first of its kind initiative was taken up by the State Judicial Academy to offer foundation training programme for advocates at the district level across 50 districts throughout the State. In all, 3511 advocates have benefitted from the training programmes. Regional workshops were also held for advocates of the district judiciary which saw the participation of 491 advocates. Repeated requests have been received to conduct more such training programmes.

Recruitment for 23 posts by direct recruitment for district judge (entry level) in M.P. Higher Judicial Services was initiated and interviews were completed this month.

Interviews are being conducted since 16th January, 2023 for 398 candidates for recruitment to 270 posts of civil judges (entry level). For the 65 posts of district judge (entry level) suitability exam has been conducted, in which 176 candidates appeared, out of which 159 candidates have been declared successful.

Recruitment to 1142 Class III posts of various categories have commenced and the main exam is scheduled to be held shortly. The above constitutes only a snapshot of the key actions that we have undertaken to ensure that all loopholes are plugged in the justice delivery system. We have attempted to identify problems and find solutions to issues ranging from pendency, vacancies in the judiciary, vacancies in the staff, lack of physical infrastructure to the hesitancy in adjudicating old cases. Even though a lot has been done, the task is incomplete as long as any litigant is suffering.

The members of the Bar have to be commended for their role in reducing the pendency. I still remember the enthusiasm of the Bar when I made the proposal for increasing the working hours of the High Court by 30 minutes. This has, indeed, gone a long way in the quick and early disposal of cases at the High Court. The district Bar has also contributed extensively in the early disposal of the cases.

As is often said, the advocates and judges constitute two faces of a coin. They are two wheels of the chariot and many such synonyms are attributed to describe the close relationship that we share. It is only with the able support and co-operation of the Bar that results can be achieved. The Bar has been extremely cooperative and understanding in many of the issues and problems that are faced by the courts. I have no hesitation that the members of the Bar would continue their support in the cause of justice.

At the same time, I appreciate the efforts made by the judges of the High Court. They have done their very best in the discharge of their responsibilities on the judicial side, and on the administrative side.

So far as the judges of the district judiciary are concerned, I am highly appreciative of their determination and hard work. They have taken up the challenge to dispose old cases in a positive manner. As narrated earlier, the total disposal for the last year was 13, 03, 962 cases out of which the '25 DEBT' scheme for disposal of oldest cases has resulted in disposal of 97,153 old cases. As is the case with any change in status quo, though there were minor hiccups initially with regard to disposal of the 25 oldest cases, the judicial officers have been quite successful and have worked hard to ensure that cases that have been pending since years reach finality. The district Bar has ably supported the cause of discharging the debt of pending cases. I am confident that the district judiciary as well as the district Bar will rise to the occasion and ensure greater disposal of cases in the years to come.

The pendency of cases is indeed, a debt on us. It is our liability. In Hindu Law, it is the pious obligation of the son to discharge the debt of the father. I feel that it is our pious obligation to reduce the pendency of cases. Not doing so is a gross dereliction of our primary duty as judges. Though it is always said that the increase in the filing of cases only reflects the faith of the common man in the judiciary, I am of the view that such faith of the common man in the judiciary can be retained only if the cases are disposed off in a real and quick manner. Even though every case requires absolute attention, it does not mean that attention and care should be delayed to such an extent that cases lie undisposed for more than 30 years. This needs to be solved and this can only be done with the active cooperation of the members of the Bar as well as the judges. Pursuant to the '25 DEBT' scheme, the district judiciary and advocates of the district Bar have come forth to narrate heart warming stories by the litigants upon disposal of their cases which had not seen a hearing in years. The earlier a case is disposed off the greater is the confidence in the judiciary. Therefore, it is this debt, that requires to be discharged. It is indeed a heavy burden on us but with proper efforts, I am sure, we will be able to tackle the pendency as early as possible.

We have tried to find novel ways to increase the efficiency of the justice delivery system over the course of the last year. We have increased the working hours, implemented a new listing and mentioning policy, introduced the '25 DEBT' scheme, created new physical and technical infrastructure, strengthened the mediation and legal service authorities, conducted training programmes for

advocates, filled long-pending vacant posts in the judiciary, ensured regular promotions, adequate pay and filled long-pending vacant posts, for ancillary staff and other employees. A couple of other issues are also in the process of being resolved.

Notwithstanding the measures that have already been implemented, I have always extended an open invitation to the members of the Bar to offer their views and suggest ways and means to solve the problems faced in the justice delivery system. I have received suggestions from them and some of them have also been implemented. It is indeed a constant battle between filing and disposal that we are faced with. The efforts should be to ensure that the disposal rate is far higher than the filing rate. We should make an endeavour to ensure that the pendency of cases for such a huge period of time gets reduced.

On this Republic Day, let us renew our efforts to uphold and carry out the duties entrusted to us by the Constitution. I once again wish you all a very happy Republic Day.

Thank you.

Conference of Principal District & Sessions Judges

Summation & Resolution

The Madhya Pradesh State Judicial Academy (MPSJA) had organized "Conference of Principal District & Sessions Judges" on 4th & 5th February, 2023 at Jabalpur. The Conference was organized with the objective to provide a platform to all the Principal District and Sessions Judges across the State to deliberate upon diverse themes of judicial and administrative work along with other ancillary facets of working of District Judiciary with a purpose to build upon each other's ideas by sharing the issues, solutions, *modus operandi*, best practices etc. prevalent amongst these districts and streamlining the said ideas resulting in overall judicial excellence.

The programme was inaugurated on Saturday, the 4th February, 2023 at 10.00 am in the Auditorium Hall of Madhya Pradesh State Judicial Academy, Jabalpur by Hon'ble Shri Justice Ravi Malimath, Chief Justice of High Court of Madhya Pradesh. Hon'ble Judges of the High Court of Madhya Pradesh and other dignitaries graced the event with their presence.

The entire programme comprised of seven sessions of approximately 75 minutes each on respective topics. Each session was Chaired by Hon'ble Judge of High Court of Madhya Pradesh. Six Principal District & Sessions Judges from amongst the participants were nominated as Panel Speakers in every session to deliberate over the topic through mode of their choice which was followed by open interactive session and thereafter concluding remarks by the Chair.

Deliberations, discussions, presentation and sharing of the experiences in these two days were found to be extremely useful in many ways. This conference succeeded to achieve not only the desired results but brought new blooms of hope for continuous and constant sharing of experience by all. Therefore, we hereby resolve that:

1. To enhance the quality and quantity of work, a performance-oriented environment at the workplace will be ensured.

2. Necessary motivation and sensitization programmes will be organized with all stakeholders including members of the Bar to impress upon them that speedy qualitative disposal would lead to increased faith of the litigant system and will reduce docket explosion.

3. Such work culture will be developed with the co-operation of senior Judges and senior members of the Bar which shall ensure optimum use of court working hours.

4. Optimum efforts will be made to ensure maximum disposal of cases under "25 Debt" Scheme.

5. To ensure speedy disposal of cases including cases under "25 Debt" scheme, certain steps like evolving mechanism for segregating simple cases which can be disposed of within a short time, bunching of common cases, identifying cases which fall in the category of stale, infructuous or ineffective cases and to suggest for withdrawal of such cases so that quality Judicial time is made available to deal with serious pending cases will be taken.

6. Modern methods of Digital Technology for sending summons like WhatsApp, e-mail, telephone, e-service of summons etc. will be ensured.

7. Proper Board Management by fixing of dates by the Judicial Officer personally will be ensured. Prompt online platform for solving legal problems of Judicial Officers will be created.

8. Issues relating to other departments including co-ordination for timely service will be thrashed out through the monitoring cell meeting.

9. ACRs would be written with utmost pious heart considering the overall circumstances in which a judicial officer is working. Overall facets of personality, behaviour, responsibility assigned and working conditions will be taken into consideration in addition to unit disposal to assess the performance.

10. Interaction with Judicial Officers will be ensured fortnightly or monthly to guide, inspire, encourage them and also to monitor their work. Individual issues shall be identified and solutions will be suggested. Discipline and punctuality of work output shall be ensured.

11. Cause lists shall be prepared at every district and compliance will also be ensured by devising mechanism suitable at respective district level.

12. Uniformity in distribution of the cases will be ascertained for overall better performance of the entire district.

13. Maximum use of Information and Communication Technology, Digitisation of case records on day-to-day basis, e-filing, e-court service

and Just IS app introduced for judicial system, Integrated CIS software with revenue case management system in civil cases and bail matters and Stock Management system software to maintain inventory of I.T infrastructure will be ensured to enhance efficiency.

14. Regular Monitoring and guidance to newly recruited/Junior Judges to dispose of listed cases on priority for the top of the listed matters shall be ensured.

15. Focus of the training programmes will be to inculcate the morals and values of judicial ethics.

16. Academy shall organize training on the basis of requirements of the Judges.

17. Specialised Training Programmes will be organized for other stakeholders i.e. Advocates, etc. on regular basis to bring out better co-ordination.

18. Major innovative practices like stimulation exercises, Mock Trials, Case Study and Use of Information and Communication Technology will be adopted for effective training. Further, display of documentary and other visuals for sensitization of Judges will also be ensured.

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OUR LEGENDS

Justice Mohammad Hidayatullah

1ST Chief Justice of High Court of Madhya Pradesh

Late Hon'ble Shri Justice Mohammad Hidayatullah was the 11th Chief Justice of India. He is the only person in the history of the country to have served in all three offices of Chief Justice of India, President of India and the Vice President of India, a man of unparalleled clairvoyance and brilliance personified.

Justice Md. Hidayatullah was born on 17th December, 1905 at Betul in the erstwhile Central Provinces and Berar. His grandfather Munshi Kudartullah was an advocate in Varanasi and his father was a poet of national repute. It is believed that Justice Hidayatullah inherited his love for language and literature from his father. His Lordship received education at the Government High School, Raipur and Morris College, Nagpur.

His Lordship went to England for further studies at the Trinity College, Cambridge and obtained the degrees of B.A. and M.A. In his autobiography, ***"My Own Boswell"***, Justice M. Hidayatullah has mentioned that he had not thought of becoming a lawyer but a teacher. With this view, he had even opted for the English Tripos at Cambridge. He was always attracted by the notable poets and writers. It is noteworthy that he was called to the Bar from Lincoln's Inn in 1930, when he was just 25 years old.

Upon returning to India, between 1930 and 1946, Justice Hidayatullah practiced as an Advocate at the erstwhile Nagpur High Court. In December 1942, he was appointed as a Government Pleader at the Court, which position he held till August 1943. From 1943 to 1946, he served as the Advocate General for the High Court of Central Provinces and Berar. He was 37 years at that time and became the youngest Advocate General of a State to serve during that duration.

After serving for three years as Advocate General, Justice Hidayatullah was appointed as a Judge of the High Court at Nagpur for eight years (1946-1954). Regarding his appointment to the Bench, he has mentioned in his memoir that his appointment to the Bench came as a surprise to him. One day he was experiencing a difficult hearing before the Chief Justice in a matter in which he was representing the Governor-General-in-Council. Next day, in the lunch recess, he was called to the Chief Justice's Chamber. His Lordship relegates that the Chief Justice personally took his gown off and draped it on the chair and proceeded to inform him that he had taken the liberty of recommending his name for appointment to the Bench, and that his name had been accepted by His Majesty.

Justice Hidayatullah was requested to keep the news of his appointment a secret. He was a man of his words, which can be gathered from the fact that even his father learnt the news of his appointment, from the morning edition of the newspaper "The Hitavada", published two days later from this incident. He was sworn in as an Acting Judge of the Nagpur High Court on 25th June, 1946 and as a permanent Judge on 13th August, 1946.

Another interesting incident worthy of mentioning from the time of His Lordship's appointment as a Judge is that when he was admitted to the lowest Kindersarten class in school he was presented before the Head Master Mr J. Sen; and 36 years later in 1946, both Mr Sen and Justice Hidayatullah were sworn in as His Majesty's Judges as colleagues on the Bench of the Nagpur High Court.

In 1954, Justice Hidayatullah was appointed as the Chief Justice of Nagpur High Court. It was around this time that the new state of Madhya Pradesh, was formed in 1956 under the States Reorganisation Act. Its administration was divided between three cities and the High Court was moved to Jabalpur. The task of setting up the new High Court of Madhya Pradesh fell upon him. It will not be an exaggeration to say that he became the driving force behind establishing the entire High Court of Madhya Pradesh. On 3rd December 1954, he was appointed as the Chief Justice of High Court of Madhya Pradesh. In his memoir, ***"My Own Boswell"***, he narrates the whole ordeal of setting up of the High Court, the associated excerpt is as follows–

> *"The preparations for the setting up of the High Court at Jabalpur had already become a nightmare for me. I went to Jabalpur to view possible buildings for the High Court. I selected the District Court building, because,*

with modifications, it could be made to house the High Court in a dignified way".[1]

Justice Hidayatullah meticulously planned the entire set-up. He mentions in his memoir that the entire building was to be refurbished, gardens were to be laid, roads were to be constructed, electrical fittings were to be redone and a boundary wall was to be constructed amongst many other works. At his behest, an estimate of 26-28 lakh rupees was prepared. It was in consequence of his detailed deliberations that the entire modifications were approved and thus, began the task of setting up of High Court of Madhya Pardesh. It was His Lordhsip's keen involvement that by 1st November, 1956, the only thing which could not be completed was the furniture, which was designed and ordered, but could not be ready by that date. Regarding the court rooms, Justice Hidayatullah mentions in his memoir –

"The courtrooms were furnished in a curious way. Two packing cases with deal boards on top covered with cloth, were to be the benches. Chairs were collected from offices, schools, colleges and even from restaurants. The problem was to find office furniture, typewriters, stationery and other equipment. I could not purchase anything as we had no funds and a vote on account for the new state was required….In the meantime, I had ordered purchase of stationery to the extent of Rs. 2,500 pledging my personal credit for the purchase with the biggest stationery shop in town".[2]

Justice Hidayatullah narrates the initial few days of functioning of the High Court of Madhya Pradesh as –

"Work, work, work ! This is how I passed my first year at Jabalpur. The problems were so many that the whole of my spare time was taken up with them. The building assigned to us was bare of furniture. The books and the bundles of records were all strewn on the floors in different rooms. The

[1] ***My Own Boswell pg 160***

[2] ***My Own Boswell pg 162***

> *records themselves were administrative, judicial, and miscellaneous……Very little was available in one-horse town of Jabalpur and we had to purchase all our requirements from Nagpur or Bombay. The Aryan Press was a great help. What they could not do at Jabalpur they got executed at the main press at Nagpur. This saved a lot of trouble. Work of the court was not stopped even for a day. We had already sorted out cases to be heard for the first month at Jabalpur and they were ready".*[3]

It was in 1958 that Justice Hidayatullah was called to Delhi to take charge as a Judge of the Supreme Court. Justice Hidayatullah accepted the invitation, and within one week took his oath of office. He was a Judge of the Supreme Court for over twelve years, and for the last two years of his tenure (1968-70) served as the country's 11th Chief Justice.

It is noteworthy that for thirty-five days, during his tenure as the Chief Justice of India, in 1969, he also served as the Acting President of India. This came about because the revered President Zakir Husain had passed away, and the Vice President, V. V. Giri, had resigned in order to contest the forthcoming election for the Presidency. As per the Constitution, the Chief Justice was the next to assume office. It was also during this time that the memorable visit of the then President of USA, President Nixon, to India took place. After completing his temporary term as President, Justice Hidayatullah returned to his position as the Chief Justice of India.

Post-independence era witnessed a lot of instability *vis-vis* the structure of the Constitution and to what extent can amendment be done. The situation was tumultuous to say the least, and then in 1967, came the case of *Golaknath v. State of Punjab, 1967 AIR 1643.* A Special Bench of eleven Supreme Court Judges assembled, and after hearing the matter, five of the Judges agreed with the earlier cases upholding all amendments; five others disagreed, the opinion being written by Chief Justice Subba Rao. Justice M. Hidayatullah concurred with Subba Rao in a separate opinion, thus exercising a swing vote in a decision which has been momentous for India's Constitutional history and for her future prospects.

[3] ***My own Boswell pg 170, 172***

In a long and scholarly opinion, Justice Hidayatullah traced the history of India's Nationalist Movement since 1885, and showed that it had been a struggle throughout for human rights, a struggle not against British rulers alone but against all oppressors and all oppressions. Justice Hidayatullah reasoned that such rights could not be abridged, even by a unanimous vote in both Houses, because the Indian Parliament has no constituent power to re-write or alter the very Constitution by and under which Parliament is constituted.

It is pertinent to mention that Justice Hidayatullah was of the view that judgments of the courts should be simple in language and easy to comprehend. Quoting Dr. Johnson, he compared badly written judicial opinions to a meal which is 'ill-killed, ill-dressed, ill-cooked and ill-served'. He was a master of the spoken and written words, a scholar and jurist in every sense. Justice Hidayatullah said that when he delivered judgments in courts in big cases, he had sleepless nights framing the judgments in his head.[4]

Justice Hidayatullah was in favour of strict discipline for the Judges. He was always of the view that the Judges in all Courts must act with responsibility and if there is a mistake on the part of the Court, then the litigants should not suffer on account of such mistake. Speaking for the Court in *Jang Singh* v. *Brij Lal*, 1966 AIR 1631, he said:

> *"There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake."*

In late 1970s, upon reaching the mandatory retirement age of 65 years, he retired from the Supreme Court. It is pertinent to note that such was his discipline and idealism that he remained in Delhi for only 56 hours thereafter and returned to Bombay. It is said about His Lordship's personality that a sense of humility permeated his entire conduct. Several anecdotes have been shared by the members of the Bar of having seen him queue up behind them in shops in Connaught Place waiting for his turn like any other customer. He sometimes used to drive down personally in his Rover car for making ordinary purchases.

[4] **Legends in Law pg. 341**

It was almost a decade after his retirement from the office of the Chief Justice of India in 1970, in the aftermath of the dissolution of the erstwhile Janata government, that Justice Hidayatullah was appointed as the 6th Vice President of India on 31st August 1979. He was elected unanimously and served full term, relinquishing office on 30th August, 1984. In 1982, when President Zail Singh travelled to the United States on account of medical issues, Justice Hidayatullah once again served as the acting President of India for a period of 25 days.

After his retirement as the Chief Justice of India, Justice Hidayatullah engaged in literary pursuits. Justice Hidayatullah was a very well-read and widely-travelled man. He was a scholar and author of several publications. He has authored Democracy in India, Judicial Process, South-West Africa Case, Judicial Methods and had edited *"Mulla's Mohammedan Law"*. Apart from this, some of his other literary works comprise of *"A Judge's Miscellany"*, "*USA and India"* and his autobiography **"***My Own Boswell''*.

Justice Mohammad Hidayatullah passed away on 18th September, 1992 at the age of 87, remaining active till the very end. At the Full Court reference held in the memory of His Lordship on 22nd September, 1992, the then Hon'ble Chief Justice of India Shri M.H. Kania said that, *"He was perhaps the last of the great generation of Judges who were held in awe and respect combined with affection by the entire Bar."*

Justice Hidayatullah's contribution to the legal system as also to the political, social and cultural systems is immense. His Lordship's understanding of diversified fields as philosophy, politics, law, religion, literature, art and history among other aspects of human and social life, truly makes him an outstanding personality. Taking into account the legendary life of Late Hon'ble Shri Justice Mohammad Hidayatullah, it can be inferred that he was a champion and crusader of human rights much before the idea and the movement gained ground both in India and abroad. He was a Gandhian in ideology, essentially cosmopolitan in outlook, truly Indian in culture, a poet at heart and an activist in thoughts. Considering the inspiring and motivating journey of His Lordship and the huge inpact he had on the Indian polity, it is only apt to say that '*Legends live forever'.*

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FORGERY & FABRICATION CASES: AN OVERVIEW

– *Institutional Article*

If a document which is not genuine, is being used as such and a person is made to part with money on that basis, then not only the offence of cheating as defined under section 415 of Indian Penal Code, 1860 but also the offence of forgery as defined under section 463 of IPC is attracted.

Definition:

Word forgery has its origin from the French word "Forger", which signifies "*to frameor fashion a thing as the smith doth his work upon the anvil. And it is used in our law forthe fraudulent making and publishing of false writings to the prejudice of another man's right"*. In *Webster's Comprehensive Dictionary, International Edition*, 'Forgery' is defined as "The act of falsely making or materially altering with intent to defraud; any writing which, if genuine, might be of legal efficacy or the foundation ofa legal liability."

Relevant provision:

Offences related to forgery are enumerated in Chapter XVIII of IPC. Section 463 deals with forgery whereas Section 465 prescribes punishment for forgery. What constitutes a false document is elaborately given in Section 464 whereas Section 466 to Section 469 are few aggravated offences of forgery. Section 470 defines a 'Forged document'. Whereas Section 471 deals with the crime of using the forged document as genuine.

Jurisdiction:

First Schedule of the Code of Criminal Procedure, 1973 as amended by Code of Criminal Procedure (Madhya Pradesh Amendment) Act of 2007, which came into force with effect from 22nd February 2008, made offences punishable under Sections 466, 467, 468 and 471 to 477A of IPC triable only by the Court of Sessions.

Ingredients of Forgery:

In order to constitute forgery, the first essential is that the accused should have made a false document, with intent to cause damage or injury to the public or to any class of public or to any community. Expression "intent to defraud" implies conduct coupled with an intention to deceive or thereby to cause injury. Document must be made dishonestly or fraudulently. But dishonest or fraudulent

are not tautological. Every fraudulent act does not imply deprivation of property or an element of injury. Every forgery postulates a false document either in whole or in part, however small. Three questions may be asked: (i) Is the document false? (ii) Is it made by accused? and (iii) Is it made with intention to defraud? If all the questions are answered in affirmative, the accused is guilty.

Difference between cheating and forgery:

In the matter of ***Sheila Sebastian v. R. Jawaharraj and ors (2018) 7 SCC522,*** it was observed that forgery can be described as merely the means to achieve an end, and the end being deception. The main difference between cheating and forgery is that in cheating the deception is oral, whereas in forgery it is in writing. The very basis of the offence of forgery is making of a false document with criminal intention to cause damage to any person. Only those acts of forgery, which are accompanied by the elements of deception and injury, can be said to be covered by the definition of forgery under Sections 463 and 464 of IPC. Making of false document is the soul of forgery. What constitutes a false document or part of document is not the writing of any number of words which in themselves are innocent, but affixing of the seal or signature of some person to the document or part of a document knowing that the seal or signature is not of himself and that he gave no authority to affix it. In other words, the falsity consists in the document, or part of a document, being signed or sealed with the name or seal of a person who did not, in fact, sign or seal it.

Essential elements of Section 463 IPC

To constitute forgery within the meaning of Section 463 IPC, the following ingredients must be established:

- The document or the part of the document must be false;
- It must have been made dishonestly or fraudulently within the meaning of the words as used in Section 464 IPC;
- It must have been made with one of the intents specified under Section 463 IPC. Preparation for forgery is not an offence under the provisions of the IPC.

In the case of ***Md. Ibrahim & ors v. State of Bihar & anr, (2009) 8 SCC 751,*** it was observed that, an analysis of Section 464 IPC shows that it divides false documents into three categories :

- *Impersonation:* The document has been falsified with the intention of causing it to be believed that such document has been made by a

person, by whom the person falsifying the document knows that it was not made.

- *Altering the documents by causing inter lineations and obliterations:* Where a person without lawful authority alters a document after it has been made.
- *Receiving the documents by exercising deception:* When the document is made to be signed by a person who due to his mental incapacity (intoxication or unsoundness of mind) does not know the contents of the documents which were made.

When offence of Section 471 IPC is attracted?

In ***A.S. Krishnan v. State of Kerala, (2004) 11 SCC 576,*** Hon'ble Supreme Court observed that the essential ingredients of Section 471 are: (*i*) fraudulent or dishonest use of document as genuine, and (*ii*) knowledge or reasonable belief on the part of person using the document that it is a forged one. Section 471 is intended to apply to persons other than the forger himself, but the forger himself is not excluded from the operation of the section. To attract Section 471, it is not necessary that the person held guilty under the provision must have forged the document himself or that the person independently charged for forgery of the document must of necessity be convicted, before the person using the forged document, knowing it to be a forged one can be convicted, as long as the fact that the document used stood established or proved to be a forged one. The act or acts which constitute the commission of the offence of forgery are quite different from the act of making use of a forged document. The expression "fraudulently" and "dishonestly" are defined in Section 24 and Section 25 IPC of respectively. For an offence under Section 471, one of the necessary ingredients is fraudulent and dishonest use of the document as genuine. The act need not be both dishonest and fraudulent. The use of document as contemplated by Section 471 must be a voluntary one. For sustaining conviction under Section 471 IPC it is necessary for the prosecution to prove that the accused knew or had reason to believe that the document a forged one. Whether the accused knew or had reason to believe the document in question to be forged has to be adjudicated on the basis of materials and the finding recorded in that regard is essentially factual.

Under what offence accused will be charged if it is not clear as to whether accused who has used the forged document has himself prepared the same?

It was observed by Hon'ble High Court of Madhya Pradesh in ***Satish***

Kumar Jaiswal v. The State Of Madhya Pradesh, on 2 December, 2013 CRR No.1054/2013,that *prima facie* it was established by the complainant that such a certificate was issued in favor of the applicant, whereas he had not done any construction work as shown in the certificate and therefore, certificate issued in favour of the applicant is a forged one. Though the documents are not shown as to whether the applicant applied for that certificate or not but, it is also established *prima facie* that such certificate was found in the office of CPWD. If the applicant was not interested in getting such certificate then, nobody could issue such a certificate and provide itto the officers of CPWD and therefore, *prima facie* it would be presumed that the forged certificate was obtained by the applicant and he used it for getting a big contract in his name. Under such circumstances, it cannot be said that *prima facie* no charge shall be framed against the applicant. Looking to the contents of the complaintand *prima facie* evidence adduced by the complainant, it appears that the learned Additional Sessions Judge has rightly framed the charges against the applicant. If the applicant is found guilty for offence punishable under section 471 of IPC then, he shall be liable for the same punishment as given for offence punishable under sections 467 and 468 of IPC and therefore, such charges could also be framed against the applicant.

Whether separate sentence can be passed for forgery and use of forged document?

It was held in ***In Re: S V Rama Rao, 1967 CrLJ 559,*** that the act of using such a forged document is by itself an offence. Hence, if a forger uses that document, such use would constitute an offence under Section 471 IPC. The act or acts which constitute the commission of the offence of forgery are quite different from the act of making use of a forged document. Therefore, Section 471 IPC covers not only some persons other than a forger but also a forger who forges the document and then makes use of it. The forger is not excluded from the operation of Section 471 IPC.

In ***M.R. Kudva v. State of A.P.,(2007) 2 SCC 772*** it was held that if the accused was charged under section 420, Section 468, Section 471 read with Section 120B IPCand also under section 5 (1) of the Prevention of Corruption Act, 1947 and upon finding guilty separate sentence could be passed.

Whether using copy of forged document is also forgery?

In ***Jivabhai Changani v. State of Gujarat, (2001)1 SCC 719,*** it was observed that if accused used a duplicate certificate with changes, as if it was the true certificate knowing it to be false, and thereby secured admission in

polytechnic course, would make its user liable under section 471 IPC. It will be the same case if an original document was first forged and then copy made of the forged document was used. In the same way, if attested copy of forged document was used by the accused after having knowledge, then he is also liable for using the forged document under section 471 IPC.

What would be the effect of non production of forged document in court?

Hon'ble Apex court has observed in ***Rama Shankar Lal v. State of U.P., (1971) 3 SCC 905,*** that the document said to have been forged, as already pointed out has not been produced in the case. We refrain from raising any presumption from the non-production of the sale deed. However, the fact remains that we have not had the benefit of looking at the document alleged to have been forged, a circumstance which is material and which must to a large extent go against the prosecution. We do not mean to say that in the absence of the document alleged to be forged, the court can in no case hold the offence of forgery to be established, but to claim such a finding in the absence of the document said to be forged, the evidence must in our view, exclude all possibility of a reasonable doubt. This is in accord with the general principle of our jurisprudence.

When a person is said to have made a false document ?

The "making" of a false document may or may not require "signing" and/or sealing and/or execution. In other words, "making" of a document essentially means and depends on the nature of the document and the use to which the document is intended to be put to.

Whether obtaining signature on blank paper is forgery?

In order to sustain a conviction under Section 465 IPC, first it has to be proved that forgery was committed under Section 463 IPC implying that ingredients under Section 464 IPC should also be satisfied. Obtaining signature on blank paper by itself is not forgery. It is an offence only when the paper is fabricated into a document contrary to the Indian Penal Code or when such document is used as genuine. Forgery and fraud are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts.

Fraud in execution of sale deed:

In ***Vimla (Dr.) v. Delhi Administration, AIR 1963 SC 1572,*** Supreme Court explained the meaning of the expression "defraud" thus:

The expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss, that is deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic and non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived the second condition is satisfied."

What was the intention while execution of sale deed is important? In ***Md. Ibrahim & ors*** (supra), it was held that there is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, anda person executing a sale deed by impersonating the owner or falsely claiming to be authorized or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he *bonafidely* believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

When a document is executed by a person claiming a property which is not of his, he is not claiming that he is someone else nor is claiming that he is authorized by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 IPC. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 IPC nor Section 471 IPC are attracted.

When we say that execution of a sale deed by a person, purporting to convey a property which is not his property, is not making a false document and therefore not forgery we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchases the property, the person defrauded, i.e. thepurchaser, may complain that the vendor committed the

fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

Fraud in Civil Cases:

In ***Indian Bank v. Satyam Fibres (India) (P) Ltd., (1996) 5 SCC 550*** the Apex court held that the judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practiced upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order. The court has also the inherent power to set aside a sale brought about by fraud practiced upon the court.

Forged Bail Order:

Section 466 IPC deals with forgery of record of court or of Public register etc. It is an aggravated form of forgery. False alteration of a police dairy by a Head Constable, forged bail orders etc can be covered under this section. It was observed in ***State v. Ranjit Singh, (1999)2 SCC 617,*** that forged bail order comes under the perview of this section. Stenographer of a judge fabricated a forged bail order although no bail was granted. Merely because the signature in such bail order was not put by the accused, it cannot be said that the same was not a document and thereby not attract section 464 IPC. The expression gaining wrongfully or losing wrongfully is not confined only to acquisition or actual deprivation of property. Hence, preparation of forged bail order attracts Section 466 IPC.

Forgery of Valuable Securities, Will etc:

A document which has been held to be valuable security within the meaning of section 30 IPC falls within the scope of section 467 IPC. It describes about the offence which is an aggravated form of the offence described in the preceding section i.e. Section 466. A person could only be made guilty under this section when the forged document is one of those mentioned in this section. It is pertinent to note that an offence under Section 467 IPC is considered as an aggravated or extended form of forgery. Just by forging a document or legal instrument, an individual may be held guilty under Section 467 IPC, irrespective

of the fact that whether such individual gained any wrongful benefit from such document or legal instrument or not. This implies that mere possession of such document or legal instrument and the intention to make use of such document or legal instrument is sufficient to convict an individual under Section 467 IPC. When it is found that the forged document is not a valuable security,then guilt of accused can be altered from section 467 IPC to section 465 IPC.

Whether OMR Sheet is a valuable security?

In ***Preeti Gautam v. Central Bureau of Investigation, Criminal Revision 3929/2022, decided on 31st October 2022,*** Hon'ble High Court of Madhya Pradesh held that whoever forges a document in order to receive any benefit of such forgery, the question of forgery of a valuable security would arise for consideration. The reasoning finds support from section 30 IPC, which also postulates what a "Valuable Security" means. It is relevant to notice that the Indian Penal Code was framed in the year 1860. The existence of an OMR sheet or otherwise was nowhere at that point of time. Therefore, the sum and substance of Section 467 IPC is to be considered in order to know whether it amounts to a valuable document or not. So far as the facts are concerned, it is a document which has been alleged by the prosecution which has been tampered by the petitioner. That the tampering has taken place in order to receive a benefit by the other co-accused. Therefore, it has to be read as a valuable security. Even though, the provisions of Section 467 IPC are not under challenge, we are of the view that the reasoning adopted by the learned Single Judge in the aforesaid judgment may not be appropriate. Therein, the learned Single Judge referred to the document in *stricto sensu* with reference to Section 467 IPC. However, what is to be considered, is not the restrictive documents that are stated under Section 467 IPC but the meaning of the word 'Valuable Security'. In course of time, there are many such documents that would be considered as "Valuable Securities". Therefore, to restrict a valuable security purely in terms of the restriction under Section 467 IPC, in our considered view may not be appropriate.

Forgery for purpose of cheating?

When there is forgery in respect of a document or electronic record with intention to be used for cheating, then it is punishable under section 468 IPC. For the application of this section, it is not mandatory that the accused must have really cheated, what is relevant is to check the intention of the accused in committing forgery. Therefore, intention plays a crucial role in determining the offence under this section and it may be fairly inferred in most cases from the content of forged document.

In **State of Orissa v. Rabindra Nath Sahu,** ***(2002) Cr. LJ 2327 (Ori),*** High court of Orissa held that Section 468 does not require that the accused has committed the offence of cheating but the material fact for this section is that the accused must have committed forgery with the intent to use the forged document for the purpose of cheating. The accused can be made liable under Section 468 IPC as well as for the offence of cheating, if he has used the forged document for the purpose of cheating.

Relation between Forgery and Fabrication of Evidence:

In ***Dr. S. Dutt v. State Of Uttar Pradesh, 1966 AIR 523,*** the Apex Court observed that the broad distinction between offences under the two groups is this Section 465 IPC deals with the offence of forgery by the making of a false document and Section 471 IPC with the offence of using forged document dishonestly or fraudulently. Section 193 IPC deals with the giving or fabricating of false evidence and Section 196 IPC deals with corruptly using evidence known to be false. The gist of the offence in the first group is making of a false document and the gist of the offences in the second group is procuring of false circumstances or making of a document containing a false statement so that a judicial officer may form a wrong opinion in a judicial proceeding on the faith of the false evidence. Another important difference is that whereas Section 471 IPC requires a user to be either fraudulent, dishonest or both, Section 196 IPC is satisfied if the user is corrupt.

It is well settled that Section 195(1)(b) CrPC creates a bar against taking cognizance of an offence against the administration of justice for the purpose of guarding against the baseless vindictive prosecutions by private parties. In ***Iqbal Singh Marwah and ors. v. Meenakshi Marwah and ors. (2005) 4 SCC 370***, it was observed that cases which fall under Section 195(1)(b)(ii) CrPC, the document that is said to have been forged should be *custodia legis* after which the forgery takes place. If it was not *custodia legis*, a private complaint would be maintainable. It was contended that, being victims of forgery, ought not to be rendered remedy less in respect of the acts of forgery which are committed before they are used as evidence in a court proceeding, and that therefore, a private complaint would be maintainable.

Whether the reasoning adopted in *Iqbal Singh Marwah* case (Supra) with regard to offences which fall under Section 195(1)(b)(ii) CrPC, ought to apply to the cases falling under Section 195(1)(b)(i) CrPC ?

To answer this contention, the Apex Court in ***Bandekar Brothers and ors v. Prasad Vassudev Keni and ors, AIR 2020 SC 4247,*** noted the difference

between the offences mentioned in Sections 195(1)(b)(i) and 195(1)(b)(ii) of CrPC. The Bench observed that where the facts mentioned in a complaint attracts the provisions of Sections 191 to 193 of IPC, Section 195(1)(b)(i) of CrPC applies. What is important is that once these sections of the IPC are attracted, the offence should be alleged to have been committed in, or in relation to, any proceeding in any Court. Thus, what is clear is that the offence punishable under these sections does not have to be committed only in any proceeding in any Court but can also be an offence alleged to have been committed 'in relation to' any proceeding in any Court.

The court also referred to ***Narendra Kumar Srivastava v. State of Bihar and ors, (2019) 3 SCC 318*** and observed that when Section 195(1)(b)(i) of CrPC is attracted, the ratio of ***Iqbal Singh Marwah (supra)***, which approved ***Sachida Nand Singh and anr. v. State of Bihar and anr, (1998) 2 SCC 493***, is not attracted, therefore, if false evidence is created outside the Court premises attracting Sections 191/192 of IPC, the aforesaid ratio would not apply so as to validate a private complaint filed for offences made out under these sections.

Whether an offence under Section 193 IPC committed at the stage of investigation, prior to production of the false evidence before the Trial Court by a person who is not yet party to proceedings before the Trial Court, is an offence "in relation to" a proceeding in any court under Section 195(1)(b)(i) CrPC ?

This issue was considered in ***Bhima Razu Prasad v. CBI, 2021 SCC Online SC 210,*** wherein it was observed that Section 195(1)(b)(i) CrPC will not bar prosecution by the investigating agency for offence punishable under Section 193 IPC, which is committed during the stage of investigation. It has been held that the investigating agency has lodged complaint or registered the case under Section 193 IPC prior to commencement of proceedings and production of such evidence before the trial court. In such circumstance, the same would not be considered as an offence committed in, or in relation to, any proceeding in any Court for the purpose of Section 195(1)(b)(i) CrPC i.e. complaint filed by investigation agency before judicial magistrate is maintainable and no bar will be applicable.

We should also keep in mind that word "forgery" is used in Section 463 IPC as a general term and that section is referred to in a comprehensive sense in Section 195 CrPC. It comprises and embraces all species of forgery and thus includes a case falling under Section 467 IPC.

Whether filing of forged and fabricated document amounts to contempt of Court?

In ***Chandramani Kanhar v. State of Odisha, 2020 SCC OnLine Ori 930*** Hon'ble High Court of Odisha held that anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. If a forged and fabricated document is filed in Court to get some relief, the same may amount to interference with the administration of justice and the conduct is punishable as contempt of Court. The fabrication and production of false document can be held to be interference with the due course of justice. Any interference in the course of justice, any obstruction caused in the path of those seeking justice are an affront to the majesty of law and therefore, the conduct is punishable as contempt of Court. Law of contempt is only one of many ways in which due process of law are prevented to be perverted, hindered or thwarted to further the cause of justice. Due course of justice means not only any particular proceeding but a broad stream of administration of justice. Therefore, due course of justice used in Section 2(c) or Section 13 of Contempt of Courts Act, 1971 are of wide import and are not limited to any particular judicial proceeding.

Assistance of hand writing expert:

In ***Murarilal v. State of M.P.,*** **AIR 1980 SC 531,** it was held that it is not the law that handwriting expert's evidence can never be acted upon unless substantially corroborated by other evidence. Approach should be one of caution. Reasons for the opinion should be carefully probed and examined. Inappropriate cases corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of a hand writing expert may be accepted.

In addition to that, Section 73 Evidence Act vests in the court first, power to direct any person present in court to give handwriting, signature including thumb impression for the purpose of enabling the court to compare the same with any admitted handwriting, signature or thumb impression. When a case hinges upon expert evidence on comparison of handwriting, the court is competent to use its own eyes for the purpose of deciding whether certain hand writing was similar or not. Court is to verify the premise of the opinion of handwriting expert. Discarding the evidence of handwriting expert altogether from consideration on the ground that such evidence is not conclusive is not proper. If any doubt creeps in the mind of the court, it can examine the handwriting itself and the true test is

not to extend the similarities observed when compared with genuine documents, but the nature and extent of dissimilarities noticed.

Preparation and Attempt :

The Apex Court has held in ***Abhayanand Mishra v. State of Bihar, AIR 1961 SC 1698*** that person commits the offence of attempting to commit a particular offence, when he intends to commit that particular offence and, having made preparations and with the intention to commit that offence, does an act towards its commission and that such an act need not be penultimate act towards the commission of that offence, but must be an act during the course of committing such offence. Preparation is not punishable, because a preparation, apart from its motive, would generally, be a harmless act. This apart it would be impossible, in most cases, to show that the preparation was directed to a wrongful end or was done with as evil motive or intent.

In ***Pura Lodar v. Deputy Commissioner, (2003) 1 GLR 359,*** Hon'ble Guwahati High Court held that for a document to be a false document, it is not necessary that it must be a complete document. However, if a document, say a deed of sale is caught before any signature, in part or in full, is put thereon, then, the deed will not be treated as a false document in as much as the offence will still remain at the stage of preparation, but if the accused or anyone involved in the conspiracy with the accused is caught, while signing such a deed, the offender can be said to have been caught, when the offence had gone beyond the stage of preparation and had already entered into the zone of attempt to commit the offence of forgery. Therefore, before the process of signing of the deed commences, the 'making' of false document will remain under process and the crime will remain within the stage of 'preparation'. It will be just like making of a duplicate key to a lock for committing theft or procuring of poison for committing murder. For merely making such a key, even if the intended offence is theft, one cannot be held to have attempted to commit the offence of theft. Similarly, procuring of poison, in itself, will not constitute offence of attempt to commit murder, though the objective might have been to administer poison to a specific person. The law punishes a man not for guilty intention, but for the overt act done.

Conclusion

A charge of forgery often boils down to intention, the burden of proof is on the prosecution to prove the intention of accused beyond reasonable doubt. The offence of forgery can be considered as a white collared crime that involves creation of a false document or an electronic record or any other legal instrument

with a *mala fide* intent to defraud an individual. The offence of making a false document is complete as soon as the document is made with intent to commit fraud.

Some more aspects which should be kept in mind while dealing cases relating to forgery are that it is not necessary that the document should be made in the name of a really existing person. It may be in the name of a fictitious person. A general intention to defraud, without the intention of causing wrongful gain or loss to any particular person, is sufficient. There must however, be a possibility of some person being defrauded. It is not an essential quality of the fraud that it should result in, or aim at, deprivation of property. Concealment of an already practiced fraud is fraud. If several persons combine to forge an instrument and each takes a distinct part in it, they are all nevertheless guilty. Counterfeiting a document to support a legal claim will amount to forgery. Antedating a document may become forgery if the date is a material part of the forgery. Intent to commit fraud is the test of forgery. A document made to conceal a previous fraudulent or dishonest act amounts to forgery. But such falsification is not forgery if it is only for the purpose of concealing a previous negligent act. Offence of forgery can be abetted as well.

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DNA Evidence in Contemporary Legal Perspective

-Institutional Article

Technology has evolved with the evolution of mankind. Innovation in technology cannot only be a source of societal development but can also play a pivotal role in bringing justice to the seeker. One such technique amongst many others is DNA profiling or DNA fingerprinting which is being widely used in contemporary justice dispensation system. Chief Justice Roberts of the Supreme Court of United States, while referring to the importance of DNA Test, in the case of ***District Attorney's Office for the Third Judicial District v. Osborne, 2009 SCC On Line US SC 73***, stated as follows:

> "DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police in investigative practices."

DNA testing works both ways, *vis* securing accurate guilt and also exonerating innocence. In criminal cases like homicide, sexual assault, etc., the technology has enabled identifying by even a tiny piece of the sample. The importance of DNA Test was highlighted in the case of ***In Re : Assessment of the Criminal Justice System in response to Sexual Offences, 2020 (1) Crimes 69 (SC)*** (Three-Judge Bench) by the Supreme Court of India.

As we are aware, DNA stands expanded as Deoxyribonucleic Acid, the fundamental building blocks of life. It is the genetic material present in the cells of all living creatures which is a complex of four chemical constituents (labelled A, T, C and G), known as bases, attached to a sugar backbone which form a strand millions of bases long. There are two strands in DNA, which run in opposite direction to form a twisted ladder. Each strand can act as a template to produce the other precisely wherein the linear sequence of bases can act as code, providing the instructions for many biological functions.

Each base pairs have the chemical constituents A to T and other G to C. The human body contains 6,500,000,000 pairs of bases and the full complement 3 meters in length, is termed as genome, which is packaged into 23 different pairs of chromosomes. This number always differs from one living organism to another living organism. DNA is made up of one half of biological mother's DNA and one half of biological father's DNA. Every human being has a distinctive DNA that does not match with anyone else other than monozygotic twins. It is this that

ensures DNA is unique, and allows for accurate testing of parentage and direct descendants through a DNA test.

Evolution of DNA Technology

In 1953, the double-helix structure of DNA was first described by the scientists Francis H. C. Crick and James D. Watson and DNA Profiling Technique has been invented by a renowned Genetic Scientist Alec Jeffreys from Leicester University, England. Around three decades ago in the late 1980s, DNA profiling and fingerprinting came into use. In a criminal case of rape and murder of two minors, in a village of United Kingdom, this technology was first used to nab a psychosexual criminal. DNA technology got worldwide attention through this case. Since then this technique has exponentially evolved, helping the justice dispensation system in one way or the other.

DNA Profiling or DNA Fingerprinting

It is a modern gene-based technique in forensic science to identify an individual. DNA profiling analyzes human DNA, through material present in human body such as saliva, skin, hair, blood, semen, and so on, that can be matched to DNA sample taken previously. It is a highly advanced form of a genetic identification test. DNA of all the people on earth has 99.9 % similarity, no two persons' DNA profiles match, owing to this mere 0.1% dissimilarity. This slight variation is enough to distinguish every human being from the other. This technique aids in deciding personality traits, behaviour, and at times even heritable illnesses of a person. DNA fingerprinting unlike other forensic evidence, can be collected easily and sustains for long thereby increasing chances of accurate analysis.

Types of testing: Procedures and Usage

There are two main types which are called Restriction Fragment Length Polymorphism, (RFLP) and Polymerase Chain Reaction (PCR) testing. RFLP testing process requires comparatively larger amount of DNA and for proper results the DNA must be uncontaminated whereas PCR testing requires lesser amount of DNA sample. However, this test is extremely sensitive and even slight contaminants can affect the results. With the development of newer and more efficient DNA analysis techniques, PCR test is now more common. Relationship Identification DNA Test, Organ Transplant DNA Test, Immigration DNA Test, Cell Line Authentication Test etc. are also the various types. Currently, in India this technology is being used widely not only in criminal cases but also in civil

matters such as determination of kinship and establishing biological parentage as well as in cases of missing person or identification of disaster victims.

Relevant legal provisions related with DNA Profiling

With the passage of time, DNA evidence has been incorporated in various legal provisions and thereby validated the usage of DNA evidence in legal proceedings. Section 53 of the Criminal Procedure Code, 1973 (for short "Cr. P. C."), states a detailed medical examination of a person accused of an offence of rape or an attempt to commit rape by the registered medical practitioner at the request of a police officer in good faith for the propose of the investigation, if there are reasonable grounds to believe that an examination of his person will afford evidence as to the commission of the offence. Section 54 Cr. P. C. further provides for the examination of the arrested person by the registered medical practitioner at the request of the arrested person.

Section 53A and Section 164 A of Cr. P.C. provides about the medical examination of a rape victim by a registered medical practitioner with the consent of the victim. By this amendment, new explanation includes within its ambit examination of blood, blood stains, semen, sputum, swabs, sweat, hair samples and finger nails by the use of modern techniques in the case of sexual offences including DNA profiling and such other tests which are necessary in a particular case in the same manner.

Section 45 of the Indian Evidence Act, 1872 ("Evidence Act" for brevity) deals with opinions of experts which provides when the Court has to form an opinion upon a point of foreign law or of science or art, or as to the identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to the identity of are relevant facts. Such persons are called experts. Section 9 of the Evidence Act provides about the facts necessary to explain or introduce a fact in issue or relevant fact. So far as Expert opinion is concerned, if the evidence of an expert is relevant under section 45, the ground on which such opinion is derived is also relevant under section 51. Section 46 deals with facts bearing upon opinions of experts. The opinion of an expert based on the DNA profiling is also relevant on the same analogy.

Presumption of Parentage *vis - a vis* DNA Test Report

Section 112 of the Evidence Act provides for presumption of parentage. This section provides that any child born during the continuance of a valid marriage or within 280 days after marriage being dissolved and the mother is also

not remarried, and then it will be conclusive proof that the child is the legal child of the person to whom the mother is married.

At times there may be a conflict between the aforesaid presumption and the DNA test report. In this context, in ***Goutam Kundu v. State of W.B., (1993) 3 SCC 418***, the Apex Court mentioned in para 26 of the judgment that there must be a strong *prima facie* case that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act. The recent position of law is that the Supreme Court gave preference to DNA test report over the legitimate presumption under Section 112 of Evidence Act. In a recent case of ***Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik & Anr (2014) 2 SCC 576***, the Apex Court considered the fact that the Evidence Act was enacted when no such scientific procedure as DNA existed. It was held that:

> "The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former."

Further, the same view was reiterated in the case of ***Dipanwita Roy v. Ronobroto Roy, AIR 2015 SC 418***.

Whether a person can be compelled to undergo DNA test?

Legitimacy of DNA fingerprinting has been meandering between two opposite poles of attaining the truth or respecting privacy of an individual. Technical advancements and scientific methods expedite the criminal justice system provided under the union list, hence, that can be legitimately promoted under the scheme of the Constitution. Article 51A(h) and (j) of the Constitution casts duty upon the citizens to develop scientific temper, humanism and the spirit of inquiry and reform to strive towards excellence in individual and collective activity. But the travesty is that DNA profiling is often contended in conflict with Right to Privacy under Article 21 and Right against Self-incrimination under Article 20(3) of the Constitution. The issue of DNA fingerprinting is incomplete without discussion on this angle.

The interplay between the DNA fingerprinting technology and aforesaid rights can be understood with some landmark judgments. In this regard, the Supreme Court in ***Govind Singh v. State of Madhya Pradesh, AIR 1975 SC 1378***

held that the fundamental rights must be limited on the grounds of public interest. In any circumstance, if the constitutional rights of the parties are in dispute then it is the responsibility of the court to ascertain that justice is done. Further, recently in ***Justice K. S. Putta swamy (Retd.) v. Union of India, (2017) 10 SCC 1,*** the Supreme Court held that the right to privacy is not absolute in nature.

So far as taking any type of sample from the accused is concerned, in the case of ***State of Bombay v. Kathi Kalu Oghad and Anr., AIR 1961 SC 1808***, it was held that:

> "When an accused person is called upon by the Court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any testimony of the nature of a 'personal testimony'. The giving of a 'personal testimony' must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation cannot change their intrinsic character. Thus, the giving of finger impressions or of specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression **'to be a witness'**."

Thus, the court established that giving of fingerprint or collection of any other evidence of 'private nature' does not essentially attract the maxim *nemodebetprodereseipsum,* i.e. no one can be required to be his own betrayer or in simple words no person shall be compelled in any criminal case to be a witness against himself, which includes DNA testing.

Whether courts can order for DNA Test?

The question that is actually perplexing is that whether courts can order any person to undergo DNA examination *suomotu* or on application of any person other than police officer? Hon'ble Supreme Court in ***Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women, (2010) 8 SCC 633***, whilst pressing upon the significance of DNA testing in the process of administration of justice held,

> "When there is apparent conflict between the Right to Privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due

consideration whether for a just decision in the matter, DNA test is eminently needed."

In the landmark case ***Rohit Shekhar v. N. D. Tiwari, (2012) 12 SCC 554***, it was held by the apex court that collection of DNA samples or compelling to undergo DNA Test in paternity lawsuits are not against fundamental rights as it would not be made public and will be confidential for the sake of justice. It was also held in the case of ***Dheeraj Gada (Dr.) v. State of M.P. and ors., 2015 (3) JLJ 314*** that accused may be compelled to allow sample to be taken for DNA test from his body and such order may be passed after filing of charge-sheet.

A while back, in the case of ***Kathi David Raju v. State of Andhra Pradesh and anr., (2019) 7 SCC 769,*** it was held by the Hon'ble Supreme Court that DNA test should not be ordered to conduct roving and fishing enquiry on a person. It may be ordered only after substantial investigation and collection of satisfying material. Hence, such power has to be exercised only when the applicant has strong *prima facie* case. In ***Radheshyam v. Kamla Devi and ors., AIR 2021 MP 162***, it was held that in disputes related with inheritance of property between brother and sister, DNA test may be ordered. In the same manner, in ***Rahul Pandey v. State of M.P. and ors., 2021 Cri LJ 3572,*** the order for DNA test was considered appropriate in the facts and circumstances of the case. Recently, in ***Ashok Kumar v. Raj Gupta and ors., (2022) 1 SCC 20*** the court held that where other evidence is available to prove the relationship, the courts must refrain from ordering for DNA test.

Here, it is pertinent to mention that where the record suggests that DNA report will elaborate the dispute between the parties, there passing an order for DNA test is not prohibited but such order should not be passed as a "matter of course" or in routine manner. Therefore, it may be safely concluded that though section 53-A, Cr.P.C. refers only to examination of the accused by medical practitioner at the request of the police officer, the court has wider power for the purpose of doing justice in criminal cases, by issuing direction to collect sample for DNA test.

Consequence of refusal to undergo DNA Test

But what if the court has ordered for DNA test and concerned party refuses to do so? Whether any adverse inference can be drawn against that party? It was held in ***Dipanwita*** (supra) that if a party declines for DNA test, the allegation would be determined by the court, by drawing a presumption provided under s. 114 (h) of Evidence Act. The same view was taken in the case of

Sukhdev Pakharwal v. Smt. Rekha Okhle and anr., ILR (2018) MP 1571,wherein it was decided that in case of refusal of wife to undergo DNA examination adverse inference u/s 114, Illustration (h) of Evidence Act can be drawn to a certain extent. In ***Badri Prasad Jharia v. Seeta Jharia, 2018 (1) MPLJ 331,*** it was held that presumption under Section 114 can be drawn without disturbing presumption under Section 112. In this regard specific provision is also made in clause (2) of Section 27 of the Prevention of Terrorism Act, 2002 that adverse inference shall be drawn if the accused denies to provide samples.

Nature of DNA Test Report

In criminal cases, DNA reports are mostly integral part in cases related with sexual assault or in some cases where DNA sample is found available on the person of the victim or at the scene of crime. After the amendment in Cr.P.C.by the insertion of Section 53A, DNA profiling has now become a part of the Statutory Scheme (***Mukesh v State of NCT for Delhi, AIR 2017 SC 2161***). In civil cases where question of paternity is somehow involved, applications regarding paternity test are frequently filed by either of the parties. Therefore, DNA evidence has become a part and parcel in criminal as well as in civil proceedings. However, India is yet to formulate a concrete legal structure for regulation of DNA evidence. The aforementioned provisions of the Code of Criminal Procedure, Evidence Act etc. regulating medical and technological matters are quite implicit. This tends to cause chaos and ambiguity while analysing DNA evidence sometimes.

So far as the nature of this type of evidence is concerned, DNA technology as a part of Forensic Science and scientific discipline, not only provides guidance to investigation but also supplies the court accrued information about the tending features of identification. Thus, the expert assists and furnishes information to judicial officers about a fact in issue and relevant fact. Therefore, DNA evidence is an opinion evidence, although accuracy of DNA evidence is increasing with advancement in science and technology, but yet it is not infallible {***Pattu Rajan v. The State of Tamil Nadu, 2019 (3) Crimes 12 (SC)***}.

Admissibility

The efficacy of the DNA profiling technique is unquestionable but there are varying opinions towards the admissibility of DNA evidence. Recently, in ***Machindra vs. Sajjan Galpha Rankhamba, 2017 SCC On Line 443***, it has been observed that an expert opinion should be demonstrative and supported by

convincing reasons. Therefore, so far as admissibility of the DNA report is concerned, general rule is that opinion of a person having special skill or knowledge in a particular field shall be admissible to the court of law and so is DNA report.

Recording of Evidence

Here, it is also pertinent to take into account that DNA report being a report based on a sample, examined by an expert, has to be proved in the same manner as any other expert's report. The technique of collection of sample, process of preserving the sample, the chain of custody etc. are also required to be proved for establishing the authenticity of DNA report. Chain of custody is highly important in any DNA testing process to ensure that results are reliable and have not been tampered with in any way. Chain of Custody refers to the logical sequence that records the collection, custody, control, transfer, analysis and disposition of evidence in legal cases. This term is used to refer to the concept that the whereabouts of a particular sample must be known at any time. This means that from the moment the DNA sample is collected to the final delivery of results, each step must be accounted for. In addition, a neutral third party must be the one collecting the initial sample and then be designated responsible for ensuring that no unauthorized persons come into contact with it.

It also documents details of each person who handled the evidence, date and time when it was collected or transferred, and the purpose of the transfer. The purpose is to preserve the integrity of the evidence. It demonstrates trust to the courts and to parties of a case that the evidence has not been tampered. Another purpose is to prevent the evidence from contamination, which can alter the state of the evidence. A clear chain of command eliminates the possibility of a particular sample being altered or swapped, therefore providing all involved parties with the assurance that the results are accurate. Hence, reliability of DNA Test is based on whether the technique of DNA collection, series of custody and testing is legitimate or not, and if the courts are convinced with the authenticity of the DNA test, only then it is acceptable.

Each step in the chain is essential and if the chain breaks, the evidence may be rendered untrustworthy. This is the reason why it is required to ensure that all the relevant details regarding chain of custody are incorporated in the deposition while recording statement related with DNA. Here it is pertinent to take note that, to ensure due compliance of principle of natural justice i.e. a*udialterampartem* and to eliminate all the possibilities of accused feeling

prejudiced, any incriminating material or circumstance appearing in the evidence against him including chain of custody, findings of DNA Report, basis of the report etc. must be placed before the accused at the stage of examination of accused u/s 313 Cr.P.C. for his explanation if any.

Evidentiary Value

Now as far as appreciation of DNA report is concerned the accuracy of the result in the DNA test report is one aspect and the same being proved in a court of law is another. Appropriate appreciation of such report would only be possible when one acknowledges both the aspects. So far as veracity of DNA Report is concerned, minor discrepancies will not affect it adversely as held in ***Deepak alias Nanhu Kirar v. State of M.P., 2020 Cri LJ 2076 (DB).*** In ***Sunil v. State of Madhya Pradesh, (2017) 4 SCC 393*** (Three Judge Bench), it was held that though a positive result of DNA test would constitute clinching evidence against the accused, negative result will favour the accused or if DNA profiling had not been done or proved, conviction may still be possible based on the remaining evidence. The weight of other materials and evidence on record will be considered. In the case of ***Afjal Khan v. State of Madhya Pradesh 2019 Cr LJ 5003 (DB)***, it was held when DNA samples are taken properly and kept in safe custody and when all samples reached Laboratory, seals were found to be intact, genuineness of samples cannot be doubted. DNA report connecting accused with crime when found reliable, it was held that conviction was proper.

Discrepancy between Oral Testimony and DNA Test Report

Now, there may be instances where there is discrepancy between oral testimony of the prosecutrix/victim/eye witnesses and findings of duly proven DNA test report. Such situations are often visible in cases related with sexual offences. As DNA Test report is an expert report and therefore, it is a corroborative piece of evidence although results are accurate and when duly proved, it is trustworthy. In cases related with sexual offence where prosecutrix/victim/eye witnesses has turned hostile, the courts before proceeding under section 232 Cr.P.C., must ascertain whether DNA test is performed and should also look into the status and findings of DNA report before reaching to a conclusion. In cases of sexual offences against a minor where consent of minor is not even in consideration, the weightage of DNA Test Report will be different from that of the cases where the victim is major and sound to give consent. It is noteworthy that is presumption provided under Sections 29 and 30 of Protection of Children from Sexual Offences Act, 2012 (''POCSO'' IN SHORT). While

dealing with cases of such nature this presumption, duly proved positive DNA report etc. Have to be kept in mind before reaching to a conclusion. This has also to be kept in mind that presumption provided under Sections 29 and 30 of Protection of Children from Sexual Offences Act, 2012 ("POCSO" in short) may further get strengthened from a duly proved positive DNA Report. Therefore, in cases related to POCSO, DNA test report is on much higher pedestal than in cases where the victim is an adult.

Recently, Delhi High Court in the case of ***Mukish v. State, 2022 SCC On Line Del 1762*** relied on DNA test report wherein the minor prosecutrix did not support the prosecution's case. In the case of ***Hemudan Nanbha Gadhvi v. State of Gujarat, 2018 SCC On Line SC 1688,*** the Apex Court held that:

> "Dispensation of justice in a criminal trial is a serious matter and cannot be allowed to become a mockery by simply allowing prime prosecution witnesses turn hostile."

In this case the minor prosecutrix turned hostile but still on the basis of other scientific and clinching evidence on record, the accused was convicted. Therefore, it is clear that in such type of cases there cannot be a straight jacket formula to assess the reliability of evidence. Rather, the courts are required to look into facts and circumstances of each case and take into consideration the entire evidence of the prosecution.

Is DNA Report mandatory?

Dwelling upon the next question, since DNA report is a kind of expert opinion and therefore, non-conduction of DNA profiling or any minor discrepancy therein, will not be fatal for the prosecution's case if other clinching evidence has been proved. In the case of ***State of Madhya Pradesh &anr. v. Veerendra and anr., (2022) 8 SCC 668,*** it was held that where the case is well established by prosecution then mere absence of DNA test is not fatal as DNA test is not mandatory. Despite such flaw, court is duty-bound to determine if material evidence is available on record to prove the prosecution case. In ***Pinki v. State of M.P., ILR (2021) MP 1586,*** the court held that although the DNA was not conducted, but considering the ocular evidence, coupled with medical evidence, it can be said that the presence of human semen and sperms in the vaginal slide, further corroborates the evidence of prosecutrix. It was held in the case of ***Pattu Rajan*** (supra) that no adverse inference can be drawn in absence of DNA evidence. In a maintenance case of ***Badri Prasad Jharia***(supra), it was held that DNA test is not mandatory in each and every proceeding u/s 125 of Cr.P.C.

Conclusion

On the basis of aforementioned discussion, it can be concluded clearly that DNA testing is in accordance with fundamental rights guaranteed by the Constitution and therefore, the court may order for DNA test if *prima facie* case appears on the record in support of doing so but not in routine manner. Since DNA Test Report is based on a sample and analysed by a person having special qualification and experience and therefore, it comes in the category of expert evidence. Although, the results are accurate in the report however, process of sample collection and chain of custody etc. are required to be proved duly.

DNA is a unique identity card provided to every living being, by the nature. The identity provided by this card cannot be challenged and to an extent, even unquestionable, which is now well established by catena of judgments worldwide. It would not be an exaggeration if it is said that in modern forensic innovations, DNA profiling is perhaps the most astounding instance of technical innovation and has ground breaking effects on the justice system.

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विधिक समस्याएँ एवं समाधान

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

1. वन्य प्राणी (संरक्षण) अधिनियम, 1972 के अपराध के संबंध में पुलिस द्वारा धारा 173 दण्ड प्रक्रिया संहिता, 1973 के अधीन पुलिस रिपोर्ट (चार्जशीट) प्रस्तुत होने पर विधिक स्थिति क्या होगी?

धारा 55 वन्य प्राणी (संरक्षण) अधिनियम, 1972 के प्रावधान अनुसार कोई भी न्यायालय उक्त धारा में उपबंधित श्रेणी के अधिकारी के परिवाद के आधार पर ही इस अधिनियम के अधीन वर्णित अपराध का संज्ञान लेगा। उक्त प्रावधान नकारात्मक "No Court shall take cognizance....." से प्रारम्भ होकर Non-obstante clause होकर आज्ञापक प्रकृति का है।

धारा 55 वन्य प्राणी (संरक्षण) अधिनियम, 1972 में परिवाद प्रस्तुत करने हेतु मूलतः पुलिस का कोई अधिकारी सशक्त नहीं था, किंतु Notification No. 14-28-76-X-2-74, dated 31st July, 1974 एवं आदेश क्र. एफ ***15–24/06/10–2*** भोपाल दिनांक ***03.08.2006*** के माध्यम से क्रमशः पुलिस थाने के भारसाधक अधिकारी एवं उपनिरीक्षक पुलिस से अनिम्न अधिकारी को भी धारा 55 के अधीन कार्यवाही करने हेतु सशक्त किया गया, जिसका आशय धारा 55 के अधीन परिवाद प्रस्तुत करने की शक्ति का प्राप्त होना है, न कि धारा 173 (2) दण्ड प्रक्रिया संहिता, 1973 के अधीन पुलिस रिपोर्ट (चार्जशीट) प्रस्तुत करने के अधिकार से अभिप्रेत है।

अधिनियम के अवलोकन से स्पष्ट है कि धारा 51(1)(1ख), धारा 51(1)(1ख) के परंतुक एवं धारा 53 वन्य प्राणी (संरक्षण) अधिनियम, 1972 में वर्णित अपराध की शास्ति के अतिरिक्त अधिनियम के शेष सभी अपराध में तीन वर्ष तक या उससे अधिक अवधि का कारावास उपबंधित है । उक्त विशेष अधिनियम में अपराध को जमानतीय अथवा अजमानतीय अभिव्यक्त नहीं किये जाने से दण्ड प्रक्रिया संहिता, 1973 की प्रथम अनुसूची के भाग II अनुसार धारा 51(1)(1ख), धारा 51(1)(1ख) के परंतुक एवं धारा 53 वन्य प्राणी (संरक्षण) अधिनियम, 1972 का अपराध जमानतीय, असंज्ञेय है तथा शेष सभी अपराध अजमानतीय एवं संज्ञेय प्रकृति के हैं ।

इस प्रकार वन्य प्राणी (संरक्षण) अधिनियम, 1972 के अधीन वर्णित मुख्य सभी अपराध संज्ञेय एवं अजमानतीय होने से पुलिस प्रथम सूचना रिपोर्ट पंजीबद्ध कर धारा 50 (1) वन्य प्राणी (संरक्षण) अधिनियम, 1972 के अधीन सशक्त पुलिस अधिकारी के माध्यम से

अन्वेषण करने हेतु स्वतंत्र है । धारा 55 वन्य प्राणी (संरक्षण) अधिनियम, 1972 में संज्ञान के संबंध में रोक बताई गई है । संज्ञान का प्रश्न अन्वेषण पूर्ण होने के उपरांत धारा 173 (2) दण्ड प्रक्रिया संहिता, 1973 के अधीन पुलिस रिपोर्ट (चार्जशीट) प्रस्तुत होने पर उत्पन्न होता है । अतः पुलिस द्वारा धारा 173 (2) दण्ड प्रक्रिया संहिता, 1973 के अधीन पुलिस रिपोर्ट (चार्जशीट) प्रस्तुत न करते हुए पुलिस थाने के भारसाधक अधिकारी अथवा पुलिस उपनिरीक्षक से अनिम्न अधिकारी के माध्यम से परिवाद पत्र प्रस्तुत किया जाना अपेक्षित है । धारा 2 (घ) दण्ड प्रक्रिया संहिता, 1973 में परिवाद का कोई प्रारूप वर्णित नही है । पुलिस यदि अपराध का संक्षिप्त वर्णन कर अभियुक्त के विरूद्ध कार्यवाही करने के लिये मजिस्ट्रेट को संबोधित करते हुए साधारण आवेदन पुलिस रिपोर्ट (चार्जशीट) के साथ संलग्न कर न्यायालय में प्रस्तुत करती है, तब उस स्थिति में धारा 55 वन्य प्राणी (संरक्षण) अधिनियम, 1972 की मंशा पूर्ण होगी तथा न्यायालय परिवाद के आधार पर संज्ञान ले सकेगा ।

उपरोक्त से स्पष्ट है कि यदि पुलिस द्वारा मात्र वन्य प्राणी (संरक्षण) अधिनियम, 1972 के अधीन प्रथम सूचना रिपोर्ट दर्ज कर अन्वेषण उपरांत धारा 173 (2) दण्ड प्रक्रिया संहिता, 1973 के अधीन पुलिस रिपोर्ट (चार्जशीट) प्रस्तुत की गई है, तब न्यायालय संज्ञान नहीं ले सकेगा। पुलिस रिपोर्ट (चार्जशीट) के आधार पर मजिस्ट्रेट द्वारा संज्ञान की अवस्था में अभियुक्त को उन्मोचित किए जाने के संबंध में मजिस्ट्रेट द्वारा पारित आदेश को माननीय राजस्थान उच्च न्यायालय द्वारा ***अश्विनी कुमार भारद्वाज विरूद्ध राजस्थान राज्य, 1997 क्रिमिनल लॉ जरनल 2150*** में उचित बताया गया। विदित रहे कि वन्य प्राणी (संरक्षण) अधिनियम, 1972 के अधीन वर्णित अपराध का परिवाद पर संस्थित मामले की तरह ही विचारण अपेक्षित है। यह स्थिति यद्यपि तब भिन्न होगी जब वन्य प्राणी (संरक्षण) अधिनियम, 1972 में वर्णित अपराध के साथ अन्य किसी विधि में वर्णित अपराध के संबंध में पुलिस द्वारा प्राथमिकी दर्ज कर कार्यवाही की जाती है ।

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2. **मोटर यान अधिनियम के अंतर्गत मोटर साईकिल पर पीछे बैठे हुए यात्री (प्लीयन राइडर) की मृत्यु या उपहति होने की दशा में, क्या वह अनुग्रह यात्री की श्रेणी में आयेगा या वह प्रतिकर प्राप्त करने का अधिकारी है?**

न्यायदृष्टांत ***ओरियंटल इंश्योरेंश कंपनी विरूद्ध सुधाकरण के.व्ही. एवं अन्य, 2008 (7) एससीसी 428*** में यह प्रतिपादित किया गया है कि प्लीयन राइडर के संबंध में बीमा कंपनी का दायित्व तब तक निर्धारित नही किया जा सकता जब तक प्लीयन राइडर का जोखिम कवर करने के लिये प्रीमियम अदा न किया गया हो। धारा 147 मोटर यान अधिनियम के अंतर्गत मृत्यु या उपहति के संबंध में वाहन के स्वामी या प्लीयन राइडर के लिये विधिक दायित्व उत्पन्न नहीं होता। दो पहिया वाहन के मामले में प्लीयन राइडर को

तब तक तृतीय पक्ष नही माना जा सकता जब तक की दुर्घटना अन्य वाहन चालक की लापरवाही के कारण घटित न हुई हो।

किन्तु न्यायदृष्टांत ***नेशनल इंश्योरेंश कंपनी लिमिटेड विरूद्ध बालकृष्णन एवं अन्य सिविल अपील क्रमांक 1232/2012 निर्णय दिनांक 20 नवंबर 2012*** में यह सिद्धांत प्रतिपादित किया गया कि यदि मोटर साईकल के संबंध में बीमा कंपनी ने पैकेज पॉलिसी जारी की है और प्लीयन राइडर के संबंध में कोई प्रीमियम प्राप्त नहीं किया है तो भी आईआरडीए के ***सर्कूलर क्रमांक IRDA-NL-CIR-F – U-073.11.2009 (16 नवम्बर, 2009)*** के अनुसार दो पहिया वाहन के संबंध में जारी पैकेज पॉलिसी में प्लीयन राइडर की रिस्क को कवर किया जाता है। इस संबंध में न्यायदृष्टांत ***पुष्पा बाई एवं अन्य विरूद्ध कुंजलाल एवं अन्य, 2020 एसीजे 2479*** भी अवलोकनीय है। इस प्रकार मोटर दुर्घटना के मामले में यदि दो पहिया वाहन के संबंध में पैकेज पॉलिसी ली गई है और प्लीयन राइडर के संबंध में कोई अतिरिक्त प्रीमियम राशि प्रदान नहीं की गई है तो भी प्लीयन राइडर की मृत्यु या क्षति होने की दशा में बीमा कंपनी क्षतिपूर्ति अदा करने हेतु उत्तरदायी रहेगी।

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PART- II

NOTES ON IMPORTANT JUDGMENTS

1. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 7 and 8

Arbitration agreement – Absence of any of the attributes of an arbitration agreement – Cannot make issue unarbitrable if parties have evinced clear intention to refer dispute to arbitration.

माध्यस्थम और सुलह अधिनियम, 1996 – धाराएं 7 एव 8

माध्यस्थम करार – माध्यस्थम करार के किसी भी आवश्यक गुण का अभाव – ऐसा अभाव वाद को माध्यस्थम हेतु अयोग्य नहीं बनाता है, यदि पक्षकारों का माध्यस्थम हेतु प्रेषित करने का स्पष्ट आशय होना दर्शित है।

Babanrao Rajaram Pund v. Samarth Builders and Developers and anr.

Judgment dated 07.09.2022 passed by the Supreme Court in Civil Appeal No. …. of 2022, reported in (2022) 9 SCC 691

Relevant extracts from the judgment:

Adverting to the case in hand, it may be seen that the contents and the nature of Clause 18 are substantially different from the dispute resolution pacts in ***K. K. Modi v. K.N. Modi, (1998) 3 SCC 573,Jagdish Chander v. Ram Chander, (2007) 5 SCC 719***or ***Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd., (2003) 7 SCC 418***. We say so for three reasons. Firstly, apart from the fact that Clause 18 of the Development Agreement uses the terms "Arbitration" and "Arbitrator(s)", it has clearly enunciated the mandatory nature of reference to arbitration by using the term "shall be referred to arbitration of a Sole Arbitrator mutually appointed, failing which, two Arbitrators, one to be appointed by each party to dispute or difference". Secondly, the method of appointing the third arbitrator has also been clearly mentioned wherein the two selected Arbitrators are to appoint a third arbitrator. Finally, even the governing law was chosen by the parties to be "the Arbitration and Conciliation Act, 1996 or any reenactment thereof." These three recitals, strongly point towards an unambiguous intention of the parties at the time of formation of the contract to refer their dispute(s) to arbitration.

We are, therefore, of the firm opinion that the High Court fell in error in holding that the Appellant's application under section 11 was not maintainable for want of a valid arbitration clause. We find that Clause 18 luminously discloses the intention and obligation of the parties to be bound by the decision of the tribunal, even though the words "final and binding" are not expressly incorporated therein. It can be gleaned from other parts of the arbitration agreement that the intention of the parties was surely to refer the disputes to arbitration. In the absence of specific exclusion of any of the attributes of an arbitration agreement, the Respondents' plea of non existence of a valid arbitration clause, is seemingly an afterthought.

Even if we were to assume that the subject-clause lacks certain essential characteristics of arbitration like "final and binding" nature of the award, the parties have evinced clear intention to refer the dispute to arbitration and abide by the decision of the tribunal. The party autonomy to this effect, therefore, deserves to be protected.

The deficiency of words in agreement which otherwise fortifies the intention of the parties to arbitrate their disputes, cannot legitimise the annulment of arbitration clause. A three Judge Bench of this Court in ***Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1***dealt with an arbitration clause that did not provide for a method of electing the third arbitrator. The court held that "the omission is so obvious that the court can legitimately supply the missing line." The line "the two arbitrators appointed by the parties shall appoint the third arbitrator" was read into the clause so as to give effect to it. It was further held that:

> "In our opinion, the courts have to adopt a pragmatic approach and not a pedantic or technical approach while interpreting or construing an arbitration agreement or arbitration clause. Therefore, when faced with a seemingly unworkable arbitration clause, it would be the duty of the court to make the same workable within the permissible limits of the law, without stretching it beyond the boundaries of recognition. In other words, a common sense approach has to be adopted to give effect to the intention of the parties to arbitrate. In such a case, the court ought to adopt the attitude of a reasonable business person, having business common sense as well as being equipped with the knowledge that may be peculiar to the business venture. The arbitration clause cannot be construed with a purely legalistic mindset, as if one is construing a provision in a statute…."

The UNCITRAL Model Law on International Commercial Arbitration, 1985 from which the Arbitration and Conciliation Act, 1996 originated, envisages minimal supervisory role by courts. When section 7 or any other provisions of the Act do not stipulate any particular form or requirements, it would not be appropriate for a court to gratuitously add impediments and desist from upholding the validity of an arbitration agreement.

There is no gainsaying that it is the bounden duty of the parties to abide by the terms of the contract as they are sacrosanct in nature, in addition to, the agreement itself being a statement of commitment made by them at the time of signing the contract. The parties entered into the contract after knowing the full import of the arbitration clause and they cannot be permitted to deviate therefrom.

It is thus imperative upon the courts to give greater emphasis to the substance of the clause, predicated upon the evident intent and objectives of the parties to choose a specific form of dispute resolution to manage conflicts between them. The intention of the parties that flows from the substance of the Agreement to resolve their dispute by arbitration are to be given due weightage. It is crystal clear to us that Clause 18, in this case, contemplates a binding reference to arbitration between the parties and it ought to have been given full effect by the High Court.

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2. ARBITRATION AND CONCILIATION ACT, 1996 – Section 9

CIVIL PROCEDURE CODE, 1908 – Order 38 Rule 5

Interim relief – Grant of – *Prima facie* case and balance of convenience in favour of interim relief – Should not be declined on technicalities.

माध्यस्थम और सुलह अधिनियम, 1996 – धारा 9

सिविल प्रक्रिया संहिता, 1908 – आदेश 38 नियम 5

अंतरिम अनुतोष – अनुदान – प्रथम दृष्टया मामला और सुविधा का संतुलन अंतरिम अनुतोष के पक्ष में – तकनीकी कारण से अस्वीकार नहीं किया जाना चाहिए।

Essar House Private Limited v. Arcellor Mittal Nippon Steel India Limited

Judgement dated 14.09.2022 passed by the Supreme Court of India in Civil Appeal No. 6574 of 2022, reported in AIR 2022 SC 4294 (Three Judge Bench)

Relevant extracts from the judgment:

If a strong *prima facie* case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5 of the CPC.

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3. ARBITRATION AND CONCILIATION ACT, 1996 – Section 11(6)

Arbitration agreement – Period of Lease deed expired–Non-renewal of lease –Arbitration clause cannot be rendered otiose by refusal of respondent to renew the lease – Clauses in a lease deed cannot be read and construed in isolation.

माध्यस्थम एवं सुलह अधिनियम, 1996 – धारा 11(6)

मध्यस्थता अनुबंध – पट्टा विलेख की अवधि समाप्त – पट्टे का नवीनीकरण न होना – उत्तरवादी द्वारा पट्टे के नवीनीकरण से इंकार करना स्वमेव मध्यस्थता खण्ड को प्रभावहीन नहीं करता – पट्टा विलेख के खण्ड एकाकी रूप से पढ़े नहीं जा सकते।

Brij Raj Oberoi v. Secretary, Tourism and Civil Aviation Department and anr.

Judgment dated 18.08.2022 passed by the Supreme Court in Civil Appeal No. 5509 of 2022, reported in AIR 2022 SC 3815

Relevant extracts from the judgment:

Clause 4(xiii) provides that the Appellant-lessee shall, in the last year of the lease tenure and not later than six months prior to the expiry of the present lease, communicate in writing to the lessor, his terms and conditions for the renewal of the present lease and if the same is accepted by the lessor, then the present lease may be renewed for such further period and on such rent as may be mutually agreed. The arbitration clause cannot be rendered otiose by refusal of the Respondent State to renew the lease. The Respondent State may have formulated

a policy for encouraging self-employment of local youth who are duly qualified and competent to run the hotel. Such policy decision cannot impact an existing agreement with a renewal clause. All disputes between the parties to the lease with regard to renewal and/or non-renewal, the period of renewal and the quantum of rent would have be decided by the Arbitrator, as observed above. The issue of arbitrability of the dispute over non-renewal of the lease is within the realm of the Arbitral Tribunal/Arbitrator.

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4. CIVIL PROCEDURE CODE, 1908 – Section 96 and Order 9 Rule 13

***Ex parte* decree – Application under Order 9 Rule 13 – Maintainability of – Unsuccessful defendant may prefer appeal or application under Order 9 Rule 13 or both simultaneously – Appellant did not file application under Order 9 Rule 13 – Appeal challenging the legality of the ex parte decree is maintainable.**

सिविल प्रक्रिया संहिता, 1908 – धारा 96 और आदेश 9 नियम 13

एकपक्षीय आज्ञप्ति – आदेश 9 नियम 13 के अंतर्गत आवेदन – पोषणीयता – असफल प्रतिवादी आदेश 9 नियम 13 के अधीन आवेदन या अपील या दोनों का चयन कर सकता है – अपीलार्थी ने आदेश 9 नियम 13 के अंतर्गत आवेदन प्रस्तुत नहीं किया – एक पक्षीय डिक्री की वैधता को अपील में चुनौती दी जा सकती है।

G.N.R. Babu @ S. N. Babu v. Dr. B.C. Muthappa and ors.

Judgment dated 06.09.2022 passed by the Supreme Court in Civil Appeal No. 6228 of 2022, reported in AIR 2022 SC 4213

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5. CIVIL PROCEDURE CODE, 1908 –Section 114 and Order 47 Rule 1 and 9

Review – Whether review of review petition is allowed? Held, No – Order 47 Rule 9 clearly bars the second review application.

सिविल प्रकिया संहिता, 1908 – धारा 114 और आदेश 47 नियम 1 एवं 9

पुनर्विलोकन– क्या पुनर्विलोकन याचिका का पुनर्विलोकन अनुज्ञात है? अवधारित, नहीं – आदेश 47 नियम 9 स्पष्ट रूप से द्वितीय पुनर्विलोकन आवेदन पर रोक लगाता है।

Anand Deep Singh and ors.State of Madhya Pradesh and ors.

Judgment dated 08.07.2022 passed by the High Court of Madhaya Pradesh in Review Petition No.1003 of 2018, reported in AIR 2022 MP 145 (DB)

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6. CIVIL PROCEDURE CODE, 1908 – Section 151 and Order 7 Rule 11 & Order 9 Rule 4

Maintainability – Scope of Section 151 CPC – Dismissal of suit under Order 7 Rule 11 of CPC for non-payment of requisite Court fees – Application u/s 151 CPC alongwith requisite Court fees for restoration of suit is maintainable. [*Ajab Singh v. Amar Singh, 2000(1) MPWN 77* followed]

सिविल प्रक्रिया संहिता, 1908 – धारा 151 एवं आदेश 7 नियम 11 एवं आदेश 9 नियम 4

पोषणीयता– धारा 151 सीपीसी का विस्तार – आवश्यक न्यायशुल्क अदा न किये जाने पर आदेश 7 नियम 11 सीपीसी के अंतर्गत वाद खारिज – आवश्यक न्यायशुल्क के साथ वाद को पुनः संस्थित किये जाने हेतु धारा 151 सीपीसी का आवेदन पोषणीय। *(अजब सिंह विरूद्ध अमर सिंह 2000 (1) एम.पी.डब्ल्यू.एन. 77 अनुसरित)*

Anil Kumar Jain v. Maniram Singraha and ors.

Order dated 11.05.2022 passed by the High Court of Madhya Pradesh in Civil Revision No.111 of 2020, reported in 2022(4) MPLJ 177

Relevant extracts from the judgment:

Law laid down by this Court in the case of ***Ajab Singh v. Amar Singh, 2000(1) MPWN 77***wherein the decision in the case of ***Padmalaya Panda Vs. Masinath Mohanty AIR 1990 Orissa 102 (DB)*** was considered, which has also been relied on in the case of ***Pravesh Pathak and others Vs. Smt. Shakuntala Sharma and others, 2016 (1) MPLJ 358*** and also in the case of ***Jagdeesh Vs. Narayan and another, 2018 MPLJ Online 135*** decided on 22.2.2018 in M.P.No.1132/2017, whereby the application under Section 151 of CPC was found to be maintainable despite the fact that order allowing the application under Order 7 Rule 11 of CPC is appealable like a decree under Section 96 of CPC.

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7. CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 10

Doctrine of *Dominus Litis* – Suit for declaration, permanent injunction and recovery of possession – Application by defendant to add subsequent purchaser as party – Whether such application maintainable under Order 1 Rule 10 – Held, no –Unless the court directs *suo motu* to do so.

सिविल प्रक्रिया संहिता, 1908 – आदेश 1 नियम 10

''डोमिनस लिटिस'' का सिद्धांत – घोषणा, स्थायी निषेधाज्ञा और आधिपत्य प्राप्ति का वाद – प्रतिवादी द्वारा पक्षकार के रूप में पश्चातवर्ती क्रेता को संयोजित करने के लिए आवेदन – क्या ऐसा आवेदन आदेश 1 नियम 10 के तहत प्रचलन योग्य है – अवधारित, नहीं – जब तक कि न्यायालय स्वतः ऐसा करने का निर्देश न दे।

Sudhamayee Pattnaik and ors.v. Bibhu Prasad Sahoo and ors.

Judgment dated 16.09.2022 passed by the Supreme Court Civil Appeal No. 6370 of 2022, reported in AIR 2022 SC 4304

Relevant extracts from the judgment:

As per the settled position of law, the plaintiffs are the *donius litis*. Unless the court *sou motu* directs to join any other person not party to the suit for effective decree and or for proper adjudication as per order 1 rule 10 of C.P.C nobody can be permitted to be impleaded as defendants against the wish of the plaintiff.

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8. CIVIL PROCEDURE CODE, 1908 – Order 2 Rule 2 and Order 6 Rule 17

SPECIFIC RELIEF ACT, 1963 – Section 21

(i) Principle of constructive *res judicata* – Applicability – No adjudication between the parties – Principle is not attracted – Whether Order 2 Rule 2 applies to amendment sought in the existing suit? Held, no – Applies only to the subsequent suit – Amendment in pleadings – Guiding principles summarised.

(ii) Suit for specific performance – Relief of compensation – Words "in addition to" incorporated in Section 21 of the Act –

Compensation can be claimed in addition to specific performance and not in lieu of it.

सिविल प्रक्रिया संहिता, 1908 – आदेश 2 नियम 2 और आदेश 6 नियम 17

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 21

(i) आन्वयिक प्रांड़न्याय का सिद्धांत– प्रयोज्यता– पक्षकारों के मध्य कोई न्याय निर्णयन नहीं– सिद्धांत आकर्षित नहीं होता – क्या वर्तमान बाद में प्रस्तावित संशोधन के संबंध में आदेश 2 निमय 2 लागू होगा? – अवधारित, नहीं – केवल पश्चातवर्ती वाद पर लागू होता है – अभिवचनों में संशोधन – मार्गदर्शक सिद्धांत संक्षेपित।

(ii) विनिर्दिष्ट अनुपालन के लिए वाद – प्रतिकर का अनुतोष – धारा 21 में सम्मिलित शब्द ''अतिरिक्त'' – विनिर्दिष्ट अनुतोष के साथ प्रतिकर का अनुतोष मांगा जा सकता है, न कि उसके बदले में।

Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd.and anr.

Judgment dated 01.09.2022 passed by the Supreme Court in Civil Appeal No. 5909 of 2022, reported in AIR 2022 SC 4256

Relevant extracts from the judgment:

Guiding principles regarding amendment of pleadings are summarised as under :

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview.

The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is *malafide*, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable,

the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. ***(See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)***

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

Determination of heirs – Whether person in question is the sole heir, can be determined at first appellate stage? Proper mode of challenge would be to seek amendment in written statement for joining other heirs as party – If not done at trial stage, issue of sole heirship attains finality.

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

उत्तराधिकारियों का निर्धारण – क्या प्रथम अपील के स्तर पर इस बात का निर्धारण किया जा सकता है कि संबंधित व्यक्ति एकमात्र उत्तराधिकारी है या

नहीं? उचित रीति से चुनौती वादोत्तर में संशोधन कर अन्य उत्तराधिकारियों को जोड़कर दी जानी चाहिये थी – यदि विचारण न्यायालय के समक्ष चुनौती नहीं दी गई तो एकमात्र उत्तराधिकारिता का बिंदु अंतिमता प्राप्त कर चुका है।

Aman Sharma and anr. v. Umesh and ors.

Judgment dated 05.07.2022 passed by the Supreme Court in Civil Appeal No. 4638 of 2022, reported in (2022) 8 SCC 798

Relevant extracts from the judgment:

The plea taken in appeal with respect to having two other legal heirs of Lahori Ram in addition to Krishna Kumar has not found merit by the lower appellate court. We are of the view that if upon the subsequent knowledge defendants discovered that Krishna Kumar was not sole legal heir of Lt. Pt. Lahori Ram, an amendment in the written statement should have been proposed by the defendants joining other legal heirs of Lt. Pt. Lahori Ram as a party, but no such steps were taken by the defendants. Thus, the court found that Krishan Kumar being sole owner inherited the subject property of Lt. Pt. Lahori Ram having right to execute will in favour of Sushila Kumari who resided as a wife and from the said wedlock plaintiffs were born. The will executed in favour of Sushila Kumari was found proved. Thus, Sushila Kumari became sole owner on the basis of the proved will dated 20-10-1993 and the plaintiffs received from her after death.

In such circumstances, it is clear that Defendant 1 was not having any title and interest in the property, therefore, he cannot pass the title which he does not have. Thus, on the basis of the sale deed executed on 4-5-2006 by Defendant 1 in favour of Defendants 2 and 3 they cannot acquire better title than that of Defendant 1. Further, the plaintiffs have not per se challenged the sale deed dated 4-5-2006 except to contend before the courts below to "ignore" the same. Simultaneously, the defendants have taken the ground of not adjudicating the rights of innocent bona fide purchasers qua the subject property after payment of lawful consideration and carried out fresh construction without any hindrance by anyone. In view of the same, we are not commenting on the validity of sale deed and keeping it open for the appellants to take recourse as permissible under the law.

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10. CIVIL PROCEDURE CODE, 1908 – Order 21 Rules 32 and 34

Execution – Breach of decree conditions – Direction by executing court to Judgment debtor to furnish affidavit if it is creating obstruction in possession-It is a step towards inquiry- whether the decree is being contravened by the petitioner or not can only be ascertained by an inquiry.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 32 एवं 34

निष्पादन– डिक्री की शर्तो का उल्लंघन – निष्पादन न्यायालय द्वारा ऐसा निर्देश दिया जाना कि निर्णित ऋणी इस आशय का शपथपत्र प्रस्तुत करे कि क्या वह आधिपत्य में बाधा पहुंचा रहा है – जॉच की परिधि में आता है – याचिकाकर्ता द्वारा डिक्री की शर्तो का उल्लंघन किये जाने के बिन्दु का अभिनिर्धारण जॉच के माध्यम से ही किया जा सकता है।

Secretary Krishi Upaj Mandi Samiti Krishi Upaj Mandi, Neemuch v. Tarabai Thru. LRs.

Order dated 13.06.2022 passed by the High Court of Madhya Pradesh in Writ Petition No. 7972 of 2012, reported in AIR 2022 MP 132

Relevant extracts from the judgment:

The decree which is being enforced by the respondent is for permanent injunction and is enforceable under Order 21 Rule 32 of the CPC. Respondent has alleged contravention by the petitioner who has filed its reply contesting the same. For deciding the question whether the decree is being contravened or not, the only course available to the executing Court is to make an inquiry as regards allegations of contravention by the petitioner. The direction issued by it to the petitioner in the order dated 19-06-2012 is a step towards such an inquiry and cannot be faulted with. The fact whether the decree is being contravened by the petitioner or not can only be ascertained by an inquiry as has been held by this Court in ***Nagar Palika Shivpur v. Ramesh Chandra Gupta, 1983MPWN Note 302***.

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11. COMMERCIAL COURTS ACT, 2015 – Section 12 A

(i) Commercial suit – Whether the statutory pre-litigation mediation contemplated under section 12A of the commercial Courts Act, 2015 is mandatory? – Held, yes-any suit instituted

without complying section 12A would result in rejection of plaint.

(ii) Commercial suit – Pre-institution mediation and settlement – Mediation proceeding resulting in settlement under section 12A – Settlement to be treated an award under Section 30(4) of the Act.

वाणिज्यिक न्यायालय अधिनियम, 2015 – धारा 12क

(i) वाणिज्यिक वाद – क्या वाणिज्यिक न्यायालय अधिनियम, 2015 में धारा 12 अ के अंतर्गत प्रावधानित प्रीलिटीगेशन मध्यस्थता आज्ञापक प्रावधान है? – अभिनिर्धारित, हॉ – यदि कोई वाद धारा 12 अ के आज्ञापक प्रावधान का पालन किये बिना संस्थित होता है तो उसका परिणाम वाद नामंजूर किया जाना होगा।

(ii) वाणिज्यिक वाद – संस्थान पूर्व मध्यस्थता एवं समझौता – जहॉ धारा 12 अ के अंतर्गत की गई मध्यस्थता की कार्यवाही के फलस्वरूप समझौता होता है वहॉ ऐसे समझौते को अधिनियम, की धारा 30(4) के अंतर्गत पंचाट माना जायेगा।

M/s Patil Automation Private Limited and ors. v. Rakheja Engineers Private Limited

Judgment dated 17.08.2022 passed by the Supreme Court in Civil Appeal No. 5333 of 2022, reported in AIR 2022 SC 3848

Relevant extracts from the judgment:

The Act did not originally contain Section 12A. It is by amendment in the year 2018 that Section 12A was inserted. The Statement of Objects and Reasons are explicit that Section 12A was contemplated as compulsory. The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief. The provision has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief. The Legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963. The object is clear. It is an undeniable reality that Courts in India are reeling under an extraordinary docket explosion. Mediation, as an Alternative Dispute Mechanism, has been identified as a workable solution in commercial matters. In other words, the cases under the Act lend themselves to be resolved through mediation. Nobody has an absolute right to file a civil suit. A

civil suit can be barred absolutely or the bar may operate unless certain conditions are fulfilled.

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12. CRIMINAL PROCEDURE CODE, 1973 – Sections 41 and 439

(i) Interim bail – Multiple First Information Reports were filed against the accused on account of the tweets put out by him – A sustained investigation by the Delhi Police was being carried out – Held, no justification to keep the petitioner in continued custody – Accused must be released on interim bail in each of the FIR and subsequent FIR filed on the same subject.

(ii) Arrest – Power must be exercised cautiously – Individuals must not be punished without a fair trial and merely on the basis of allegation– Section 41 must be followed. (*Arnesh Kumar v. State of Bihar, AIR 2014 SC 2756* relied on)

भारतीय दण्ड संहिता, 1973 – धाराएं 41 एवं 439

(i) अंतरिम जमानत – अभियुक्त द्वारा किए गए ट्वीट्स के कारण उसके विरूद्ध कई प्रथम सूचना रिपोर्ट पंजीबद्ध की गई – दिल्ली पुलिस द्वारा विस्तृत अन्वेषण किया जा रहा था – अभिनिर्धारित, अभियुक्त को निरंतर अभिरक्षा में रखने पर कोई औचित्य नहीं – दर्ज की गई प्रत्येक एफ.आई. आर. एवं पश्चात्वर्ती प्रक्रम में इसी विषय पर की गई एफ.आई.आर. में अभियुक्त को अंतरिम जमानत पर छोड़ा जाना चाहिए।

(ii) गिरफ्तारी – शक्ति का सतर्कता से प्रयोग किया जाना चाहिए – किसी भी व्यक्ति को मात्र आक्षेप के आधार पर बिना निष्पक्ष विचारण के दण्डित नहीं किया जाना चाहिए – धारा 41 का अनुसरण किया जाना चाहिये। (*अरनेश कुमार विरूद्ध बिहार, ए.आई.आर. 2014 एससी 2756* का अवलंबित किया गया)

Mohammad Zubair v. State of NCT of Delhi and ors.

Judgment dated 20.07.2022 passed by the Supreme Court in Writ Petition (Criminal) No. 279 of 2022, reported in AIR 2022 SC 3649 (Three Judge Bench)

Relevant extracts from the judgment:

Essentially, the allegations against the petitioner pertain to the tweets which have been put out by him. The three notices issued by Police Stations at

Hathras Kotwali, Sikandra Rao, and Khairabad under Section 91 CrPC are verbatim the same. Having found from the record that the petitioner has been subjected to a sustained investigation by the Delhi Police, we find no reason or justification for the deprivation of the liberty of the petitioner to persist any further. Consequently, we are of the view that the petitioner must be released on interim bail in each of the FIRs which forms the subject matter of these proceedings, under Article 32 of the Constitution. The existence of the power of arrest must be distinguished from the exercise of the power of arrest. The exercise of the power of arrest must be pursued sparingly. In the present case, there is absolutely no justification to keep the petitioner in continued custody any further and to subject him to an endless round of proceedings before diverse courts when the gravamen of the allegations in each of the said FIRs arises out of the tweets which have been put out by the petitioner, and which also form the subject matter of the investigation being conducted by the Delhi Police in FIR 172/2022.

We once again have occasion to reiterate that the guidelines laid down in ***Arnesh Kumar v. State of Bihar, AIR 2014 SC 2756*** must be followed, without exception. The raison d'être of the powers of arrest in relation to cognizable offences is laid down in Section 41. Arrest is not meant to be and must not be used as a punitive tool because it results in one of the gravest possible consequences emanating from criminal law: the loss of personal liberty. Individuals must not be punished solely on the basis of allegations, and without a fair trial. When the power to arrest is exercised without application of mind and without due regard to the law, it amounts to an abuse of power. The criminal law and its processes ought not to be instrumentalized as a tool of harassment. Section 41 of the CrPC as well as the safeguards in criminal law exist in recognition of the reality that any criminal proceeding almost inevitably involves the might of the state, with unlimited resources at its disposal, against a lone individual.

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13. CRIMINAL PROCEDURE CODE, 1973 – Sections 41, 41A, 167(2), 170, 437 and 439

CONSTITUTION OF INDIA – Article 21

(i) **Arrest – Whether arrest in cognizable offence mandatory? Held, No – Reasons of arrest or non arrest by I. O. to be recorded in writing – Investigating agency to satisfy the court**

about grounds of arrest – Compliance of S. 41 and 41A CrPC mandatory.

(ii) Bail – Meaning of – Pre-trial restrictions on the accused – Conditional release with assurance to co-operate in investigation as well as trial – Discretion of court – ground for enlargement – Courts to satisfy themselves in compliance of S. 41 and 41A CrPC – Non-compliance will entitle the accused for grant of bail – Parity – Person accused for same offence shall be treated as same.

(iii) Compliance of S. 436 A CrPC mandatory – Strict compliance of the mandate laid down in the judgment *Siddharth v. State of Uttar Pradesh, 2021 SCC Online SC 615* to be ensured.

(iv) Bail applications are to be disposed of within two weeks and Anticipatory bail within six weeks.

आपराधिक प्रक्रिया संहिता, 1973 – धाराएं 41, 41क, 167(2), 170, 437, एवं 439

भारत का संविधान – अनुच्छेद 21

(i) गिरफ्तारी– क्या संज्ञेय अपराध में गिरफ्तारी अनिवार्य है? – अवधारित नहीं, अनुसंधान अधिकारी द्वारा गिरफ्तारी या गिरफ्तारी न करने के आधार लेखबद्ध करना चाहिये – अनुसंधान एजेंसी गिरफ्तारी के आधार से संबंधित न्यायालय को संतुष्ट करे – धारा 41 और 41क द.प्र.सं. का अनुपालन अनिवार्य।

(ii) जमानत– आशय – अभियुक्त पर विचारण पूर्व प्रतिबंध – अनुसंधान एवं विचारण में सहयोग करने के आश्वासन के साथ सशर्त रिहाई – न्यायालय का विवेक – जमानत प्रदान करने के आधार – न्यायालय स्वयं को धारा 41 और 41क द.प्र.स. के अनुपालन से संतुष्ट करे –अनुपालन का आभाव में अभियुक्त जमानत का हकदार होगा –समानता – एक समान आरोपित आरोप के अभियुक्तों से समान व्यवहार ।

(iii) धारा 436 ए का अनुपालन अनिवार्य– निर्णय सिद्धार्थ बनाम उत्तर प्रदेश राज्य, 2021 SCC ऑनलाइन SC 615 के निर्देष का कड़ाई से अनुपालन।

(iv) जमानत आवेदन दो सप्ताह के भीतर एवं अग्रिम जमानत आवेदन छः सप्ताह के भीतर निराकृत किये जाने चाहिए।

Satendra Kumar Antil v Central Bureau of Investigation and anr.

Judgment dated 11.07.2022 passed by the Supreme Court in Miscellaneous application No. 1849 of 2021, reported in 2022 (3) Crimes 290 (SC)

Relevant extract from the judgment:

The word 'trial' is not explained and defined underthe Code. An extended meaning has to be given to this word for the purpose of enlargement on bail to include, the stage of investigation and thereafter. Primary considerations would obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the Court in the form of a trial. If we keep the above distinction in mind, the consequence to be drawn is for a more favourable consideration towards enlargement when investigation is completed, of course, among other factors.

Similarly, an appeal or revision shall also be construed as a facet of trial when it comes to the consideration of bail on suspension of sentence.

The term "bail" has not been defined in the Code, though is used very often.

A bail is nothing but a surety inclusive of a personal bond from the accused.

It means the release of an accused person either by the orders of the Court or by the police or by the Investigating Agency.

Innocence of a person accused of an offense is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the Court. Thus, it is for that agency to satisfy the Court that the arrest made was warranted and enlargement on bail is to be denied.

We also expect the courts to come down heavily on the officers effecting arrest without due compliance of Section 41and Section 41A. We express our hope that the Investigating Agencies would keep in mind the law laid down in **Arnesh Kumar v. State of Bihar (2014) 8 SCC 273,** the discretion to be exercised on the touchstone of presumption of innocence, and the safeguards provided underSection 41, since an arrest is not mandatory.

The scope and ambit of Section 17 has already been dealt with by this Court in ***Siddharth v. State of U.P., (2021) 1 SCC 676.*** This is a power which is

to be exercised by the court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the court alone, and thus the investigating agency has got a limited role to play. In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the magistrate under Section 170 of the Code. There is not even a need for filing a bail application, as the accused is merely forwarded to the court for the framing of charges and issuance of process for trial. If the court is of the view that there is no need for any remand, then the court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the accused for the commencement of the trial. Of course, there may be a situation where a remand may be required, it is only in such cases that the accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the accused persons, if the court is of the *prima facie* view that the remand would be required. We make it clear that we have not said anything on the cases in which the accused persons are already in custody, for which, the bail application has to be decided on its own merits.

Suffice it to state that for due compliance of Section 170of the Code, there is no need for filing of a bail application.

The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.

Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded inthe Code, has to be preserved, protected, and enforced by the Criminal Courts. Any conscious failure by the Criminal Courts would constitute an affront to liberty. It is the pious duty of the Criminal Court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest.

In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments.:

a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41and 41Aof the Code and the directions issued by this Court in ***Arnesh Kumar (supra).*** Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41and 41Aof the Code. Any non-compliance would entitle the accused for grant of bail.

d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under Sections 41and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing order No. 109 of 2020, to comply with the mandate of Section 41Aof the Code.

e) There need not be any insistence of a bail application while considering the application under Section 88, 170, 204 and 209 of the Code.

f) There needs to be a strict compliance of the mandate laid down in the judgment of this court in ***Siddharth (supra).***

g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions.

After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436Aof the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

l) All State Governments, Union Territories and High Courts are directed to file affidavits/ status reports within a period of four months.

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14. CRIMINAL PROCEDURE CODE, 1973 – Section 154

INDIAN PENAL CODE, 1860 – Section 302

(i) Murder by unlawful assembly – Primary charge of prosecution that all 22 accused formed an unlawful assembly –allegations of unlawful assembly, common object, trespass, rioting etc held not proved against all of them – Remaining charge of murder too cannot be sustained.

(ii) Doctrine of *falsus in uno falsus in omnibus* – Applicability of – Does not have unadulterated application to criminal jurisprudence – It is a rule of caution.

दण्ड प्रक्रिया संहिता, 1973 — धारा 154

भारतीय दण्ड संहिता, 1860 — धारा 302

(i) विधि विरूद्ध जमाव द्वारा हत्या – अभियोजन का यह मुख्य आरोप था कि सभी 22 अभियुक्तगण ने विधि विरूद्ध जमाव बनाया– विधि विरूद्ध जमाव, सामान्य उद्देश्य, आपराधिक अतिचार, बलवा आदि के आरोप किसी भी अभियुक्त के विरूद्ध प्रमाणित नहीं पाए गए – हत्या का आरोप भी सिद्ध नहीं माना जा सकता।

(ii) *फाल्सस इन उनो फाल्सस इन ओमनीबस* का सिद्धांत– प्रयोज्यता – आपराधिक न्यायशास्त्र पर अमिश्रित प्रभाव नहीं – यह सावधानी का नियम है।

Ramabora alias Ramaboraiah and anr.v. State of Karnataka

Judgment dated 10.08.2022 passed by the Supreme Court in Criminal Appeal No. 1697 of 2011, reported in AIR 2022 SC 3726

Relevant extracts from the judgment:

The primary charge of the prosecution was that all the 22 accused, formed themselves into an unlawful assembly with the common object of committing the murder of the deceased and that all of them being members of the unlawful assembly were armed with deadly weapons like clubs, bettu kudli, kodli etc. and that they committed the offence of rioting, trespass and murder. All these charges have now been held not proved against all the accused including A-1 and A-2 and the only offence held proved against A-1 and A-2 is the one under Section 302 IPC. We do not know how, in the facts and circumstances of the case, the conviction of only 2 out of the 22 accused can be sustained and that too only for the offence under Section 302 when the allegation of unlawful assembly, common object, trespass, rioting etc. are held not proved against all of them. The State has not come up with any appeal against the acquittal of all the other accused.

It is true that the principle "*falsus in uno falsus in omnibus*" may not have unadulterated application to criminal jurisprudence. The Courts have always preferred to do what Hamsa, the mythological Swan, is believed to do, namely, to separate milk and water from a mixture of the two. In ***Arvind Kumar @ Nemichand v. State of Rajasthan, 2021 SCC Online SC 1099,*** M.M. Sundresh J. speaking for the bench crystallized this principle as follows:

> "The principle that when a witness deposes falsehood, the evidence in its entirety has to be eschewed may not have strict application to the criminal jurisprudence in our country. The principle governing sifting the chaff from the grain has to be

applied. However, when the evidence is inseparable and such an attempt would either be impossible or would make the evidence unacceptable, the natural consequence would be one of avoidance. The said principle has not assumed the status of law but continues only as a rule of caution. One has to see the nature of discrepancy in a given case. When the discrepancies are very material shaking the very credibility of the witness leading to a conclusion in the mind of the court that is neither possible to separate it nor to rely upon, it is for the said court to either accept or reject."

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15. CRIMINAL PROCEDURE CODE, 1973 – Sections 154, 173, 156(3) and 327

(i) Complaint – Power u/s 156(3) in Sexual harassment case – DVR containing audio video recording of CCTV footage of chamber, where incident occurred not in possession of complainant – Magistrate ought to direct the police to investigate.

(ii) Police Officer cannot decline registration of FIR on receipt of a complant disclosing cognizable offence – If no offence is made out can file a report u/s 173 Cr.P.C.

(iii) Duties and responsibilities of trial court – Enumerated.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 154, 173, 156(3) एवं 327

(i) परिवाद – यौन उत्पीड़न के मामले में धारा 156(3) दं.प्र.सं. की शक्ति – शिकायतकर्ता के आधिपत्य में उस कक्ष की सी.सी.टी.व्ही. फुटेज की डी. व्ही.आर,. जहाँ घटना घटित हुई, मौजूद नहीं – मजिस्ट्रेट को पुलिस से जाँच कराया जाना आवश्यक।

(ii) पुलिस अधिकारी संज्ञेय मामले की शिकायत मिलने पर प्रथम सूचना रिपोर्ट लिखने से इंकार नहीं कर सकता – यदि अपराध बनना नहीं पाया जाता तो धारा 173 द.प्र.सं. की रिपोर्ट प्रस्तुत कर सकता है।

(iii) विचारण न्यायालय के कर्तव्य एवं उत्तरदायित्व बताए गए।

XYZ v. State of Madhya Pradesh and ors.

Judgment dated 05.08.2022 passed by the Supreme Court in Criminal Appeal No. 1184 of 2022, reported in 2022 CriLJ 3969

Relevant extracts from the judgment:

Whether or not the offence complained of is made out is to be determined at the stage of investigation and / or trial. If, after conducting the investigation, the police find that no offence is made out, they may file a B Report under Section 173 CrPC. However, it is not open to them to decline to register an FIR. The law in this regard is clear - police officers cannot exercise any discretion when they receive a complaint which discloses the commission of a cognizable offence.

Word "may" implies that the Magistrate has discretion in directing the police to investigate or proceeding with the case as a complaint case. But this discretion cannot be exercised arbitrarily and must be guided by judicial reasoning. An important fact to take note of, which ought to have been, but has not been considered by either the Trial Court or the High Court, is that the appellant had sought the production of DVRs containing the audio-video recording of the CCTV footage of the then Vice-Chancellor's (i.e., the second respondent) chamber . As a matter of fact, the Institute itself had addressed communications to the second respondent directing the production of the recordings, noting that these recordings had been handed over on his oral direction by the then Registrar of the Institute as he was the Vice-Chancellor. Due to the lack of response despite multiple attempts, the Institute had even filed a complaint with PS Gole Ka Mandir on 29 October 2021 for registering an FIR against the second respondent for theft of the DVRs.

Where not only does the Magistrate find the commission of a cognizable offence alleged on a prima facie reading of the complaint but also such facts are brought to the Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read 12 as it being the Magistrate's duty to order the police to investigate. In cases such as the present, wherein, there is alleged to be documentary or other evidence in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the CrPC, the matter ought to be sent to the police for investigation.

Especially in cases alleging sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatized, the Courts should not further burden the complainant and should

press upon the police to investigate. Due regard must be had to the fact that it is not possible for the complainant to retrieve important evidence regarding her complaint. It may not be possible to arrive at the truth of the matter in the absence of such evidence. The complainant would then be required to prove her case without being able to bring relevant evidence (which is potentially of great probative value) on record, which would be unjust.

It is the duty and responsibility of trial courts to deal with the aggrieved persons before them in an appropriate manner, by:

a. Allowing proceedings to be conducted in camera, where appropriate, either under Section 327 CrPC or when the case otherwise involves the aggrieved person (or other witness) testifying as to their experience of sexual harassment / violence;

b. Allowing the installation of a screen to ensure that the aggrieved woman does not have to see the accused while testifying or in the alternative, directing the accused to leave the room while the aggrieved woman's testimony is being recorded;

c. Ensuring that the counsel for the accused conducts the cross-examination of the aggrieved woman in a respectful fashion and without asking inappropriate questions, especially regarding the sexual history of the aggrieved woman. Cross-examination may also be conducted such that the counsel for the accused submits her questions to the court, who then poses them to the aggrieved woman;

d. Completing cross-examination in one sitting, as far as possible.

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16. CRIMINAL PROCEDURE CODE, 1973 – Section 196

Sanction of prosecution – Alleged hate speech by Member of Parliament – CD of alleged speech found to be tampered – No bar for registering FIR, investigation or submission of a report by police – Previous sanction of Central or State Government – Left open to be considered in future.

दण्ड प्रकिया संहिता, 1973 – धारा 196

अभियोजन की स्वीकृति – संसद सदस्य द्वारा कथित घृणित भाषा का प्रयोग – कथित भाषण की सी.डी. से छेड़छाड़ पाई गई – प्राथमिकी दर्ज करने, जांच करने या पुलिस द्वारा रिपोर्ट प्रस्तुत करने पर कोई रोक नहीं – केंद्र या राज्य सरकार की पूर्व अनुज्ञा – भविष्य में निर्णय लिया जा सकता है।

Parvez Parwaz and anr.v. State of Uttar Pradesh and ors.

Judgment dated 26.08.2022 passed by the Supreme Court in Criminal Appeal No. 1343 of 2022, reported in 2022 (3) Crimes 360 (SC) (Three Judge Bench)

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17. CRIMINAL PROCEDURE CODE, 1973 – Section 227

Discharge – Complainant did not name the accused in the FIR – Later on, named the accused in the witness statement – Complainant was not an eye-witness – No other witness made statement regarding the accused visiting the house of the deceased before or after the incident – No oral or documentary evidence on record to connect the accused with the crime – Held, appellant deserves to be discharged.

दण्ड प्रक्रिया संहिता, 1973 – धारा 227

उन्मोचन – प्रार्थी ने अभियुक्त का नाम प्रथम सूचना रिपोर्ट में नमित नहीं किया – पश्चातवर्ती प्रक्रम में साक्षी कथन में नाम बताया – प्रार्थी घटना का चक्षुदर्शी साक्षी नहीं एवं अन्य किसी साक्षी ने अभियुक्त को घटना के पूर्व अथवा बाद में मृतक के घर जाते नहीं देखा – अभिलेख पर कोई मौखिक अथवा लिखित साक्ष्य ऐसी नही जो अभियुक्त को अपराध से जोड़े – अभिनिर्धारित, अपीलार्थी उन्मोचित होने का अधिकारी है।

Vikramjit Kakati v. State of Assam

Judgment dated 04.08.2022 passed by the Supreme Court in Criminal Appeal No. 1140 of 2022, reported in AIR 2022 SC 3597

Relevant extracts from the judgment:

So far as the conspiracy is concerned, some evidence ought to have emerged or the prosecution could have brought on record some prima facie material whereby the appellant along with the accused persons had prior meeting of mind to execute the alleged offence and in the given facts and circumstances, there is no justification for the appellant to undergo the agony of facing trial, to

which the appellant is not even prima facie connected. Still the prosecution filed charge-sheet on 30th August, 2011 for offence implicating the appellant under Sections 302/120-B/201 IPC along with the wife of deceased (A-1) and mother of wife of the deceased (A-3).

There is no iota of evidence which, in any manner, connect the present appellant with the commission of crime and neither the trial Court nor the High Court has even taken pains to look into the record as to whether there is any oral/documentary evidence which in any manner connect the appellant with the alleged incident of crime and, in our considered view, in the absence of even a prima facie material, oral/documentary, being placed by the prosecution in the charge-sheet, the trial Court as well as the High Court have committed serious error in framing charge against the appellant. Even the complainant also in the complaint has not named the appellant as the perpetrator of the offence, rather she stated that she suspects foul play.

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18. CRIMINAL PROCEDURE CODE, 1973 – Section 239

Discharge –*Prima facie* case – Not made out – Probative value of material available on record irrelevant at the stage of framing of charge – Sufficient grounds to act against the accused does not exist – Discharge appropriate.

दण्ड प्रक्रिया संहिता, 1973 – धारा 239

उन्मोचन – प्रथम दृष्ट्या प्रकरण नहीं बनता – अभिलेख में उपलब्ध सामग्री का साक्ष्यिक मूल्य आरोप तय करने के स्तर पर असंगत है–अभियुक्त के विरूद्ध कार्यवाही करने हेतु पर्याप्त आधार नहीं – उन्मोचन उचित ।

Pushpendra Kumar Sinha v. State of Jharkhand (Three Judge Bench)

Judgment dated 24.08.2022 passed by the Supreme Court in Criminal Appeal No. 1333 of 2022, reported in AIR 2022 SC 3983

Relevant extracts from the judgment:

It is a well settled law that at the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing of charge the Court must apply it's judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

Indeed, the Court has limited scope of enquiry and has to see whether any *primafacie* case against the accused is made out or not. At the same time, the Court is also not expected to mirror the prosecution story, but to consider the broad probabilities of the case, weight of *primafacie* evidence, documents produced and any basic infirmities etc. In this regard the judgment of "Union of India Vs. Prafulla Kumar Samal, (1979) 3 SCC 4" can be profitably referred for ready reference. Having due regard to the documents placed before us and in the light of the submissions and discussion made above, we are of the considered view that sufficient grounds casting a grave suspicion on the Appellant, do not exist. It is observed that the ingredients of alleged offences cannot be *primafacie* established against the Appellant as neither had he been entrusted with funds of JSEB nor he had fraudulently or dishonestly deceived senior officials of the JSEB to cause any benefit to RPCL or any wrongful loss to JSEB and no evidence of illegal gratification or disproportionate assets has been found against the Appellant.

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19. CRIMINAL PROCEDURE CODE, 1973 – Sections 437 and 439

Bail order – Necessity to pass reasoned/speaking order – Justice should not only be done, but should manifestly and undoubtedly be seen to be done – Judges are duty bound to explain the basis on which they have arrived at a conclusion.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437 एवं 439

जमानत आदेश – तार्किक/बोलता हुआ आदेश पारित करने की आवश्यकता– न्याय केवल होना ही नहीं चाहिए परंतु ऐसा होते हुए स्पष्ट और निश्चित तौर पर दिखाई भी देना चाहिए – न्यायाधीश उन आधार को बताने के लिये बाध्य है जिन से वह निष्कर्ष पर पहुंचे हैं ।

Y v. State of Rajasthan and anr.

Judgment dated 19.04.2022 passed by the Supreme Court in Criminal Appeal No. 649 of 2022, reported in (2022) 9 SCC 269

Relevant extracts from the judgment:

Apart from the general observation that the facts and circumstances of the case have been taken into account, nowhere have the actual facts of the case been adverted to. There appears to be no reference to the factors that ultimately led the

High Court to grant bail. In fact, no reasoning is apparent from the impugned order.

Reasoning is the life blood of the judicial system. That every order must be reasoned is one of the fundamental tenets of our system. An unreasoned order suffers the vice of arbitrariness. In ***Puran v. Rambilas, (2001) 6 SCC 338*** this Court held as under:

> "Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done in the order dated 11.09.2000 was to discuss the merits and demerits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated."

From the above, it is clear that this Court has consistently upheld the necessity of reasoned bail orders, with a special emphasis on matters involving serious offences. In the present case, respondent no. 2 accused has been accused of committing the grievous offence of rape against his young niece of nineteen years. The fact that the respondent no. 2 accused is a habitual offender and nearly twenty cases registered against him has not even found mentioned in the impugned order. Further the High Court has failed to consider the influence that the respondent no. 2 accused may have over the prosecutrix as an elder family member. The period of imprisonment, being only three months, is not of such a magnitude as to push the Court towards granting bail in an offence of this nature.

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20. EVIDENCE ACT, 1872 – Section 9

Identification – Non-conduction of TIP – Failure to hold the test identification parade would not make the evidence of identification in Court inadmissible but the weight to be attached to such identification should be a matter for the courts of fact.

साक्ष्य अधिनियम, 1872 – धारा 9

न्यायलय में पहचान के संबंध में प्रस्तुत साक्ष्य को केवल इस आधार पर अग्राह्य नहीं किया जा सकता कि पहचान परेड आयोजित नहीं की गई, पहचान का महत्व तथ्य का प्रश्न है।

Amrik Singh v. State of Punjab

Judgment dated 11.07.2022 passed by the Supreme Court in Criminal Appeal No. 993 of 2012, reported in (2022) 9 SCC 402

Relevant extracts from the judgment:

The decision of this Court in the case of ***Malkhansingh v. State of M.P., (2003) 5 SCC 746*** relied upon by learned counsel appearing on behalf of the State in support of her submissions that the TIP is not substantive evidence and in fact the substantive evidence is that of identification in Court is concerned, on facts the said decision shall not be applicable to the facts of the case on hand. Even in the said decision it is observed what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. In the case before this Court, it was found that the crime was perpetrated in broad daylight; the prosecutrix had sufficient opportunity to observe the features of the appellants who raped her one after the other; before the rape was committed, she was threatened and intimated by the accused; after the rape was committed, she was again threatened and intimidated by them. On such facts it was found that it was not a case where the identifying witness had only a fleeting glimpse of the accused on a dark night.

Similarly, another decision of this Court in the case of ***Mohd. Kalam v. State of Rajasthan, (2008) 11 SCC 352*** relied upon by learned counsel appearing on behalf of the State also shall not be applicable to the facts of the case on hand. It is observed in the said decision that the evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. It is observed that the purpose of TIP therefore is to test and strengthen the trustworthiness of that evidence. It is observed that it is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. It is further observed that the said rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration. Therefore, on facts it was observed that failure to hold a TIP would not make inadmissible the evidence of identification in Court. It is further observed that the weight to be attached to such identification should be a matter for the courts of fact.

Even applying the law laid down by this Court in the aforesaid decisions and looking to the facts narrated hereinabove, we are of the opinion that it would not be safe and/or prudent to convict the accused solely on the basis of their identification for the first time in the Court.

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21. HINDU SUCCESSION ACT, 1956 – Section 8

Hindu law – Applicability – Suit for declaration, partition and separate possession – Birth prior to the year 1956 proved or undisputed – Rights of co-parcener – Governed by the old Hindu Law i.e. Mitakshara law and not by the Hindu Succession Act, 1956 – Nature of property – Will remain co-parcenary property.

हिन्दू उत्तराधिकार अधिनियम, 1956 – धारा 8

हिन्दू विधि – प्रयोज्यता – घोषणा, विभाजन और पृथक कब्जे के लिए वाद – वर्ष 1956 से पहले जन्म स्थापित या निर्विवाद है – सहदायिक के अधिकार – प्राचीन हिन्दू विधि अर्थात् मिताक्षरा विधि द्वारा शासित होगी न कि हिन्दू उत्तराधिकार अधिनियम, 1956 द्वारा – संपत्ति की प्रकृति – सहदायिकी संपत्ति बनी रहेगी।

Chokhelal & ors.v. Ashwani Kumar & ors.

Judgment dated 23.06.2022 passed by High Court of Madhya Pradesh in Second Appeal No. 153 of 1995, reported in AIR 2022 MP 157

Relevant extracts from the judgment:

The Hon'ble Apex Court has recently in the case of ***Arshnoor Singh Vs. Harpal Singh and others (2020) 14 SCC 436*** considered all the previous judgments, which were also cited by learned senior counsel for the appellants and held as under:-

> "7.6. If succession opened under the old Hindu law i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-a-vis his male descendants up to three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956."

24. Similar is the view taken by coordinate Bench of this Court in the case of ***Uttam V. Saubhag Singh reported in ILR (2014) MP 1593***, which after

considering the case of ***Yudhishter v. Ashok Kumar AIR 1987 SC 558***and ***Sheela Devi and others V. Lal Chand and anr., (2006) 8 SCC 581***held as under:-

> "11. In the matter of ***Yudhishter Vs. Ashok Kumar, reported in AIR 1987 SC 558*** referring to the earlier judgment in the case of ***Commissioner of wealth Tax v. Chandra Sen (1986)3 SCC 567*** it has been held by the Supreme Court that the property which devolved upon the father on the demise of the grand-father cannot be said to be HUF property in the hands of the father vis-a-vis his own sons. In the matter of ***Sheela Devi (supra)***, it has been further clarified by the Supreme Court by holding that prior to the commencement of the Act as per the Mitakshara law usage once a son was born he used to acquire an interest in the coparcenary property as an incident of his birth, but now the Act would prevail over the Hindu law. In that case son's son was born prior to the commencement of 1956 Act, therefore, it was held that he would retain his share of the property as a coparcener even after the commencement of the 1956 Act, while father who had died in 1889, his share will devolve upon his heirs according to the provisions of the Act.

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22. INDIAN PENAL CODE, 1860 – Section 34

(i) Common intention – Meaning of the word "furtherance" – The existence of aid or assistance in producing an effect in future – To be construed as an advancement or promotion.

(ii) Common intention – Liability – It is shared on those who shared the common intention to commit the crime.

भारतीय दण्ड संहिता, 1860 – धारा 34

(i) सामान्य आशय – शब्दांश 'अग्रसरण में' का अर्थ – भविष्य में प्रभावित करने में सहायता या उसका अस्तित्व – उन्नति या पदोन्नति के रूप में समझा जाना ।

(ii) सामान्य आशय – दायित्व – यह उन लोगों में सहभाजित होता है जो अपराध कारित करने का सामान्य आशय साझा करते हैं ।

Shishpal alias Shishu v. State (NCT of Delhi)

Judgment dated 11.07.2022 passed by the Supreme Court in Criminal Appeal No. 1053 of 2015, reported in (2022) 9 SCC 782

Relevant extracts from the judgment:

Both the appellants have been charged only based upon the rule of evidence available under Section 34 of the IPC. Section 34 does not constitute an offence by itself, but creates a constructive liability. The foundational facts will have to be proved by the prosecution. Not only the occurrence, but the common intention, has to be proved beyond reasonable doubt. In ***Jasdeep Singh alias Jassu v. State of Punjab, (2022) 2 SCC 545,***this Court considered the scope of Section 34 IPC as follows:

> 17. We shall first go back into the history to understand Section 34 IPC as it stood at the inception and as it exists now.

Old Section 34 IPC	New Section 34 IPC
"***34. Each of several persons liable for an act done by all, in like manner as if done by him alone***.— When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act were done by him alone"	"***34. Acts done by several persons in furtherance of common intention***.— When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

> 18. On a comparison, one could decipher that the phrase "in furtherance of the common intention" was added into the statute book subsequently. It was first coined by Barnes Peacock, C.J. presiding over a Bench of the Calcutta High Court, while delivering its decision in R***. v. Gorachand Gope, 1866 SCC OnLine Cal 16*** which would have probably inspired and hastened the amendment to Section 34 IPC, made in 1870. The following passage may lend credence to the aforesaid possible view:
>
> > "It does not follow that, because they were present with the intention of taking him away, that they assisted by their presence in the beating of him to such an extent as to cause death. If the object and design of those who seized Amordi was merely to take him to the *thannah* on a charge of theft, and it was no part of the common design to beat him, they would not

all be liable for the consequence of the beating merely because they were present. It is laid down that, when several persons are in company together engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits an offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention. It is also said, although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who commit it, he will not be a principal merely because he did not endeavour to prevent it or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man and taking him to the *thannah* on a charge of theft, and some of the party in the presence of the others beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties and acting in concert, and that the beating was in furtherance of a common design. I do not know what the evidence was, all that I wish to point out is, that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."

Before we deal further with Section 34 IPC, a peep at Section 33 IPC may give a better understanding. Section 33 IPC brings into its fold a series of acts as that of a single one. Therefore, in order to attract Sections 34 to 39 IPC, a series of acts done by several persons would be related to a single act which constitutes a criminal offence. A similar meaning is also given to the word "omission", meaning thereby, a series of omissions would also mean a single omission. This provision would thus make it clear that an act would mean and include other acts along with it.

Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to

prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of Section 34 IPC is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him on a par with the one who actually committed the offence.

What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case Section 34 IPC does not get attracted.

It is a team effort akin to a game of football involving several positions manned by many, such as defender, mid-fielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared between the players. The same logic is the foundation of Section 34 IPC which creates shared liability on those who shared the common intention to commit the crime.

The intendment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act "in furtherance of the said intention". One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offence.

Normally, in an offence committed physically, the presence of an accused charged under Section 34 IPC is required, especially in a case where the act attributed to the accused is one of instigation/exhortation. However, there are exceptions, in particular,

when an offence consists of diverse acts done at different times and places. Therefore, it has to be seen on a case-to-case basis.

The word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.

There may be cases where all acts, in general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offence. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.

The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance. There may also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later. Of course, this is also one of the facts for the consideration of the court. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the defence to specifically raise such a plea in a case where adequate evidence is available before the court.

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23. INDIAN PENAL CODE, 1860 – Sections 86, 300 and 302

Murder – Intention and knowledge – If accused and deceased had consumed liquor together, full knowledge is liable to be attributed to the accused and the defence of being under the influence of liquor is not something which was available to him.

भारतीय दण्ड संहिता, 1860 – धाराएं 86, 300 एवं 302

हत्या – आशय एवं ज्ञान – यदि अभियुक्त और मृतक ने साथ में शराब का सेवन किया, तब अभियुक्त को पूर्ण ज्ञान होना दर्शित है और शराब के प्रभाव में होने का बचाव उसे उपलब्ध नहीं है ।

Chherturam alias Chainu v. State of Chhattisgarh

Judgment dated 13.09.2022 passed by the Supreme Court in Criminal Appeal No. 1317 of 2022, reported in (2022) 9 SCC 571

Relevant extracts from the judgment:

Learned counsel for the respondent also made a reference to Section 86 of the IPC, which reads as under:

> "**Offence requiring a particular intent or knowledge committed by one who is intoxicated**– In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will."

It was, thus, the submission made by the respondent that merely because the appellant and the deceased had consumed liquor together, full knowledge is liable to be attributed to the appellant and the defence of being under the influence of liquor is not something which was available to him.

It was further contended that the benefit of Section 300 Fourthly extends to act committed by an offender with the knowledge that the result of such acts will be death approximates a practical certainty/a very high degree of probability. The nature of injuries in the present case indicates that death was a practical certainty. Therefore, the conviction of the appellant was liable to be sustained under Section 302 of the IPC.

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24. INDIAN PENAL CODE, 1860 – Sections 299 and 300

Murder – Significance of the word "likely" – Intention to cause death – Can be gathered from combination of a few or several circumstances – Explained.

भारतीय दण्ड संहिता, 1860 – धाराएं 299 एवं 300

हत्या – 'संभाव्य' शब्द का महत्व – मृत्यु कारित करने का आशय – अन्य कुछ या अनेक परिस्थितियों के संयोजन से एकत्रित किया जा सकता है – समझाया गया।

Ajmal v. State of Kerala

Judgment dated 12.07.2022 passed by the Supreme Court in Criminal Appeal No. 1838 of 2019, reported in (2022) 9 SCC 766

Relevant extracts from the judgment:

The distinctive features and the considerations relevant for determining a culpable homicide amounting to murder and distinguishing it from the culpable homicide not amounting to murder has been a matter of debate in large number of cases. Instead of referring to several decisions on the point reference is being made to a recent decision in the case of ***Mohd. Rafiq vs. State of M.P., (2021) 10 SCC 706***, wherein Justice Ravindra Bhatt, speaking for the Bench, relied upon two previous judgments dealing with the issue as narrated in paragraph nos.11, 12 and 13 of the report which are reproduced below:

> "The question of whether in a given case, a homicide is murder, punishable under section 302 IPC, or culpable homicide, of either description, punishable under section 304 IPC has engaged the attention of courts in this country for over one and a half century, since the enactment of the IPC; a welter of case law, on this aspect exists, including perhaps several hundred rulings by this court. The use of the term "likely" in several places in respect of culpable homicide, highlights the element of uncertainty that the act of the accused may or may not have killed the person. Section 300 IPC which defines murder, however refrains from the use of the term likely, which reveals absence of ambiguity left on behalf of the accused. The accused is for sure that his act will definitely cause death. It is often difficult to distinguish between culpable homicide and murder as both involve death. Yet, there is a subtle distinction of intention and knowledge involved in both the crimes.

> This difference lies in the degree of the act. There is a very wide variance of degree of intention and knowledge among both the crimes."

The decision in ***State of Andhra Pradesh v Rayavarapu Punnayya &anr., (1976) 4 SCC 382*** notes the important distinction between the two provisions, and their differing, but subtle distinction. The court pertinently pointed out that:

> "In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice versa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of section 304.
>
> The academic distinction between "murder" and "culpable homicide not amounting to murder" has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of sections 299 and 300."

The considerations that should weigh with courts, in discerning whether an act is punishable as murder, or culpable homicide, not amounting to murder, were outlined in ***Pulicherla Nagaraju @ Nagaraja Reddy v State of Andhra Pradesh, (2006) 11 SCC 444*** this court observed that:

> "Therefore, the Court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder are treated as murder punishable under section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances;
>
> (i) nature of the weapon used;
>
> (ii) whether the weapon was carried by the accused or was picked up from the spot;
>
> (iii) whether the blow is aimed at a vital part of the body;
>
> (iv) the amount of force employed in causing injury;
>
> (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight;

(vi) whether the incident occurs by chance or whether there was any premeditation;

(vii) whether there was any prior enmity or whether the deceased was a stranger;

(viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;

(ix) whether it was in the heat of passion;

(x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;

(xi) whether the accused dealt a single blow or several blows.

The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention."

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25. INDIAN PENAL CODE, 1860 – Section 300 Exception 1

Murder – Grave and sudden provocation– factors to be considered – Whole of the events have to be taken into account and not just the events of the day of fatality– cumulative test would be satisfied when the accused's retaliation was preceded and precipitated by some sort of provocative conduct.

भारतीय दण्ड संहिता, 1860 – धारा 300 अपवाद 1

हत्या – घोर और आकस्मिक प्रकोपन– विचार योग्य कारक – संपूर्ण घटनाओं को देखा जाना चाहिए न कि घटना के दिन के घटना क्रम को – आंकलित परीक्षण तभी संतुष्ट होगा जब अभियुक्त का प्रतिकार किसी उत्तेजक आचरण के फलस्वरूप उपजा था।

Dauvaram Nirmalkar v. State of Chattisgarh

Judgment dated 02.08.2022 passed by the Supreme Court in Criminal Appeal No. 1124 of 2022, reported in AIR 2022 SC 3620

Relevant extracts from the judgment:

The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to Section 300 of the IPC. First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation (See the opinion expressed by ***Goddar, C.J. in R. v. Duffy, (1949) All. E.R. 932)***. The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the court would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. Gravity of provocation turns upon the whole of the victim's abusive behaviour towards the accused. Gravity does not hinge upon a single or last act of provocation deemed sufficient by itself to trigger the punitive action. Last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control. The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.

Exception 1 to Section 300 recognises that when a reasonable person is tormented continuously, he may, at one point of time, erupt and reach a break point whereby losing self-control, going astray and committing the offence. However, sustained provocation principle does not do away with the requirement of immediate or the final provocative act, words or gesture, which should be verifiable. Further, this defence would not be available if there is evidence of reflection or planning as they mirror exercise of calculation and premeditation.

For clarity, it must be stated that the prosecution must prove the guilt of the accused, that is, it must establish all ingredients of the offence with which the accused is charged, but this burden should not be mixed with the burden on the accused of proving that the case falls within an exception. However, to discharge this burden the accused may rely upon the case of the prosecution and the evidence adduced by the prosecution in the court. It is in this context we would refer to the case of the prosecution, which is that the deceased was addicted to alcohol and used to constantly torment, abuse and threaten the appellant. On the night of the occurrence, the deceased had consumed alcohol and had told the appellant to leave the house and if not, he would kill the appellant. There was sudden loss of self-control on account of a 'slow burn' reaction followed by the final and immediate provocation. There was temporary loss of self-control as the appellant had tried to kill himself by holding live electrical wires. Therefore, we hold that the acts of provocation on the basis of which the appellant caused the death of his brother, Dashrath Nirmalkar, were both sudden and grave and that there was loss of self-control.

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26. INDIAN PENAL CODE, 1860 – Section 411

Possession of stolen articles – Ingredients of crime – Recovery established – *Mens rea*– Knowledge of article being stolen is key ingredient – Intent either of causing wrongful gain or wrongful loss – Proper approach – 'Believe factor' is of stellar importance – Disclosure statement by co-accused – Cannot be accepted as proof of accused having knowledge.

भारतीय दंड संहिता 1860 – धारा 411

चोरी गई वस्तुओं का आधिपत्य – अपराध की अंतर्वस्तु – जप्ती प्रमाणित– दुराश्य – वस्तु को चोरी की होने का ज्ञान मुख्य अंतर्वस्तु – सदोष लाभ या सदोष हानि कारित करने का आशय – युक्तियुक्त दृष्टिकोण –'विश्वास कारक' सर्वाधिक महत्वपूर्ण है – सह–अभियुक्त द्वारा ज्ञान होने का कथन –अभियुक्त के ज्ञान में होने का प्रमाण नहीं है।

Shiv Kumar v. State of Madhya Pradesh

Judgment dated 07.09.2022 passed by the Supreme Court of India in SLP(Crl.) No. 9141 of 2019, reported in 2022(3) Crimes 399 (SC)

Relevant extracts from the judgment:

To establish that a person is dealing with stolen property, the "believe" factor of the person is of stellar import. For successful prosecution, it is not enough to prove that the accused was either negligent or that he had a cause to think that the property was stolen, or that he failed to make enough inquiries to comprehend the nature of the goods procured by him. The initial possession of the goods in question may not be illegal but retaining those with the knowledge that it was stolen property, makes it culpable.

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27. INDIAN PENAL CODE, 1860 – Sections 419, 420, 467, 468, 471 and 120B

CRIMINAL PROCEDURE CODE, 1973 – Section 482

Cognizance of offence – No *prima facie* evidence – Compassionate appointment on the basis of documents which later found to be forged – Selection Committee cannot be said to have aided in forgery or commission of crime – Cognizance by Magistrate who issued summons against the members of the Selection Committee – Clear abuse of process of law.

भारतीय दंड संहिता, 1860– धारा 419, 420, 467, 468, 471 एवं 120 बी

दण्ड प्रक्रिया संहिता, 1973– धारा 482

अपराध का संज्ञान– प्रथम दृष्टया साक्ष्य नहीं – दस्तावेजों के आधार पर अनुकंपा नियुक्ति –जो बाद में जाली पाये गये – चयन समिति को कूटरचना में या अपराध करने में सहायक नहीं कहा जा सकता – मजिस्ट्रेट द्वारा संज्ञान एवं सिलेक्शन कमेटी के विरूद्ध सम्मन जारी – विधि की प्रक्रिया का स्पष्ट दुरुपयोग।

Munna Prasad Verma v. State of U.P. and anr.

Judgment dated 02.09.2022 passed by the Supreme Court in Criminal Appeal No. 1414 of 2022, reported in 2022 (3) Crimes 280 (SC)

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28. INDIAN PENAL CODE, 1860 – Section 420

Cheat or defraud – Absence of intention – When accused executed registered sale deed and never claimed any interest in the land and bonafidely sought release of land in favour of buyer, he has no intention to commit the offence of cheating.

भारतीय दण्ड संहिता, 1860 – धारा 420

छल या धोखा – आशय का अभाव – जब अभियुक्त ने पंजीकृत विक्रय पत्र निष्पादित किया हो और उस भूमि पर कभी अपने हित का दावा न किया हो तथा सद्भाविक रूप से भूमि खरीददार के पक्ष में छोड़ने की प्रार्थना की हो तब उसका छल कारित करने का आशय न होना दर्शित होता है ।

P. Vijay Nataraj and ors. v. State and anr.

Judgment dated 05.09.2022 passed by the Supreme Court in Criminal Appeal No. 1448 of 2022, reported in (2022) 9 SCC 280

Relevant extracts from the judgment:

Learned Senior Advocate for the appellants has brought to our notice the fact that the appellants had approached the High Court of Judicature at Madras by filing Writ Petition No.417 of 2022 submitting *inter alia* that in view of the inaction on the part of the authorities, the land in question stood released from reservation/designation and that such release ought to be in favour of the complainant. It is submitted that accepting the submissions so made, the High Court vide its judgment and order dated 12.01.2022 observed as under:

In that view of the matter this Court is inclined to dispose of this writ petition with the following order:

That the land in question owned by the petitioners in S. Nos.26/2B and 26/3 of Tudiyalur Village which was part of the land proposed for the inner ring road in the Coimbatore Master Plan under G.O. Ms. No.661, Housing and Urban Development Department dated 12.10.1994 is declared to be land released under Section 38 of the Tamil Nadu Town and Country Planning Act.

As a sequel, the respondents 1 and 2 as well as the third respondent shall take necessary steps to release the land to and in favour of the petitioners within a period of four weeks from the date of receipt of a copy of this order.

It is made clear that once the land in question is released in favour of the petitioners, since the same has already been transferred in the name of the fourth respondent, subsequently the fourth respondent shall establish and execute his right over the property as the lawful owner."

As has been observed by the High Court, the land would be released in favour of the 4th respondent in the proceedings before the High Court, that is to say, the complainant.

Learned Senior Advocate for the appellants submits that the appellants stand by the petition and the order passed by the High Court as stated above. It is further submitted that in case the original complainant so desires, the appellants are willing to return the amount of consideration.

Considering the fact that the appellants never claimed any interest in the land and the fact that his bona fides are clear when he sought release in favour of 4th respondent i.e. the complainant, in our view, the application seeking discharge as filed by the present appellants deserves acceptance.

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29. LAND ACQUISITION ACT, 1894 – Sections 23 and 28A

Determination of compensation Parity – Land acquired in same notification – Claimants similarly situated with other landowners – Entitled at par with enhanced compensation.

भूमि अधिग्रहण अधिनियम 1894– धाराएं 23 और 28अ

प्रतिकर निर्धारण समता – एक ही अधिसूचना द्वारा अधिग्रहित भूमि – दावेदार समान रूप से अन्य भूमिस्वामियों के साथ स्थित–समान संवर्धित मुआवजे के हकदार।

Amanullah Khan v. State of Haryana and anr.

Judgment dated 08.09.2022 passed by the Supreme Court in Civil Appeal No. 6229 of 2022, reported in 2022 AIR 2022 SC 4158

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30. LAND ACQUISITION ACT, 1894 – Section 28A

Land acquisition – Compromise reached in Lok Adalat – An award passed u/s 20 of the Legal Services Authorities Act, 1987 by the Lok Adalat cannot be the basis for invoking Section 28A of the Actand on the basis of this redetermination cannot be ordered as the award is not the determination of compensation by the Court.

भूमि अधिग्रहण अधिनियम, 1894 – धारा 28A

भूमि अधिग्रहण – लोक अदालत में राजीनामा – विधिक सेवा प्राधिकरण अधिनियम, 1987 की धारा 20 के अंतर्गत लोक अदालत द्वारा पारित अवार्ड अधिनियम की धारा 28 ए को आकर्षित करने का आधार नहीं बन सकता है और न्यायालय द्वारा प्रतिकर निर्धारण का अवार्ड न होने के कारण इस आधार पर पुनर्निधारण का आदेश नहीं दिया जा सकता।

New Okhla Industrial Development Authority (Noida) v. Yunus and ors.

Judgment dated 03.02.2022 passed by the Supreme Court in Civil Appeal No. 901 of 2022, reported in (2022) 9 SCC 516

Relevant extracts from the judgment:

The next aspect is even more fatal to the case of the respondents. Not only must it be an award passed as a result of the adjudication but it must be passed by 'the Court' allowing compensation in excess of the amount awarded by the collector. The word 'Court' has been defined in the Act as the Principal Civil Court of original jurisdiction unless the appropriate Government has appointed a Special Judicial Officer to perform judicial functions of the court under this Act. We have noticed the composition of a Lok Adalat in Section 19(2) of the '1987 Act'. The Court is not the same as a Lok Adalat.

The Award passed by the Lok Adalat in itself without anything more is to be treated by the deeming fiction to be a decree. It is not a case where a compromise is arrived at under Order XXIII of the Code of Civil Procedure, 1908, between the parties and the court is expected to look into the compromise and satisfy itself that it is lawful before it assumes efficacy by virtue of Section 21. Without anything more, the award passed by Lok Adalat becomes a decree. The enhancement of the compensation is determined purely on the basis of compromise which is arrived at and not as a result of any decision of a 'Court' as defined in the Act.

An Award passed by the Lok Adalat is not a compromise decree. An Award passed by the Lok Adalat without anything more, is to be treated as a decree inter alia. We would approve the view of the learned Single Judge of the Kerala High Court in ***Thomas Job v. P.T. Thomas, 2003 SCC Online Ker 270***. An award unless it is successfully questioned in appropriate proceedings, becomes unalterable and non-violable. In the case of a compromise falling under Order XXIII Code of Civil Procedure, it becomes a duty of the Court to apply its mind to the terms of the compromise. Without anything more, the mere compromise arrived at between the parties does not have the imprimatur of the Court. It becomes a compromise decree only when the procedures in the Code are undergone.

An Award passed under Section 19 of the 1987 Act is a product of compromise. Sans compromise, the Lok Adalat loses jurisdiction. The matter

goes back to the Court for adjudication. Pursuant to the compromise and the terms being reduced to writing with the approval of the parties it assumes the garb of an Award which in turn is again deemed to be a decree without anything more. We would think that it may not be legislative intention to treat such an award passed under Section 19 of the 1987 Act to be equivalent to an award of the Court which is defined in the Act as already noted by us and made under Part III of the Act. An award of the Court in Section 28A is also treated as a decree. Such an Award becomes executable. It is also appealable. Part III of the Act contains a definite scheme which necessarily involves adjudication by the Court and arriving at the compensation. It is this which can form the basis for any others pressing claim under the same notification by invoking Section 28A. We cannot be entirely oblivious to the prospect of an 'unholy' compromise in a matter of this nature forming the basis for redetermination as a matter of right given under Section 28A.

31. MOTOR VEHICLES ACT, 1988 – Section 166

Assessment of compensation – Deceased was a probationer bank employee – There are only two classifications *i.e.* salaried employee and self-employed – Claimants are entitled to future prospect also.

मोटर यान अधिनियम, 1988 – धारा 166

क्षतिपूर्ति का निर्धारण – मृतक परिवीक्षाधीन बैंक कर्मचारी – केवल दो वर्गीकरण है, प्रथम वेतन भोगी कर्मचारी एवं स्वनियोजित – आवेदकगण भविष्यवर्ती लाभ भी प्राप्त करने के अधिकारी।

Nidhi and ors.v. Mahaveer Singh and ors.

Judgment dated 02.03.2022 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 2755 of 2012, reported in 2022 ACJ 2360

Relevant extracts from the judgment:

After hearing learned counsel for the parties, there is no dispute that in place of deduction of 1/5th applied by the tribunal, actual deduction should be 1/4th. Similarly, there is also no dispute that tribunal has wrongly applied multiplier of 17 whereas it should be 16. However, I am not in agreement with submission made by learned Advocate for respondent No.3 that future prospect is

not to be awarded as deceased was a probationer and not a confirmed employee. In fact, there is no such classification made by Hon'ble Supreme Court while deciding ***National Insurance Co. Ltd. v. Pranay Sethi, AIR 2017 SC 5157***. There are only two classifications namely salaried employee and self- employed. In case of salaried employee up to the age of 40, future prospect is 50%, it is 40% in case of self-employed. Therefore, third argument put forth by learned Advocate for respondent No.3 deserves to be rejected and is rejected. However, his two submissions in regard to deduction and multiplier are accepted and to this extent, appeal filed by the Insurance Company is allowed.

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

(i) Assessment of compensation – Death of house wife – Fixed income as 1/3rd of the income of husband – Salary drawn by deceased three years prior to the accident is unreliable guide to assess notional income. [*Arun Kumar Agarwal v. National Insurance Co. Ltd., (2010) 9 SCC 218* followed.]

(ii) Dependent – Cannot be restricted to mean those who are financially dependent – Minor children are emotionally dependent on mother, who lost care and guidance of their mother at a very young age – Tribunal ought to factor in loss of dependency.

मोटर यान अधिनियम, 1988 – धाराएं 166 एवं 168

(i) क्षतिपूर्ति का निर्धारण – मृतक गृहणी – पति की आय का 1/3 भाग निर्धारित – मृतिका द्वारा 3 वर्ष पूर्व अर्जित आय के आधार पर काल्पनिक आय का निर्धारण अनुचित है। (*अरूण कुमार अग्रवाल विरूद्ध नेशनल इंश्योरेंस कंपनी लिमिटेड (2010) 9 SCC 218* अनुसरित)

(ii) आश्रित – केवल वित्तीय आश्रित तक सीमित नही किया जा सकता – अव्यस्क बच्चे जिन्होंने बहुत छोटी आयु में माँ की देखभाल एवं सन्तान को छोटी आयु में खोया भी आश्रित है – अभिकरण को निर्भरता निर्धारण के समय यह कारक भी ध्यान रखना चाहिये।

S. Chandrasekharan and ors. v. M. Dinakar and anr.

Judgment dated 11.07.2022 passed by the Supreme Court in Civil Appeal No. 4688 of 2022, reported in 2022 ACJ 2362

Relevant extracts from the judgment:

In our opinion, the judgment of the High Court on this point suffers from error on two counts. At the time of her death, the deceased was not in employment. She was a homemaker. It was not a case where the deceased at the time of accident had just left her job. If that was the case, her last drawn salary might have had given reliable guidance for computing her monthly income at that point of time. Here the deceased remained without employment for a period of approximately three years and what she earned prior to that ought not to have been treated to be her monthly income to arrive at just and proper compensation under the head of pecuniary loss, as has been held by the High Court. There is a long time gap between the time she was in employment and the occurrence of the accident. Her monthly salary approximately three years back thus would be an unreliable guide for fixing her notional income when she succumbed to her injuries caused by the accident. Moreover, at the time of the accident, she was a homemaker providing care and support to her family. In this context, in our opinion, the computation methodology prescribed in the case of ***Arun Kumar Agrawal and anr v. National Insurance Company Ltd. and ors., (2010) 9 SCC 218*** would be more appropriate to apply, which was done by the Tribunal.

Plea has been taken before us on behalf of the insurance company that the appellants could not take a stand for computing the income of the deceased in the manner held in the case of Arun Kumar Agrawal (supra), since before the High Court, they had run a case that the pecuniary loss ought to be computed on the basis of her last drawn salary. Just because the appellants urged their claim based on the last drawn salary of the deceased before the High Court, this Court ought not to anchor its decision on that argument alone. It remains open to this Court to examine the nature of the claim and compute the compensation on a different criterion applying a different parameter. This is more so, because such compensation figure could be arrived at on the basis of materials on record, that includes evidence on monthly earning of the husband of the deceased and the applied parameter stands judicially recognised as a legitimate mode for computing pecuniary loss. Further, in this case, plea was made in the claim petition for compensation calculated on the basis of onethird of the husband's income. In the petition for special leave to appeals also, one of the points formulated is as to whether compensation on account of death of Bala Babitha would be calculated on the basis of her last drawn salary or her husband's income.

So far as deduction on account of personal expenses of the deceased, following the case of ***Sarla Verma (Smt) and ors.v. DelhiTransport Corporation***

and anr. (2009) 6 SCC 121, the Tribunal directed deduction of 1/3rd of the earning of the deceased, the latter being determined on the income of her spouse. That was, in our view, the proper course. We hold so because, even if we leave out the husband of the deceased from being treated as a dependent, there were two minor children at the material point of time who ought to have been treated as dependent family members. At that point of time the second appellant was twelve years old and the age of injured daughter was three years. In the case of ***Sarla Verma (supra)*** the deduction has been held to be valid in a case where there were dependent family members. We should not restrict the expression "dependent" to mean those financially dependent only. Minor children are emotionally dependent on the mother. They lost care and guidance of their mother at a very young age. While arriving at just compensation, the Tribunal ought to factor in the loss of dependency in these terms.

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33. MUSLIM LAW:

Jurisdiction – Examination of the authenticity of *Hiba* – Revenue authorities are precluded to entertain objectionable application of mutation on the basis of *Hiba* – Only remedy available to a party is to approach the Civil Court for appropriate relief.

मुस्लिम विधिः

क्षेत्राधिकार – हिबा की वैधानिकता का परीक्षण– नामांतरण के संबंध में प्रस्तुत विवादित आवेदन के निराकरण का क्षेत्राधिकार राजस्व अधिकारी को नही है – पक्षकार केवल सिविल न्यायालय से उचित सहायता प्राप्त कर सकता है।

Firoz Khan v. State of M.P. and ors.

Judgment dated 04.03.2022 passed by High Court of Madhya Pradesh in Writ Petition No. 233 of 2022, reported in 2022(4) MPLJ 4

Relevant extracts from the judgment:

This Court is of the opinion that the revenue authorities are precluded to entertain an application for mutation on the basis of Hiba when the authenticity is objected by the other side. The only remedy available to the party concerned is to approach the Civil Court for appropriate relief. Same is the view taken by this Court in the matter of ***Jahooran B and ors. v. State of M.P. and ors., 2021 MPLJ Online 59***, while placing

reliance on a decision rendered by this Court in the matter of ***Rasool Khan (Dead) through Legal Heirs and ors., 2020 MPLJ Online 75*.**

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34. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 143A(5)

Failure to pay Interim compensation – Whether an accused who had failed to deposit interim compensation could be fastened with any other disability including denial of right to cross-examine the witnesses? Held, no – Foreclosing the right to cross-examine on account of failure to pay interim compensation goes beyond the power conferred upon the court.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 143क (5)

अंतरिम प्रतिकर दिये जाने में विफलता – जहॉ अभियुक्त ने अंतरिम प्रतिकर नहीं दिया हो, वहॉ उसे साक्षी का प्रतिपरीक्षण करने के अधिकार से वंचित किये जाने के दण्ड से दण्डित किया जा सकता है? अभिनिर्धारित, नहीं – अंतरिम प्रतिकर न दिए जाने की स्थिति में प्रतिपरीक्षण के अधिकार को समाप्त करना न्यायालय को दिए गए शक्ति से बाह्य है।

Noor Mohammed v. Khurram Pasha

Judgment dated 02.08.2022 passed by the Supreme Court in Criminal Appeal No. 1123 of 2022, reported in AIR 2022 SC 3592 (Three Judge Bench)

Relevant extracts from the judgment:

After empowering the court to pass an order directing the accused to pay interim compensation under Sub-Section 1 of Section 143A, Sub-Section 2 then mandates that such interim compensation should not exceed 20 per cent of the amount of the cheque. The period within which the interim compensation must be paid is stipulated in Sub-Section 3, while Sub-Section 4 deals with situations where the drawer of the cheque is acquitted. Said Sub-Section 4 contemplates repayment of interim compensation along with interest as stipulated. Sub-Section 5 of said Section 143A then states "the interim compensation payable under this Section can be recovered as if it were a fine". The expression interim compensation is one which is "payable under this Section" and would thus take

within its sweep the interim compensation directed to be paid under Sub-Section 1 of said Section 143A.

Since the right to cross-examine the respondent was denied to the Appellant, the decisions rendered by the courts below suffer from an inherent infirmity and illegality. Therefore, we have no hesitation in allowing this appeal and setting aside the decisions of all three courts with further direction that Complaint Case No. 244 of 2019 shall stand restored to the file of the Trial Court. The Trial Court is directed to permit the Appellant to cross-examine the Respondent and then take the proceedings to a logical conclusion. With these observations the appeal is allowed.

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34. N.D.P.S. ACT, 1985 – Sections 20(b)(ii) (c) and 54

Burden of proof – Illegal possession of contraband – Accused will have to discharge the burden that how he came into possession of contraband – Presumption – When applicable – It must first be established that a recovery was made from the accused.

स्वापक औषधि एवं मनःप्रभावी पदार्थ अधिनियम, 1985 – धारायें 20(बी)(ii) (सी) और 54

सबूत का भार – कॉन्ट्राबेंड का अवैध आधिपत्य में पाया गया – अभियुक्त को इस भार का निर्वहन करना होगा कि वह कॉन्ट्राबेंड के कब्जे में कैसे आया – उपधारणा – लागू होगी – पहले यह स्थापित किया जाना चाहिए कि अभियुक्त से बरामदगी की गई थी।

Sanjeet Kumar Singh @ Munna Kumar Singh v. State of Chhattisgarh

Judgment dated 30.08.2022 passed by the Supreme Court in Criminal Appeal No. 871 of 2021, reported in AIR 2022 SC 4051

Relevant extracts from the judgment:

It is true that Section 54 of the Act raises a presumption and the burden shifts on the accused to explain as to how he came into possession of the contraband. But to raise the presumption under Section 54 of the Act, it must be established that a recovery was made from the accused. The moment a doubt is cast upon the most fundamental aspect, namely the search and seizure, the

appellant, in our considered opinion will also be entitled to the same benefit as given by the Special Court to the co-accused.

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36. STAMP ACT, 1899 – Section 35

REGISTRATION ACT, 1908 – Sections 17 and 49

(i) Compulsory registration of document – Effect of non-registration – Not admissible unless duly stamped – Nither can be received as evidence of any transaction norcan be used even for a collateral purpose.

(ii) Collateral transaction – Must be independent/divisible – Does not affect right, title or interests of parties.

भारतीय स्टाम्प अधिनियम, 1899 – धारा 35

रजिस्ट्रीकरण अधिनियम, 1908 –धारायें 17 और 49

(i) दस्तावेज का अनिवार्य पंजीकरण – अपंजीकरण का प्रभाव – विधिवत स्टांपित होने तक स्वीकार्य नहीं – किसी भी संव्यवहार के साक्ष्य के रूप में ग्राह्य नहीं किया जा सकता – यहां तक कि संपार्श्विक उद्देश्य के लिए भी उपयोग नहीं किया जा सकता है।

(ii) संपार्श्विक लेन–देन – स्वतंत्र/विभाज्य होना चाहिए – पक्षकारों के अधिकार, शीर्षक या हित को प्रभावित नहीं करता।

Manish Singh Malukani v. Hari Prashad Gupta

Order dated 04.07.2022 passed by the Madhya Pradesh High Court in Writ Petition No. 7581 of 2017, reported in AIR 2022 MP 150

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37. SPECIFIC RELIEF ACT, 1963 – Section 34

TRANSFER OF PROPERTY ACT, 1882 – Section 5

EVIDENCE ACT, 1872 – Section 65

(i) Partition deed – Not a public document – Certified copy is admissible only after getting permission to file secondary evidence.

(ii) Relinquishment deed – Not a public document – Admitted only when original registered deed was presented or permission to file a copy as secondary evidence was granted.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34

संपत्ति अंतरण अधिनियम, 1882 – धार 5

साक्ष्य अधिनियम, 1872 – धारा 65

(i) विभाजन विलेख – लोक दस्तावेज नहीं – द्वितीय साक्ष्य की अनुमति लेने के पश्चात् ही प्रमाणित प्रति साक्ष्य में ग्राह्य किया जा सकता है ।

(ii) परित्याग पत्र– लोक दस्तावेज नहीं – केवल तभी साक्ष्य में ग्रहण किया जा सकता है जब असल रजिस्टर्ड विलेख प्रस्तुत किया जाये या द्वितीय साक्ष्य के रूप में प्रति प्रस्तुत करने की अनुमति प्राप्त की जावे।

Premlal Kadak and ors.v. Madhukar Kadak and ors.

Judgment dated 04.01.2022 passed by the High Court of Madhya Pradesh in Second Appeal No. 768 of 2020, reported in 2022 (4) MPLJ 116

Relevant extracts from the judgment:

The partition deed (Ex.D/2) is not the public document, therefore, it's certified copy is not admissible in the evidence without getting permission to file secondary evidence. While defendants neither filed original partition deed nor they took permission to file copy of the partition deed as secondary evidence. Even in the relinquish deed (ExD/1) which is alleged to be executed later i.e. on 26/12/1996 it is not mentioned that the earlier partition of suit land took place between Madhukar, Premlal and Vaman. Likewise, appellants filed document (Ex.D/1) relinquishment deed to prove the fact that Madhukar relinquished his share in the suit land, but that document is also a copy of original document and not public document, therefore it's certified copy is not admissible in the evidence without getting permission to file secondary evidence. While defendants neither filed original relinquishment deed nor they took permission to file a copy of that document as secondary evidence, furthermore, the registration of relinquishment deed is required, while the alleged relinquishment deed (Ex.D/1) is not registered. So, also on the basis of that document, it can not be said that Madhukar relinquished his share in the suit land.

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PART – III

CIRCULARS /NOTIFICATIONS

NOTIFICATION DATED 24.02.2023 OF THE HIGH COURT OF MADHYA PRADESH REGARDING JURIDICTION IN MOTOR ACCIDENT CLAIM CASES

Pursuant to the judgement dated 15-12-2022 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 9322/ 2022, (Gohar Mohammad Vs. Uttar Pradesh State Road Transport Corporation 8s ors.), it is hereby notified that in Motor Accident Claim Cases, if the claimant (s) or legal representative (s) of the deceased has/ have filed separate claim petition (s) in the territorial jurisdiction of different High Courts, in the said situation, the first claim petition filed by the claimant (s)/legal representative (s) shall be maintained by the said Claims Tribunal and the subsequent claim petition (s) shall stand transferred to the Claims Tribunal where the first claim petition was filed and is pending. The claimant (s) are not required to approach the Hon'ble Supreme Court of India seeking transfer of the other claim petition(s) filed in the territorial jurisdiction of different High Courts.

This Notification shall come into force with immediate effect.

BY ORDER OF HON'BLE CHIEF JUSTICE
Sd/-
(RAMKUMAR CHOUBEY)
REGISTRAR GENERAL

'However good a Constitution may be it is sure to turn out bad because those who are called upon to work it happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution.'

Dr. B.R. Ambedkar

सात सामाजिक बुराईयां –

सिद्धान्त विहीन राजनीति
परिश्रम विहीन सम्पत्ति
अंतरात्मा विहीन सुख
ज्ञान विहीन चरित्र
नैतिकता विहीन व्यापार
मानवता विहीन विज्ञान
त्याग विहीन उपासना

महात्मा गाँधी

A great man is one in whose presence everyone feels great.

Nani A. Palkhivala

PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (SEIZURE, STORAGE, SAMPLING AND DISPOSAL) RULES, 2022

New Delhi, the 23rd December, 2022

G. S. R. 899(E).— In exercise of the powers conferred by section 76 read with section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby makes the following rules, namely:-

PART I

PRELIMINARY

1. **Short title and commencement**. **—** (1) These rules may be called the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions**. **—** (1) In these rules, unless the context otherwise requires –

(a) "Act" means the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

(b) "container" means a portable receptacle in which narcotic drugs, psychotropic substances and controlled substances are placed for convenience of movement;

(c) "Form" means the forms appended to these rules;

(d) "Magistrate" means the judicial magistrate;

(e) "package" means the narcotic drugs, psychotropic substances and controlled substances covered in paper or in a box.

(2) Words and expressions used herein and not defined, but defined in the Act shall have the same meanings as respectively assigned to them in the Act.

PART II

SEIZURE AND STORAGE OF SEIZED MATERIAL

3. Classification of seized material. – (1) The narcotic drugs, psychotropic substances and controlled substances seized under the Act shall be classified based on physical properties and results of the drug detection kit, if any, and shall be weighed separately.

(2) If the narcotic drugs, psychotropic substances and controlled substances are found in packages or containers, such packages and containers shall be weighed separately and serially numbered for the purpose of identification.

(3) All narcotic drugs, psychotropic substances and controlled substances found in loose form shall be packed in tamper proof bag or in container, which shall be serially numbered and weighed and the particular of drugs and the date of seizure shall also be mentioned on such bag or container: Provided that bulk quantities of ganja, poppy straw may be packed in gunny bags and sealed in such way that it cannot be tempered with: Provided further that seized concealing material such as trolley bags, backpack and other seized articles shall be sealed separately.

(4) The classification, weighing, packaging and numbering referred to in this sub-rule shall be done in the presence of search witnesses (Panchas) and the person from whose possession the drugs and substances was recovered and a mention to this effect shall invariably be made in the panchnama drawn on the spot of seizure.

(5) The detailed inventory of the packages, containers, conveyances and other seized articles shall be prepared and attached to the panchnama.

4. Designation of godowns. – (1) The godowns for storage of narcotic drugs, psychotropic substances, controlled substances, conveyance and other articles seized under the Act shall be designated by,-

(a) the department and agencies of the Central Government whose officers have been delegated powers of an officer-in-charge of a police station under section 53 of the Act;

(b) The State Police and the department and agencies of the State Government whose officers have been delegated powers of an officer-in-charge of a police station under section 53 of the Act.

(2) Godowns referred to in sub-rule (1) shall be identified taking into consideration the security aspect and juxtaposition to court of law and such godowns shall be placed under the over-all supervision and charge of an officer of Gazette rank of the department and agencies referred to in sub-rule (1).

5. Deposit in godowns. – (1) All seized materials referred to in sub-rule (1) of rule 3, after seizure under the Act shall be deposited by the seizing officer in the nearest godown designated under rule 4 within forty-eight hours from the time of seizure alongwith a forwarding memorandum in Form-1:

Provided that the said time period may be relaxed by further twenty-four hours after providing of reasonable justification by the officer to whom the seized material has been forwarded under sub-section (3) of Section 52 of the Act.

(2) The officer in-charge of a godown, before giving an acknowledgement of receipt in Form-2, shall satisfy himself that the seized materials are properly packed, sealed and in conformity with the details mentioned in Form-1.

(3) The officer, who had seized the material, shall hand over the acknowledgement of receipt of seized material in Form-2, alongwith all other documents relating to the seizure, to the Investigating Officer for further proceedings.

6. Storage of seized material in godown. – (1) After receipt of the seized material, the officer in-charge of the godown shall ensure that the seized material is properly arranged, case-wise, for quick retrieval.

(2) The officer in-charge of a godown shall maintain a register of material received in the godown in Form-3.

(3) All seized material, excluding the conveyances, shall be stored in safes and vaults with double lock.

7. Inspection of godown. – (1) The department and agencies referred to in rule 4 and the State Police shall designate an Inspecting Officer for each godown, who shall be higher in rank to that of the officer in-charge of the godown.

(2) The Inspecting Officer referred to in sub-rule (1) shall make periodical inspection of the godown, at least once in every quarter, and shall record his remarks in the godown register in Form-3 with respect to security, safety and early disposal of the seized material.

(3) The departments and agencies, referred to in rule 4 and the State Police shall maintain periodical reports and returns to monitor the safe receipt, deposit, storage, accounting and disposal of seized materials under the Act.

CHAPTER III

SAMPLING

8. **Application to Magistrate**. – After the seized material under the Act is forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53 of the Act or if it is seized by such an officer himself, he shall prepare an inventory of such material in Form-4 and apply to the Magistrate, at the earliest, under sub-section (2) of section 52A of the Act in Form-5.

9. **Samples to be drawn in the presence of Magistrate**. – After application to the Magistrate under sub-section (2) of section 52A of the Act is made, the Investigating Officer shall ensure that samples of the seized material are drawn in the presence of the Magistrate and the same is certified by the magistrate in accordance with the provisions of the said-sub-section.

10. **Drawing the samples**. – (1) One sample, in duplicate, shall be drawn from each package and container seized.

(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn:

Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than fourty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or

container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

11. **Quantity to be drawn for sampling**. – (1) Except in cases of opium, ganja and charas (hashish), where a quantity of not less than twenty-four grams shall be drawn for each sample, in all other cases not less than five grams shall be drawn for each sample and the same quantity shall be taken for the duplicate sample.

(2) The seized substances in the packages or containers shall be well mixed to make it homogeneous and representative before the sample, in duplicate, is drawn.

(3) In case where seized quantities is less than that required for sampling, the whole of the seized quantity may be sent.

12. **Storage of samples. -** (1) Each sample shall be kept in heat-sealed plastic bags or heat-resistant glass bottle or apparatus, which shall be kept in a paper envelope, sealed properly and marked as original or duplicate, as the case may be.(2) The paper envelope shall also bear the respective serial number of the package or container from which the sample had been drawn.(3) The envelope containing the duplicate sample shall also have reference of the test memo and shall be kept in another envelope, sealed and marked 'Secret-drug sample / Test memo', to be sent to the designated laboratory for chemical analysis.

13. **Despatch of sample for testing**. – (1) The samples after being certified by the Magistrate shall be sent directly to any one of the jurisdictional laboratories of Central Revenue Control Laboratory, Central Forensic Science Laboratory or State Forensic Science Laboratory, as the case may be, for chemical analysis without any delay.(2) The samples of seized drugs or substances shall be despatched to the jurisdictional laboratories under the cover of the Test Memo, which shall be prepared in triplicate, in Form-6.(3) The original and duplicate of the Test Memo shall be sent to the jurisdictional laboratory alongwith the samples and the triplicate shall be retained in the case file of the seizing officer.

14. **Expeditious Test.-**The chemical laboratory shall submit its report to the court of Magistrate with a copy to the investigating officer within fifteen days from the date of receipt of the sample.

Provided that where quantitative analysis requires longer time, the results of the qualitative test shall be dispatched to the court of Magistrate with a copy to investigating officer within the said time limit on the original copy of the Test Memo and in the next fifteen days the result of quantitative test shall also be indicated on the duplicate Test Memo and sent to the court of Magistrate with a copy to the investigating officer.

15. Duplicate Sample and Remnants of Samples. – (1) Remnants of samples shall be returned with reference to the Test Memo to the office from which they were received within three months after the analysis by the laboratory.

(2) Immediately after the acceptance of the test report by the court of Magistrate, the duplicate sample held by the Inquiry Officer shall be deposited in the godown referred to in rule 5 along with the remnants of the sample.

CHAPTER IV

DISPOSAL

16. Items that can be disposed of. - Having regard to the hazardous nature, vulnerability to theft, substitution and constraints of proper storage space, all narcotic drugs, psychotropic substances, controlled substances and conveyances, as soon as may be after their seizure, shall be disposed of in the manner determined under section 52Aof the Act.

17. Officers who shall initiate action for disposal. - Any officer in-charge of a police station or any officer empowered under section 53 of the Act shall initiate action for disposal of narcotic drugs, psychotropic substances, controlled substances or conveyances under section 52A of the Act after the receipt of chemical analysis report.

18. Application to Magistrate. – (1) The officer empowered under section 53 of the Act or if the materials are seized by such an officer himself, he shall apply to the Magistrate under sub-section (2) of section 52A of the Act in Form-5at the earliest to allow the application under sub-section (3) of section 52A of the Act.

(2) After the Magistrate allows the application under sub-section (3) of section 52A of the Act, the officer referred to in sub rule (1) shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit

details of the seized materials to the Chairman of the Drug Disposal Committee for a decision by the Committee on the disposal, and the said officer shall also send a copy of the details along with the seized materials to the officer-in-charge of the godown.

19. Drug Disposal Committee.- The Head of the Department of each Central drug law enforcement agency and State drug law enforcement agency shall constitute one or more Drug Disposal Committees comprising of three Member search which shall be headed by an officer not below the rank of the Superintendent of Police or Joint Commissioner of Customs and Central Goods and Services Tax, Joint Director of Directorate of Revenue Intelligence or officers of equivalent rank and every such Committee shall be directly responsible to the Head of the Department.

20. Functions of the Drug Disposal Committee. - The functions of the Drug Disposal Committee shall be to, -

(a) meet as frequently as possible and necessary;

(b) conduct a detailed review of seized items pending disposal;

(c) order disposal of seized items, and

(d) advise the respective investigation officers or supervisory officers on the steps to be initiated for expeditious disposal.

21. Procedure to be followed by the Drug Disposal Committee with regard to disposal of seized materials. - (1)The officer-in-charge of the godown shall prepare a list of all the seized materials that have been certified under section 52A of the Act and submit it to the Chairman of the concerned Drug Disposal Committee.

(2) After examining the list referred to in sub-rule (1) and satisfying that the requirements of section 52Aof the Act have been fully complied with, the Members of the concerned Drug Disposal Committee shall endorse necessary certificates to this effect and thereafter that Committee shall physically examine and verify the weight and other details of each of the seized materials with reference to the seizure report, report of chemical analysis and any other documents, and record its findings in each case.

(3) In case of conveyance, the committee shall verify the engine number, chassis number and other details mentioned in panchnama and certify the inventory thereof.

22. Power of Drug Disposal Committee for disposal of seized material. - The Drug Disposal Committee can order disposal of seized materials up to the quantity or value indicated in the following Table, namely: -

TABLE

Sl. No	Name of item	Quantity per consignment
(1)	(2)	(3)
1.	Heroin	5 Kilogram
2.	Hashish (Charas)	100 Kilogram
3.	Hashish oil	20 Kilogram
4.	Ganja	1000 Kilogram
5.	Cocaine	2 Kilogram
6.	Mandrax	3000 Kilogram
7.	Poppy straw	Up to 10 Metric Tonne.
8.	Other narcotic drugs, psychotropic substances, orcontrolled substances	Upto a quantity of 500 Kilogram or 500Litre
9.	Conveyances	Upto a value of Rs. 50 Lakhs:

Provided that if the consignments are larger in quantity or of higher value than those indicated in the Table, the Drug Disposal Committee shall send its recommendations to the Head of the Department who shall order their disposal by a high-level Drug Disposal Committee specially constituted in this regard.

23. Mode of disposal. - (1) Opium, morphine, codeine and the baine shall be disposed of by transferring to the Government Opium and Alkaloid Works under the Chief Controller of Factories.

(2) In case of narcotic drugs and psychotropic substances other than those mentioned in sub-rule (1),the Chief Controller of Factories shall be intimated by the fastest means of communication available, the details of the seized materials that are ready for disposal.

(3) The Chief Controller of Factories shall indicate within fifteen days of the date of receipt of the communication under sub-rule (2), the quantities of narcotic drugs and psychotropic substances, if any, that are required by

him to supply as samples under rule 67B of the Narcotic Drugs and Psychotropic Substances Rules,1985.

(4) The quantities of narcotic drugs and psychotropic substances, if any, as required by the Chief Controller of Factories under sub-rule (3) shall be transferred to him and the remaining quantities of narcotic drugs and psychotropic substances shall be disposed of in accordance with the provisions of sub-rules (5), (6)and (7).

(5) Narcotic drugs, psychotropic substances and controlled substances having legitimate medical or industrial use, and conveyances shall be disposed of in the following manner:

(a) narcotic drugs, psychotropic substances and controlled substances which are in the form of formulations and labelled in accordance with the provisions of the Drugs and Cosmetics Act, 1940 (23of 1940) and rules made there under may be sold, by way of tender or auction or in such other manner as may be determined by the Drug Disposal Committee, after confirming the composition and formulation from the licensed manufacturer mentioned in the label, to a person fulfilling the requirements of the said Act and the rules and orders made there under:

Provided that a minimum of 60% of the shelf life of the seized formulation remains at the time of such sale;

(b) narcotic drugs, psychotropic substance and controlled substances seized in the form of formulations and without proper labelling shall be destroyed;

(c) narcotic drugs, psychotropic substances and controlled substances seized in bulk form may be sold by way of tender or auction or in such other manner as may be determined by the Drug Disposal Committee, to a person fulfilling the requirements of the Drugs and Cosmetics Act, 1940 (23 of 1940)and the Act, and the rules and orders made there under, after confirming the standards and fitness of the seized substances for medical purposes from the appropriate authority under the said Drugs and Cosmetics Act, 1940 and the rules made there under;

(d) controlled substances having legitimate industrial use may be sold, by way of tender or auction or in such other manner as may be

determined by the Drug Disposal Committee, to a person fulfilling the requirements of the Act and the rules and orders made there under;

(e) seized conveyances shall be sold by way of tender or auction as may be determined by the Drug Disposal Committee.

(6) Narcotic drugs, psychotropic substances and controlled substances which have no legitimate medicalor industrial use or such quantity of seized substance which is not found fit for such use or could not be sold shall be destroyed.

(7) The destruction referred to in clause (b) of sub-rule (5) and sub-rule (6) shall be by incineration in incinerators fitted with appropriate air pollution control devices, which comply with emission standards and such incineration may only be done in places approved by the State Pollution Control Board or where adequate facilities and security arrangements exist and in the latter case, in order to ensure that such incineration may not be a health hazard or polluting, the consent of the State Pollution Control Board or Pollution Control Committee, as the case may be, shall be obtained, and the destruction shall be carried out in the presence of the Members of the Drug Disposal Committee.

24. Intimation to Head of Department on destruction. -The Drug Disposal Committee shall intimate the Head of the Department regarding the destruction referred in sub-rule (7) of rule 23, at least fifteen days in advance so that, in case he deems fit, he may either himself conduct surprise checks or depute an officer for conducting such surprise checks and after every destruction operation, the Drug Disposal Committee shall submit to the Head of the Department a report giving details of destruction.

25. Certificate of destruction. - (1) A certificate of destruction in Form-7 shall be prepared in triplicate and signed by the Chairman and Members of the Drug Disposal Committee.

(2) The original copy of the certificate of destruction shall be pasted in the godown register after making necessary entries to this effect, the duplicate to be retained in the seizure case file and the triplicate copy shall be kept by the Drug Disposal Committee.

26. **Receipt by Government Opium and Alkaloid Works.** - (1) As and when seized narcotic drug, psychotropic substance, or controlled substance is transferred to the Government Opium and Alkaloid Works, it shall issue a certificate in Form-8, acknowledging the receipt of such transfer, which shall be signed by an authority as may be decided by the Chief Controller of Factories.

(2) The Government Opium and Alkaloid Works shall maintain a register in Form-9 containing details of seized narcotic drug, psychotropic substance, and controlled substance transferred to it, which shall be signed by an authority as may be decided by the Chief Controller of Factories and which shall be preserved for a period of twenty five years from the date of last entry.

27. **Certificate of Disposal.** - (1) As and when the seized narcotic drug, psychotropic substance, controlled substance or conveyance is transferred to the Government Opium and Alkaloid Works or sold by way of tender or auction or in any other manner determined by the Drug Disposal Committee, a certificate of disposal in Form-10 shall be prepared in triplicate and signed by the Chairman and Members of the Drug Disposal Committee.

(2) The original copy of the certificate of disposal shall be pasted in the godown register after making necessary entries to this effect, the duplicate copy shall be retained in the seizure case file and the triplicate copy shall be kept by the Drug Disposal Committee.

28. **Communication to Narcotics Control Bureau.** - (1) The Head of the Department of each Central drug law enforcement agency and State drug law enforcement agency shall submit a quarterly report in Form-11 to the Narcotics Control Bureau giving details of action taken for disposal of narcotic drugs, psychotropic substances, controlled substances and conveyances under section 52A of the Act.

(2) The return for a quarter shall be submitted before the last day of the month following that quarter. *Explanation*. - For the removal of doubts, it is hereby clarified that for the purpose of sub-rule (2) the expression "quarter" shall be January to March, April to June, July to September and October to December of every year.

CHAPTER IV

MISCELLANEOUS

29. **Repeal and savings.** - (1) The Standing Order No. 1/88, dated the 15th March, 1988, Standing Order No 2/88, dated the 11th April, 1988, issued by the Narcotics Control Bureau, Standing Order No. 1/89, dated the 13th June, 1989, issued by the Government of India, Ministry of Finance (Department of Revenue), the notification of the Government of India, Ministry of Finance (Department of Revenue), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide, number G.S.R.339(E), dated the 10th May, 2007 and the notification of the Government of India, Ministry of Finance (Department of Revenue), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide, number G.S.R.38(E), dated the 16th January, 2015 are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under any of the Standing Order or notification repealed by sub-rule (1) shall, in so far as it is not inconsistent with the provisions of these rules, be deemed to have been done or taken under the corresponding provision of these rules.

[F. No-N-16011/07/2018-NC-II]

VINOD KUMAR, Director

FORM-1

[See rule 5(1)]
[To be prepared in duplicate]

Forwarding Memorandum to Godown by the Seizing Officer

1. NDPS Crime No. [as per crime and prosecution register under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985)]
2. Name and address of the accused
3. Place, Date and Time of Seizure
4. Description (physical properties) of items in each sealed package / container
5. Results of test done, if any, by drug detection kit
6. Quantity in each sealed package / container
7. No. of packages / containers, material wise, containing similar material
8. Total Number of Packages / Containers
9. Total Number of Conveyances
10. Description of each conveyance, such as type, make, manufacturer name, colour, etc., alongwith identification number associated with each conveyance, such as registration number, engine number, chasis number, etc.
11. Description of animal used as conveyance

Place:
Date:
Time:

Signature of the Seizing Officer with Full Name,
Designation and official Seal

Endorsement by
Officer-in-charge of the Godown:

Signature
with Full Name and Official Seal

FORM-2

[See rule 5(2)]

Acknowledgement by Officer-in-charge of a Godown

Received number of packages / containers and __ number of conveyances, from _____, as per details in Form-1 duly signed by him and endorsed by the undersigned (Original copy of Form-1 retained and duplicate copy thereof is enclosed), and entered in godown register vide entry No. ____.

Place:

Date:

Time:

Signature of the Officer-in-charge of the godown with Full Name, Designation and official Seal

FORM-3

[See rule 6(2)]

Register of material received in Godown

Godown Register No.____	Name of the Officer-in-charge of the Godown
Year_____	

1. Godown Entry Sl. No:
2. NDPS Crime No:
3. Name/designation/address of the seizing / depositing officer:
4. Facsimile of the seal put on the packages / containers by the seizing officer:
5. Name and address of the accused:
6. Place, Date and Time of Seizure:
7. Date and time of deposit in godown:
8. Description (physical properties) of items in each sealed package / container:
9. Gross Quantity in each sealed package / container:
10. Net quantity after taking sample in the presence of the Magistrate:
11. No. of packages / containers, material wise, containing similar material:
12. Total Number of Packages / Containers:
13. Total Number of Conveyances:
14. Description of each conveyance, such as type, make, manufacturer name, colour, etc., alongwith identification number associated with each conveyance, such as registration number, engine number, chassis number, etc:

15. Description of animal used as conveyance:

16. Particulars of exit and re-entry for exhibiting in court:

17. Whether Magistrate has allowed the application moved under Section 52A (mention details):

18. Date and time of removal for disposal:

19. Certificate of destruction / disposal, as the case may be :

20. Remarks of the Inspecting Officer:

FORM-4

[See rule 8]

INVENTORY OF SEIZED MATERIAL

[Under sub-section (2) of Section 52A of the Narcotic Drugs and Psychotropic Substances Act,1985]

Case No.----------

Seizing agency: ----------

Seizing officer: ----------

Date of seizure: ----------

Place of seizure: ----------

Name and designation of the officer preparing this inventory: ----------

TABLE

Sl. No.	Description of the items seized	Quality	Quantity	Mode of packing	Mark and numbers	Other identifying Particulars of seized items or packing	Country of origin	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Signature, name and designation of the officer

Certification by the Magistrate under sub-section (3) of section 52A of the Narcotic Drugs and Psychotropic Substances Act,1985

Whereas the above officer applied to me under sub-section (2) section 52A of the Narcotic Drugs and Psychotropic Substances Act,1985 to certify the above inventory and sub-section (3) of that section requires any Magistrate to whom an application is made to allow the application as soon as may be, I, having been satisfied that the above inventory is as per the seizure documents and the consignments of seized materials related to the case presented before me, certify the correctness of the above inventory.

Signature, name and designation of the Magistrate

FORM-5

[See rule 8 and rule18(1)]

APPLICATION FOR DISPOSAL OF SEIZED NARCOTIC DRUGS, PSYCHOTROPIC SUBTANCES, CONTROLLED SUBSTANCES AND CONVEYANCES UNDER SUB SECTION (2) OF SECTION 52A OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

[Application to be made by the officer in-charge of a police station or an officer empowered under section 53 of the Narcotic Drugs and Psychotropic Substances Act,1985*who has custody of the material seized under the said Act]*

To

Learned Magistrate,

_____

Sir,

Sub: Application for certification of correctness of inventory, photographs and samples of seized narcotic drugs, psychotropic substances, controlled substances and conveyances

1. All narcotic drugs, psychotropic substances, controlled substances and conveyances have been identified by the Central Government under section 52A of the Narcotic Drugs and Psychotropic Substances Act,1985 as vulnerable to theft and substitution vide Notification No……. dated……
2. As required under sub-section (2) of section 52 A of the Narcotic Drugs and Psychotropic Substances

Act,1985, I submit the enclosed inventory of seized material and request you to-

(a) certify the correctness of the inventory;

(b) permit taking, in your presence, photographs of the seized items in the inventory and certify such photographs as true; and

(c) allow drawing of representative samples in your presence and certify the correctness of the list of samples so drawn.

3. I request you to allow this application under sub-section (3) of section 52 A of the Narcotic Drugs and Psychotropic Substances Act,1985 so that the seized narcotic drugs, psychotropic substances, controlled substances or conveyances can thereafter be disposed of as per sub-section (1) of section 52Aof the said Act retaining the certificate, photographs and samples as primary evidence as per sub-section (4) of section 52A.

Yours faithfully,

Date: Signature, name and designation of the officer

CERTIFICATE BY THE MAGISTRATE UNDER SUB-SECTION (3) OF SECTION 52A OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT,1985

I allow the above application under sub-section (3) of section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 and hereby, certify the correctness of the enclosed inventory, the enclosed photographs taken and the list of samples drawn in my presence.

Signature, name and designation of the Magistrate

Date:

FORM – 6

[See rule 13(2)]

TEST MEMO

Name and address of the seizure organisation ==========

SECTION –I (for use by the Seizing Officer)

1. Crime No.
2. Name and Address of the Officer(s) drawing sample:
3. Name and address of the accused(s):
4. Alleged description of drug and

   Weight of samples (net weight):
5. Date and time of seizure:
6. Place of Seizure:
7. Date of draw of sample:
8. No. of samples and marking on each of them for identification:
9. (a) Description of Seal:

(b) No. of seal put on samples:

10. Facsimile of the seal:

Name and signature of the forwarding Officer

SECTION-II (for use in the laboratory)

1. Date of receipt in the laboratory:
2. Weight (Net Weight) as found in the laboratory:
3. Date of conducting result of: -
   (a) Qualitative Test:
   (b) Quantitative Test:
   (c) General observation of the Chemist:

Name and signature of the Chemist

FORM-7

[See rule 25]

CERTIFICATE OF DESTRUCTION

This is to certify that the following narcotic drugs, psychotropic substances and controlled substances, were destroyed in our presence-

1. Case No.
2. Narcotic Drug / Psychotropic Substance / Controlled Substance:
3. Seizing agency:
4. Seizing officer:
5. Date of seizure:
6. Place of Seizure:
7. Godown entry number:
8. Gross weight of the drug seized:
9. Net weight of the narcotic drugs, psychotropic substances, controlled substances destroyed (after taking samples, etc.):
10. Where and how destroyed:

Signature(s), name(s) and designation(s) of
Chairman and Members of the Drug Disposal Committee.

FORM-8

[See rule 26(1)]

CERTIFICATE BY GOVERNMENT OPIUM AND ALKALOID WORKS

Reference No_____ Date _____

This is to certify that the following narcotic drugs / psychotropic substances / controlled substances were received in the Government Opium and Alkaloid Works:

1. Case No:
2. Seizing agency:
3. Seizing officer:
4. Date of seizure:
5. Place of Seizure:

6. Godown entry number:

7. Detail of the Narcotic Drug / Psychotropic Substance / Controlled Substance received in the Government Opium and Alkaloid Works:-

   (a) Name of the Narcotic Drug / Psychotropic Substance / Controlled Substance

   (b) Net weight of the Narcotic Drug / Psychotropic Substance / Controlled Substance received (if more than one drug and/or substance, net weight of the each to be specified)

8. Receipt of the aforesaid Narcotic Drug / Psychotropic Substance / Controlled Substance has been entered in the register at Sl No._____.

Signature, name, designation, office address of the officer authorised to sign this certificate as provided in rule 26.

FORM-9

[See rule 26 (2)]

REGISTER OF RECEIPT OF NARCOTIC DRUG / PSYCHOTROPIC SUBSTANCE / CONTROLLED SUBSTANCE TO BE MAINTIANED BY GOVERNMENT OPIUM AND ALKALOID WORKS

1. Sl No:

2. Case No:

3. Seizing agency:

4. Seizing officer:

5. Date of seizure:

6. Place of Seizure:

7. Godown entry number:

8. Name of the Narcotic Drug / Psychotropic Substance / Controlled Substance:

9. Net weight of the Narcotic Drug / Psychotropic Substance / Controlled Substance received (if more than one drug or substance, net weight of the each to be specified with consecutive serial number):

10. Reference No. and Date of the Certificate issued for receipt of the aforesaid Narcotic Drug/Psychotropic Substance/Controlled Substance:

Signature, name, and designation of the officer
authorized to sign the certificate as provided in rule 26.

FORM-10

[See rule 27]

CERTIFICATE OF DISPOSAL

This is to certify that the following narcotic drugs, psychotropic substances, controlled substances, and conveyances were disposed of:-

1. Case No:
2. Seizing agency:
3. Seizing officer:
4. Date of seizure:
5. Place of Seizure:
6. Godown entry number:
7. Detail of the Narcotic Drug / Psychotropic Substance / Controlled Substance:-
   (a) Name of the drug / substance:
   (b) Gross weight of the drug / substance seized (if more than one drug or substance, gross weight of the each to be specified):
   (c) Net weight of the drug / substance after taking samples (if more than one drug and/or substance, net weight of the each to be specified):
   (d) Quantity transferred to Government Opium and Alkaloid Works:
   (e) Reference No. and Date of the Certificate issued by Government Opium and Alkaloid Works:
   (f) Quantity sold:
   (g) Sale proceeds realised (in Rupees):
   (h) To whom sold:
8. Detail of the conveyance: -
   (a) Registration Number of the conveyance:
   (b) Description of the conveyance (manufacturer, model, colour, etc. to be specified):

(c) Identification numbers of the conveyance, such as engine number, chassis number, etc., to be specified:

(d) Sale proceeds realised (in Rupees):

(e) To whom sold:

Signature (s), name(s) and designation(s)
of Chairman and Members of the Drug Disposal Committee.

FORM-11

[See rule 28]

QUARTERLY REPORT TO BE SUBMITTED BYTHE HEAD OF DEPARTMENT OF CENTRAL DRUG LAW ENFORCEMENT AGENCY/ STATE DRUG LAW ENFORCEMENT AGENCY

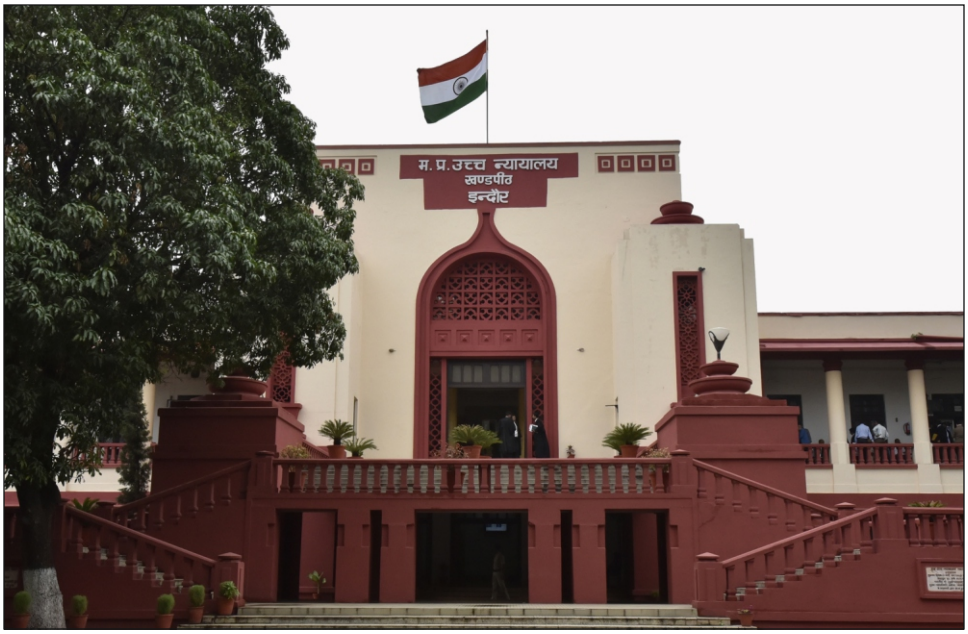
TO THE NARCOTICS CONTROL BUREAU

Report for the quarter ending_____ Date _____

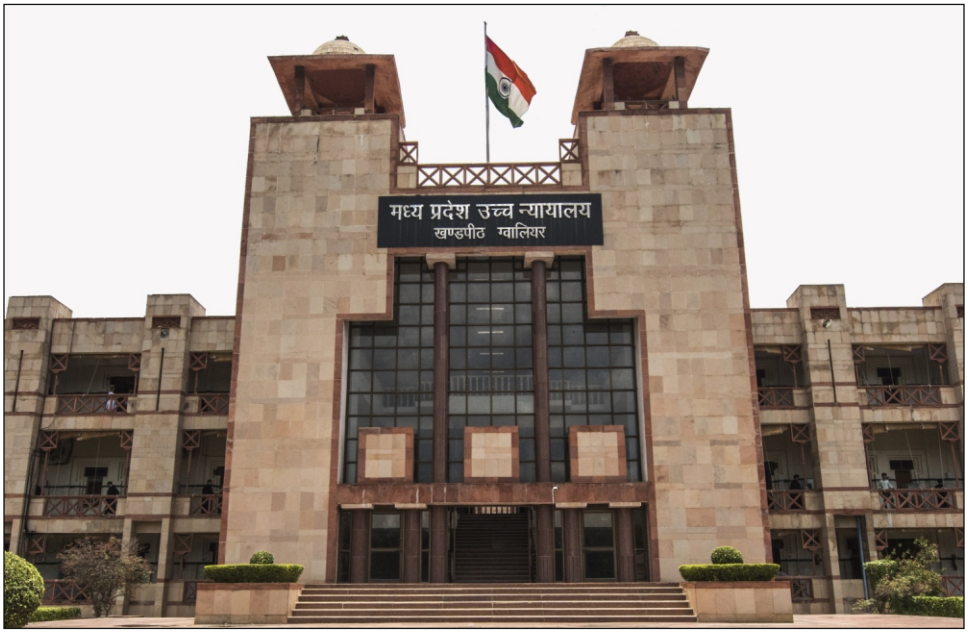
Name and address of the law enforcement agency: _____

1. Number of cases at the beginning of the quarter
2. Number of new cases during the quarter
3. Total number of cases (1+2):
4. Out of the total number of cases at 3 above, number of cases where application has been moved under sub-section 2of section 52A of the Act:
5. Number of cases where application moved under sub-section 2 of section 52A of the Act has been allowed under sub-section (3) of the said section 52A:
6. Out of the cases at 5 above, number of cases where seized material has been disposed of

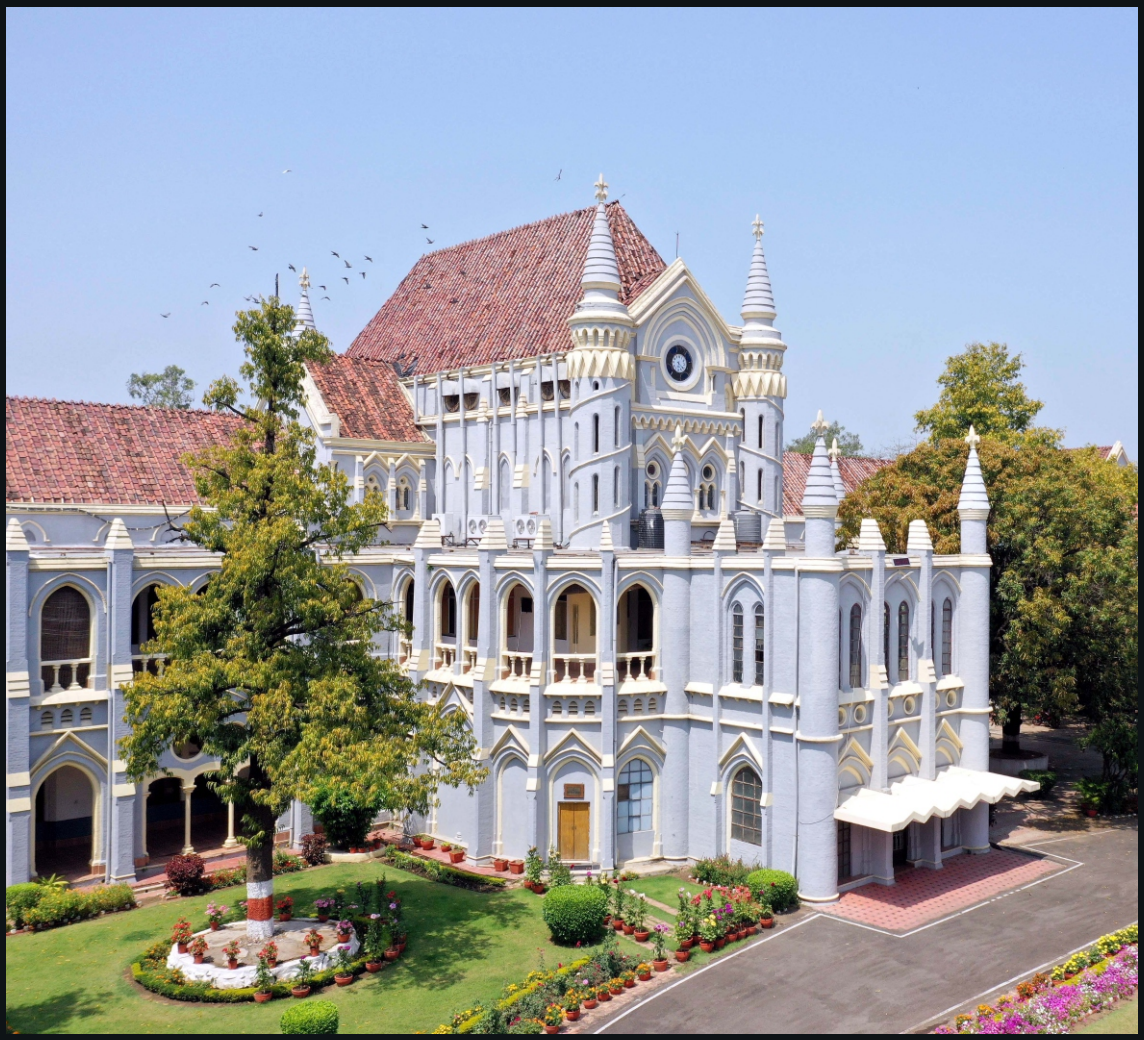
Signature, Name, designation, office address of the officer
authorised by the Head of Department of Central Law Enforcement Agency/
State Law Enforcement Agency to sign this certificate



मध्यप्रदेश उच्च न्यायालय, खण्डपीठ इन्दौर



मध्यप्रदेश उच्च न्यायालय, खण्डपीठ ग्वालियर



मध्यप्रदेश उच्च न्यायालय, जबलपुर

मध्यप्रदेश राज्य न्यायिक अकादमी

ब्योहारबाग, जबलपुर (म.प्र.) - 482 007

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