

I. L. R. (2009) M P



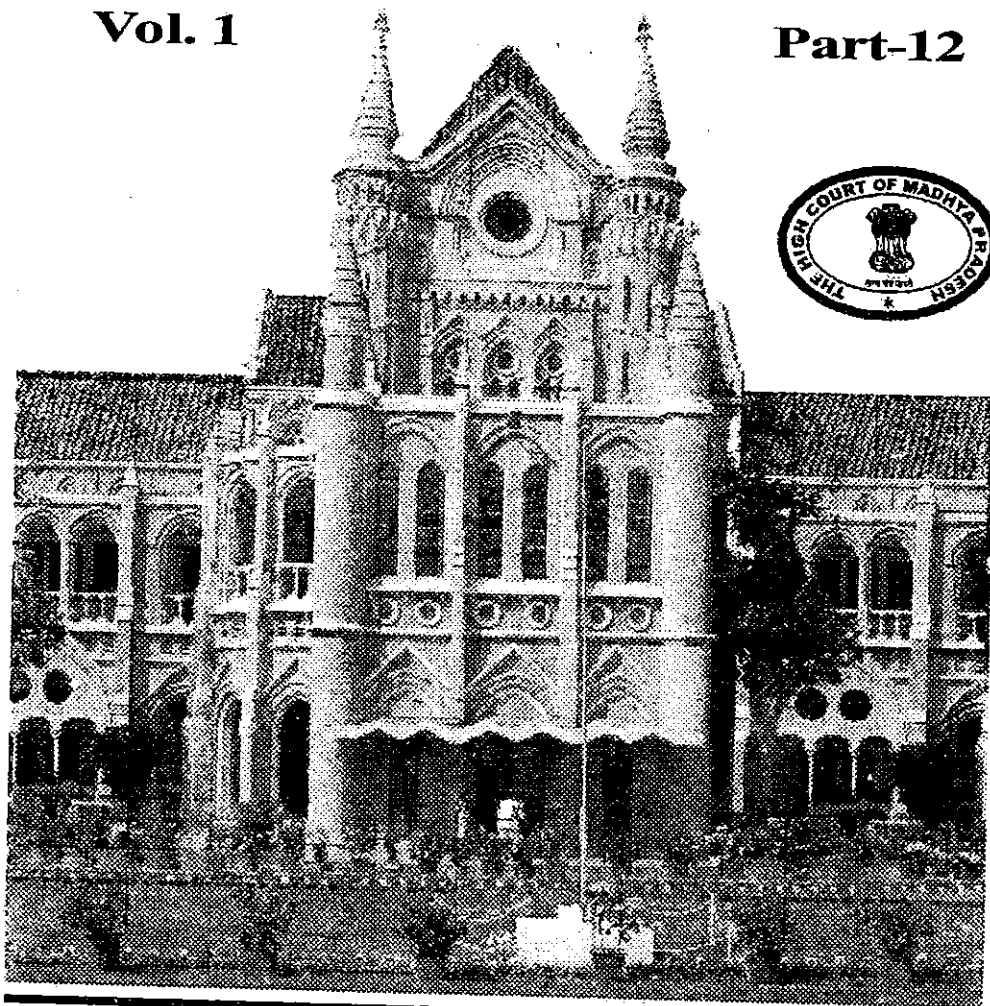
THE INDIAN LAW REPORTS

CONTAINING M. P. SERIES

CASES DECIDED BY THE SUPREME COURT OF INDIA AND
THE HIGH COURT OF MADHYA PRADESH

Vol. 1

Part-12



December (Single copy Rs.30)
(pp. 3241 to 3466) * (All Rights Reserved)

2009

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ILR (M.P. Series) 2009=Other Journals

1=	214=
10=	218=
16=	224=
21= 2009 (1) MPHT 162 (DB)	229=
31=	234=
41=	241= 2009 (3) MPHT 196
47= 2009 (1) MPLJ 207=2009 (1) MPJR SN 13	246=
55=	251=
67= 2009 (2) MPJR SN 16	255=
70=	259= 2009 (1) MPHT 215
72=	264=
78= 2009 (1) MPLJ 611 (DB)	270=
84=	272=
100= 2009 (3) MPHT 193	276= 2009 (1) MPHT 516 = 2009 (1) MPLJ 376 = 2009 (1) JLJ 106
103= 2009 (2) MPLJ 297=2009 (2) MPJR SN 11	286=
107=	292=
112= 2009 (1) MPHT 99 (DB)	309=
127= 2009 (2) MPHT 204	317= 2009 (2) MPLJ 150
131= 2009 (1) MPLJ 106	321=
136= 2009 (2) MPHT 26	327= 2009 (1) MPJR 32 (SC)
144= 2009 (1) MPHT 446=2009 (1) MPLJ 248=2009 (1) MPJR SN 10 =2009 (1) JLJ 223	332= 2009 (1) MPJR 7 (SC)
155=	336= 2009 (1) MPHT 296 = 2009 (2) MPLJ 365 (DB)
165= 2009 (1) MPHT 322=2009 (1) JLJ 320	341=
176=	346=
186= 2009 (2) MPHT 38 =2009 (1) MPLJ 426 = 2009 (2) MPJR 117=2009 (1) JLJ 348	359=
195=	370= 2009 (1) MPLJ 200 = 2009 (2) MPJR 260
197=	373=
204=	377= 2009 (1) MPHT 383
	386=
	396=
	402=

Comparative Table

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408=	589= 2009 (2) MPHT 470 = 2009 (1)
415= 2009 (1) MPJR 321	MPJR 367
424=	591=
430= 2009 (1) MPHT 128 (DB)	594=
436= 2009 (1) MPHT 280 = 2009 (2)	597= 2009 (1) MPHT 58 = 2009 (1)
MPLJ 455 (DB)	MPJR 29
440= 2009 (1) MPHT 262 = 2009 (1)	600=
MPLJ 158 (DB)	604=
446=	609=
450= 2009 (2) MPHT 351 = 2009 (1)	613=
MPLJ 477 (DB)	615=
455=	618= 2009 (1) MPLJ 244 = 2009 (2)
466= 2009 (1) MPHT 196 = 2009 (2)	MPJR 71 (DB)
MPLJ 254	623=
471=	636=
476=	639=
485= 2009 (1) MPHT 48 = 2009 (2)	643=
MPJR 199 = 2009 (2) MPLJ 222	648= 2009 (1) MPHT 401
490= 2009 (1) MPLJ 222 (DB)	653= 2009 (1) MPHT 288 = 2009 (1)
495= 2009 (2) MPLJ 88	MPLJ 258
497=	662=
501=	675=
504= 2009 (2) MPHT 509	681=
508=	691=
513=	700=
518=	706= 2009 (1) MPHT 212 = 2009 (2)
523=	MPLJ 198
536= 2009 (1) JLJ 167	709=
548=	711=
559= 2009 (2) MPJR 225	714=
563= 2009 (1) MPHT 43 = 2009 (1) JLJ	717=
285	730= 2009 (2) MPHT 142 (DB)
568= 2009 (1) MPHT 251	747=
580= 2009 (1) MPJR 20	752=
585= 2009 (1) MPHT 54 = 2009 (2)	757= 2009 (2) MPJR SN 8
MPLJ 219 (DB)	765= 2009 (1) MPHT 499 = 2009 (1)

(8)

Comparative Table

MPLJ 418 = 2009 (1) MPJR 362	953=
= 2009 (1) JLJ 181	956=
771=	959=
778=	974= 2009 (1) MPHT 202 = 2009 (2)
785= 2009 (2) MPJR SN 6 = 2009 (1)	MPLJ 242
JLJ 298	979=
795= 2009 (2) MPHT 317 = 2009 (2)	985=
MPJR 83	994= 2009 (2) MPHT 235 (DB)
802=	999=
806=	1004=
817=	1010=
824= 2009 (2) MPLJ 324	1017=2009 (2) MPLJ 447 = 2009 (2)
830= 2009 (2) MPLJ 475 = 2009 (1)	MPJR 238
MPJR 293	1025=2009 (2) MPLJ 424
837= 2009 (2) MPHT 396 = 2009 (1)	1031=
MPLJ 313 = 2009 (2) MPJR SN 1	1045=2009 (2) MPHT 58 (DB)
843= 2009 (2) MPHT 442 = 2009 (1)	1048=2009 (1) MPLJ 305 = 2009 (2)
MPLJ 616	MPJR SN 12
848=	1055=
854=	1060=2009 (1) MPLJ 586 = 2009 (1)
859=	MPJR 314
866= 2009 (1) MPHT 134 (DB)	1067=2009 (2) MPHT 115 = 2009 (1)
870=	MPLJ 413
875= 2009 (2) MPHT 34 (DB)	1073=2009 (2) MPHT 336 = 2009 (1)
879=	MPLJ 582
885= 2009 (2) MPHT 198	1075=2009 (1) MPLJ 620
891=	1079=
894=	1086=
897= 2009 (1) MPJR 1	1094=2009 (2) MPHT 280
899=	1099=2009 (2) MPLJ 559 = 2009 (2)
906= 2009 (1) MPJR 329 (FB)	MPJR SN 23
915= 2009 (2) MPHT 426 = 2009 (2)	1109=
MPLJ 577 = 2009 (2) MPJR 218	1113=
(FB)	1117=2009 (1) MPHT 269 (DB)
923=	1128=2009 (2) MPHT 138 (DB)
946=	1131=

Comparative Table

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1137=	1319=2009 (2) MPHT 270(DB)= 2009
1140=	(2) MPJR 36
1145=	1326=
1148=	1331=2009 (2) MPLJ 662
1154=	1335=2009 (2) MPLJ 432
1160=2009 (2) MPHT 302 (DB)	1342=2009 (2) MPHT 48 (DB)
1166=2009 (1) JLJ 209 = 2009 (2) MPLJ 184	1351=2009 (1) MPHT 139=2009 (2) MPLJ 247=2009 (2) MPJR 403
1172=2009 (1) MPHT 525 = 2009 (1) MPLJ 318 = 2009 (2) MPJR SN 33	1356=2009 (2) MPHT 123=2009 (1) MPLJ 467=2009 (1) MPJR 276=2009 (1) JLJ 198
1178=	1367=2009 (3) MPHT 161= 2009 (1) MPLJ 559=2009 (2) MPJR 277
1184=2009 (1) MPLJ 624	1374=2009 (2) MPHT 186=2009 (2) MPLJ 156
1193=	1385=
1197=	1390=2009 (2) MPHT 540
1200=	1394=
1204=2009 (2) MPLJ 659=2009 (3) MPJR 233= 2009 (1) JLJ 445	1402=
1207=	1408=2009 (2) MPLJ 587= 2009 (3) MPJR 118 = 2009 (2) JLJ 276
1225=2009 (1) MPHT 9 (DB)	1415=2009 (3) MPHT 168 = 2009 (2) MPLJ 638= 2009 (3) MPJR 226= 2009 (3) JLJ 55
1233=2009 (1) MPHT 22=2009 (2) MPLJ 189	1422=
1235=2009 (1) MPHT 155	1427=
1241=2009 (1) MPLJ 143	1431=
1249=	1435=2009 (2) JLJ 438
1255=2009 (1) MPLJ 176	1445=2009 (1) MPLJ 384
1260=2009 (1) MPHT 121 (DB)= 2009 (2) MPLJ 200	1476=
1266=2009 (1) MPLJ 326=2009 (1) MPJR SN 14 = 2009 (1) JLJ 40	1477=
1280=	1484=
1293=2009 (2) MPHT 75=2009 (3) MPLJ 527	1489=
1296=	1493=2009 (4) MPHT 178
1306=	1497=2009 (2) MPJR 155
1311=2009 (3) MPHT 122=2009 (1) MPLJ 575=2009 (1) MPJR 258	1502=2009 (3) MPHT 490

1506=2009 (4) MPHT 130=2009 (3)	1666=
MPLJ 459=2009 (3) MPJR	1675=2009 (2) MPHT 288 (DB)
47=2009 (2) JLJ 284	1679=2009 (2) MPHT 297 (DB)
1515=2009 (4) MPHT 155	1683=2009 (2) MPHT 479 (DB)
1531=2009 (2) MPLJ 546	1697=2009 (3) MPHT 60 (DB) =2009
1534=	(3) MPLJ 662=2009 (2) MPJR 292
1537=2009 (3) MPHT 410=2009 (3)	1707=2009 (2) MPJR 322
MPLJ 435	1717=2009 (3) MPLJ 197
1545=	1721=
1552=2009 (3) MPJR (SC) 41	1726=2009 (3) MPHT 27=2009 (3)
1557=	MPLJ 6
1561=2009 (1) JLJ 313	1732=2009 (3) MPLJ 254
1568=2009 (3) MPHT 304 (FB)= 2009	1737=2009 (3) MPLJ 246
(2) MPLJ 593=2009 (2) MPJR	1747=
(FB) 16= 2009 (2) JLJ 298	1755=2009 (1) MPJR SN 13
1586=2009 (3) MPHT 301(FB)= 2009	1760=
(2) MPLJ 567=2009 (2) MPJR	1764=
302=2009 (1) JLJ 370	1769=2009 (2) MPHT 78
1589=2009 (2) MPHT 256(DB)	1774=
1595=2009 (3) MPHT 113(DB)= 2009	1780=2009 (2) MPJR 107=2009 (1) JLJ
(3) MPLJ 691	374
1597=2009 (2) MPHT 343 (DB)	1789=2009 (3) MPHT 34 (DB)
1603=2009 (2) MPHT 339(DB)	1794=2009 (3) MPLJ 329
1607=	1798=2009 (3) MPLJ 208
1615=2009 (4) MPHT 123 (DB)= 2009	1807=
(3) MPLJ 39=2009 (2) MPJR 211	1825=
1623=2009 (2) MPHT 245=2009 (3)	1836=
MPLJ 547	1840=
1631=2009 (1) JLJ 437	1843=
1638=2009 (2) MPHT 64(DB) = 2009	1847=2009 (2) JLJ 126
(3) MPLJ 524	1857=
1642=2009 (2) JLJ 367	1861=
1647=2009 (2) MPHT 262(DB)= 2009	1866=
(3) MPLJ 554	1869=2009 (3) MPHT 356 (FB)= 2009
1651=	(2) MPLJ 609(FB)= 2009 (2)
1658=2009 (3) MPHT 101=2009 (2)	MPJR (FB) 43=2009 (3) JLJ 15
MPLJ 236	

Comparative Table

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1887=2009 (1) MPLJ 239	2073=2009 (3) MPHT 228 (DB)= 2009
1893=2009 (2) MPHT 240 (DB)	(2) MPJR 206
1898=2009 (3) MPHT 465 (DB) =2009	2078=
(2) MPLJ 625=2009 (2) MPJR 407	2083=
1903=2009 (2) MPHT 357 (DB) = 2009	2093=2009 (2) MPHT 513
(1) MPLJ 647	2098=2009 (3) MPHT 116
1913=2009 (3) MPHT 109 (DB) =2009	2101=2009 (3) MPHT 204
(3) MPLJ 694	2111=2009 (2) MPLJ 378
1917=	2116=2009 (1) MPHT 208
1922=	2120=
1928=2009 (1) MPLJ 552	2123=
1935=2009 (2) MPHT 182=2009 (3)	2126=2009 (2) MPJR 317
MPLJ 519	2129=
1939=2009 (2) MPHT 277 (DB)	2133=
1942=2009 (2) MPLJ 107	2136=2009 (2) JLJ 226
1947=2009 (2) MPHT 308 (DB)= 2009	2164=2009 (3) MPHT 335 (DB)
(3) MPLJ 670	2168=2009 (3) MPHT 387(DB)= 2009
1952=	(3) MPLJ 366
1959=2009 (2) MPLJ 632	2173=
1966=2009 (3) MPHT 77 (DB)= 2009	2179=
(3) MPLJ 648	2182=
1978=2009 (2) MPHT 435 (DB)	2191=2009 (2) MPLJ 166
1984=2009 (2) MPLJ 667	2210=2009 (2) MPHT 292 (DB)
1988=2009 (3) MPHT 16(DB)= 2009 (3)	2215=2009 (3) MPLJ 383
MPLJ 191=2009 (2) JLJ 135	2219=
1994=2009 (3) MPHT 270	2228=2009 (4) MPHT 26 (DB) = 2009
2023=2009 (3) MPHT 256 (DB)= 2009	(2) MPJR 229
(3) MPLJ 239	2233=2009 (3) MPHT 41 (DB) = 2009
2027=2009 (3) MPHT 251 (DB) =2009	(3) MPLJ 674 =2009 (2) MPJR
(3) MPLJ 76	418
2041=2009 (2) MPLJ 85	2249=2009 (3) MPHT 39(DB) =2009
2044=2009 (2) MPLJ 142	(3) MPLJ 660
2047=	2251=
2057=2009 (2) MPHT 267 (DB)	2264=2009 (3) MPLJ 30
2060=2009 (4) MPHT 31=2009 (3)	2269=2009 (3) MPHT 418 (DB)
MPLJ 616=2009 (2) MPJR	2310=
333=2009 (2) JLJ 176	

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2315=	2526=
2328=2009 (3) MPLJ 472	2531=
2360=	2534=2009 (IV) MPJR 50
2369=	2540=2009 (4) MPHT 299 (DB)=2009 (4) MPLJ 512=2009 (II) MPJR 204
2373=2009 (3) MPLJ 34	2542=2009 (3) MPHT 330 (DB)=2009 (3) MPLJ 235
2376=2009 (3) MPLJ 50	2547=2009(III) MPJR 113=2009(2) JLJ 155
2382=2009 (3) MPHT 215=2009 (3) MPLJ 45	2552=
2388=2009 (3) MPHT 175(DB)= 2009 (3) MPLJ 55=2009 (2) MPJR 412=2009 (2) JLJ 426	2557=2009 (3) MPHT 507
2395=	2563=2009 (5) MPHT 55=2009 (3) MPLJ 359
2409=	2567=2009 (3) MPHT 504
2415=	2570=
2425=	2576=2009 (III) MPJR 83
2433=	2583=2009 (4) MPHT 10 (DB)=2009 (3) MPLJ 322
2437=	2590=2009 (4) MPLJ 387
2443=	2599=2009 (4) MPLJ 566
2446=2009 (2) MPLJ 373	2601=2009 (3) MPHT 346=2009 (4) MPLJ 10 = 2009 (I) MPJR 287
2450=2009 (2) MPLJ 369	2607=2009 (3) MPLJ 375
2455=	2616=2009 (3) MPLJ 168
2464=	2623=2009 (3) MPLJ 174=2009 (3) JLJ 84
2472=	2630=2009 (4) MPHT 285=2009 (3) MPLJ 395=2009 (III) MPJR 90 =2009 (2) JLJ 348
2477=	2640=
2480=	2643=2009 (3) MPHT 519 (DB) = 2009 (2) JLJ 254
2483=2009 (III) MPJR (SC) 1	2652=2009 (2) JLJ 148
2487=	2660=
2490=2009 (4) MPHT 425 (FB)=2009 (4) MPLJ 453=2009 (IV) MPJR (FB) 122	2671=
2496=	2675=2009 (2) JLJ 115
2503=2009 (5) MPHT 62 (DB) = 2009 (III) MPJR 6	
2514=2009 (3) MPLJ 408	
2517=2009 (3) MPLJ 442	
2521=	

Comparative Table

(13)

2680=	2863=2009 (IV) MPJR SN 11
2686=2009 (3) MPHT 513	2886=
2692=2009 (3) MPHT 238 (DB)	2897=
2706=	2906=2009 (4) MPHT 373 (DB) = 2009
2713=	(4) MPLJ 458
2721=2009 (5) MPHT 402=2009 (II)	2911=
MPJR 196	2915=2009 (5) MPHT 166 = 2009 (3)
2724=	MPLJ 700
2728=	2919=2009 (3) MPLJ 73
2731=2009 (3) MPHT 495	2922=
2735=	2926=2009 (4) MPLJ 426
2739=	2935=2009 (4) MPHT 442 (DB)
2748=2009 (4) MPHT 352 (FB)=2009	2941=
(4) MPLJ 57=2009 (IV) MPJR	2965=
(FB) 108=2009 (3) JLJ 253	2968=2009 (4) MPLJ 377
2752=2009 (4) MPHT 377 (FB)=2009	2979=
(4) MPLJ 66=2009 (IV) MPJR	2982=
(FB) 153=2009 (3) JLJ 276	2994=
2760=2009 (IV) MPJR 367	2999=
2766=	3003=2009 (3) JLJ 337
2769=	3012=
2796=	3019=2009 (3) MPHT 324 (DB) = 2009
2799=2009 (3) MPLJ 179	(3) MPLJ 411
2804=2009 (3) MPLJ 345	3025=
2811=2009 (5) MPHT 60 (DB)=2009 (3)	3032=
MPLJ 259	3035=
2813=2009 (3) MPLJ 88	3041=
2818=2009 (3) MPLJ 159	3046=2009 (5) MPHT 233 (DB) = 2009
2824=	(4) MPLJ 212=2009 (3) JLJ 266
2830=2009 (4) MPHT 472=2009 (4)	3053=
MPLJ 351=2009 (IV) MPJR 55	3061=
2842=	3063=2009 (2) MPHT 285= 2009 (4)
2848=2009 (4) MPHT 277 (DB)	MPLJ 56
2854=2009 (3) MPLJ 697	3067=2009 (3) MPHT 70 (DB) = 2009
2858=2009 (5) MPHT 343 (DB) = 2009	(3) MPLJ 370=2009 (2) JLJ 333
(3) MPLJ 688 = 2009 (IV) MPJR	3072=2009 (5) MPHT 74
68	

(14)

Comparative Table

3079=	3252=
3090=2009 (4) MPHT 263 (DB) = 2009 (4) MPLJ 434	3254=2009 (4) MPLJ 395
3098=2009 (4) MPLJ 374=2009 (IV) MPJR 285	3257=
3101=	3265=
3107=	3273=2009 (3) MPLJ 416=2009 (III) MPJR 293
3111=2009 (4) MPHT 347 (DB) = 2009 (4) MPLJ 182	3276=2009 (4) MPLJ 405=2009 (2) JLJ 108
3115=2009 (5) MPHT 348	3282=2009 (5) MPHT 13 (DB)
3125=	3291=2009 (4) MPLJ 139
3128=2009 (5) MPHT 293 (DB)	3296=2009 (5) MPHT 243 (DB) = 2009 (4) MPLJ 144
3133=	3302=
3139=	3322=2009 (5) MPHT 187
3144=	3334=-
3148=	3341=
3151=2009 (4) MPHT 148 = 2009 (3) MPLJ 445 = 2009 (III) MPJR 77 = 2009 (3) JLJ 112	3351=2009 (5) MPHT 23 (DB)=2009 (4) MPLJ 530
3158=2009 (III) MPJR 154	3357=2009 (5) MPHT 371 (DB) = 2009 (IV) MPJR 293
3167=	3365=2009 (5) MPHT 418
3172=	3371=
3177=2009 (5) MPHT 96=2009 (4) MPLJ 75	3382=2009 (4) MPLJ 526
3182=	3387=2009 (3) MPLJ 389
3187=	3390=2009 (5) MPHT 44
3201=2009 (4) MPHT 449	3395=
3205=	3401=
3214=	3411=
3221=	3426=
3226=	3437=
3234=	3440=
3241=2009 (4) MPLJ 90 = 2009 (IV) MPJR 384= 2009 (2) JLJ 54	3449=
3247=2009 (4) MPLJ 331=2009 (2) JLJ 338	3452=2009 (4) MPLJ 149
	3454=
	3462=2009 (5) MPHT 359
	*1=

Comparative Table

(15)

*2=		*30= 2009 (2) MPHT 533 (DB) = 2009
*3=	2009 (2) MPHT 135 = 2009 (1)	(3) MPLJ 388
	MPJR 45 = 2009 (2) MPLJ 154	*31=
*4=		*32= 2009 (3) MPLJ 319
*5=		*33=
*6=		*34=
*7=		*35=
*8=		*36=
*9=		*37= 2009 (3) MPHT 471
*10=		*38=
*11=		*39= 2009 (5) MPHT 148=2009 (4)
*12=		MPLJ 131
*13=		*40= 2009 (3) JLJ 330
*14=		*41=
*15=	2009 (1) MPHT 29 = 2009 (1)	*42= 2009 (5) MPHT 298 (DB)
	MPLJ 604	*43= 2009 (4) MPHT 175
*16=	2009 (2) MPJR SN 20	*44= 2009 (5) MPHT 170 (DB) = 2009
*17=		(3) JLJ 131
*18=	2009 (2) MPHT 101 = 2009 (1) JLJ	*45=
	308	*46= 2009 (3) MPHT 485
*19=		*47=
*20=		*48=
*21=	2009 (1) MPJR SN 9	*49= 2009 (3) MPLJ 418 = 2009 (III)
*22=		MPJR 301
*23=		*50= 2009 (5) MPHT 380 (DB) = 2009
*24=		(3) MPLJ 392
*25=		*51= 2009 (4) MPLJ 79
*26=		*52=
*27=		*53=
*28=	2009 (1) MPHT 144 =2009 (2)	*54=
	MPLJ 258 = 2009 (3) MPJR 130	*55= 2009 (IV) MPJR 288 = 2009 (3)
*29=		JLJ 248

(Note An asterisk (*) denotes Note number)

Accommodation Control Act, M.P. (41 of 1961), Sections 12(1)(a), (c) & (n) - See - *Civil Procedure Code, 1908, Section 10* [Rajesh Singh v. Manoj Kumar] ...2906

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) - *Changed the user of accommodation - Trial Court passing a decree u/s 12(1)(c) and First Appellate Court affirming the findings - Held - First Appellate Court erred in substantial error of law by affirming the judgment and decree passed by the Trial Court u/s 12(1)(c) without giving any reason.* [Bhanwarlal (Dead) Through L.Rs. Smt. Sushilal Bai v. Chandra Shekhar Vashishtha] ...3172

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) - *Suit for eviction - Tenant inducted in the tenanted premises for residential purpose - Tenant converted one entire room situated at front side of tenanted premises for STD/PCO Centre - Held - Act of tenant is inconsistent with the purpose of tenancy - Single act of the tenant is sufficient to cause his eviction provided that the act is of gravity - Judgment & decree u/s 12(1)(c) of the Act affirmed - Appeal dismissed.* [Sahibram Dhingra (Died) Through L.R. Narendra Dhingra v. Shivshankar Goyal] ...3151

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(i) - *Acquired suitable accommodation for residential purpose - Tenant alleging that the acquired property is in dilapidated condition - Held - Tenant admitted that he is residing with his family in the purchased house it consists of nine rooms plus latrine & bathroom having electrical and water fittings - Tenant acquired a suitable accommodation for his residence - Merely because First Appellate Court has mentioned that tenant is also residing in the house purchased in the name of his wife, would in itself is not a ground to hold that the tenant is not residing in his own house - Decree affirmed - Appeal dismissed.* [Bhanwarlal (Dead) Through L.Rs. Smt. Sushilal Bai v. Chandra Shekhar Vashishtha] ...3172

Accommodation Control Act, M.P. (41 of 1961), Section 43(3), Criminal Procedure Code, 1973, Section 200 - *Complaint - Letting out tenanted premises to sub-tenant without permission of landlord is prohibited u/s 14 of Act - Tenant liable to face penalty u/s 43(3) of Act for doing any act of subletting in contravention of S. 14 of Act - Merely because time was granted by HC in Second Appeal to vacate premises would not mean that there is no material to register the complaint - Magistrate acted illegally by not registering the case - Revision allowed.* [Manisha Lalwani (Smt.) v. Dr. D.V. Paul] ...2721

Accommodation Control Act, M.P. (41 of 1961), Section 43(3) - *Provision is applicable only against tenant and not against the sub-tenant.* [Manisha Lalwani (Smt.) v. Dr. D.V. Paul] ...2721

(Note An asterisk (*) denotes Note number)

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का), धाराएँ 12(1)(ए), (सी) व (एन) — देखें — सिविल प्रक्रिया संहिता, 1908, धारा 10, (राजेश सिंह वि. मनोज कुमार) ...2906

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12 (1)(सी) — स्थान के उपयोग में परिवर्तन — विचारण न्यायालय ने धारा 12(1)(सी) के अंतर्गत डिक्री पारित की और प्रथम अपीलीय न्यायालय ने निष्कर्षों की पुष्टि की — अभिनिर्धारित — प्रथम अपीलीय न्यायालय ने बिना कोई कारण बताए विचारण न्यायालय द्वारा पारित धारा 12(1)(सी) के निर्णय और डिक्री की पुष्टि कर विधि की सारवान त्रुटि की। (भंवरलाल (मृतक) द्वारा विधिक प्रतिनिधि श्रीमति सुशीला बाई वि. चंद्रशेखर वशिष्ठ) ...3172

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(सी) — बेदखली का वाद — किरायेदार किरायेदारी परिसर में नैवासिक प्रयोजन के लिए अधिवासित किया गया — किरायेदार ने किरायेदारी परिसर के सामने की ओर स्थित एक पूरा कमरा एस.टी.डी./पी.सी.ओ. सेंटर में परिवर्तित किया — अभिनिर्धारित — किरायेदार का कृत्य किरायेदारी प्रयोजन से असंगत है — किरायेदार का एकमात्र कृत्य उसकी बेदखली कारित करने के लिए पर्याप्त है यदि वह कृत्य गंभीर प्रकृति का हो — अधिनियम की धारा 12(1)(सी) के अधीन निर्णय व डिक्री की पुष्टि की गई — अपील खारिज। (साहिबराम ढींगरा (मृतक) द्वारा विधिक प्रतिनिधि नरेन्द्र ढींगरा वि. शिवशंकर गोयल) ...3151

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41) — धारा 12(1)(आई) — नैवासिक प्रयोजन के लिए उपयुक्त स्थान का अर्जन — किरायेदार का अभिकथन कि अर्जित सम्पत्ति जीर्ण शीर्ण स्थिति में है — अभिनिर्धारित — किरायेदार ने स्वीकार किया कि वह उसके परिवार के साथ क्रय किये हुए मकान, जिसमें नौ कमरे, लेट्रिन और बाथरूम हैं और बिजली और पानी की फिटिंग है, में निवास कर रहा है — किरायेदार ने उसके निवास के लिए उपयुक्त स्थान अर्जित कर लिया — केवल प्रथम अपीलीय न्यायालय का यह दर्शाना कि किरायेदार उसकी पत्नी के नाम क्रय किये गये मकान में भी निवास कर रहा है, यह अपने आप में यह अभिनिर्धारित करने का आधार नहीं है कि किरायेदार उसके स्वयं के मकान में निवास नहीं कर रहा है — डिक्री की पुष्टि की — अपील खारिज। (भंवरलाल (मृतक) द्वारा विधिक प्रतिनिधि श्रीमति सुशीला बाई वि. चंद्रशेखर वशिष्ठ) ...3172

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 43(3), दण्ड प्रक्रिया संहिता, 1973, धारा 200 — परिवाद — भूस्वामी की अनुमति के बिना किरायेदारी परिसर उपभाड़ेदार को किराये पर देना अधिनियम की धारा 14 के अन्तर्गत प्रतिषिद्ध है — भाड़ेदार अधिनियम की धारा 14 के उल्लंघन में उपभाड़े पर देने का कोई कृत्य करने के लिए अधिनियम की धारा 43(3) के अन्तर्गत शासित का दायी — केवल इसलिए कि उच्च न्यायालय द्वारा द्वितीय अपील में परिसर रिक्त करने के लिए समय दिया गया, का अर्थ यह नहीं होगा कि परिवाद रजिस्टर करने के लिए कोई सामग्री नहीं है — मजिस्ट्रेट ने मामला रजिस्टर न करके अवैधानिक कृत्य किया — पुनरीक्षण मंजूर। (मनीषा लालवानी (श्रीमति) वि. डॉ. डी.व्ही.पॉल) ...2721

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 43(3) — उपबंध केवल भाड़ेदार के विरुद्ध लागू होता है उपभाड़ेदार के विरुद्ध नहीं। (मनीषा लालवानी (श्रीमति) वि. डॉ. डी. व्ही.पॉल) ...2721

Board of Secondary Education (Enrolment) Rules, 1994, Rules 3, 5, 6 & 8 - See - Board of Secondary Education (Madhya Pradesh) Regulation, 1965, Regulation 128 & 129 [Devmata Educational & Welfare Association Samiti, Birsinghpur Pali v. State of M.P.] ...3282

Board of Secondary Education (M.P.) Regulations, 1965, Regulation 97, Proviso - See - Madhyamik Shiksha Adhiniyam, M.P., 1965, Section 28(4), [Firoz Khan v. Secretary, Board of Secondary Education] ...2848

Board of Secondary Education (Madhya Pradesh) Regulation, 1965, Regulation 128 & 129, Board of Secondary Education (Enrolment) Rules, 1994, Rules 3, 5, 6 & 8 - Examination - 31 students of class X not permitted to appear in examination for the reason their applications for enrolment were submitted in the Board after prescribed date - Held - Object of the Rules and Regulations is to ensure that regular students in fact were admitted in the school in class IX and intended to take the class X examinations of the Board after two years of the study in class IX and class X - Hence, if these conditions are satisfied but the applications for enrolment are sent beyond the time prescribed, such applications, if rejected, would lead to injustice and hardship to such students - Petition allowed. [Devmata Educational & Welfare Association Samiti, Birsinghpur Pali v. State of M.P.] ...3282

Civil Procedure Code (5 of 1908) [As amended w.e.f. 01.02.1977], Order 11 Rules 1 to 11, 12, 15 to 18 and Order 11 Rule 21 - Non-compliance with order for discovery - Non-compliance of order to answer interrogatories, or for discovery or inspection of documents by plaintiff - In this situation, only on an application and that too after giving notice to the parties and giving them reasonable opportunity of being heard - Court can dismiss the suit, exercising power under Order 11 Rule 21. [Archdiocese of Bhopal Regd. Society v. Hasan Kabir] ...3351

Civil Procedure Code (5 of 1908) [As amended w.e.f. 01.02.1977], Order 11 Rules 14 & 21 - Production of documents - Non-compliance of the order passed under Order 11 Rule 14 with respect to production of documents - Suit dismissed under Order 11 Rule 21 - Held - Legislature in its wisdom has not included in Rule 21 of Order 11 such a penal consequence due to non-compliance of order passed under Order 11 Rule 14 - Suit cannot be dismissed w/s Order 11 Rule 21 - It can be dismissed due to non-compliance of order of interrogatories, discovery or inspection as envisaged under Order 11 Rule 21. [Archdiocese of Bhopal Regd. Society v. Hasan Kabir] ...3351

Civil Procedure Code (5 of 1908), Section 9 - Possession - In the oldest Khasra entry of the year 1943-44 name of plaintiff not mentioned - In the Khasra entry of the year 1953-54 name of plaintiff not mentioned in column 8 as cultivator occupying land - Nature of land shown as Khadan (mine) - No document to prove title - Plaintiff did not have possession of land - Appeal dismissed. [Babulal Sharma v. State of M.P.] SC...2483

माध्यमिक शिक्षा मण्डल (नामांकन) नियम, 1994, नियम 3, 5, 6 व 8 — देखें
— माध्यमिक शिक्षा मण्डल (मध्य प्रदेश) विनियम, 1965, विनियम 128 व 129 (देवमाता एजूकेशनल
एण्ड वेलफेयर एसोसियेशन समीति, बिरसिंहपुर पाली वि. म.प्र. राज्य) ...3282

माध्यमिक शिक्षा मण्डल (म.प्र.) विनियम, 1965, विनियम 97, परन्तुक — देखें —
माध्यमिक शिक्षा अधिनियम, म.प्र., 1965, धारा 28(4), (फिरोज खान वि. सेक्रेटरी, बोर्ड ऑफ सेकेन्डरी
एजूकेशन) ...2848

माध्यमिक शिक्षा मण्डल (मध्य प्रदेश) विनियम, 1965, विनियम 128 व 129,
माध्यमिक शिक्षा मण्डल (नामांकन) नियम, 1994, नियम 3, 5, 6 व 8 — परीक्षा — कक्षा
10 के 31 परीक्षार्थियों को परीक्षा में बैठने की अनुज्ञा इस कारण से नहीं दी गई कि उनके नामांकन
के आवेदन मण्डल में विहित तारीख के बाद प्रस्तुत किये गये — अभिनिर्धारित — नियम और विनियम
का उद्देश्य यह सुनिश्चित करना है कि नियमित छात्र वास्तव में विद्यालय में कक्षा 9 में भर्ती किये
गये और कक्षा 9 व कक्षा 10 में अध्ययन के दो वर्ष बाद मण्डल की कक्षा 10 की परीक्षा में बैठना
आशयित था — इसलिए, यदि इन शर्तों का समाधान हो जाता है लेकिन नामांकन के आवेदन विहित
समय के परे भेजे जाते हैं, तो ऐसे आवेदन, यदि नामंजूर कर दिये गये, तो ऐसे छात्रों के साथ अन्याय
होगा और उन्हें कठिनाई होगी — याचिका मंजूर। (देवमाता एजूकेशनल एण्ड वेलफेयर एसोसियेशन
समीति, बिरसिंहपुर पाली वि. म.प्र. राज्य) ...3282

सिविल प्रक्रिया संहिता (1908 का 5) {01.02.1977 से यथा संशोधित}, आदेश 11
नियम 1 से 11, 12, 15 से 18 एवं आदेश 11 नियम 21 — प्रकटीकरण के आदेश का
अननुपालन — वादी द्वारा परिप्रश्नों का उत्तर देने या दस्तावेजों के प्रकटीकरण या निरीक्षण के आदेश
का अननुपालन — इस स्थिति में केवल आवेदन पर और पक्षकारों को सूचना देकर तथा उन्हें सुने जाने
का युक्तियुक्त अवसर देकर — न्यायालय आदेश 11 नियम 21 के अन्तर्गत शक्ति का प्रयोग करते हुए
वाद खारिज कर सकता है। (आर्चडायोसेसे ऑफ भोपाल रजिस्टर्ड सोसायटी वि. हसन कबीर) ...3351

सिविल प्रक्रिया संहिता (1908 का 5) {01.02.1977 से यथा संशोधित}, आदेश 11
नियम 14 व 21 — दस्तावेजों का पेश किया जाना — दस्तावेजों के पेश किये जाने के सम्बन्ध में आदेश
11 नियम 14 के अन्तर्गत पारित आदेश का अननुपालन — आदेश 11 नियम 21 के अन्तर्गत वाद
खारिज — अभिनिर्धारित — विधायिका ने अपनी बुद्धिमानी से आदेश 11 नियम 14 के अन्तर्गत पारित
आदेश के अननुपालन के कारण आदेश 11 के नियम 21 में ऐसा दण्डात्मक परिणाम सम्मिलित नहीं
किया है — आदेश 11 नियम 21 के अन्तर्गत वाद खारिज नहीं किया जा सकता है — यह परिप्रश्नों,
प्रकटीकरण या निरीक्षण के आदेश के अननुपालन के कारण खारिज किया जा सकता है जैसा कि
आदेश 11 नियम 21 में परिकल्पित है। (आर्चडायोसेसे ऑफ भोपाल रजिस्टर्ड सोसायटी वि. हसन
कबीर) ...3351

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 — कब्जा — वर्ष 1943-44 की सबसे
पुरानी खसरा प्रविष्टि में वादी का नाम उल्लिखित नहीं — वर्ष 1953-54 की खसरा प्रविष्टि में वादी
का नाम खाना 8 में भूमि पर दखल करने वाले कृषक के रूप में उल्लिखित नहीं — भूमि की प्रकृति
खदान (खान) के रूप में दिखायी गयी — हक साबित करने के लिए कोई दस्तावेज नहीं — वादी
भूमि का कब्जा नहीं रखता — अपील खारिज। (बाबू लाल शर्मा वि. म.प्र. राज्य) SC ---2483

Civil Procedure Code (5 of 1908), Section 10, Accommodation Control Act, M.P. 1961, Sections 12(1)(a), (c) & (n) - Stay of suit - Applicability - Earlier suit for declaration of title and subsequent suit for ejectment u/s 12(1)(a), (c) & (n) of Act for same property - Application u/s 10 CPC filed for staying the subsequent suit that in both the suits issue about ownership of the suit property was common - Held - S. 10 would apply only if there is identity of matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical - Since for getting a decree of eviction on the grounds u/s 12(1)(a), (c) & (n) of Act ownership of the suit property is not required to be proved - Trial Court rightly refused to stay the subsequent suit. [Rajesh Singh v. Manoj Kumar] ...2906

Civil Procedure Code (5 of 1908), Section 10 - Stay of suit - Applicability - The fundamental test to attract S. 10 is whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit - S. 10 applies only in cases where whole of the subject matter in both the suits is identical. [Rajesh Singh v. Manoj Kumar] ...2906

Civil Procedure Code (5 of 1908), Section 10 - Stay of suit - Applicability - The key words in S. 10 are "the matter in issue directly and substantially in issue" in the previously instituted suit - Words "directly & substantially in issue" are used in contra-distinction to the word "identically or collaterally in issue." [Rajesh Singh v. Manoj Kumar] ...2906

Civil Procedure Code (5 of 1908), Section 10 - Stay of civil suit - Petitioner filed suit and also lodged FIR against respondent - FIR quashed by HC - Petitioner filed SLP before SC - Petitioner filed application u/s 10 CPC for staying the suit which was dismissed - Held - The only relevant consideration here is the likelihood of embarrassment - Pendency of SLP is not sufficient ground to stay suit - Embarrassment in civil suit may be to the respondent/defendant but not to petitioner/plaintiff who himself filed suit and has already pleaded material facts in plaint - Application rightly rejected - Petition dismissed. [Vandana Tiwari (Smt.) v. Ajay Pande] ...2540

Civil Procedure Code (5 of 1908), Section 47 - Scope - Identity of judgment debtor disputed - A decree was passed against respondent No.2 in a recovery suit filed by the appellant - At the stage of execution proceedings, respondent No.1 has filed objection stating that he was not the proprietor of respondent No.2 and hence not liable to honour the decree - Held - The issue could be adjudicated u/s 47 notwithstanding the fact that respondent No.1 was not a party in the suit, wherein the decree in question was passed. [Century Textiles Industries Ltd. (M/S) v. Deepak Jain] ...3241

Civil Procedure Code (5 of 1908), Section 80(2) - See - Krishni Upaj Mandi Adhiniyam, M.P. 1973, Section 67, [Krishi Upaj Mandi Samiti] Banapur v. Chandra Shekhar Raghuvanshi] ...3016

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10, स्थान नियंत्रण अधिनियम, म.प्र. 1961, धाराएँ 12(1)(ए), (सी) व (एन) - वाद की रोक - प्रयोज्यनीयता - एक ही सम्पत्ति के लिए पूर्ववर्ती वाद स्वत्व घोषणा के लिए और पश्चात्पूर्वी वाद अधिनियम की धारा 12(1)(ए), (सी) व (एन) के अन्तर्गत बेदखली के लिए - पश्चात्पूर्वी वाद को रोकने के लिए सि. प्र.सं. की धारा 10 के अन्तर्गत आवेदन पेश किया गया कि दोनों वादों में वादग्रस्त सम्पत्ति के स्वामित्व संबंधी विवाद्यक समान था - अभिनिर्धारित - धारा 10 केवल तभी लागू होगी यदि दोनों वादों में विवाद्य विषय समान हो, जिसका अर्थ है कि दोनों कार्यवाहियों में सम्पूर्ण विषयवस्तु समान हो - चूंकि अधिनियम की धारा 12(1)(ए), (सी) व (एन) के आधारों पर बेदखली की डिक्री अभिप्राप्त करने के लिए वादग्रस्त सम्पत्ति का स्वामित्व साबित किया जाना आवश्यक नहीं है - विचारण न्यायालय ने पश्चात्पूर्वी वाद रोकने से उचित रूप से इंकार किया। (राजेश सिंह वि. मनोज कुमार) ...2906

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10 - वाद की रोक - प्रयोज्यनीयता - धारा 10 को आकृष्ट करने के लिए मूलभूत परीक्षण यह है कि क्या पूर्ववर्ती वाद में अंतिम विनिश्चय पर पहुंचने पर ऐसा विनिश्चय पश्चात्पूर्वी वाद में पूर्व न्याय के रूप में प्रवर्तित होगा - धारा 10 केवल उन मामलों में लागू होती है जहाँ दोनों वादों में सम्पूर्ण विषय वस्तु समान हो। (राजेश सिंह वि. मनोज कुमार) ...2906

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10 - वाद की रोक - प्रयोज्यनीयता - धारा 10 में आधार शब्द हैं पूर्वतन संस्थित वाद में "विवाद्य विषय प्रत्यक्षतः और सारतः विवाद्य" - शब्द "समरूपतः या प्रसंगतः" के प्रति-विमेद में शब्द "प्रत्यक्षतः और सारतः विवाद्य" प्रयोग किये गये हैं। (राजेश सिंह वि. मनोज कुमार) ...2906

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10 - सिविल वाद की रोक - याची ने प्रत्यर्थी के विरुद्ध वाद पेश किया और एफ.आई.आर. भी दर्ज करायी - एफ.आई.आर. उच्च न्यायालय द्वारा अभिखंडित की गई - याची ने उच्चतम न्यायालय के समक्ष एस.एल.पी. पेश की - याची ने वाद को रोकने के लिए सि.प्र.सं. की धारा 10 के अन्तर्गत आवेदन पेश किया, जो खारिज किया गया - अभिनिर्धारित - यहाँ केवल सुसंगत विचार है उलझन की संभावना - एस.एल.पी. का लंबित होना वाद को रोकने के लिए पर्याप्त आधार नहीं है - सिविल वाद में उलझन प्रत्यर्थी/प्रतिवादी को हो सकती है, किन्तु याची/वादी को नहीं, जिसने स्वयं वाद पेश किया और पहिले से दावे में सारवान तथ्यों का अभिवचन किया - आवेदन उचित रूप से नामंजूर - याचिका खारिज। (वंदना तिवारी (श्रीमति) वि. अजय पांडे) ...2540

सिविल प्रक्रिया संहिता (1908 का 5), धारा 47 - विस्तार - निर्णीत ऋणी की पहचान विवादित - अपीलार्थी द्वारा पेश वसूली के वाद में प्रत्यर्थी क्र. 2 के विरुद्ध डिक्री पारित की गयी - निष्पादन कार्यवाहियों के प्रक्रम पर प्रत्यर्थी क्र. 1 ने यह कथन करते हुए आपत्ति पेश की कि वह प्रत्यर्थी क्र. 2 का प्रोप्राइटर नहीं था इसलिए डिक्री का आदर करने के लिए दायी नहीं है - अभिनिर्धारित - इस तथ्य के होते हुए भी कि प्रत्यर्थी क्र. 1 उस वाद में पक्षकार नहीं था, जिसमें प्रश्नगत डिक्री पारित की गई, विवाद्यक धारा 47 के अन्तर्गत न्यायनिर्णीत किया जा सकता है। (सेंचुरी टेक्सटाईल्स इंडस्ट्रीज लि. (मे.) वि. दीपक जैन) ...3241

सिविल प्रक्रिया संहिता (1908 का 5), धारा 80(2) - देखें - कृषि उपज मण्डी अधिनियम, म.प्र. 1973, धारा 67, (कृषि उपज मंडी समिति, बानापुर वि. चन्द्रशेखर रघुवंशी)...3016

Civil Procedure Code (5 of 1908), Section 100 - Concurrent findings of fact whether can be interfered in second appeal - Held - No - It is settled proposition of law that the concurrent findings on the question of relationship between the parties as landlord and tenant being finding of fact could not be interfered at the stage of second appeal u/s 100 CPC. [Ram Vishal @ Vishali Kachhwaha v. Dwarka Prasad Jaiswal] ...3390

Civil Procedure Code (5 of 1908), Section 151 - Consolidation of suits - Trial Court ordered for consolidation of two suits one at stage of evidence whereas other at primary stage - Held - Application for consolidation not filed promptly after order of High Court - Grounds in the suits are different and cannot be said that the judgments in both shall have to be conflicting with each other - Due to order of consolidation, evidence already recorded in one suit will be washed out and there shall be a de novo trial of suit for no infirmity, legal or procedural - Trial Court failed to exercise the discretion judicially - Order set-aside - Petition allowed. [Parwati Bai v. Kriparam]...3296

Civil Procedure Code (5 of 1908), Section 151 - Inherent powers - Plaintiff submitted application for temporary injunction that the defendant was collecting material on suit land with intend to construct municipal park - Application was dismissed by the trial Court on the defendant's representing that construction was being made on their own land - After recording evidence, trial Court found that park has been illegally and unauthorizedly constructed on suit land - A decree for injunction as well as for removal of construction granted against the defendant - First appeal dismissed - Second appeal filed - Held - In such a situation Court has ample power to restore the position as it existed on the date of suit because no one can be permitted to take undue advantage of the court proceedings by making wrong submissions - Appeal dismissed. [Nagarpalika Parishad, Shivpuri v. Mohan Singh Sisodiya]...3395

Civil Procedure Code (5 of 1908), Section 152 - Scope - A decree was passed against respondent No.2 - At the stage of execution proceedings, respondent No.1 has filed objection stating that he was not the proprietor of respondent No.2 and hence not liable to honour the decree - Held - High Court was not right in holding that the only course available to the appellant was to seek amendment of the decree u/s S. 152 - S. 152 makes it clear that the power of Court under the said provision is limited to rectification of clerical and arithmetical errors arising from any accidental slip or omission - There cannot be reconsideration of the merits of the matter. [Century Textiles Industries Ltd. (M/S) v. Deepak Jain] ...3241

Civil Procedure Code (5 of 1908), Order 3 Rule 2 - Power of attorney - Power of attorney holder of the plaintiff may appear and depose only about the facts which are within his knowledge and he cannot appear on behalf of plaintiff to depose about the facts which are exclusively within the personal

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 — क्या द्वितीय अपील में तथ्य के समवर्ती निष्कर्षों में हस्तक्षेप किया जा सकता है — अभिनिर्धारित — नहीं — यह विधि की स्थापित प्रतिपादना है कि पक्षकारों के मध्य भूस्वामी और किरायेदार के सम्बन्ध के प्रश्न पर समवर्ती निष्कर्ष तथ्य के निष्कर्ष होने से सि.प्र.सं. की धारा 100 के अन्तर्गत द्वितीय अपील के प्रक्रम पर उनमें हस्तक्षेप नहीं किया जा सकता। (राम विशाल उर्फ विशाली कछवाहा वि. द्वारका प्रसाद जायसवाल) ...3390

सिविल प्रक्रिया संहिता (1908 का 5), धारा 151 — वादों का समेकन — विचारण न्यायालय ने दो वादों जिनमें एक साक्ष्य के प्रक्रम पर था जबकि दूसरा प्राथमिक प्रक्रम पर, के समेकन का आदेश दिया — अभिनिर्धारित — उच्च न्यायालय के आदेश के बाद समेकन का आवेदन तत्परता से पेश नहीं किया गया — वादों में आधार भिन्न-भिन्न और यह नहीं कहा जा सकता कि दोनों में पारित निर्णय एक-दूसरे के परस्पर विरोधी होंगे — समेकन के आदेश के कारण एक वाद में पहले से अभिलिखित साक्ष्य व्यर्थ हो जायेगी और किसी विधिक या प्रक्रियात्मक अशक्तता के बिना वाद का नए सिरे से विचारण करना होगा — विचारण न्यायालय न्यायिकतः विवेकाधिकार का प्रयोग करने में असफल — आदेश अपास्त — याचिका मंजूर। (पार्वती बाई वि. कृपाराम) ...3296

सिविल प्रक्रिया संहिता (1908 का 5), धारा 151 — अन्तर्निहित शक्तियाँ — वादी ने अस्थायी व्यादेश का आवेदन यह कहते हुए पेश किया प्रतिवादी वादग्रस्त भूमि पर नगरपालिका पार्क के निर्माण के आशय से सामग्री एकत्र कर रहा है — विचारण न्यायालय द्वारा प्रतिवादी के इस निवेदन पर आवेदन खारिज कर दिया गया कि निर्माण उनकी स्वयं की भूमि पर किया जा रहा था — साक्ष्य अभिलिखित करने के बाद विचारण न्यायालय ने पाया कि वादग्रस्त भूमि पर अवैध और अनधिकृत रूप से पार्क का निर्माण किया गया है — प्रतिवादी के विरुद्ध व्यादेश के अतिरिक्त निर्माण हटाने की डिक्री प्रदान की गई — प्रथम अपील खारिज — द्वितीय अपील पेश — अभिनिर्धारित — ऐसी दशा में न्यायालय को उस स्थिति को प्रत्यावर्तित करने की व्यापक शक्ति है जैसी वाद पेश करने की तारीख को अस्तित्व में थी क्योंकि किसी को भी गलत निवेदन करके न्यायालयीन कार्यवाहियों का अनुचित लाभ लेने के लिए अनुज्ञात नहीं किया जा सकता है — अपील खारिज। (नगरपालिका परिषद, शिवपुरी वि. मोहनसिंह सिसोदिया) ...3395

सिविल प्रक्रिया संहिता (1908 का 5), धारा 152 — विस्तार — प्रत्यर्थी क्र. 2 के विरुद्ध डिक्री पारित की गयी — निष्पादन कार्यवाहियों के प्रक्रम पर प्रत्यर्थी क्र. 1 ने यह कथन करते हुए आपत्ति पेश की कि वह प्रत्यर्थी क्र. 2 का प्रोप्राईटर नहीं था इसलिए डिक्री का आदर करने के लिए दायी नहीं है — अभिनिर्धारित — उच्च न्यायालय यह अभिनिर्धारित करने में सही नहीं थे कि अपीलार्थी को केवल यह उपचार उपलब्ध था कि धारा 152 के अन्तर्गत डिक्री के संशोधन की माँग करे — धारा 152 यह स्पष्ट करती है कि उक्त उपबंध के अन्तर्गत न्यायालय की शक्ति किसी आकस्मिक भूल या लोप से हुई लिपिकीय या गणितीय भूलों के सुधार तक सीमित है — मामले के गुणदोषों पर पुनर्विचार नहीं हो सकता है। (सेंचुरी टेक्सटाईल्स इंडस्ट्रीज लि. (मे.) वि. दीपक जैन) ...3241

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 3 नियम 2 — मुख्याारनामा — वादी का मुख्याार उपसंजात हो सकता है और केवल उन तथ्यों के बारे में अभिसाक्ष्य दे सकता है जो उसके ज्ञान में हैं और वह ऐसे तथ्यों जो अनन्यतः वादी के व्यक्तिगत ज्ञान में हैं उनके बारे में वादी की

knowledge of plaintiff. [Sahibram Dhingra (Died) Through L.R. Narendra Dhingra v. Shivshankar Goyal] ...3151

Civil Procedure Code (5 of 1908), Order 6 Rule 17 - Amendment of pleadings - *Defendants filed an application seeking amendment in W.S. by bringing on record an order passed by Additional Commissioner and filing of another appeal - Application disallowed - Held - Defendants want to bring on record the subsequent events which in fact are undisputed - Such facts are required to be brought on record to do complete justice to the parties - Plaintiffs cannot be allowed to take advantage of their own doings by saying that such facts are not required to be brought on record.* [Ravindra Prakash v. State of M.P.] ...3144

Civil Procedure Code (5 of 1908), Order 6 Rule 17, Representation of the People Act, 1951, Section 87 - Amendment in the election petition - Permissibility - *Held - The election petition can not be allowed to be amended, under Order 6 Rule 17 CPC r/w S. 87 of the Act, by inserting a new claim that had already become barred by limitation on the date of the corresponding application.* [Rampal Singh v. Devendra Patel] ...2915

Civil Procedure Code (5 of 1908), Order 7 Rule 11 - Rejection of plaint - Duty of Court - *Court is also required to see that the vexatious and frivolous litigation should not be allowed to proceed so as to kill the time of the Court for nothing.* [Karim Bhai v. State of Maharashtra] ...3167

Civil Procedure Code (5 of 1908), Order 7 Rule 11 - Rejection of plaint - Powers of Court - *A plaint shall be rejected on the grounds mentioned in the Rule, but the instances as given cannot be regarded as exhaustive of all the cases, in which the Court can reject the plaint or is limiting the inherent powers of the Court in respect thereof - Provisions are procedural and enacted with an aim and object to prevent vexatious and frivolous litigation.* [Karim Bhai v. State of Maharashtra] ...3167

Civil Procedure Code (5 of 1908), Order 7 Rule 11(a) - Rejection of plaint - *Where it does not disclose a cause of action - Mere writing that plaintiff is having cause of action would in itself is not sufficient to hold that plaintiff has disclosed the cause of action.* [Karim Bhai v. State of Maharashtra] ...3167

Civil Procedure Code (5 of 1908), Order 7 Rule 11(d) & Order 8 Rule 6-D - Rejection of plaint - Effect of discontinuance of suit - Civil suit dismissed for want of prosecution - Application under Order 7 Rule 11(d) for rejection of counter claim made - Trial Court rejected the application - Held - Counter claim filed by defendants setting up his claim against plaintiffs and co-defendants - If the suit is discontinued subsequently for one reason or the other, the counter claim does not come to an end and it can be proceeded with - Counter claim does not appear to be barred by any law - No jurisdictional error or illegality or material irregularity found in order - Revision dismissed. [Om Prakash Malviya v. Shambhunath Singh] ...3449

ओर से अभिसाक्ष्य देने के लिए उपसंजात नहीं हो सकता है। (साहिब्राम ढींगरा (मृतक) द्वारा विधिक प्रतिनिधि नरेन्द्र ढींगरा वि. शिवशंकर गोयल) ...3151

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 — अभिवचनों का संशोधन — प्रतिवादी ने अपर आयुक्त द्वारा पारित आदेश और एक अन्य अपील का पेश किया जाना अभिलेख पर लाने हेतु लिखित कंथन में संशोधन चाहते हुए आवेदन पेश किया — आवेदन नामंजूर — अभिनिर्धारित — प्रत्यर्था पश्चात्पूर्ती घटनाक्रम अभिलेख पर लाना चाहते हैं जो वस्तुतः अविवादित हैं — ऐसे तथ्यों को पक्षकारों के प्रति पूर्ण न्याय करने के लिए अभिलेख पर लाया जाना आवश्यक है — वादियों को यह कहते हुए कि ऐसे तथ्य अभिलेख पर लाया जाना आवश्यक नहीं हैं उनके स्वयं के कार्यों का लाभ लेने की इजाजत नहीं दी जा सकती। (रवीन्द्र प्रकाश वि. म.प्र. राज्य) ...3144

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17, लोक प्रतिनिधित्व अधिनियम, 1951, धारा 87 — निर्वाचन याचिका में संशोधन — अनुज्ञेयता — अभिनिर्धारित — सि.प्र.सं. के आदेश 6 नियम 17 सहपठित धारा 87 के अन्तर्गत, नया दावा शामिल करके, जो पहिले से तत्संबंधी आवेदन की तारीख को परिसीमा से वर्जित हो चुका था, निर्वाचन याचिका संशोधित किये जाने की अनुमति नहीं दी जा सकती। (रामपाल सिंह वि. देवेन्द्र पटेल) ...2915

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 — वादपत्र का नामंजूर किया जाना — न्यायालय का कर्तव्य — न्यायालय से अपेक्षित है कि तुच्छ व तंग करने वाले मामलों में कार्यवाही करने की इजाजत नहीं देना चाहिए कि न्यायालय का समय बिना कारण के नष्ट किया जाए। (करीम भाई वि. महाराष्ट्र राज्य) ...3167

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 — वादपत्र का नामंजूर किया जाना — न्यायालय की शक्तियाँ — कोई वादपत्र नियम में उल्लिखित आधारों पर नामंजूर कर दिया जायेगा, किन्तु दिये गये दृष्टांत सभी मामलों के लिए व्यापक नहीं समझे जा सकते, जिनमें न्यायालय वादपत्र नामंजूर कर सकता है या उसके सम्बन्ध में न्यायालय की अन्तर्निहित शक्तियों को सीमित करते हैं — उपबंध प्रक्रियात्मक हैं और तंग करने वाले तथा तुच्छ मामलों को रोकने के ध्येय व उद्देश्य से अधिनियमित किये गये हैं। (करीम भाई वि. महाराष्ट्र राज्य) ...3167

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11(ए) — वादपत्र का नामंजूर किया जाना — जहाँ वह वाद हेतुक प्रकट नहीं करता है — केवल यह लिखना कि वादी वाद हेतुक रखता है यह अभिनिर्धारित करने के लिए स्वमेव पर्याप्त नहीं होगा कि वादी ने वाद हेतुक प्रकट किया है। (करीम भाई वि. महाराष्ट्र राज्य) ...3167

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11(डी) व आदेश 8 नियम 6—डी — वादपत्र का नामंजूर किया जाना — वाद के बन्द कर दिए जाने का प्रभाव — सिविल वाद अभियोजन के अभाव में खारिज — प्रतिदावा नामंजूर करने के लिए आदेश 7 नियम 11(डी) के अन्तर्गत आवेदन किया गया — विचारण न्यायालय ने आवेदन नामंजूर किया — अभिनिर्धारित — प्रतिवादियों द्वारा वादियों और सह-प्रतिवादियों के विरुद्ध अपना दावा स्थापित करते हुए प्रतिदावा पेश किया — यदि तत्पश्चात् वाद एक या अन्य कारण से बन्द कर दिया जाता है तो प्रतिदावा समाप्त नहीं होता और उसमें आगे कार्यवाही की जा सकती है — प्रतिदावा किसी विधि द्वारा वर्जित होना प्रतीत नहीं होता — आदेश में कोई अधिकारिता की त्रुटि या अवैधता या तात्त्विक अनियमितता नहीं पायी गयी — पुनरीक्षण खारिज। (ओमप्रकाश मालवीय वि. इन्दूनाथ सिंह) ...3449

Civil Procedure Code (5 of 1908), Order 8 Rule 6-A - Counter claim by defendant - *The language of Order 8 Rule 6-A makes it clear that the counter claim solely against the co-defendants cannot be filed.* [Om Prakash Malviya v. Shambhunath Singh] ...3449

Civil Procedure Code (5 of 1908), Order 9 Rule 3 & 4, Order 7 Rule 11 & 13 - *Earlier suit was dismissed in default of appearance of the parties - Apart from this, there was non-compliance of the order to make payment of deficit court fee - Subsequent suit dismissed as not maintainable - Held - If the order passed in earlier suit is treated u/O. 9 R. 3 CPC then the plaintiff can file a fresh suit u/O. 9 R. 4 CPC - If the order passed in earlier suit is treated u/O. 7 R. 11(b) CPC then it was rejection of plaint and u/O. 7 R. 13 CPC plaintiff can file a fresh suit in respect of the same cause of action subject to period of limitation - Order of dismissal of subsequent suit set-aside - Matter remanded back to trial Court.* [Har Prasad Sharma v. Smt. Nisha Sharma] ...2965

Civil Procedure Code (5 of 1908), Order 9 Rule 9 - *Earlier suit for declaration of title dismissed under Order 9 Rule 8 - In subsequent suit cause of action is based on same set of facts - Held - Plaintiff is precluded from filing fresh suit on same cause of action in view of Order 9 Rule 9 - Judgment of the trial Court affirmed - Appeal dismissed.* [Karuna Chaturvedi (Smt.) v. Smt. Sarojini Agarwal] ...2935

Civil Procedure Code (5 of 1908), Order 14 Rule 5 - Power to amend and strike out issues - *Suit for declaration of title of agricultural land - Application for framing issue regarding maintainability of the suit on the pleadings that land in dispute was subject matter of the agriculture ceiling matter pending before the Competent Authority, M.P. Ceiling on Agriculture Holding Act - Application rejected - Held - Any decree passed in civil suit shall not bind the Competent Authority whether State/Commissioner are party or not a party to the civil suit - The question of maintainability of the suit will have to be decided by the Civil Court - Such issue is required to be cast and answered.* [Ravindra Prakash v. State of M.P.] ...3144

Civil Procedure Code (5 of 1908), Order 17 - *See - Representation of the People Act, 1951, Section 87* [Rajkumar Patel v. Shivraj Singh Chauhan] ...3063

Civil Procedure Code (5 of 1908), Order 17 Rule 1 - *In election petition application of adjournment supported by medical certificate - Held - Application not supported by affidavit - Name of author of the certificate is not ascertainable and overwriting in the date of commencement of ailment - Trial had to be adjourned at the request of the petitioner on five earlier dates of hearing - It has led to a ridiculous result as the evidence of the petitioner is yet to be recorded in election trial whereas, in the meanwhile, a fresh election to the Legislative Assembly has already been held - Application rejected.* [Rajkumar Patel v. Shivraj Singh Chauhan] ...3063

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 8 नियम 6-ए — प्रतिवादी द्वारा प्रतिदावा — आदेश 8 नियम 6-ए की भाषा यह स्पष्ट करती है कि केवल सह-प्रतिवादियों के विरुद्ध प्रतिदावा पेश नहीं किया जा सकता। (ओमप्रकाश मालवीय वि. शम्भूनाथ सिंह) ...3449

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 3 व 4, आदेश 7 नियम 11 व 13 — पूर्ववर्ती वाद पक्षकारों की उपस्थिति के व्यतिक्रम में खारिज कर दिया गया — इसके अतिरिक्त न्यायालय फीस में कमी का संदाय करने के आदेश का अपालन भी था — पश्चात्पूर्व वाद पोषणीय न मानकर खारिज किया गया — अभिनिर्धारित — यदि पूर्ववर्ती वाद में पारित आदेश सि. प्र.सं. के आदेश 9 नियम 3 के अन्तर्गत माना जाता है तब वादी सि.प्र.सं. के आदेश 9 नियम 4 के अन्तर्गत नया वाद पेश कर सकता है — यदि पूर्ववर्ती वाद में पारित आदेश सि.प्र.सं. के आदेश 7 नियम 11(बी) के अन्तर्गत माना जाता है तब यह वादपत्र की नामजूसरी थी और सि.प्र.सं. के आदेश 7 नियम 13 के अन्तर्गत वादी परिसीमा की कालावधि के अध्यधीन उसी वादकारण पर नया वाद पेश कर सकता है — पश्चात्पूर्व वाद की खारिजी अपास्त — मामला विचारण न्यायालय को प्रतिप्रेषित। (हरप्रसाद शर्मा वि. श्रीमति निशा शर्मा) ...2965

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 9 — स्वत्व घोषणा का पूर्ववर्ती वाद आदेश 9 नियम 8 के अन्तर्गत खारिज — पश्चात्पूर्व वाद में वाद कारण तथ्यों के उसी समूह पर आधारित — अभिनिर्धारित — वादी आदेश 9 नियम 9 को दृष्टिगत रखते हुए उसी वाद कारण पर नया वाद लाने से प्रवारित है — विचारण न्यायालय के निर्णय की पुष्टि की गयी — अपील खारिज। (करुणा चतुर्वेदी (श्रीमति) वि. श्रीमति सरोजिनी अग्रवाल) ...2935

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 14 नियम 5 — विवादकों को संशोधित करने और हटाने की शक्ति — कृषि भूमि के स्वत्व घोषणा के लिए वाद — वाद की पोषणीयता के सम्बन्ध में विवादक विरचित करने के लिए आवेदन इन अभिवचनों पर कि वादग्रस्त भूमि सक्षम प्राधिकारी, म.प्र. कृषि जोत सीमा अधिनियम के समक्ष लम्बित कृषि सीलिंग मामले की विषयवस्तु थी — आवेदन खारिज — अभिनिर्धारित — सिविल वाद में पारित कोई डिक्ली सक्षम प्राधिकारी को बाध्य नहीं करेगी चाहे सिविल वाद में राज्य/कमिश्नर पक्षकार हो या न हो — वाद की पोषणीयता का प्रश्न सिविल न्यायालय को विनिश्चित करना होगा — ऐसा विवादक विरचित और उत्तरित किया जाना आवश्यक है। (रवीन्द्र प्रकाश वि. म.प्र. राज्य) ...3144

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 17 — देखें — लोक प्रतिनिधित्व अधिनियम, 1951, धारा 87 (राजकुमार पटेल वि. शिवराज सिंह चौहान) ...3063

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 17 नियम 1 — निर्वाचन याचिका में चिकित्सीय प्रमाणपत्र से समर्थित स्थगन का आवेदन — अभिनिर्धारित — आवेदन शपथपत्र द्वारा समर्थित नहीं — प्रमाणपत्र के लेखक का नाम अभिनिश्चय योग्य नहीं है और बीमारी के प्रारम्भ होने की तारीख में अधिलेखन — सुनवाई की पूर्ववर्ती पाँच तारीखों पर याची के निवेदन पर विचारण स्थगित किया जाना था — इसने हास्यास्पद परिणाम का नेतृत्व किया है क्योंकि निर्वाचन विचारण में अभी याची की साक्ष्य अभिलिखित की जाना है जबकि इसी बीच में विधान सभा का नया निर्वाचन किया जा चुका है — आवेदन खारिज। (राजकुमार पटेल वि. शिवराज सिंह चौहान) ...3063

Civil Procedure Code (5 of 1908), Order 17 Rule 1, Proviso - *Interpreted in the light of Salem Advocate Bar's case (2005) 6 SCC 344 - The question as to grant of further adjournment to the party, who has already been able to get hearing of the trial adjourned on three occasions, would always depend upon the facts and circumstances of each case - In other words, the process of judicial interpretation has not made the proviso totally redundant, otiose and nugatory.* [Rajkumar Patel v. Shivraj Singh Chauhan] ...3063

Civil Procedure Code (5 of 1908), Order 17 Rule 1(1) Proviso - *Trial Court refused to take on record the affidavit containing chief-examination of plaintiff's witness in the light of proviso to Order 17 Rule 1 CPC on the ground that three opportunities of evidence were already granted to the plaintiff - Held - Proviso empowers the Court to refuse adjournment if availed by a party for more than three times during hearing of the suit - Plaintiff had submitted the affidavit of her witness but didn't pray for adjournment - Thus, proviso to sub-rule (1) of Order 17 Rule 1 CPC has no application.* [Mayadevi Kukreja (Smt.) v. Meera Agrawal] ...2858

Civil Procedure Code (5 of 1908), Order 17 Rule 1(1) Proviso, Order 18 Rule 4 - Recording of evidence - *It is not obligatory on the part of a litigant to produce evidence of a fresh witness before cross-examination of the previous witness is concluded - After cross-examination the litigant may decide whether to produce further evidence or not - However, adjournment for this purpose may be refused in exercise of powers conferred by virtue of proviso to Order 17 Rule 1(1) CPC.* [Mayadevi Kukreja (Smt.) v. Meera Agrawal] ...2858

Civil Procedure Code (5 of 1908), Order 17 Rule 2 - Procedure if the parties failed to appear on the day fixed - *In election petition on the previous date of hearing last opportunity was given to the petitioner for recording of his evidence - However, he has not been able to make out an extreme case for grant of further adjournment - Consequently, the election petition dismissed under Order 17 Rule 2 of the Code for want of evidence.* [Rajkumar Patel v. Shivraj Singh Chauhan] ...3063

Civil Procedure Code (5 of 1908), Order 21 Rule 4 - Necessary parties - *Decree holder and judgment debtor are necessary party in a suit challenging the title of judgment debtor by third party - Neither decree holder nor judgment debtor were joined as party - Non-joinder would make the suit statutorily bad.* [State of M.P. v. Rajendra Kumar] ...2979

Civil Procedure Code (5 of 1908), Order 21 Rule 92 - Maintainability of suit after deciding objections by Executing Court - *Property of judgment debtor put to auction as it failed to pay suit amount - Sale ordered - Objections were raised by State Government and person who was in possession of property as lessee of State Government - Objections decided*

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 17 नियम 1, परन्तुक - सालेम एडवोकेट बार के मामले (2005) 6 एससीसी 344 के प्रकाश में निर्वचन किया गया - पक्षकार, जो पहिले से तीन अवसरों पर विचारण की सुनवाई को स्थगित करा, पाने योग्य रह चुका है, को अतिरिक्त स्थगन दिये जाने संबंधी प्रश्न सदा ही प्रत्येक मामले के तथ्यों और परिस्थितियों पर निर्भर होगा - अन्य शब्दों में, न्यायिक निर्वचन की प्रक्रिया ने परन्तुक को पूर्णतः अनावश्यक, बेकार और निरर्थक नहीं बनाया है। (राजकुमार पटेल वि. शिवराज सिंह चौहान) ...3063

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 17 नियम 1(1) परन्तुक - विचारण न्यायालय ने वादी के साक्षी का मुख्य परीक्षण का शपथपत्र सि.प्र.सं. के आदेश 17 नियम 1 के परन्तुक के आलोक में इस आधार पर अभिलेख पर लेने से इंकार कर दिया कि वादी को साक्ष्य के तीन अवसर पहिले से दिये गये थे - अभिनिर्धारित - परन्तुक न्यायालय को स्थगन से इंकार करने के लिए सशक्त करता है यदि पक्षकार द्वारा वाद की सुनवाई के दौरान तीन अवसरों से अधिक बार लाभ उठा लिया हो - वादी ने अपने साक्षी का शपथपत्र पेश किया था किन्तु स्थगन के लिए प्रार्थना नहीं की - इस प्रकार सि.प्र.सं. के आदेश 17 नियम 1 के उपनियम (1) का परन्तुक लागू नहीं होता। (मायादेवी कुकरेजा (श्रीमति) वि. मीरा अग्रवाल) ...2858

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 17 नियम 1(1) परन्तुक, आदेश 18 नियम 4 - साक्ष्य का अभिलेखन - किसी वादकारी के लिए यह बाध्यकारी नहीं है कि नये साक्षी की साक्ष्य पूर्ववर्ती साक्षी की प्रतिपरीक्षा पूर्ण होने से पूर्व पेश करे - प्रतिपरीक्षा के बाद वादकारी यह विनिश्चय कर सकता है कि वह आगे साक्ष्य पेश करे या नहीं - तथापि, सि.प्र.सं. के आदेश 17 नियम 1(1) के परन्तुक के आधार पर प्रदत्त शक्तियों के प्रयोग में इस प्रयोजन के लिए स्थगन से इंकार किया जा सकता है। (मायादेवी कुकरेजा (श्रीमति) वि. मीरा अग्रवाल) ...2858

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 17 नियम 2 - यदि पक्षकार नियत दिन पर उपसंजात होने में असफल रहते हैं तो प्रक्रिया - निर्वाचन याचिका में सुनवाई की पूर्ववर्ती तारीख पर याची को अपनी साक्ष्य अभिलिखित कराने के लिए अंतिम अवसर दिया गया - तथापि, वह आगे स्थगन प्रदान किये जाने के लिए आत्यंतिक मामला समझाने में समर्थ नहीं हुआ - परिणामस्वरूप, निर्वाचन याचिका साक्ष्य के अभाव में संहिता के आदेश 17 नियम 2 के अन्तर्गत खारिज। (राजकुमार पटेल वि. शिवराज सिंह चौहान) ...3063

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 4 - आवश्यक पक्षकार - तृतीय पक्ष द्वारा निर्णीत ऋणी के हक को चुनौती देने वाले वाद में डिक्रीदार और निर्णीत ऋणी आवश्यक पक्षकार हैं - न तो डिक्रीदार को और न ही निर्णीत ऋणी को पक्षकार के रूप में संयोजित किया गया - असंयोजन वाद को कानूनी रूप से दोषपूर्ण बनायेगा। (म.प्र. राज्य वि. राजेन्द्र कुमार) ...2979

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 92 - निष्पादन न्यायालय द्वारा आपत्तियाँ विनिश्चित करने के बाद वाद की पोषणीयता - निर्णीत ऋणी की सम्पत्ति नीलाम की गई क्योंकि वह वाद राशि अदा करने में असफल रहा - विक्रय आदेशित - राज्य सरकार एवं उस व्यक्ति द्वारा, जो राज्य सरकार के पट्टेदार के रूप में सम्पत्ति के कब्जे में था, आपत्तियाँ उठाई गई - आपत्तियाँ आपत्तिकर्ताओं के विरुद्ध विनिश्चित की गई - आपत्तिकर्ताओं ने तत्पश्चात् विक्रय को

against the objectors - Objectors subsequently filed civil suit for declaring the sale as bad - Held - Once objections are decided by Executing Court, Order 21 Rule 92(3) would come into play and would forbid every person against whom order is made, to bring a suit - Suit not maintainable - Appeal dismissed. [State of M.P. v. Rajendra Kumar] ...2979

Civil Procedure Code (5 of 1908), Order 21 Rule 97 - Resistance or obstruction to possession of immovable property - Application/objection how to be adjudicated - Holding the inquiry by Executing Court does not mean to adduce the evidence but the inquiry means the satisfaction of the Court in the available circumstances with respect of objections raised by the objectors - Court is not bound to record the evidence or direct the parties to adduce the evidence in support of the objections. [Shobha Mishra v. Vinod Kumar] ...3182

Civil Procedure Code (5 of 1908), Order 21 Rule 97 - Resistance or obstruction to possession of immovable property - Married daughters of deceased tenant filed objections that they were not impleaded as party and no opportunity of hearing given to them, therefore, decree is not binding - Held - Objectors did not have any right to inherit the tenancy right as member of the family of deceased tenant - Objectors were neither in possession of the premises nor paid the rent - Objections rightly dismissed by executing Court and appellate Court. [Shobha Mishra v. Vinod Kumar] ...3182

Civil Procedure Code (5 of 1908), Order 23 Rule 3-A - Bar to suit - Scope - Provision merely puts an embargo on parties to dispute compromise decree on the ground that compromise on which the decree is based was not lawful - It does not create absolute bar against institution of suit to set-aside compromise decree. [Tijauwa v. Rajmani] ...2616

Civil Procedure Code (5 of 1908), Order 32 Rule 7 - See - Motor Vehicles Act 1988, Section 166 [Tijauwa v. Rajmani] ...2616

Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2, Partnership Act, 1932, Section 53 - Suit for dissolution of partnership firm along with an application for grant of injunction - Appellate Court granted the injunction restraining defendants from using the name of the firm, its goodwill and its property - Held - S. 53 of Act not applicable as suit is for dissolution of partnership firm - Without appreciating allegation and counter allegation, Court can not bring business to standstill or to a grinding halt - The balance of convenience would be in favour of defendants who are running the business - Irreparable injury would be suffered more by defendants in comparison to the plaintiff - Order set-aside with direction protecting interest of plaintiff - Petition allowed. [Ishwarchand Jain v. Sushil Kumar Jain]...2796

Civil Procedure Code (5 of 1908), Order 43 Rule 1(r), Order 39 Rule 1 & 2 - Temporary injunction - When cannot be granted - Injunction for sale and circulation of a book granted after 9 years of its publication on

दोषपूर्ण घोषित करने के लिए सिविल वाद पेश किया — अभिनिर्धारित — जब एक बार निष्पादन न्यायालय द्वारा आपत्तियाँ विनिश्चित कर दी जाती हैं, आदेश 21 नियम 92(3) प्रचलन में आयेगा और प्रत्येक व्यक्ति, जिसके विरुद्ध आदेश किया गया है, को वाद लाने से निषेधित करेगा — वाद पोषणीय नहीं — अपील खारिज। (म.प्र. राज्य वि. राजेन्द्र कुमार) ...2979

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 97 — स्थावर सम्पत्ति पर कब्जा करने में प्रतिरोध या बाधा — आवेदन/आपत्ति कैसे न्यायनिर्णीत की जाएंगी — निष्पादन न्यायालय द्वारा जाँच करने का अर्थ साक्ष्य पेश करना नहीं होता बल्कि जाँच का अर्थ आपत्तिकर्ताओं द्वारा उठायी गयी आपत्तियों के सम्बन्ध में उपलब्ध परिस्थितियों में न्यायालय के समाधान से है — न्यायालय साक्ष्य अभिलिखित करने या (शोभा मिश्रा वि. विनोद कुमार) ...3182

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 97 — स्थावर सम्पत्ति पर कब्जा करने में प्रतिरोध या बाधा — मृत किरायेदार की विवाहित पुत्रियों ने आपत्ति पेश की कि उन्हें पक्षकार नहीं बनाया गया और साक्ष्य पेश करने का कोई अवसर उन्हें प्रदान नहीं किया गया, इसलिए डिक्री बाध्यकारी नहीं है — अभिनिर्धारित — आपत्तिकर्ताओं को मृत किरायेदार के पारिवारिक सदस्य के रूप में किरायेदारी अधिकार उत्तराधिकार में पाने का कोई अधिकार नहीं था — आपत्तिकर्ता न तो परिसर के कब्जे में थे और न ही किराया अदा किया — निष्पादन न्यायालय और अपीलीय न्यायालय द्वारा आपत्तियाँ उचित रूप से खारिज की गईं। (शोभा मिश्रा वि. विनोद कुमार) ...3182

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 23 नियम 3-ए — वाद का वर्जन — विस्तार — उपबंध केवल समझौता डिक्री को इस आधार पर विवादित करने पर पक्षकारों पर रोक लगाता है कि समझौता, जिस पर डिक्री आधारित है, विधिपूर्ण नहीं था — यह समझौता डिक्री को अपास्त करने के लिए वाद के संस्थापन के विरुद्ध आत्यन्तिक वर्जन स्पष्ट नहीं करता। (तिजौआ वि. राजमनी) ...2616

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 32 नियम 7 — देखें—मोटर यान अधिनियम 1988, धारा 166 (तिजौआ वि. राजमनी) ...2616

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2, भागीदारी अधिनियम, 1932, धारा 53 — व्यादेश प्रदान करने के आवेदन सहित भागीदारी फर्म के विघटन के लिए वाद — अपीलीय न्यायालय ने प्रतिवादियों को फर्म के नाम, उसकी शाख और उसकी सम्पत्ति का उपयोग करने से निषेधित करते हुए व्यादेश प्रदान किया — अभिनिर्धारित — अधिनियम की धारा 53 लागू नहीं होती क्योंकि वाद भागीदारी फर्म के विघटन के लिए है — अभिकथन और प्रति-अभिकथन का विवेचन किये बिना न्यायालय कारोबार को विराम-स्थिति या चलने पर विराम लगाने की स्थिति में नहीं ला सकता — सुविधा का संतुलन प्रतिवादियों के पक्ष में होगा जो कारोबार चला रहे हैं — वादी की तुलना में प्रतिवादियों को अधिक अपूरणीय क्षति होगी — वादी के हित की रक्षा करते हुए निदेश के साथ आदेश अपास्त — याचिका मंजूर। (ईश्वरचन्द्र जैन वि. सुशील कुमार जैन)...2796

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 43 नियम 1(आर), आदेश 39 नियम 1 व 2 — अस्थायी व्यादेश — कब अनुदत्त नहीं किया जा सकता — एक पुस्तक के विप्रेषण और परिचालन का व्यादेश उसके प्रकाशन के 9 वर्ष बाद इस आधार पर अनुदत्त किया गया कि, पुस्तक

the ground that certain statements made in the book to be defamatory in nature - Held - Sufficient prima facie material is available to hold that the publishers may have justification to substantiate the so-called defamatory statements made - Temporary injunction granted without evaluating the principles properly and without taking note of the fact that 9 years has been passed after the publication of defamatory statements - Injunction could not be granted - Application for staying the operation of injunction order allowed till disposal of appeal. [Dominique Lapierre v. Swaraj Puri] ...2982

Civil Procedure Code (5 of 1908), Order 43 Rule 1(w) - Appeal - Powers of appellate Court - Held - While considering the appeal under Order 43 Rule 1(w), the appellate Court was required to examine merits of the case - The appellate Court has not considered the earlier judgment on merits but confined its order limited to the extent of granting relief of mesne profit by allowing review application by the trial Court. [Kamal Vasini Agarwal (Smt.) v. Hindustan Petroleum Corporation Ltd.] ...3128

Civil Procedure Code (5 of 1908), Order 47 Rule 1 - Review - Powers of trial Court - Can a Court modify its earlier judgment when such question was not considered in earlier judgment - Held - No - Such recourse was not available to the trial Court - Modifying the decree by allowing mesne profit was beyond the scope of Order 47 Rule 1 of CPC, when such question was not at all considered in the earlier judgment. [Kamal Vasini Agarwal (Smt.) v. Hindustan Petroleum Corporation Ltd.] ...3128

Civil Procedure Code (5 of 1908), Order 47 Rule 1 - Review - Scope - Law discussed. [Tijauwa v. Rajmani] ...2616

Civil Procedure Code (5 of 1908), Order 47 Rule 4 - Whether a First Appeal u/s 96 CPC would be maintainable or a Miscellaneous Appeal under Order 43 Rule 1, against an order allowing an application under Order 47 Rule 4 - Held - If an order under Rule 4 of Order 47 CPC granting an application of review is passed then Miscellaneous Appeal would lie and not a First Appeal. [Kamal Vasini Agarwal (Smt.) v. Hindustan Petroleum Corporation Ltd.] ...3128

Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rule 9, Representation of Peoples Act, 1951, Section 28-A - Authority to disciplinary action against official on election duty - Every official on election duty is deemed to be on deputation to Election Commission - Authority to take disciplinary action during election vests only with Election Commission - Suspension of petitioner by Commissioner bad in law and hence quashed. [S.K. Tripathi v. State of M.P.] ...2567

Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rule 9(1) Proviso - Suspension - Word 'shall' in proviso indicates that where a Challan for criminal offence involving corruption or other moral turpitude

में किये गये कतिपय कथनों की प्रकृति मानहानिकारक है — अभिनिर्धारित — यह अभिनिर्धारित करने के लिए प्रथम दृष्ट्या पर्याप्त सामग्री उपलब्ध है कि प्रकाशक के पास किये गये तथाकथित मानहानिकारक कथनों को सिद्ध करने के लिए न्यायोचित्य था — अस्थायी व्यादेश सिद्धांतों का समुचित मूल्यांकन किये बिना और इस तथ्य को ध्यान में लिये बिना कि मानहानि कारक कथनों के प्रकाशन को 9 वर्ष बीत चुके हैं, अनुदत्त किया गया, — व्यादेश अनुदत्त नहीं किया जा सकता था — अपील के निपटारे तक व्यादेश के आदेश का प्रवर्तन रोकने का आवेदन मंजूर। (डॉमनिक लेपियरे वि. स्वराज पुरी) ...2982

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 43 नियम 1(डब्ल्यू) — अपील — अपीलीय न्यायालय की शक्तियाँ — अभिनिर्धारित — आदेश 43 नियम 1(डब्ल्यू) के अन्तर्गत अपील पर विचार करते समय अपीलीय न्यायालय को मामले के गुणदोषों की परीक्षा करना आवश्यक था — अपीलीय न्यायालय ने पूर्ववर्ती निर्णय को गुणदोषों पर विचारित नहीं किया बल्कि अपना आदेश विचारण न्यायालय द्वारा पुनर्विलोकन आवेदन मंजूर करके अन्तर्वर्ती लाभ का अनुतोष देने के विस्तार तक सीमित रखा। (कमल वासिनी अग्रवाल (श्रीमति) वि. हिन्दुस्तान पेट्रोलियम कारपोरेशन लि.) ...3128

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 1 — पुनर्विलोकन — विचारण न्यायालय की शक्तियाँ — क्या कोई न्यायालय अपना पूर्ववर्ती निर्णय उपांतरित कर सकता है जब ऐसे प्रश्न पर पूर्ववर्ती निर्णय में विचार नहीं किया गया — अभिनिर्धारित — नहीं — विचारण न्यायालय को ऐसा विकल्प उपलब्ध नहीं है — अन्तर्वर्ती लाभ मंजूर करते हुए डिग्री उपांतरित करना सि.प्र.सं. के आदेश 47 नियम 1 के विस्तार से परे था, जब ऐसा प्रश्न पूर्ववर्ती निर्णय में विचारित नहीं किया गया। (कमल वासिनी अग्रवाल (श्रीमति) वि. हिन्दुस्तान पेट्रोलियम कारपोरेशन लि.) ...3128

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 1 — पुनर्विलोकन — विस्तार — विधि का विवेचन किया गया। (तिजौआ वि. राजमनी) ...2616

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 4 — क्या आदेश 47 नियम 4 के अन्तर्गत किसी आवेदन को मंजूर करने के आदेश के विरुद्ध सि.प्र.सं. की धारा 96 के अन्तर्गत प्रथम अपील पोषणीय होगी या आदेश 43 नियम 1 के अन्तर्गत विविध अपील — अभिनिर्धारित — यदि पुनर्विलोकन का आवेदन अनुदत्त करते हुए सि.प्र.सं. के आदेश 47 नियम 4 के अन्तर्गत आदेश पारित किया जाता है तब विविध अपील की जायेगी न कि प्रथम अपील। (कमल वासिनी अग्रवाल (श्रीमति) वि. हिन्दुस्तान पेट्रोलियम कारपोरेशन लि.) ...3128

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9, लोक प्रतिनिधित्व अधिनियम, 1951, धारा 28-ए — चुनाव ड्यूटी पर कर्मचारियों के विरुद्ध अनुशासनिक कार्यवाही का प्राधिकार — चुनाव ड्यूटी पर प्रत्येक कर्मचारी चुनाव आयोग में प्रतिनियुक्ति पर होना समझा जाता है — चुनाव के दौरान अनुशासनिक कार्यवाही करने का प्राधिकार केवल चुनाव आयोग में निहित होता है — कमिश्नर द्वारा याची का निलंबन विधि की दृष्टि में दोषपूर्ण इसलिए अभिखंडित। (एस.के. त्रिपाठी वि. म.प्र. राज्य) ...2567

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9(1) परन्तुक — निलंबन — परन्तुक में शब्द 'करेगा' उपदर्शित करता है कि जहाँ सरकार से अभियोजन की मंजूरी के बाद भ्रष्टाचार या अन्य नैतिक अधमता में आलिप्त करने वाले दाण्डिक अपराध के लिए

is filed after sanction of prosecution by Government, the government servant has to be invariably placed under suspension and there is very little discretion with authority. [Rajendra Singh Dasondhi v. State of M.P.] ...2766

Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rule 9(1)(b) - *Challan for offence u/ss. 13(1)(d) & 13(2) of Prevention of Corruption Act r/w Ss. 120-B & 406 IPC filed against appellant but Government is yet to sanction the prosecution - Proviso to Rule 9(1) not attracted - It is not mandatory for authority to place appellant under suspension but discretion by authority to place the appellant under suspension can not be said to be arbitrarily exercised - Appeal dismissed.* [Rajendra Singh Dasondhi v. State of M.P.] ...2766

Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rule 10 - *See - Service Law* [Prakash Chandra Prasad v. State of M.P.]...3139

Civil Services (Pension) Rules, M.P. 1976, Rule 42(1)(a) - *Permissibility - Withdrawal of application for voluntary retirement after expiry of period of notice - Held - No relationship of employer-employee continued or existed between them subsequent thereto - Withdrawal not permissible.* [Ruksana Begum Siddiqui v. State of M.P.] ...3072

Civil Services (Pension) Rules, M.P. 1976, Rule 42(1)(a) - *Services rendered by teacher after the expiry of the period of notice and withdrawal of application for voluntary retirement - Effect - Held - Work taken by Principal subsequent to the date of voluntary retirement without taking any permission from the Competent Authority would be at the risk and cost of the Principal himself, who was not competent to either accept the application for voluntary retirement or extend the period of voluntary retirement - Teacher stood voluntarily retired w.e.f. expiry of period of notice - Petition dismissed.* [Ruksana Begum Siddiqui v. State of M.P.] ...3072

Commercial Tax Act, M.P., 1994 (5 of 1995), Section 70 - *Reference to High Court on substantial question of law - Reference to High Court on substantial question of law rejected on the ground of delay of 1 month and 17 days - Held - Court of law unless finds that the litigation is absolutely frivolous or is filed with the motive to procrastinate the proceeding, it should adopt a liberal approach while dealing with the application for condonation of delay - When there is some delay and it has been acceptably explained - The legal forum should not adopt a hyper-technical approach to throw the lis on the threshold.* [M. Ishaq M. Gulam (M/s) v. State of M.P.] ...2842

Companies Act (1 of 1956), Section 10-F - *Jurisdiction of High Court - Appeal u/s 10-F only deals with questions of law involved therein - A question of fact may give rise to a question of law, if the finding of fact is perverse or contrary to the material available on record - At the same time, if the finding based on some evidence available on record and is a possible*

चालान पेश किया जाता है वहाँ सरकारी कर्मचारी को सदैव निलंबन के अधीन रखना होगा और प्राधिकारी को बहुत कम विवेकाधिकार है। (राजेन्द्र सिंह दसौंधी वि. म.प्र. राज्य) ...2766

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9(1)(बी) - अपीलार्थी के विरुद्ध भ्रष्टाचार निवारण अधिनियम की धारा 13(1)(डी) व 13(2) सहपठित मा.द.सं. की धारा 120-बी व 406 के अपराध के लिए चालान पेश, किन्तु सरकार को अभी अभियोजन की मंजूरी देना है - नियम 9(1) का परन्तुक आकृष्ट नहीं - प्राधिकारी के लिए यह आज्ञापक नहीं है कि अपीलार्थी को निलंबन के अधीन रखे किन्तु प्राधिकारी द्वारा अपीलार्थी को निलंबन के अधीन रखने का विवेकाधिकार मनमाने ढंग से प्रयोग करना नहीं कहा जा सकता - अपील खारिज। (राजेन्द्र सिंह दसौंधी वि. म.प्र. राज्य) ...2766

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10 - देखें - सेवा विधि (प्रकाश चंद्र प्रसाद वि. म.प्र.राज्य) ...3139

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42(1)(ए) - अनुज्ञेयता - सूचना की कालावधि की समाप्ति के बाद स्वैच्छिक सेवानिवृत्ति का आवेदन वापस लेना - अभिनिर्धारित - तत्पश्चात् उनके बीच नियोक्ता और कर्मचारी का कोई सम्बन्ध जारी अथवा विद्यमान नहीं रहता - वापस लेना अनुज्ञेय नहीं। (रुकसाना बेगम सिद्दीकी वि. म.प्र. राज्य) ...3072

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42(1)(ए) - अध्यापक द्वारा सूचना की कालावधि की समाप्ति के बाद सेवाएँ देना और स्वैच्छिक सेवानिवृत्ति का आवेदन वापस लेना - प्रभाव - अभिनिर्धारित - प्राचार्य द्वारा सक्षम प्राधिकारी से कोई अनुमति लिये बिना स्वैच्छिक सेवानिवृत्ति की तारीख के पश्चात् लिया गया कार्य प्राचार्य के स्वयं के जोखिम और कीमत पर होगा जो स्वैच्छिक सेवानिवृत्ति का आवेदन स्वीकार करने या स्वैच्छिक सेवानिवृत्ति की कालावधि आगे बढ़ाने के लिए सक्षम नहीं था - अध्यापक सूचनापत्र की कालावधि समाप्त होने से स्वैच्छिक रूप से सेवानिवृत्ति हो गया - याचिका खारिज। (रुकसाना बेगम सिद्दीकी वि. म.प्र. राज्य) ...3072

वाणिज्यिक कर अधिनियम, म.प्र., 1994 (1995 का 5), धारा 70 - विधि के सारवान प्रश्न पर उच्च न्यायालय को निर्देश - विधि के सारवान प्रश्न पर उच्च न्यायालय को निर्देश 1 माह 17 दिन के विलम्ब के आधार पर खारिज किया गया - अभिनिर्धारित - न्यायालय जब तक यह नहीं पाते कि मुकदमा आत्यंतिकतः तुच्छ है या कार्यवाही को बिलम्बित करने के उद्देश्य से पेश किया गया है, उन्हें विलम्ब माफी के आवेदन पर कार्यवाही करते समय उदार दृष्टिकोण अपनाना चाहिए - जब कुछ विलम्ब है और वह स्वीकार्य रूप से स्पष्ट कर दिया गया है - विधिक फोरम को वाद को प्रारम्भ में फेंकने के लिए अति तकनीकी दृष्टिकोण नहीं अपना चाहिए। (एम. इशाक एम. गुलाम (मे.) वि. म.प्र. राज्य) ...2842

कम्पनी अधिनियम (1956 का 1), धारा 10-एफ - उच्च न्यायालय की अधिकारिता - अधिनियम की धारा 10-एफ के अन्तर्गत अपील केवल उसमें अन्तर्ग्रस्त विधि के प्रश्नों पर विचार करती है - तथ्य के प्रश्न से विधि का प्रश्न पैदा हो सकता है, यदि तथ्य का निष्कर्ष विपर्यस्त या अभिलेख पर उपलब्ध सामग्री के प्रतिकूल है - साथ ही साथ यदि निष्कर्ष अभिलेख पर उपलब्ध किसी

finding that can be arrived at in the given set of circumstances, then the same need not and will not give rise to a question of law. [Marbel City Hospital & Research Centre Pvt. Ltd. (M/s.) v. Mr. Sarabjeet Singh Mokha] ...2941

Companies Act (1 of 1956), Sections 53 & 286 - Presumption of service of notice sent by UPC - Permissibility - Held - Onus of proving the fact that the notice was sent, was on the company - Mere production of the certificate of posting is not and cannot be a conclusive proof of having served the notice upon the addressee - In the facts and circumstances of the case, company have failed to discharge this onus by adducing cogent, legal and admissible evidence -Accordingly, sending of the notice for the five Board meetings and its service on the respondent is not proved. [Marbel City Hospital & Research Centre Pvt. Ltd. (M/s.) v. Mr. Sarabjeet Singh Mokha] ...2941

Companies Act (1 of 1956), Section 400 - Non-service of notice to Central Government - Held - There is nothing under law to indicate that non-compliance with the aforesaid provision renders the proceeding vitiated in all cases, even when no public interest or right of any other member of the company, unrepresented. [Marbel City Hospital & Research Centre Pvt. Ltd. (M/s.) v. Mr. Sarabjeet Singh Mokha] ...2941

Constitution, Articles 14 & 15(3) - Right to equality - Article 15(3) provides that the State can make special provision for women - Such special provisions for women include reservation of seats in educational institutions or of posts in public employment in favour of women. [Satish Menon (Dr.) v. State of M.P.] ...2584

Constitution, Articles 16(2) & (3) - See - Service Law [Lalita Tomar v. State of M.P.] ...3302

Constitution, Articles 26 & 226 - P.I.L. - Freedom to manage religious affairs - Petitioners belonging to Christian community approached the High Court for a direction that the State be directed to permit the registered society to construct a Church as the earlier Church was in a dilapidated condition and was thus demolished - Held - In the absence of a Church, all the necessary rituals and religious functions which are carried out in Church cannot be carried out - High Court exercising powers under Article 226 to enforce the rights guaranteed under Article 26 must pass orders keeping in view the right of local Christian community of a particular district guaranteed under Article 26. [Rubina Danial (Smt.) v. State of M.P.] ...2897

Constitution, Article 215 - See - Contempt of Courts Act, 1971, Section 12 [Horilal v. Bhajanlal] ...3061

Constitution, Article 226 - Bank guarantee - Bank guarantee was liable to be encashed against any loss or damage caused to or suffered or would be caused to or suffered by reason of any breach of contract -

साक्ष्य पर आधारित हो और दी गई परिस्थितियों में निष्कर्ष संभव हो, तब उससे विधि का प्रश्न पैदा नहीं होगा। (मार्बल सिटी हॉस्पिटल एण्ड रिसर्च सेन्टर प्रा.लि. (मे.) वि. मि. सरबजीत सिंह मोखा) ...2941

कम्पनी अधिनियम (1956 का 1), धाराएँ 53 व 286 — यू.पी.सी. से भेजे गये सूचनापत्र की तामील की उपधारणा — अनुज्ञेयता — अभिनिर्धारित — इस तथ्य को साबित करने का भार कि सूचनापत्र भेजा गया, कम्पनी पर था — केवल डाक प्रमाणपत्र पेश करना प्रेषिती पर सूचनापत्र तामील किये जाने का निश्चायक सबूत नहीं है और न हो सकता है — मामले के तथ्यों और परिस्थितियों में, कम्पनी अकाद्यू, वैध और ग्राह्य साक्ष्य पेश करके इस भार को उन्मोचित करने में विफल रही — तदनुसार, बोर्ड की पाँच बैठकों के लिए सूचनापत्र भेजना और प्रत्यर्थी पर उसकी तामील साबित नहीं। (मार्बल सिटी हॉस्पिटल एण्ड रिसर्च सेन्टर प्रा.लि. (मे.) वि. मि. सरबजीत सिंह मोखा) ...2941

कम्पनी अधिनियम (1956 का 1), धारा 400 — केन्द्र सरकार को सूचनापत्र की तामील न होना — अभिनिर्धारित — विधि के अन्तर्गत यह उपदर्शित करने के लिए कुछ नहीं है कि उक्त उपबंध का अनुपालन सभी मामलों में कार्यवाही को दूषित करता है, लोक हित या कम्पनी के किसी अन्य सदस्य का कोई अधिकार प्रतिनिधित्व के बिना न रहने पर भी। (मार्बल सिटी हॉस्पिटल एण्ड रिसर्च सेन्टर प्रा.लि. (मे.) वि. मि. सरबजीत सिंह मोखा) ...2941

संविधान, अनुच्छेद 14 व 15(3) — समता का अधिकार — अनुच्छेद 15(3) उपबंधित करता है कि राज्य महिलाओं के लिए विशेष उपबंध बना सकता है — महिलाओं के लिए ऐसे विशेष उपबंधों में, महिलाओं के हक में शैक्षणिक संस्थानों में सीटों का या लोक नियोजन में पदों का आरक्षण भी सम्मिलित है। (सतीश मेनन (डॉ.) वि. म.प्र. राज्य) ...2583

संविधान, अनुच्छेद 16(2) व (3) — देखें — सेवा विधि (ललिता तोमर वि. म.प्र. राज्य) ...3302

संविधान, अनुच्छेद 26 व 226 — लोक हित वाद — धार्मिक कार्य का प्रबंध करने की स्वतंत्रता — ईसाई समुदाय के याचियों ने उच्च न्यायालय से इस निदेश के लिए निवेदन किया कि गिरजाघर का निर्माण करने के लिए रजिस्ट्रीकृत सोसायटी को अनुमति देने हेतु राज्य सरकार को निदेशित किया जाए क्योंकि पूर्ववर्ती गिरजाघर जीर्ण-शीर्ण दशा में था और गिरा दिया गया — अभिनिर्धारित — किसी गिरजाघर के अभाव में सभी आवश्यक कर्मकाण्ड और धार्मिक समारोह, जो गिरजाघर में किये जाते हैं, नहीं किये जा सकते — उच्च न्यायालय को अनुच्छेद 26 के अन्तर्गत प्रत्याभूत अधिकारों को प्रवर्तित करने के लिए अनुच्छेद 226 के अन्तर्गत शक्तियों का प्रयोग करते हुए अनुच्छेद 26 के अन्तर्गत प्रत्याभूत किसी विशिष्ट जिले के स्थानीय ईसाई समुदाय के अधिकार को दृष्टिगत रखते हुए आदेश पारित करने चाहिए। (रुबिना डेनियल् (श्रीमति) वि. म.प्र. राज्य) ...2897

संविधान, अनुच्छेद 215 — देखें — न्यायालय अवमान अधिनियम, 1971, धारा 12 (होरीलाल वि. भजनलाल) ...3061

संविधान, अनुच्छेद 226 — बैंक गारंटी — संविदा के किसी भंग के कारण कारित या उठायी गयी या कारित होने वाली या उठाये जाने वाली किसी हानि या क्षति के विरुद्ध बैंक गारंटी भुनाने योग्य थी — विभाग संविदा के किसी भंग के कारण विभाग को कारित या उठायी गयी या कारित

Department failed to intimate the Bank any loss or damage caused to or suffered or would be caused to or suffered by department by reason of any breach of contract - Held - Condition of Bank guarantee while directing Bank to encash remained uncomplied - Department not entitled to encash Bank guarantee - Petition allowed. [G.V. Pratap Reddy v. M.P. Rural Road Development Authority, Bhopal] ...3079

Constitution, Article 226 - Contract - Breach of contract - Damages - Judicial Review - Held - Remedy available for a party complaining of breach of contract lies for seeking damages - He would be entitled to the relief of specific performance, if the contract was capable of being specifically enforced in law - The remedy for a breach of contract being purely in the realm of contract are dealt with by civil courts. [Bits & Bytes (M/S) v. State of M.P.] ...3371

Constitution, Article 226 - Contract - Judicial Review - Held - Contract between the parties is a contract in the realm of private law - It is not a statutory contract - It is governed by the provisions of the Contract Act - Any dispute relating to breach of contract cannot be agitated in a writ petition. [Bits & Bytes (M/S) v. State of M.P.] ...3371

Constitution, Article 226 - Contract - Notice inviting tenders - A condition stipulated in the notice inviting tenders that there should have been turnover of 10 crores in the last 3 years - The said condition challenged being arbitrary and to make undue favour to a single person - Held - Only genuine and capable persons should participate in the tender process and for this purpose the condition so imposed appears to be just and reasonable. [Rakesh Kumar Naik v. State of M.P.] ...2576

Constitution, Article 226 - Contract - Notice inviting tenders - Judicial review - Permissibility - Held - While exercising the power of judicial review of the terms of the tender notice the Court cannot say that the terms of the earlier tender notice would serve the purpose sought to be achieved better than the terms of tender notice under consideration and order change in them, unless it is of the opinion that the terms were either arbitrary or discriminatory or actuated by malice. [Rakesh Kumar Naik v. State of M.P.]...2576

Constitution, Article 226 - Contracts - Power of judicial review - Petitioner was the lowest bidder and his tender form not accepted but fresh tender issued with some modifications and for only for a class of printers - Held - When the power of judicial review is invoked in the matters relating to tender or award of contract, certain special features have to be considered - A contract is a commercial transaction and evaluating tenders and awarding contract are essentially commercial functions - In such cases the principles of equity and natural justice stay at distance - If the decision relating to cancellation of earlier bid is bona fide and is in public interest, Courts will

होने वाली या उठाये जाने वाली किसी हानि या क्षति बैंक को सूचित करने में विफल रहा — अभिनिर्धारित — बैंक गारंटी की शर्त बैंक को भुनाने का निदेश देते समय अपालित रही — विभाग बैंक गारंटी को भुनाने का हकदार नहीं — याचिका मंजूर। (जी.व्ही. प्रताप रेड्डी वि. एम.पी. रुरल रोड डेवेलपमेन्ट आथॉरिटी, भोपाल) ...3079

संविधान, अनुच्छेद 226 — संविदा — संविदा भंग — नुकसानी — न्यायिक पुनर्विलोकन — अभिनिर्धारित — संविदा भंग की शिकायत करने वाले किसी पक्षकार को उपलब्ध उपचार नुकसानी की माँग करने तक विस्तृत है — वह विनिर्दिष्ट पालन के अनुतोष का हकदार होगा, यदि संविदा विधि में विनिर्दिष्टतः प्रवर्तित किये जाने के योग्य थी — संविदा भंग के लिए अनुतोष शुद्ध रूप से संविदा के क्षेत्र में होने से सिविल न्यायालय द्वारा कार्यवाही की जाती है। (बिट्स एण्ड बाइट्स (मे.) वि. म.प्र. राज्य) ...3371

संविधान, अनुच्छेद 226 — संविदा — न्यायिक पुनर्विलोकन — अभिनिर्धारित — पक्षकारों के मध्य संविदा निजी विधि के क्षेत्र में संविदा है — यह कानूनी संविदा नहीं है — यह संविदा विधि के उपबंधों से शासित होती है — संविदा भंग से सम्बन्धित कोई विवाद रिट याचिका में नहीं उठाया जा सकता। (बिट्स एण्ड बाइट्स (मे.) वि. म.प्र. राज्य) ...3371

संविधान, अनुच्छेद 226 — संविदा — निविदा आमंत्रित करने के लिए सूचना — निविदा आमंत्रित करने के लिए सूचना में अनुबद्ध एक शर्त कि पूर्ववर्ती 3 वर्षों में 10 करोड़ का आवर्तन होना चाहिए — उक्त शर्त को मनमानी और एक व्यक्ति की अनुचित सहायता करने वाली होने से चुनौती दी गई — अभिनिर्धारित — केवल वास्तविक और समर्थ व्यक्तियों को निविदा प्रक्रिया में भाग लेना चाहिए और इस प्रयोजन के लिए इस प्रकार अधिरोपित शर्त न्यायसंगत और युक्तियुक्त प्रतीत होती है। (राकेश कुमार नायक वि. म.प्र. राज्य) ...2576

संविधान, अनुच्छेद 226 — संविदा — निविदा आमंत्रित करने के लिए सूचना — न्यायिक पुनर्विलोकन — अनुज्ञेयता — अभिनिर्धारित — निविदा सूचना के निबंधनों के न्यायिक पुनर्विलोकन की शक्ति का प्रयोग करते समय न्यायालय यह नहीं कह सकते कि पूर्ववर्ती निविदा सूचना के निबंधन विचाराधीन निविदा सूचना के निबंधनों की अपेक्षा प्राप्त करना चाहे गये प्रयोजन की अधिक अच्छी प्रकार से पूर्ति करेंगे और उनमें परिवर्तन का आदेश नहीं दे सकते, जब तक यह राय न हो कि निबंधन या तो मनमाने या विभेदकारी या विद्वेष से प्रेरित थे। (राकेश कुमार नायक वि. म.प्र. राज्य) ...2576

संविधान, अनुच्छेद 226 — संविदाएँ — न्यायिक पुनर्विलोकन की शक्ति — याची निम्नतम बोली लगाने वाला था और उसका निविदा फॉर्म स्वीकार नहीं किया गया बल्कि कुछ उपांतरणों सहित और केवल मुद्रकों के एक वर्ग के लिए नयी निविदा जारी की गई — अभिनिर्धारित — जब निविदा या संविदा के दिये जाने से सम्बन्धित मामलों में न्यायिक पुनर्विलोकन की शक्ति का अवलंब लिया जाता है तब कुछ विशिष्ट विशेषताओं पर भी विचार करना होगा — कोई संविदा एक वाणिज्यिक संव्यवहार है और निविदा का मूल्यांकन करना और संविदा का दिया जाना आवश्यक वाणिज्यिक कार्य हैं — ऐसे मामलों में साम्य और नैसर्गिक न्याय के सिद्धांत कुछ दूरी पर रुक जाते हैं — यदि पूर्ववर्ती बोली के रद्दकरण से सम्बन्धित विनिश्चय सद्भाविक और लोक हित में हो तो न्यायालय न्यायिक

not exercise the power of judicial review and interfere even if it is accepted for the sake of argument that there is a procedural lacuna. [Ami Art Creations & Offset Printers v. Board Of Secondary Education] ...3357

Constitution, Article 226 - Green Card Holder - Circulars - Exemption from Tuition Fee - *Petitioner took admission on 12.06.2006 - Circular dated 29.11.2005 was in force and was modified on 17.10.2007 - Petitioner entitled to get benefit of circular dated 29.11.2005 which was in vogue - Later circular cannot curtail the right of a student who has already taken admission as that is the right conferred on him on the basis of earlier circular - Petition allowed. [Ashutosh Mishra (Dr.) v. State of M.P.] ...2547*

Constitution, Article 226 - Investigation by CBI - *High Court has power to direct investigation by CBI - However, this power should be exercised only in cases where there is sufficient material to a prima facie conclusion that there is need for such investigation. [Anurag Modi v. State of M.P.]...*38*

Constitution, Article 226 - Investigation by CBI - *Video footage prima facie established that demolition of settlements of Pardhis and death of two persons had support of local administration and elected representatives of that area - Police merely recorded FIR against unknown persons - Two years were passed but not a single person was made an accused - Sufficient material to believe that police was under tremendous political pressure and did not investigate the case properly from very beginning - Director, CBI directed to take over investigation. [Anurag Modi v. State of M.P.] ...*38*

Constitution, Article 226 - Maintainability of Writ Petition - *Appointment of respondent No. 4 as Incharge Managing Director, M.P. Hathkargha Bunkar Sakhari Sangh Maryadit - Appointment of respondent No.4 as Incharge Managing Director by giving go by to provisions of statute - Writ Petition maintainable. [Ramesh Sahu v. State of M.P.] ...2534*

Constitution, Article 226 - *Petitioner firm was awarded contract for the job of making data entries relating to the implementation of Government scheme - Contract cancelled - Action challenged in W.P. - Held - Work of petitioner was unsatisfactory and inspite of notice there was no improvement - As per terms & conditions of the contract, he had failed to complete the work within a period of one year - Prior to termination of contract notice was duly issued to the petitioner - In such circumstances, the order of cancellation of contract was neither arbitrary nor unreasonable nor mala fide - Petition dismissed. [Bits & Bytes (M/S) v. State of M.P.] ...3371*

Constitution, Article 226 - P.I.L. - *Misappropriation of public money in construction of canals - Lokayukt was requested for enquiry of misappropriation of fund - Benefit for which dam was constructed is not reaching the villagers after two decades of its completion - State Government directed*

पुनर्विलोकन की शक्ति का प्रयोग नहीं करेंगे और हस्तक्षेप नहीं करेंगे यद्यपि यदि तर्क के लिए इसे स्वीकार कर लिया जाए कि कोई प्रक्रियात्मक कमी है। (अमी आर्ट क्रियेशन्स एण्ड ऑफसेट प्रिंटर्स वि. बोर्ड ऑफ सेकेन्ड्री एजुकेशन) 3357

संविधान, अनुच्छेद 226 – ग्रीन कार्ड धारक – परिपत्र – शिक्षा शुल्क से छूट – याची ने 12.06.2006 को प्रवेश लिया – परिपत्र तारीख 29.11.2005 प्रवर्तन में था और 17.10.2007 को उपांतरित किया गया – याची परिपत्र तारीख 29.11.2005 का लाभ पाने का हकदार जो प्रचलन में था – बाद का परिपत्र किसी छात्र के अधिकार, जिसने पहिले से प्रवेश ले लिया हो, को कम नहीं कर सकता क्योंकि वह पूर्ववर्ती परिपत्र के आधार पर उसे प्रदत्त अधिकार है – याचिका मंजूर। (आशुतोष मिश्रा (डॉ.) वि. म.प्र. राज्य) 2547

संविधान, अनुच्छेद 226 – सी.बी.आई. द्वारा अन्वेषण – उच्च न्यायालय को सी.बी.आई. द्वारा अन्वेषण करने का निदेश देने की शक्ति है – तथापि, यह शक्ति केवल उन मामलों में प्रयुक्त की जानी चाहिए जहाँ प्रथम दृष्ट्या इस निष्कर्ष के लिए पर्याप्त सामग्री हो कि ऐसे अन्वेषण की आवश्यकता है। (अनुराग मोदी वि. म.प्र. राज्य) ---*38

संविधान, अनुच्छेद 226 – सी.बी.आई. द्वारा अन्वेषण – वीडियो फुटेज से प्रथम दृष्ट्या साबित होता है कि पारधियों के आवासों के विनष्टीकरण और दो व्यक्तियों की मृत्यु को स्थानीय प्रशासन और उस क्षेत्र के निर्वाचित प्रतिनिधियों का समर्थन प्राप्त था – पुलिस ने केवल अज्ञात व्यक्तियों के विरुद्ध एफ.आई.आर. दर्ज की – दो वर्ष व्यतीत हो गये किन्तु एक भी व्यक्ति को अभियुक्त नहीं बनाया गया – यह विश्वास करने के लिए पर्याप्त सामग्री है कि पुलिस अत्यधिक राजनैतिक दबाव में थी और प्रारम्भ से ही मामले का उचित अन्वेषण नहीं किया – सी.बी.आई. के निदेशक को अन्वेषण का भार ग्रहण करने का निदेश दिया गया। (अनुराग मोदी वि. म.प्र. राज्य) ---*38

संविधान, अनुच्छेद 226 – रिट याचिका की पोषणीयता – प्रत्यर्थी क्र. 4 की प्रभारी प्रबंध निदेशक, म.प्र. हथकरघा बुनकर सहकारी संघ मर्यादित के रूप में नियुक्ति – प्रत्यर्थी क्र. 4 की प्रभारी प्रबंध निदेशक के रूप में नियुक्ति कानून के उपबंधों से आगे बढ़ते हुए – रिट याचिका पोषणीय। (रमेश साहू वि. म.प्र. राज्य) 2534

संविधान, अनुच्छेद 226 – याची फर्म से सरकारी स्कीम के क्रियान्वयन सम्बन्धी डाटा एण्ट्री करने के कार्य के लिए संविदा की गई – संविदा रद्द की गयी – कृत्य को रिट याचिका में चुनौती – अभिनिर्धारित – याची का कार्य असंतोषप्रद था सूचनापत्र के बावजूद उसमें कोई सुधार नहीं हुआ था – संविदा के निबंधन और शर्तों के अनुसार वह एक वर्ष की कालावधि के भीतर कार्य पूर्ण करने में असफल रहा – संविदा के पर्यवसान के पूर्व याची को सम्यक् रूप से सूचनापत्र जारी किया गया – इन परिस्थितियों में संविदा के रद्दकरण का आदेश न तो मनमाना था न ही अयुक्तियुक्त और न ही असदभावपूर्ण था – याचिका खारिज। (बिट्स एण्ड बाइट्स (मे.) वि. म.प्र. राज्य) 3371

संविधान, अनुच्छेद 226 – लोकहित वाद – नहरों के निर्माण में लोकधन का दुर्विनियोग – लोकायुक्त से निधि के दुर्विनियोग की जाँच का निवेदन किया गया – जिन ग्रामीणों के लाभ के लिए बांध का निर्माण किया गया था, निर्माण पूर्ण होने के दो दशक बाद भी उन्हें इसका लाभ नहीं मिल रहा है – राज्य सरकार को निदेशित किया गया कि तत्काल विचार करे और निर्णय ले ताकि

to immediately consider and take decision so that construction of canals is completed without any further delay - Petition allowed. [Kumer Singh Bhati v. State of M.P.] ...2911

Constitution, Article 226 - See - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 13(2), [Aman Trading Company (M/s) v. Vyavisayik Evam Audhyogik Sahakari Bank] ...2830

Constitution, Article 226 - Territorial jurisdiction of High Court of M.P. - Petitioner having registered office at Gwalior was transporting Ballast to State of Uttar Pradesh wherein transit fee is being levied - Respondents raising an objection of territorial jurisdiction of High Court - Held - As the transit fee is being levied at Itawa and Jhansi falling within the territory of State of Uttar Pradesh - High Court of M.P. does not have jurisdiction to entertain writ petition under Article 226. [Emerald Industries Ltd. v. State of M.P.] ...3341

Constitution, Article 226 - Writ petition challenging notification of Board amending and modifying agreement and withdrawing the condition of paying interest on security deposit - Any change resulting in non-payment or reduction of interest will have to be justified by cogent reasons and materials having a bearing on financial position - Sufficient justification given by Board regarding increased financial deficit - Board is justified in issuing the notification - Appeal dismissed. [Jindal Strips Ltd v. M.P. State Electricity Board] ...3257

Constitution, Article 226 - Writ petition to rectify or substitute part of the order passed u/s 439 Cr.P.C. by learned Single Judge of High Court - Held - Petition is abuse of process of law, thus, not maintainable and absolutely frivolous - Dismissed with cost. [Vijendra Singh v. Central Bureau of Investigation] ...2521

Constitution, Article 235 - See - Service Law [Ramakant Choudhary v. District & Sessions Judge, Guna] ...3265

Constitution (Scheduled Caste) Order, 1950, Clause 2 & Entry 22, Representation of People Act, 1950, Section 20 - Caste certificate - Dhobi belonging to Bhopal, Raisen and Sehore District of Madhya Pradesh are Scheduled Caste as per Entry 22 of Constitution (Scheduled Caste) Order, 1950 - Petitioner born in Sehore alleging herself to be Dhobi and sought for caste certificate - Held - When the presidential Order, 1950 came into existence, the petitioner's father was not an ordinary resident of Sehore and was residing at Betul - Petitioner born after the presidential notification, therefore, ineligible for being considered as belonging to Scheduled Caste - No fault in rejection of application for caste certificate - Petition dismissed. [Rashmi Khedle (Ku.) v. State of M.P.] ...2563

नहरों का निर्माण बिना किसी अतिरिक्त विलम्ब के पूर्ण हो जाए — याचिका मंजूर। (कुमेर सिंह माटी वि. म.प्र. राज्य) ...2911

संविधान, अनुच्छेद 226 — देखें — वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम, 2002, धारा 13(2), (अमन ट्रेडिंग कम्पनी (मे.) व्यवसायिक एवं औद्योगिक सहकारी बैंक) ...2830

संविधान, अनुच्छेद 226 — म.प्र. उच्च न्यायालय की क्षेत्रीय अधिकारिता — याची जिसका पंजीकृत कार्यालय ग्वालियर में था, रोड़ी पत्थर उत्तर प्रदेश राज्य को ले जा रहा था जिसमें अभिवहन फीस उदगृहीत की जा रही है — प्रत्यर्थियों ने उच्च न्यायालय की क्षेत्रीय अधिकारिता की आपत्ति उठायी — अभिनिर्धारित — चूंकि अभिवहन फीस उत्तर प्रदेश राज्य के राज्यक्षेत्र के अंदर आने वाले इटावा और झांसी में उदगृहीत की जा रही है — म.प्र. उच्च न्यायालय को अनुच्छेद 226 के अन्तर्गत रिट याचिका ग्रहण करने की अधिकारिता नहीं है। (एमराल्ड इंडस्ट्रीज लि. वि. म.प्र. राज्य) ...3341

संविधान, अनुच्छेद 226 — करार को संशोधित और उपांतरित करने वाली और सुरक्षा निधि पर ब्याज अदा करने की शर्त को वापस लेने वाली मण्डल की अधिसूचना को चुनौती देते हुए रिट याचिका — कोई परिवर्तन जिसका परिणाम ब्याज का असंदाय या कमी है, को वित्तीय स्थिति से सम्बन्धित प्रत्यायक हेतु और सामग्री से न्यायोचित ठहराना होगा — मण्डल द्वारा बढ़े हुए वित्तीय घाटे के सम्बन्ध में पर्याप्त न्यायोचित्य दिया गया — मण्डल का अधिसूचना जारी करना न्यायानुमत — अपील खारिज। (जिंदल स्ट्रिप्स लि. वि. एम.पी. स्टेट इलेक्ट्रिसिटी बोर्ड) ...3257

संविधान, अनुच्छेद 226 — उच्च न्यायालय के विद्वान एकल न्यायाधीश द्वारा द.प्र.सं. की धारा 439 के अन्तर्गत पारित आदेश के भाग को सुधारने अथवा प्रतिस्थापित करने के लिए रिट याचिका — अभिनिर्धारित — याचिका विधि की प्रक्रिया का दुरुपयोग है, इस प्रकार पोषणीय नहीं और आत्यन्तिकतः तुच्छ है — खर्च सहित खारिज। (विजेन्द्र सिंह वि. सेंट्रल ब्यूरो ऑफ़ इनवेस्टिगेशन) ...2521

संविधान, अनुच्छेद 235 — देखें — सेवा विधि (रमाकांत चौधरी वि. जिला एवं सत्र न्यायाधीश, गुना) ...3265

संविधान (अनुसूचित जाति) आदेश, 1950, खण्ड 2 एवं प्रविष्टि 22, लोक प्रतिनिधित्व अधिनियम, 1950, धारा 20 — जाति प्रमाण पत्र — संविधान (अनुसूचित जाति) आदेश, 1950 की प्रविष्टि 22 के अनुसार मध्य प्रदेश के भोपाल, रायसेन और सीहोर जिले के धोबी अनुसूचित जाति हैं — सीहोर में उत्पन्न याची ने स्वयं को धोबी होना अभिकथित किया और जाति प्रमाण पत्र चाहा — अभिनिर्धारित — जब राष्ट्रपति का आदेश 1950 अस्तित्व में आया याची के पिता सीहोर के साधारण निवासी नहीं थे और बैतूल में रह रहे थे — याची का जन्म राष्ट्रपति की अधिसूचना के बाद हुआ, इसलिए, अनुसूचित जाति के रूप में विचारित किये जाने के लिए अपात्र — जाति प्रमाण पत्र का आवेदन नामंजूर करने में कोई त्रुटि नहीं — याचिका खारिज। (रश्मि खडल (कुमारी) वि. म.प्र. राज्य) ...2563

Consumer Protection Act (68 of 1986), Sections 2(1)(e) & 21(b) - *A revision is maintainable against an appellate order passed by the State Commission before the National Commission u/s 21(b) of the Act.* [Rajendra Singh Sisodiya v. M.P. Housing Board, Indore] ...2552

Contempt of Courts Act (70 of 1971), Section 12, Constitution, Article 215 - Maintainability of Contempt Petition for execution of a decree passed by competent civil Court - Held - Not maintainable - When the Code of Civil Procedure provides for instituting a proceeding for execution of the judgment & decree, then a contempt application under Article 215 of Constitution r/w S. 12 of Act is not maintainable as the statute provides for a mechanism for execution of the decree passed. [Horilal v. Bhajanlal] ...3061

Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 49-E - Appointment of Managing Director - Respondent No.4 is not a class-I officer - Not eligible for appointment as Managing Director - Appointment de hors statutory provision - Appointment quashed. [Ramesh Sahu v. State of M.P.] ...2534

Cooperative Societies Act, M.P. 1960 (17 of 1961), Sections 64 & 82 - Bar of jurisdiction of Courts - Civil suit filed for restraining the Bank from recovering loan amount - Held - Bank was a registered cooperative society - There is a clear bar u/s 82 of the Act - Civil suit not maintainable. [Adim Jati Seva Sahakari Samiti Maryadit v. Kodar] ...2922

Cooperative Societies Act, M.P. 1960 (17 of 1961), Sections 64 & 82 - Lack of jurisdiction - Decree of civil Court for restraining the cooperative bank from recovering loan amount - There is inherent lack of jurisdiction of civil Court - Question of jurisdiction can be raised at any time and at any stage even in collateral proceedings. [Adim Jati Seva Sahakari Samiti Maryadit v. Kodar] ...2922

Court Fees Act (7 of 1870), Section 7(iv)(c) - Payment of ad valorem court fees - Sale deed executed by father binding on the son - Held - Ad valorem court fees on the valuation of the sale deed is required to be paid - Even if the relief is couched in declaratory form, the relief of avoidance and/or cancellation is implicit in the declaratory relief contained in plaint. [Israt Jahan (Smt.) v. Rajia Begum] ...3107

Court Fees Act (7 of 1870), Schedule II, Article 17 - Ad valorem court fee - Void & voidable transaction - Sale deed obtained by playing fraud - Document is void not voidable - Held - In case of a void document it is not necessary to seek the relief of cancellation of document - Ad valorem court fees is not payable. [Manzoor Ahmad v. Jaggi Bai] ...3111

Criminal Procedure Code, 1973 (2 of 1974) [As amended by Code of Criminal Procedure (Amendment) Act, 2001 w.e.f. 24.09.2001], Section 125 - Amount of maintenance - Interim order of maintenance challenged as

उपमोक्ता संरक्षण अधिनियम (1986 का 68), धाराएँ 2(1)(ई) व 21(बी) — राज्य आयोग द्वारा पारित अपीलीय आदेश के विरुद्ध अधिनियम की धारा 21(बी) के अन्तर्गत राष्ट्रीय आयोग के समक्ष पुनरीक्षण पोषणीय है। (राजेन्द्र सिंह सिसोदिया वि. एम.पी. हाउसिंग बोर्ड, इंदौर)...2552

न्यायालय अवमान अधिनियम (1971 का 70), धारा 12, संविधान, अनुच्छेद 215 — सक्षम सिविल न्यायालय द्वारा पारित डिक्री के निष्पादन के लिए अवमानना याचिका की पोषणीयता — अभिनिर्धारित — पोषणीय नहीं — जब सिविल प्रक्रिया संहिता निर्णय व डिक्री के निष्पादन के लिए कार्यवाही संस्थित करने का उपबंध करती है तब संविधान के अनुच्छेद 215 सहपठित अधिनियम की धारा 12 के अन्तर्गत आवेदन पोषणीय नहीं है क्योंकि कानून पारित डिक्री के निष्पादन की रीति का उपबंध करता है। (होरीलाल वि. भजनलाल) ...3061

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 49-ई — प्रबंध निदेशक की नियुक्ति — प्रत्यर्थी क्रमांक 4 वर्ग-1 अधिकारी नहीं — प्रबंध निदेशक नियुक्त किये जाने का पात्र नहीं — नियुक्ति कानूनी उपबंध के बाहर — नियुक्ति अभिखंडित। (रमेश साहू वि. म.प्र. राज्य) ...2534

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धाराएँ 64 व 82 — न्यायालयों की अधिकारिता का वर्जन — बैंक को ऋण राशि वसूल करने से अवरुद्ध करने के लिए सिविल वाद पेश — अभिनिर्धारित — बैंक रजिस्ट्रीकृत सहकारी सोसाइटी थी — अधिनियम की धारा 82 के अन्तर्गत स्पष्ट वर्जन है — सिविल वाद पोषणीय नहीं। (आदिम जाति सेवा सहकारी समिति मर्यादित वि. कोदार) ...2922

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धाराएँ 64 व 82 — अधिकारिता का अभाव — सहकारी बैंक को ऋण राशि वसूल करने से अवरुद्ध करने के लिए सिविल न्यायालय की डिक्री — सिविल न्यायालय की अधिकारिता का अन्तर्निहित अभाव है — अधिकारिता का प्रश्न किसी भी समय और किसी भी प्रक्रम पर आनुषंगिक कार्यवाहियों में भी उठाया जा सकता है। (आदिम जाति सेवा सहकारी समिति मर्यादित वि. कोदार) ...2922

न्यायालय फीस अधिनियम (1870 का 7), धारा 7(iv)(सी) — एड वेलोरेम न्यायालय फीस का संदाय — पिता द्वारा निष्पादित विक्रय विलेख पुत्र पर बंधनकारी है — अभिनिर्धारित — विक्रय विलेख के मूल्यांकन पर एड वेलोरेम न्यायालय फीस संदत्त करना आवश्यक है — यद्यपि अनुतोष घोषणात्मक रूप में गर्भित है, तथापि वादपत्र में अन्तर्विष्ट घोषणात्मक अनुतोष में परिवर्जन और/अथवा रद्दकरण का अनुतोष अन्तर्निहित है। (इशरत जहाँ (श्रीमति) वि. रजिया बेगम) ...3107

न्यायालय फीस अधिनियम (1870 का 7), अनुसूची II, अनुच्छेद 17 — एड वेलोरेम न्यायालय फीस — शून्य और शून्यकरणीय संव्यवहार — विक्रय विलेख कपट द्वारा अभिप्राप्त — दस्तावेज शून्य है न कि शून्यकरणीय — अभिनिर्धारित — शून्य दस्तावेज की दशा में यह आवश्यक नहीं है कि दस्तावेज के रद्दकरण का अनुतोष चाहा जाए — एड वेलोरेम न्यायालय फीस देय नहीं है। (मंजूर अहमद वि. जगगी बाई) ...3111

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) {दण्ड प्रक्रिया संहिता (संशोधन) अधिनियम, 2001 से यथासंशोधित 24.09.2001 से प्रभावी}, धारा 125 — भरण पोषण की रकम — अंतरिम आदेश को चुनौती दी गई क्योंकि अधिकतम भरण-पोषण 3000 रुपये की रकम

*maximum maintenance can be awarded upto sum of Rs.3000 - Held - As per State's amendment for the words "five hundred rupees" words "3000 rupees" were substituted w.e.f. 29.05.1998 - This State amendment was made prior to the enactment of Code of Criminal Procedure (Amendment) Act, 2001 by which the words "not exceeding five hundred rupees in the whole" have been omitted - The ceiling which was fixed under the original enactment of Rs.500 p.m. has been removed and now it is open to Court under the amended law to fix such amount as it thinks fit - Looking to the social & economic status of parties and facts & circumstances of the case, Court has fixed a reasonable amount of interim maintenance - No interference warranted - Revision dismissed. [Piyushkant Sharma v. Smt. Pragati Sharma] ...*54*

Criminal Procedure Code, 1973 (2 of 1974), Section 70(2) - Perpetual warrant of arrest - Applicant accused in another crime - However, warrant of arrest issued in wrong name - Applicant directed to be taken into custody. [Sanjay v. State of M.P.] ...3025

Criminal Procedure Code, 1973 (2 of 1974), Section 70(2) - Perpetual warrant of arrest - Applicant not an accused in Crime No.26/95 - In spite of that perpetual warrant of arrest issued against him - Issuance of warrant of arrest and proclamation issued by S.P., are without any authority - Consequently they are quashed. [Sanjay v. State of M.P.] ...3025

Criminal Procedure Code, 1973 (2 of 1974), Section 133 - Conditional order of removal of nuisance - SDM issued a show cause notice on the basis of police report and letter of CMO for demolition of a house which was in dilapidated condition - Held - Formulation of an opinion by the SDM without the reference to expert/engineer is not proper - SDM, therefore, directed to seek an opinion from the engineer, not below the rank of SE, PWD and after an opinion is received shall forward a copy to the petitioners and give them an opportunity of hearing before passing a final order. [Niranjan Singh v. State of M.P.] ...3276

Criminal Procedure Code, 1973 (2 of 1974), Section 154 - FIR - Delay - Incident took place on 14.08.1992 - FIR lodged on 20.08.1992 - Complainant had come into contact with Sarpanch and Watchman of village after the incident - Explanation that due to fear FIR could not be lodged, does not appear to be reliable - If FIR is lodged at belated stage without giving proper explanation, then it being suspicious could not be made basis for holding conviction. [Mangal Singh v. State of M.P.] ...2671

Criminal Procedure Code, 1973 (2 of 1974), Section 154 - FIR - FIR is not a substantive piece of evidence - Can be used for contradiction and corroboration. [State of M.P. v. Habib Ahmad] ...3187

Criminal Procedure Code, 1973 (2 of 1974), Section 154 - See - Penal Code, 1860, Section 376 [Nanda v. State of M.P.] ...3221

तक अधिनिर्णीत किया जा सकता है - अभिनिर्धारित - राज्य संशोधन के अनुसार शब्द "पाँच सौ रुपया" के लिए शब्द "3000 रुपया" 29.05.1998 से प्रतिस्थापित कर दिये गये हैं - यह राज्य संशोधन दण्ड प्रक्रिया संहिता (संशोधन) अधिनियम, 2001 के पूर्व किया गया था जिसके द्वारा शब्द "कुल पाँच सौ रुपया से अधिक नहीं" हटा दिये गये हैं - मूल अधिनियम के अन्तर्गत नियत की गई 500 रुपये की सीमा हटा दी गई है और अब संशोधन अधिनियम के अन्तर्गत यह न्यायालय की स्वतंत्रता है कि ऐसी रकम नियत करे जैसी वह ठीक समझे - पक्षकारों की सामाजिक और आर्थिक प्रास्थिति एवं मामले के तथ्यों और परिस्थितियों को देखते हुए न्यायालय ने अंतरिम भरण-पोषण की युक्तियुक्त रकम नियत की है - कोई हस्तक्षेप की आवश्यकता नहीं - रिवीजन खारिज। (पीयूषकांत शर्मा वि. श्रीमति प्रगति शर्मा) ---*54

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 70(2) - गिरतारी का शाश्वत वारण्ट - आवेदक भिन्न अपराध में अभियुक्त - तथापि, गिरतारी का वारण्ट गलत नाम से जारी किया गया - आवेदक को अभिरक्षा में लेने का निदेश दिया गया। (संजय वि. म.प्र. राज्य)...3025

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 70(2) - गिरतारी का शाश्वत वारण्ट - आवेदक अपराध क्र. 26/95 में अभियुक्त नहीं - इसके बावजूद उसके विरुद्ध गिरतारी का शाश्वत वारण्ट जारी किया गया - गिरतारी का वारण्ट जारी किया जाना और पुलिस अधीक्षक द्वारा जारी उद्घोषणा बिना किसी प्राधिकार के - परिणामतः वे अभिखंडित की गई। (संजय वि. म.प्र. राज्य) ...3025

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 133 - न्यूसेंस हटाने का सशर्त आदेश - उपखण्ड मजिस्ट्रेट ने पुलिस रिपोर्ट और मुख्य नगरपालिका अधिकारी के पत्र के आधार पर एक मकान, जो जीर्ण-शीर्ण दशा में था, के गिराने का कारण बताओ सूचनापत्र जारी किया - अभिनिर्धारित - उपखण्ड मजिस्ट्रेट द्वारा विशेषज्ञ/अभियंता के प्रति निर्देश के बिना कोई राय बनाना उचित नहीं - इसलिए उपखण्ड मजिस्ट्रेट को निदेशित किया गया कि अभियंता, जो अधीक्षण अभियंता, लोक निर्माण विभाग से नीचे की श्रेणी का न हो, से राय लें और राय प्राप्त हो जाने के बाद उसकी एक प्रतिलिपि याचियों को प्रेषित करें और अंतिम आदेश पारित करने के पूर्व उन्हें सुनवाई का अवसर प्रदान करें। (निरंजन सिंह वि. म.प्र. राज्य) ...3276

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 - एफ.आई.आर. - विलम्ब - घटना 14.08.1992 को घटित हुई - एफ.आई.आर. 20.08.1992 को दर्ज करायी गयी - परिवादी घटना के बाद गाँव के सरपंच और चौकीदार के सम्पर्क में आया था - स्पष्टीकरण कि डर के कारण एफ.आई.आर. दर्ज नहीं करायी जा सकी, विश्वसनीय प्रतीत नहीं होता - यदि एफ.आई.आर. समुचित स्पष्टीकरण दिये बिना विलम्बित प्रक्रम पर दर्ज करायी जाती है, तब वह शंकास्पद होने से दोषसिद्धि का आधार नहीं बनायी जा सकती। (मंगल सिंह वि. म.प्र. राज्य) ...2671

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 - एफ.आई.आर. - एफ.आई.आर. साक्ष्य का सारभूत भाग नहीं है - खण्डन और सम्पुष्टि के लिये प्रयुक्त की जा सकती है। (म.प्र. राज्य वि. हबीब अहमद) ...3187

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 - देखें - दण्ड संहिता, 1860, धारा 376, (नंदा वि. म.प्र. राज्य) ...3221

Criminal Procedure Code, 1973 (2 of 1974), Section 157 - Non-compliance - *There is prompt FIR - Police reached on the spot immediately - Spot map prepared mentioning the crime number etc - Dead body sent for postmortem mentioning the summary story of case - Assault by respondent No.1 also mentioned in application addressed to Doctor - Non-compliance of S. 157 would not be fatal to the prosecution.* [State of M.P. v. Habib Ahmad]...3187

Criminal Procedure Code, 1973 (2 of 1974), Section 157 - Spot map - *Spot map prepared in the presence of eye witnesses - Eye witness also signatory to spot map - If the place where the witness was standing is not shown, it would not dilute the case of the prosecution.* [State of M.P. v. Habib Ahmad] ...3187

Criminal Procedure Code, 1973 (2 of 1974), Sections 158 & 173(3) - Further investigation - *Superintendent of Police, Special Police Establishment informed Special Judge that further investigation has been started in pending trial - Challenged the legality, enforceability and effect - Held - Superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall after recording such instructions on such report, transmit the same without delay to the Magistrate - In such a case, the special officer is required to submit his personal report along with the report of the officer in charge of the police station.* [Prashant Pathak v. State of M.P.] ...3234

Criminal Procedure Code, 1973 (2 of 1974), Sections 158 & 173(3) - Permission/Order of Magistrate for further investigation not necessary - *Section 173(3) makes it clear that officer especially appointed u/s 158, pending orders of the Magistrate, may direct the officer in charge of Police Station to make further investigation - Officer in charge is only required to give an information to the concerned Magistrate - However, his authority to issue instructions to officer in charge of Police Station to make further investigation cannot be short circuited.* [Prashant Pathak v. State of M.P.]...3234

Criminal Procedure Code, 1973 (2 of 1974), Section 161 - Delay in recording of statement of witnesses - *Explanation given by I.O. satisfactory - Objection not tenable.* [Gajendra Singh v. State of M.P.] ...*41

Criminal Procedure Code, 1973 (2 of 1974), Sections 173(3), (8) & 158 - *Where a superior officer of police appointed u/s 158 direct the officer in charge of the police station to make further investigation - Procedure after further investigation - S. 173(3) is governed and controlled by S. 158 shall continue to be applicable if the original report was required to be filed by an officer especially appointed by the State Government - Then the supplementary challan / additional report will also have to be filed by such authorised officer and none other.* [Prashant Pathak v. State of M.P.] ...3234

Criminal Procedure Code, 1973 (2 of 1974), Section 173(8) -

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 - अननुपालन - तत्काल एफ.आई.आर. है - पुलिस तुरन्त घटनास्थल पर पहुँची - अपराध क्रमांक आदि का उल्लेख करते हुए घटनास्थल का नक्शा बनाया गया - शव मामले की संक्षिप्त कहानी का उल्लेख करते हुए शव-परीक्षा के लिए भेजा गया - प्रत्यर्थी क्र. 1 द्वारा हमले का चिकित्सक को सम्बोधित आवेदन में भी उल्लेख किया गया - धारा 157 का अननुपालन अभियोजन के लिए घातक नहीं होगा। (म.प्र. राज्य वि. हबीब अहमद) ...3187

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 - घटनास्थल का नक्शा - घटनास्थल का नक्शा प्रत्यक्षदर्शी साक्षियों की उपस्थिति में बनाया गया - प्रत्यक्षदर्शी साक्षी भी घटनास्थल के नक्शे का हस्ताक्षरकर्ता था - यदि स्थान, जहाँ साक्षी खड़े रहे थे, दिखाई नहीं देता, तो यह अभियोजन के मामले को हल्का नहीं करेगा। (म.प्र. राज्य वि. हबीब अहमद) ...3187

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 158 व 173(3) - आगे और अन्वेषण करे - पुलिस अधीक्षक, विशेष पुलिस स्थापना ने विशेष न्यायाधीश को सूचित किया कि लम्बित विचारण में आगे और अन्वेषण प्रारम्भ कर दिया गया है - वैधता, प्रवर्तनशीलता और प्रभाव को चुनौती - अभिनिर्धारित - वरिष्ठ अधिकारी पुलिस थाने के भारसाधक अधिकारी को ऐसे अनुदेश दे सकेगा जैसा वह उचित समझता है, और ऐसी रिपोर्ट पर ऐसे अनुदेश अभिलिखित करने के बाद उसे बिना किसी विलम्ब के मजिस्ट्रेट को प्रेषित करेगा - ऐसे मामले में, विशेष अधिकारी को पुलिस थाने के भारसाधक अधिकारी की रिपोर्ट के साथ अपनी व्यक्तिगत रिपोर्ट पेश करना अपेक्षित है। (प्रशांत पाठक वि. म.प्र. राज्य) ...3234

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 158 व 173(3) - आगे और अन्वेषण करने के लिए मजिस्ट्रेट की अनुज्ञा/आदेश आवश्यक नहीं - धारा 173(3) यह स्पष्ट करती है कि धारा 158 के अन्तर्गत विशेषतः नियुक्त अधिकारी मजिस्ट्रेट के आदेशों के लम्बित रहते हुए पुलिस थाने के भारसाधक अधिकारी को आगे और अन्वेषण करने का निदेश दे सकेगा - भारसाधक अधिकारी को केवल सम्बन्धित मजिस्ट्रेट को सूचना देना अपेक्षित है - तथापि, आगे और अन्वेषण करने के लिए पुलिस थाने के भारसाधक अधिकारी को अनुदेश जारी करने का उसका प्राधिकार कम नहीं हो सकता। (प्रशांत पाठक वि. म.प्र. राज्य) ...3234

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 - साक्षियों के कथन अभिलिखित करने में विलम्ब - अनुसंधानकर्ता अधिकारी द्वारा दिया गया स्पष्टीकरण समाधानप्रद - आपत्ति मान्य नहीं। (गजेन्द्र सिंह वि. म.प्र. राज्य) ---*41

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 173(3), (8) व 158 - जहाँ धारा 158 के अन्तर्गत नियुक्त पुलिस का वरिष्ठ अधिकारी पुलिस थाने के भारसाधक अधिकारी को आगे और अन्वेषण करने के लिए निदेश देता है - आगे और अन्वेषण के बाद की प्रक्रिया - धारा 158 से शासित और नियंत्रित धारा 173(3) लागू होना जारी रहेगी यदि मूल रिपोर्ट राज्य सरकार द्वारा विशेषतः नियुक्त अधिकारी द्वारा पेश किया जाना अपेक्षित था - तब अनुपूरक चालान/अतिरिक्त रिपोर्ट भी ऐसे प्राधिकृत अधिकारी द्वारा न कि अन्य के द्वारा पेश करनी होगी। (प्रशांत पाठक वि. म.प्र. राज्य) ...3234

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(8) - आगे और अन्वेषण करने

Permission/Order of Magistrate for further investigation not necessary. - S. 173(8) of Cr.P.C. opens with non-obstante clause - S. 173(8) nowhere provides that for further investigation permission/sanction from concerned Magistrate to whom report has already been filed, is required. [Prashant Pathak v. State of M.P.] ...3234

Criminal Procedure Code, 1973 (2 of 1974), Section 173(8) -Where officer in charge of police station himself can proceed further investigation - Procedure after further investigation - When officer in charge of police station obtains further evidence oral or documentary, he shall forward to the Magistrate a further report/reports regarding such evidence - After further investigation, officer in charge of police station would be entitled to file supplementary challan - Such supplementary challan is required to be filed in accordance with S. 173(2) of Cr.P.C. - Once the supplementary challan is treated to be a regular challan then provisions of Sub-section (2) to (6) shall apply mutatis mutandis. [Prashant Pathak v. State of M.P.] ...3234

Criminal Procedure Code, 1973 (2 of 1974), Section 174 - Inquest - Non-mentioning of name of assailant - Not fatal for prosecution. [Bhikhari @ Bhikhamsingh v. State of M.P.] ...3411

Criminal Procedure Code, 1973 (2 of 1974), Section 174 - Inquest report - Eye witnesses claimed to be present on spot but no enquiry was made by police - Investigating Officer did not join eye witnesses of incident in inquest proceedings - Inquest proceedings were conducted before other witnesses - It is also mentioned that no eye witness was available and cause of death was also not known - Above facts cast serious doubt on the truthfulness of evidence of eye witness. [Lal Bahadur Dubey v. State of M.P.] ...3214

Criminal Procedure Code, 1973 (2 of 1974), Section 174 - Scope of proceedings u/s 174 is very limited - Non-mention of names of assailants in inquest report - No significance could be attached. [State of M.P. v. Mohan]...2692

Criminal Procedure Code, 1973 (2 of 1974), Section 177 - See - Penal Code, 1860, Section 498-A, [Jitendra v. State of M.P.] ...*43

Criminal Procedure Code 1973 (2 of 1974), Section 200 - See - Accommodation Control Act, M.P. 1961, Section 43(3), [Manisha Lalwani (Smt.) v. Dr. D.V. Paul] ...2721

Criminal Procedure Code, 1973 (2 of 1974), Section 200 - See - Negotiable Instruments Act, 1881, Section 138, [Banshilal v. Abdul Munnar]...3032

Criminal Procedure Code, 1973 (2 of 1974), Sections 203 & 204 - Right of audience of accused - Complaint dismissed without registering it - Right of audience is conferred on other party only after the case is registered against him and when he is summoned u/s 204 CrPC. [Manisha Lalwani (Smt.) v. Dr. D.V. Paul] ...2721

के लिए मजिस्ट्रेट की अनुज्ञा/आदेश आवश्यक नहीं — — द.प्र.सं. की धारा 173(8) सर्वोपरि खण्ड से प्रारम्भ होती है — धारा 173(8) कहीं भी उपबंधित नहीं करती कि अतिरिक्त अन्वेषण के लिए सम्बन्धित मजिस्ट्रेट से, जिसे रिपोर्ट पूर्व में ही पेश की जा चुकी है, अनुज्ञा/मंजूरी लेना अपेक्षित है। (प्रशांत पाठक वि. म.प्र. राज्य) ...3234

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(8) — जहाँ पुलिस थाने का भारसाधक अधिकारी स्वयं आगे और अन्वेषण करने के लिए अग्रसर हो सकता हो — आगे और अन्वेषण के बाद की प्रक्रिया — जब पुलिस थाने का भारसाधक अधिकारी अतिरिक्त मौखिक या दस्तावेजी साक्ष्य अभिप्राप्त करता है, तो वह ऐसी साक्ष्य के सम्बन्ध में मजिस्ट्रेट को अतिरिक्त रिपोर्ट/रिपोर्टें अग्रेषित करेगा — आगे और अन्वेषण के बाद, पुलिस थाने का भारसाधक अधिकारी अनुपूरक चालान पेश करने का हकदार होगा — ऐसा अनुपूरक चालान द.प्र.सं. की धारा 173(2) के अनुसार पेश किया जाना अपेक्षित है — जब एक बार अनुपूरक चालान को नियमित चालान मान लिया जाता है तब उपधारा (2) से (6) के उपबंध यथावश्यक परिवर्तन सहित लागू होंगे। (प्रशांत पाठक वि. म.प्र. राज्य) ...3234

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 174 — मृत्यु समीक्षा — हमलावर का नाम उल्लिखित न करना — अभियोजन के लिए घातक नहीं। (भिखारी उर्फ भीकमसिंह वि. म.प्र. राज्य) ...3411

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 174 — मृत्यु-समीक्षा रिपोर्ट — प्रत्यक्षदर्शी साक्षियों ने घटनास्थल पर उपस्थित होने का दावा किया किन्तु कोई जाँच नहीं की गई — अन्वेषण अधिकारी ने घटना के प्रत्यक्षदर्शी साक्षियों को मृत्यु-समीक्षा कार्यवाहियों में शामिल नहीं किया — मृत्यु-समीक्षा कार्यवाहियाँ अन्य साक्षियों के समक्ष की गयीं — यह भी उल्लेख किया गया कि कोई प्रत्यक्षदर्शी साक्षी उपलब्ध नहीं था और मृत्यु का कारण भी ज्ञात नहीं था — उपर्युक्त तथ्य प्रत्यक्षदर्शी साक्षी के साक्ष्य की सत्यनिष्ठा पर गम्भीर संदेह डालते हैं। (लाल बहादुर दुबे वि. म.प्र. राज्य) ...3214

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 174 — धारा 174 के अन्तर्गत कार्यवाहियों का विस्तार बहुत सीमित है — मृत्यु समीक्षा रिपोर्ट में हमलावरों के नाम उल्लिखित न होना — कोई अर्थ नहीं लगाया जा सका। (म.प्र. राज्य वि. मोहन) ...2692

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 177 — देखें — दण्ड संहिता, 1860, धारा 498-ए, (जितेन्द्र वि. म.प्र. राज्य) ---*43

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 200 — देखें — स्थान नियंत्रण अधिनियम, म.प्र., 1961, धारा 43(3), (मनीषा लालवानी (श्रीमति) वि. डॉ. डी.व्ही.पॉल) ...2721

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 200 — देखें — परक्राम्य लिखित अधिनियम, 1881, धारा 138, (बंशीलाल वि. अब्दुल मुन्नार) ...3032

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 203 व 204 — अभियुक्त का सुनवाई का अधिकार — परिवाद रजिस्टर किये बिना खारिज — अन्य पक्षकार को सुनवाई का अधिकार उसके विरुद्ध मामला रजिस्टर हो जाने के बाद और जब वह द.प्र.सं. की धारा 204 के अन्तर्गत समनित किया जाता है, तभी प्रदत्त किया जाता है। (मनीषा लालवानी (श्रीमति) वि. डॉ. डी.व्ही.पॉल) ...2721

Criminal Procedure Code, 1973 (2 of 1974), Section 207 - Compact Disc - CD was displayed in Court in the presence of counsel for the accused before framing of charge - No objection by Advocate that because of non-supply of CD they cannot advance arguments on the question of framing of charge - Non-supply of CD did not cause prejudice to the accused. [Prakash Chattrani v. State of M.P.] ...3454

Criminal Procedure Code, 1973 (2 of 1974), Section 215 - See - Penal Code, 1860, Section 376(2)(g), 376 [Subhash v. State of M.P.] ...3226

Criminal Procedure Code, 1973 (2 of 1974), Section 227, Penal Code, 1860, Section 307 - Attempt to murder - Framing of charge - Important factor is intention or knowledge to cause death - At the stage of framing of charge, standard of tests regarding guilt or otherwise of accused cannot be applied - Court has to be satisfied about the prima facie existence of the factual ingredients constituting the offence - Application dismissed. [Sanjay Mishra v. State of M.P.] ...3462

Criminal Procedure Code, 1973 (2 of 1974), Section 282 - See - Evidence Act 1872, Section 119 [Vinod v. State of M.P.] ...3440

Criminal Procedure Code, 1973 (2 of 1974), Section 318 - Deaf & dumb - Accused deaf & dumb was tried alongwith others for offences punishable u/ss. 148 & 302 or 302/149 IPC - His plea of guilt not recorded and his examination u/s 313 of Code could not be possible - Trial Court found accused guilty of the offence u/s 325/34 IPC and forwarded the proceedings to HC u/s 318 of Code - Held - Accused was represented by a defence lawyer of his choice - The trend of cross-examination further reflected that the defence counsel on his behalf was able to question the witnesses as per instructions of the accused - The fact that the person is deaf and dumb does not necessarily mean that he cannot understand or cannot be made to understand the proceedings before a Court, though the disability is undoubtedly a serious handicap to the communication either way - His non-examination u/s 313 of Code had also not resulted into any prejudice to him - In the light of overwhelming evidence HC upheld the conviction u/s 325/34 IPC and sentence of already undergone imposed. [In Reference: Boura v. State of M.P.] ...2724

Criminal Procedure Code, 1973 (2 of 1974), Section 386 - Appeal against acquittal - Powers of appellate Court - Incident took place on 22.06.1991 - High Court being appellate Court and final Court of facts is vested with jurisdiction to reappraise evidence - Remanding matter to Trial Court for decision afresh not necessary. [State of M.P. v. Mohan] ...2692

Criminal Procedure Code, 1973 (2 of 1974), Section 437(6) - Grant of bail - Section 437(6) is mandatory in nature - One of the prosecution witnesses could not be cross-examined as counsel for applicants was not

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 207 - कॉम्पेक्ट डिस्क - आरोप विरचित करने के पूर्व अभियुक्त के अधिवक्ता की उपस्थिति में न्यायालय में सीडी दिखाई गयी - अधिवक्ता द्वारा कोई आपत्ति नहीं कि सीडी प्रदाय न किये जाने के कारण वे आरोप विरचित करने के प्रश्न पर बहस प्रस्तुत नहीं कर सकते हैं - सीडी प्रदाय न किये जाने के कारण अभियुक्त को कोई पूर्वाग्रह कारित नहीं हुआ। (प्रकाश छत्रानी वि. म.प्र. राज्य) ...3454

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 215 - देखें - दण्ड संहिता, 1860, धारा 376(2)(जी), 376 (सुभाष वि. म.प्र. राज्य) ...3226

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227, दण्ड संहिता, 1860, धारा 307 - हत्या का प्रयत्न - आरोप विरचित करना - महत्वपूर्ण करक हत्या कारित करने का आशय या ज्ञान है - आरोप विरचित करने के प्रक्रम पर अभियुक्त के दोष या अन्यथा से सम्बंधित परीक्षाओं का मानक लागू नहीं हो सकता - न्यायालय को अपराध गठित करने वाले तथ्यात्मक तत्वों के प्रथम दृष्ट्या अस्तित्व के बारे में समाधान करना होगा - आवेदन खारिज। (संजय मिश्रा वि. म.प्र. राज्य) ...3462

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 282 - देखें - साक्ष्य अधिनियम, 1872, धारा 119, (विनोद वि. म.प्र. राज्य) ...3440

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 318 - बधिर और मूक - बधिर और मूक अभियुक्त का अन्य के साथ भा.द.सं. की धारा 148 व 302 या 302/149 के अन्तर्गत दण्डनीय अपराधों के लिए विचारण किया गया - उसका दोषी होने का अभिवचन अभिलिखित नहीं किया गया और न संहिता की धारा 313 के अधीन उसकी परीक्षा संभव हो सकी - विचारण न्यायालय ने अभियुक्त को भा.द.सं. की धारा 325/34 के अन्तर्गत अपराध का दोषी पाया और संहिता की धारा 318 के अन्तर्गत कार्यवाहियाँ उच्च न्यायालय को अप्रेषित कीं - अभिनिर्धारित - अभियुक्त का प्रतिनिधित्व उसकी पसंद के प्रतिरक्षा अधिवक्ता द्वारा किया गया - प्रतिपरीक्षा की प्रवृत्ति से भी यह प्रतिबिम्बित होता है कि अभियुक्त के निर्देशानुसार उसकी ओर से प्रतिरक्षा अधिवक्ता साक्षियों से प्रश्न करने में समर्थ हुए - यह तथ्य कि व्यक्ति बधिर और मूक है, का आवश्यक रूप से यह अर्थ नहीं होता कि वह समझ नहीं सकता या न्यायालय के समक्ष की कार्यवाहियों को नहीं समझाया जा सकता, यद्यपि निःशक्ता दोनों ओर से संसूचना के लिए निस्संदेह एक गम्भीर अपंगता है - संहिता की धारा 313 के अन्तर्गत उसकी परीक्षा न करने के परिणामस्वरूप उसे कोई पूर्वाग्रह भी नहीं हुआ - पर्याप्त साक्ष्य के आलोक में उच्च न्यायालय ने भा.द.सं. की धारा 325/34 के अन्तर्गत दोषसिद्धि की पुष्टि की और पहले से ही भोगी जा चुकी अवधि का दण्डादेश अधिरोपित किया। (इन रेफरेन्स: बौरा वि. म.प्र. राज्य) ...2724

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 386 - दोषमुक्ति के विरुद्ध अपील - अपीलीय न्यायालय की शक्तियाँ - घटना 22.06.1991 को घटित हुई - उच्च न्यायालय में अपीलीय न्यायालय और तथ्यों का अंतिम न्यायालय होने से साक्ष्य का पुनःमूल्यांकन करने की अधिकारिता निहित है - पुनःविनिश्चय के लिए मामला विचारण न्यायालय को प्रतिप्रेषित करना आवश्यक नहीं। (म.प्र. राज्य वि. मोहन) ...2692

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 437(6) - जमानत का अनुदान - धारा 437(6) की प्रकृति आज्ञापक है - एक अभियोजन साक्षी की प्रतिपरीक्षा नहीं की जा सकी

*engaged on that date - Trial could not be completed within 60 days - Valuable right was accrued to applicants for grant of bail - Bail cannot be denied - Application allowed. [Ratilal v. State of M.P.] ...*45*

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code, 1860, Section 420 - Cheating - Applicants given C & F agency to non-applicant and on his default, agency was terminated - Magistrate took cognizance u/s 420 IPC on complaint against applicants - Held - As per the terms & conditions of agreement, the applicants were entitled to cancel the agreement in case of default on the part of non-applicant - In these circumstances, it cannot be said that any offence has been committed by the applicants - Court below committed error in taking cognizance of offence against the applicants u/s 420 IPC. [TCL India Holdings Pvt. Ltd. v. Murtaza] ...*46

Criminal Procedure Code, 1973 (2 of 1974), Sections 482 & 200, Negotiable Instruments Act, 1881, Section 138 - Magistrate taking cognizance u/s 138 of Act without examining the complainant u/s 200 Cr.P.C. - Held - Magistrate has not complied with statutory mandatory procedure - The order directing issuance of process deserves to be interfered with under the inherent powers but it would not be possible to quash the complaint in its entirety - Order set-aside - However, the Magistrate shall be at liberty to make an inquiry u/s 200 & 202 of Cr.P.C. to ascertain as to whether there exists sufficient ground for proceeding against the accused in respect of offence u/s 138 of Act. [Banshilal v. Abdul Munnar] ...3032

Dharma Swatantrya Adhiniyam, M.P. (27 of 1968), Sections 3 & 5 - Petition claiming handing over the dead body to perform funeral according to Hindu rites - No specific averments about forcible conversion - Deceased lived three years without objection after accepting Christianity - Relief of handing over for funeral can not be granted - Petition dismissed. [Prabhat Balotiya v. State of M.P.] ...2799

Dharma Swatantrya Adhiniyam, M.P. (27 of 1968), Section 5 - Intimation to District Magistrate about conversion from one religion to another within 7 days of ceremony - Absence of intimation does not vitiate the conversion - It is only a forcible conversion and not merely conversion which is prohibited. [Prabhat Balotiya v. State of M.P.] ...2799

Essential Commodities Act (10 of 1955), Section 3 r/w 7, Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990, Clause 5 - Tanker filled with kerosene parked at the HSD Pump - A pipe for discharging kerosene from the tanker into the HSD tank was duly fitted in the corresponding nozzle - Appellants convicted u/s 3/7 of the Act for making an attempt to commit adulteration in HSD - Held - Sample drawn from HSD tank was not found to be adulterated - Appellants had made preparation to commit the violation of Order, 1990 -

क्योंकि उस तारीख को आवेदकों के अधिवक्ता नियुक्त नहीं थे - विचारण 60 दिनों के भीतर पूर्ण नहीं हो सका - आवेदकों को जमानत के अनुदान का मूल्यवान अधिकार प्रोद्भूत हुआ - जमानत से इनकार नहीं किया जा सकता - आवेदन मंजूर। (रतीलाल वि. म.प्र. राज्य) ---*45

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता, 1860, धारा 420 - छल - आवेदकों ने अनावेदक को सी एण्ड एफ एजेंसी दी और उसके व्यक्तिगत पर एजेंसी समाप्त कर दी गई - मजिस्ट्रेट ने आवेदकों के विरुद्ध भा.द.सं. की धारा 420 के अन्तर्गत संज्ञान लिया - अभिनिर्धारित - आवेदक अनुबन्ध की शर्तों और निबंधनों के अनुसार अनावेदक की ओर से किसी व्यक्तिगत की दशा में अनुबन्ध रद्द करने के हकदार थे - इन परिस्थितियों में यह नहीं कहा जा सकता कि आवेदकों द्वारा कोई अपराध किया गया - अधीनस्थ न्यायालय ने आवेदकों के विरुद्ध भा.द.सं. की धारा 420 के अन्तर्गत अपराध का संज्ञान लेने में त्रुटि की। (टीसीएल इंडिया होलडिंग्स प्रा. लि. वि. मूर्तजा) ---*46

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 482 व 200, परक्राम्य लिखत अधिनियम, 1881, धारा 138 - मजिस्ट्रेट ने द.प्र.सं. की धारा 200 के अन्तर्गत परिवादी की परीक्षा किये बिना अधिनियम की धारा 138 के अन्तर्गत संज्ञान लिया - अभिनिर्धारित - मजिस्ट्रेट ने कानूनी आज्ञापक प्रक्रिया का अनुपालन नहीं किया - आदेशिका जारी करने के निदेश देने वाला आदेश अन्तर्निहित शक्तियों के अधीन हस्तक्षेप योग्य है किन्तु यह संभव नहीं होगा कि परिवाद पूर्णतः अभिखंडित किया जाए - आदेश अपास्त - तथापि, यह अभिनिश्चित करने के लिए कि क्या परिवादी के विरुद्ध अधिनियम की धारा 138 के अन्तर्गत अपराध के सम्बन्ध में कार्यवाही के लिए पर्याप्त आधार विद्यमान है, मजिस्ट्रेट द.प्र.सं. की धारा 200 व 202 के अन्तर्गत जाँच करने के लिए स्वतंत्र होगा। (बंशीलाल वि. अब्दुल मुन्नार) ...3032

धर्म स्वातंत्र्य अधिनियम, म.प्र. (1968 का 27), धाराएँ 3 व 5 - हिन्दू रीतियों के अनुसार अन्त्येष्टि करने के लिए शव सुपुर्द किये जाने का दावा करत हुए याचिका - बलात् धर्मान्तरण के बारे में कोई विनिर्दिष्ट प्रकथन नहीं - मृतक ईसाई धर्म ग्रहण करने के बाद तीन वर्ष तक आपत्ति के बिना जीवित रहा - अन्त्येष्टि के लिए सुपुर्द किये जाने का अनुतोष प्रदान नहीं किया जा सकता - याचिका खारिज। (प्रभात बलोटिया वि म.प्र. राज्य) ...2799

धर्म स्वातंत्र्य अधिनियम, म.प्र. (1968 का 27), धारा 5 - एक धर्म से दूसरे में धर्मान्तरण के बारे में अनुष्ठान के 7 दिनों के भीतर जिला मजिस्ट्रेट को सूचना - सूचना का अभाव धर्मान्तरण को दूषित नहीं करता - यह केवल बलात् धर्मान्तरण है न कि मात्र ऐसा धर्मान्तरण जो प्रतिषिद्ध है। (प्रभात बलोटिया वि म.प्र. राज्य) ...2799

आवश्यक वस्तु अधिनियम (1955 का 10), धारा 3 सहपठित धारा 7, मोटर स्प्रिट और हाईस्पीड डीजल (आपूर्ति और वितरण में अनाचार का निवारण) आदेश, 1990, खण्ड 5 - एचएसडी पम्प पर केरोसीन से भरा हुआ टैंकर खड़ा किया गया - टैंकर से एचएसडी टैंक में डीजल मुक्त करने के लिए एक पाइप सम्यक रूप से तत्स्थानी टॉटी में लगाया गया - अपीलार्थियों को हाईस्पीड डीजल में अपमिश्रण करने का प्रयत्न करने के लिए अधिनियम की धारा 3/7 के अन्तर्गत दोषसिद्ध किया गया - अभिनिर्धारित - एचएसडी टैंक से निकाला गया नमूना अपमिश्रित होना नहीं पाया गया - अपीलार्थियों ने आदेश, 1990 का उल्लंघन करने की तैयारी की

However, possibility of commission of offence was not relevant as it is the actual commission of act in attempting to commit offence that constitutes offence of attempt - Conviction & sentences set-aside - Appeal allowed. [Mohd. Shamim v. State of M.P.] ...3201

Evidence Act (1 of 1872), Section 3, Penal Code, 1860, Section 302 - Delay in examination of witness - Effect - Statements of material and important witnesses were recorded on next day by I.O. though he reached to the place of occurrence on the same night - Held - No questions were put to I.O. as to why the statements of material and important witnesses could not be recorded in the same night of the incident or at the earliest point of time - No opportunity was given to these witnesses to explain the delay in recording the statements - Defence cannot get any benefit on this count. [Rama @ Ramlal v. State of M.P.] ...2660

Evidence Act (1 of 1872), Section 3 - See - Penal Code, 1860, Section 302, (Bhaskar Rao v. State of M.P.) ...3401

Evidence Act (1 of 1872), Section 3 - See - Penal Code, 1860, Section 302, [Goru @ Goriya v. State of M.P.] ...2994

Evidence Act (1 of 1872), Section 3 - See - Penal Code, 1860, Section 302 [State of M.P. v. Habib Ahmad] ...3187

Evidence Act (1 of 1872), Section 3 - Witness - Injured was taken to Doctor by P.W. 2 which is corroborated by evidence of Doctor - P.W. 2 cannot be said to be a planted witness. [State of M.P. v. Mohan] ...2692

Evidence Act (1 of 1872), Section 3 - Witness - Oral & medical evidence - Contradiction - Version of eye witness should be believed in case there is contradiction in the statement of eye witness and medical evidence regarding injuries and weapons. [Bhikhari @ Bhikham Singh v. State of M.P.]...3411

Evidence Act (1 of 1872), Section 3 - Witness - Principles dealing with appreciation of evidence in criminal matter - Law discussed. [Bajinath v. State of M.P.] SC...3041

Evidence Act (1 of 1872), Section 3 - Witness - Related or interested witness - Witnesses examined by prosecution are interested witnesses but their interestedness is confined to bring the real culprit to book - They were not interested in implicating innocent persons absolutely on false grounds - Minor inconsistencies were not sufficient to make the eyewitnesses unreliable. [State of M.P. v. Mohan] ...2692

Evidence Act (1 of 1872), Sections 3, 7 & 8 - See - Penal Code, 1860, Section 302 [Devendra Singh @ Pappu v. State of M.P.] ...*47

Evidence Act (1 of 1872), Sections 3 & 119, Penal Code, 1860, Section 376(2)(g) - Appreciation of evidence of deaf & dumb witness - Signs

थी — तथापि, अपराध करने की संभावना सुसंगत नहीं थी क्योंकि यह अपराध करने का प्रयत्न करने में कार्य का वास्तविक रूप से किया जाना है जो प्रयत्न का अपराध गठित करता है — दोषसिद्धि और दण्डादेश अपास्त — अपील मंजूर। (मोहम्मद शमीम वि. म.प्र. राज्य) ...3201

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता, 1860, धारा 302 — साक्षी की परीक्षा में विलम्ब — प्रभाव — अनुसंधान अधिकारी द्वारा तात्त्विक और महत्वपूर्ण साक्षियों के कथन अगले दिन अभिलिखित किये गये यद्यपि वह घटनास्थल पर उसी रात पहुँच गया था — अभिनिर्धारित — अनुसंधान अधिकारी से कोई प्रश्न नहीं पूछे गये कि तात्त्विक और महत्वपूर्ण साक्षियों के कथन घटना की रात को ही या शीघ्रतम अवसर पर क्यों अभिलिखित नहीं किये जा सके — इन साक्षियों को कथन अभिलिखित करने में विलम्ब को स्पष्ट करने के लिए कोई अवसर नहीं दिया गया — प्रतिरक्षा इस आधार पर कोई लाभ प्राप्त नहीं कर सकती। (रामा उर्फ रामलाल वि. म.प्र. राज्य) ...2660

साक्ष्य अधिनियम (1872 का 1), धारा 3 — देखें — दण्ड संहिता, 1860, धारा 302, (भास्कर राव वि. म.प्र. राज्य) ...3401

साक्ष्य अधिनियम (1872 का 1), धारा 3 — देखें — दण्ड संहिता, 1860, धारा 302, (गोरू उर्फ गोरिया वि. म.प्र. राज्य) ...2994

साक्ष्य अधिनियम (1872 का 1), धारा 3 — देखें — दण्ड संहिता, 1860, धारा 302 (म.प्र. राज्य वि. हबीब अहमद) ...3187

साक्ष्य अधिनियम (1872 का 1), धारा 3 — साक्षी — क्षतिग्रस्त को अ.सा. 2 द्वारा चिकित्सक के पास ले जाया गया जिसकी चिकित्सक के साक्ष्य से पुष्टि होती है — अ.सा. 2 को रखा गया साक्षी नहीं कहा जा सकता। (म.प्र. राज्य वि. मोहन) ...2692

साक्ष्य अधिनियम (1872 का 1), धारा 3 — साक्षी — मौखिक और चिकित्सीय साक्ष्य — परस्पर विरोध — यदि क्षतियों और आयुधों के बारे में प्रत्यक्षदर्शी साक्षी के कथन और चिकित्सीय साक्ष्य में परस्पर विरोध हो तो प्रत्यक्षदर्शी साक्षी के ब्यान पर विश्वास किया जाना चाहिए। (भिखारी उर्फ मीकमसिंह वि. म.प्र. राज्य) ...3411

साक्ष्य अधिनियम (1872 का 1), धारा 3 — साक्षी — दण्डिक मामले में साक्ष्य के अधिमूल्यन से सम्बन्धित सिद्धांत — विधि की विवेचना की गई (बैजनाथ वि. म.प्र. राज्य) SC ---3041

साक्ष्य अधिनियम (1872 का 1), धारा 3 — साक्षी — नातेंदार या हितबद्ध साक्षी — अभियोजन द्वारा जिन साक्षियों की परीक्षा करायी गयी वे हितबद्ध साक्षी हैं किन्तु उनकी हितबद्धता वास्तविक अपराधी को जवाब तलब करने तक सीमित है — वे आत्यंतिकतः मिथ्या आधारों पर निर्दोष व्यक्तियों को आलिप्त करने में हितबद्ध नहीं थे — सूक्ष्म असंगतियाँ प्रत्यक्षदर्शी साक्षियों को अविश्वसनीय बनाने के लिए पर्याप्त नहीं थीं। (म.प्र. राज्य वि. मोहन) ...2692

साक्ष्य अधिनियम (1872 का 1), धाराएँ 3, 7 व 8 — देखें — दण्ड संहिता, 1860, धारा 302 (देवेन्द्र सिंह उर्फ पप्पू वि. म.प्र. राज्य) ---*47

साक्ष्य अधिनियम (1872 का 1), धाराएँ 3 व 119, दण्ड संहिता, 1860, धारा 376(2)(जी) — वधिर और मूक साक्षी के साक्ष्य का अधिमूल्यन — अभियोक्त्री द्वारा किये

and gestures made by prosecutrix are not recorded by trial Court - Therefore, cannot be examined by appellate Court while appreciating her evidence - Apart from that, it appears that no oath was administered to the Instructor, Deaf & Dumb Welfare Society - Evidence of the prosecutrix cannot be said to be legal evidence. [Vinod v. State of M.P.] ...3440

Evidence Act (1 of 1872), Section 5 - Discrepancy in evidence - Distance of firing - P.W. 2 is a witness from rural area - Could hardly be expected to have marked the precise distance at which the person shooting with Katta was standing. [State of M.P. v. Mohan] ...2692

Evidence Act (1 of 1872), Section 5 - Evidence of police officer - None of Panch witnesses came forward to corroborate prosecution version - In absence of any motive for false implication, evidence of I.O. cannot be underestimated merely because he is a police officer. [Mohd. Shamim v. State of M.P.] ...3201

Evidence Act (1 of 1872), Section 6 - Res gestae - Eye witness PW-4 informed PW-3 about the incident who further informed Kotwar PW-2, who lodged the FIR - Evidence of PW-4 corroborated by PW-3 & PW-2 - Statement of PW-3 is admissible as res gestae evidence. [Baijnath v. State of M.P.] SC...3041

Evidence Act (1 of 1872), Section 9 - See - Penal Code, 1860, Section 376 [Subhash v. State of M.P.] ...3226

Evidence Act (1 of 1872), Section 11 - Plea of alibi - Burden to proof is on accused but it stands discharged by showing preponderance of probability in favour of the plea on the basis of the material on record. [Pavinder Ahluwalia v. State of M.P.] ...3426

Evidence Act (1 of 1872), Section 32 - Dying declaration - Conviction can be based only on the basis of dying declaration if the same is given voluntarily and truthfully - Need of corroboration is not requirement of law. [Ramesh v. State of M.P.] ...2680

Evidence Act (1 of 1872), Section 32 - Multiple dying declarations - When there are multiple dying declarations and there are several inconsistencies therein, the same cannot be relied upon for basing conviction. [Ramesh v. State of M.P.] ...2680

Evidence Act (1 of 1872), Section 32(1) - Dying declaration - Reliability - After receiving message, A.S.I. immediately reached to the place of incident and at the instance of deceased recorded Dehati Nalishi and statement u/s 161 Cr.P.C. - Held - In view of modulated statement given by A.S.I. regarding receiving message about the incident - It is not conceivable that after sustaining such serious injuries damaging several vital organs the deceased could remained in full conscious condition after about 2 hours

गये संकेत और अंगविक्षेप विचारण न्यायालय द्वारा अभिलिखित नहीं किये गये — इसलिए, अपीलीय न्यायालय द्वारा उसकी साक्ष्य का अधिमूल्यन करते समय परीक्षा नहीं की जा सकती — उसके अतिरिक्त यह प्रतीत होता है कि वधिर एवं मूक कल्याण समिति के अनुदेशक को कोई शपथ नहीं दिलाई गयी — अभियोक्त्री का साक्ष्य विधिक साक्ष्य होना नहीं कहा जा सकता। (विनोद वि. म.प्र. राज्य)...3440

साक्ष्य अधिनियम (1872 का 1), धारा 5 — साक्ष्य में अंतर — गोली चलाने की दूरी — अ.सा. 2 ग्रामीण क्षेत्र का साक्षी — मुश्किल से ठीक-ठाक दूरी चिह्नित करने की आशा की जा सकती थी जिस पर व्यक्ति, जिसने कट्टे से गोली मारी, खड़ा हुआ था। (म.प्र. राज्य वि. मोहन)...2692

साक्ष्य अधिनियम (1872 का 1), धारा 5 — पुलिस अधिकारी का साक्ष्य — पंच साक्षियों में से कोई भी अभियोजन की कहानी को सम्पुष्ट करने आगे नहीं बढ़ा — मिथ्या आलिप्त करने के किसी हेतु के अभाव में, अन्वेषण अधिकारी की साक्ष्य केवल इसलिए कम नहीं आँकी जा सकती कि वह एक पुलिस अधिकारी है। (मोहम्मद शमीम वि. म.प्र. राज्य)...3201

साक्ष्य अधिनियम (1872 का 1), धारा 6 — सम्बन्धित तथ्य और कार्य (रेस जेस्टे) — प्रत्यक्षदर्शी साक्षी असा-4 ने घटना के बारे में असा-3 को सूचित किया जिसने कोटवार असा-2 को सूचित किया, जिसने एफ.आई.आर. दर्ज करायी — असा-4 के साक्ष्य की असा-3 व असा-2 द्वारा सम्पुष्टि की गयी — असा-3 का कथन सम्बन्धित तथ्य और कार्य (रेस जेस्टे) के साक्ष्य के रूप में ग्राह्य है। (बैजुनाथ वि. म.प्र. राज्य) SC ---3041

साक्ष्य अधिनियम (1872 का 1), धारा 9 — देखें — दण्ड संहिता, 1860, धारा 376 (सुभाष वि. म.प्र. राज्य)...3226

साक्ष्य अधिनियम (1872 का 1), धारा 11 — अन्यत्र उपस्थित होने का अभिवाक् — साबित करने का भार अभियुक्त पर है किन्तु यह अभिलेख पर उपलब्ध सामग्री के आधार पर अभिवाक् के पक्ष में अधिसंभाव्यता की प्रबलता दर्शाकर उन्मोचित हो जाता है। (पविन्दर अहलुवालिया वि. म.प्र. राज्य)...3426

साक्ष्य अधिनियम (1872 का 1), धारा 32 — मृत्युकालिक कथन — दोषसिद्धि केवल मृत्युकालिक कथन पर आधारित हो सकती है यदि वह स्वेच्छया और सत्यतापूर्वक दिया गया हो — संपुष्टि की आवश्यकता विधि की अपेक्षा नहीं है। (रमेश वि. म.प्र. राज्य)...2680

साक्ष्य अधिनियम (1872 का 1), धारा 32 — बहुविध मृत्युकालिक कथन — जब बहुविध मृत्युकालिक कथन हों और उनमें अनेक असंगतियाँ हों तो दोषसिद्धि आधारित करने के लिए उन पर विश्वास नहीं किया जा सकता। (रमेश वि. म.प्र. राज्य)...2680

साक्ष्य अधिनियम (1872 का 1), धारा 32(1) — मृत्युकालिक कथन — विश्वसनीयता — संदेश प्राप्त करने के बाद ए.एस.आई. घटनास्थल पर पहुँचा और मृतक की प्रेरणा पर देहाती नालिशी और द.प्र.सं. की धारा 161 के अन्तर्गत कथन अभिलिखित किये — अभिनिर्धारित — ए.एस. आई. द्वारा घटना के बारे में संदेश प्राप्त करने के सम्बन्ध में दिये गये परिवर्तित कथन को दृष्टिगत रखते हुए — यह अनुमेय नहीं है कि अनेक मर्मस्थल अंगों को क्षतिग्रस्त करने वाली ऐसी गम्भीर क्षतियाँ आने के बाद मृतक बिना किसी चिकित्सीय सहायता के लगभग 2 घण्टे बाद न केवल एक बार बल्कि दो बार घटना का स्पष्ट और सूक्ष्म विवरण देने के लिए पूर्ण सचेतन अवस्था में रह सका

without any medical aid to give a graphic and minute details of incident not only once but twice - Dying declaration do not inspire confidence for placing reliance on them against all seven accused persons. [Rama @ Ram Lal v. State of M.P.] ...2660

Evidence Act (1 of 1872), Section 32(1) - See - Penal Code, 1860, Sections 304-B & 498-A, [Rammilan v. State of M.P.] ...2999

Evidence Act (1 of 1872), Sections 32(2) & 67 - Medical report - How can be proved if doctor not available - Medical report should be proved by examining doctor who medically examined the victim - In case doctor was not available, the report can be proved by examining any other employee of the same hospital like ward boy or nurse who were acquainted with the handwriting & signature of the doctor - Same could have been admissible in evidence as per provision u/s 32(2) of Act because the medical report was given by the doctor in discharging his professional duty. [Subhash v. State of M.P.] ...3226

Evidence Act (1 of 1872), Section 32(2) & 67 - Statement made in discharge of professional duty - Proof of signature & handwriting of doctor - Treating Surgeon not traceable - Therefore, not examined - Medical reports proved by other doctors - Held - Medical report admissible in evidence in view of S. 32(2) of Act - Signatures and handwriting of a person can be proved u/s 67 of Act - Medical report admissible. [Pardeshi @ Peetambhar v. State of M.P.] ...2706

Evidence Act (1 of 1872), Section 45 - Age of prosecutrix - Margin of error - Age of prosecutrix assessed above 14 and below 16 years on the basis of findings of radiological examination of joints comprising radius, ulna & femur bones and crest of ilium - Admission of doctor of margin of error of 2 years on both sides was misconceived as ossification test was not confined to x-ray examination of a single bone only - Margin of error could be 6 months. [Nanda v. State of M.P.] ...3221

Evidence Act (1 of 1872), Section 45 - Expert opinion - Rigor mortis - Presence of rigor mortis varies from person to person - There is no barometer in order to indicate that when the process of rigor mortis would start. [State of M.P. v. Habib Ahmad] ...3187

Evidence Act (1 of 1872), Sections 61 & 73 - Presumption of signature on a document - Held - When a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted. [Grasim Industries Ltd. v. Agarwal Steel] SC...3252

Evidence Act (1 of 1872), Section 64 - Objection as to admissibility

— मृत्युकालिक कथन सभी सात अभियुक्त व्यक्तियों के विरुद्ध उन पर भरोसा रखने के लिए विश्वास प्रेरित नहीं करते। (रामा उर्फ रामलाल वि. म.प्र. राज्य) ...2660

साक्ष्य अधिनियम (1872 का 1), धारा 32(1) — देखें — दण्ड संहिता, 1860, धाराएँ 304—बी. व 498—ए, (राममिलन वि. म. प्र. राज्य) ...2999

साक्ष्य अधिनियम (1872 का 1), धाराएँ 32(2) व 67 — चिकित्सीय रिपोर्ट — कैसे साबित की जा सकती है यदि चिकित्सक उपलब्ध न हो — चिकित्सीय रिपोर्ट उस चिकित्सक की परीक्षा करके साबित की जानी चाहिए जिसने पीड़ित की चिकित्सीय परीक्षा की — यदि चिकित्सक उपलब्ध न हो तो रिपोर्ट उसी चिकित्सालय के किसी अन्य कर्मचारी जैसे वार्ड बॉय अथवा नर्स, जो चिकित्सक के हस्तलेख और हस्ताक्षरों से परिचित हैं, की परीक्षा कराकर साबित की जा सकती है — वह रिपोर्ट अधिनियम की धारा 32(2) के उपबंध अनुसार साक्ष्य में ग्राह्य की जा सकती है क्योंकि चिकित्सक द्वारा उसके वृत्तिक कर्तव्य के निर्वहन में चिकित्सीय रिपोर्ट दी गयी थी। (सुभाष वि. म.प्र. राज्य) ...3226

साक्ष्य अधिनियम (1872 का 1), धारा 32(2) व 67 — वृत्तिक कर्तव्य के निर्वहन में किया गया कथन — चिकित्सक के हस्ताक्षर और हस्तलेख का सबूत — इलाज करने वाला शल्यचिकित्सक पता लगाने लायक नहीं — इसलिए परीक्षा नहीं करायी गयी — मेडीकल रिपोर्ट अन्य चिकित्सकों द्वारा साबित की गई — अभिनिर्धारित — मेडीकल रिपोर्ट अधिनियम की धारा 32(2) को दृष्टिगत रखते हुए साक्ष्य में ग्राह्य — किसी व्यक्ति के हस्ताक्षर और हस्तलेख अधिनियम की धारा 67 के अन्तर्गत साबित किये जा सकते हैं — मेडीकल रिपोर्ट ग्राह्य। (परदेशी उर्फ पीताम्बर वि. म.प्र. राज्य) ...2706

साक्ष्य अधिनियम (1872 का 1), धारा 45 — अभियोक्त्री की आयु — त्रुटि का अंतर — अभियोक्त्री की आयु रेडियस, अल्ना और फीमर अस्थियों को समाविष्ट करने वाले जोड़ों और श्रोणिफलक के शिखर के रेडियोलॉजिकल परीक्षण के निष्कर्षों के आधार पर 14 वर्ष से अधिक और 16 वर्ष से कम निर्धारित की गई — दोनों ओर 2 वर्ष की त्रुटि के अंतर की चिकित्सक की स्वीकृति का गलत अर्थ लगाया गया क्योंकि ऑसीफिकेशन टेस्ट केवल एक अस्थि के एक्स-रे परीक्षण तक सीमित नहीं रखा गया — त्रुटि का अंतर 6 माह हो सकता था। (नंदा वि. म.प्र. राज्य) ...3221

साक्ष्य अधिनियम (1872 का 1), धारा 45 — विशेषज्ञ की राय — मृत्यु के कुछ घण्टे बाद जोड़ों और पेशियों का अकड़ना — अकड़न की उपस्थिति व्यक्ति से व्यक्ति परिवर्तित होती है — यह उपदर्शित करने के लिए कोई बैरोमीटर नहीं है कि कब जोड़ों और पेशियों के अकड़न की प्रक्रिया प्रारम्भ होगी। (म.प्र. राज्य वि. हबीब अहमद) ...3187

साक्ष्य अधिनियम (1872 का 1), धाराएँ 61 व 73 — किसी दस्तावेज पर हस्ताक्षर की उपधारणा — अभिनिर्धारित — जब कोई व्यक्ति किसी दस्तावेज को हस्ताक्षरित करता है, तब जब तक बल या कपट का सबूत न हो, यह उपधारणा की जाती है कि उसने दस्तावेज को उचित रूप से पढ़ लिया है और उसे समझ लिया है और केवल तब उसने उस पर अपने हस्ताक्षर किये हैं, अन्यथा दस्तावेज पर कोई हस्ताक्षर कभी भी स्वीकार नहीं किये जा सकते हैं। (ग्रासिम इंडस्ट्रीज लि. वि. अग्रवाल स्टील) SC----3252

साक्ष्य अधिनियम (1872 का 1), धारा 64 — दस्तावेज की ग्राह्यता सम्बन्धी आक्षेप

of document - Certificates issued by army authorities were exhibited by trial Court as no objection with regard to their admissibility was raised by respondents - Question regarding admissibility of documents cannot be raised at appellate stage. [Pavinder Ahluwalia v. State of M.P.] ...3426

Evidence Act (1 of 1872), Section 67, Specific Relief Act, 1963, Section 20 - Agreement to sell executed by an illiterate person - Proof of execution - No specific denial that the sale agreement bears thumb impression of illiterate person - Plaintiff's husband stated an oath that he had paid the amount to the illiterate person and after counting the money illiterate person had put his thumb impression on the sale agreement - In absence of cross-examination on this point, it would be presumed to be correct - It may also be presumed that illiterate person was well aware of the contents of the document on which he puts his thumb impression, unless he pleads and proves that the money received by him was for some another particular purpose. [Omprakash v. Dharma Bai] ...3177

Evidence Act (1 of 1872), Section 76 - See - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Section 3(1)(x) [Mangal Singh v. State of M.P.] ...2671

Evidence Act (1 of 1872), Section 102 - On whom burden of proof lies - Tenant contended consent of plaintiff for installation of STD/PCO centre - Tenant failed to prove factum of having obtained consent - It was not necessary for the plaintiff to appear in witness box for denial of fact which itself has not been proved at all. [Sahibram Dhingra (Died) Through L.R. Narendra Dhingra v. Shivshankar Goyal] ...3151

Evidence Act (1 of 1872), Section 106 - See - Penal Code, 1860, Section 318 [Fareeda v. State of M.P.] ...3437

Evidence Act (1 of 1872), Section 113-A - See - Penal Code, 1860, Sections 306, 498-A, [Anamika (Smt.) v. State of M.P.] ...3003

Evidence Act (1 of 1872), Section 113-B - See - Penal Code, 1860, Section 304-B, [Jamna Prasad v. State of M.P.] ...2686

Evidence Act (1 of 1872), Section 116 - Estoppel of tenant - It is settled proposition of the law that once the rent is paid by the tenant to a person who acquired the right over the property then subsequent to it, the tenant has no right to deny the title or landlordship of the person to whom he paid the rent. [Ram Vishal @ Vishali Kachhwaha v. Dwarka Prasad Jaiswal] ...3390

Evidence Act (1 of 1872), Section 119, Criminal Procedure Code, 1973, Section 282 - Examination of dumb & deaf witness - Procedure & precautions for recording evidence - Explained. [Vinod v. State of M.P.]...3440

— विचारण न्यायालय द्वारा थल सेना प्राधिकारियों द्वारा जारी प्रमाण पत्र प्रदर्शित किये गये क्योंकि उनकी ग्राह्यता के सम्बन्ध में प्रत्यर्थी द्वारा कोई आक्षेप नहीं किया गया — दर्स्तावेजों की ग्राह्यता सम्बन्धी प्रश्न अपीलीय प्रक्रम पर नहीं उठाया जा सकता। (पविन्दर अहलुवालिया वि. म.प्र. राज्य) ...3426

साक्ष्य अधिनियम (1872 का 1), धारा 67, विनिर्दिष्ट अनुतोष अधिनियम, 1963, धारा 20 — अनपढ़ व्यक्ति द्वारा निष्पादित विक्रय अनुबन्ध — निष्पादन का सबूत — कोई विनिर्दिष्ट प्रत्याख्यान नहीं कि विक्रय अनुबन्ध पर अनपढ़ व्यक्ति का अंगूठा निशानी है — वादी के पति ने शपथ पर कथन किया कि उसने अनपढ़ व्यक्ति को धनराशि अदा की थी और अनपढ़ व्यक्ति ने धनराशि गिनने के बाद विक्रय अनुबन्ध पर अपना अंगूठा निशानी लगाया था — इस बिन्दु पर प्रतिपरीक्षा के अभाव में इसके सही होने की उपधारणा की जायेगी — यह भी उपधारणा की जायेगी कि अनपढ़ व्यक्ति को दस्तावेज, जिस पर उसने अपना अंगूठा निशानी लगाया, की अन्तर्वस्तु का ज्ञान था, जब तक वह यह अभिवचन और साबित नहीं करता कि उसके द्वारा प्राप्त किया गया धन किसी दूसरे विशिष्ट प्रयोजन के लिए था। (ओमप्रकाश वि. धर्मा बाई) ...3177

साक्ष्य अधिनियम (1872 का 1), धारा 76 — देखें — अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989, धारा 3(1)(ग), (मंगल सिंह वि. म.प्र. राज्य)...2671

साक्ष्य अधिनियम (1872 का 1), धारा 102 — सबूत का भार किस पर होता है — किरायेदार ने एस.टी.डी./पी.सी.ओ. संस्थापित करने के लिए वादी की सम्मति का प्रतिवाद किया — किरायेदार सम्मति अभिप्राप्त करने के तथ्य को साबित करने में विफल रहा — वादी के लिए यह आवश्यक नहीं था कि तथ्य से इंकारी के लिए कठघरे में उपस्थित होता, जो स्वमेव किसी ढंग से साबित नहीं किया गया। (साहिबराम ढोंगरा (मृतक) द्वारा विधिक प्रतिनिधि नरेन्द्र ढोंगरा वि. शिवशंकर गोयल) ...3151

साक्ष्य अधिनियम (1872 का 1), धारा 106 — देखें — दण्ड संहिता, 1860, धारा 318 (फरीदा वि. म.प्र. राज्य) ...3437

साक्ष्य अधिनियम (1872 का 1), धारा 113-ए — देखें — दण्ड संहिता, 1860, धाराएँ 306, 498-ए, (अनामिका (श्रीमति) वि. म.प्र. राज्य) ...3003

साक्ष्य अधिनियम (1872 का 1), धारा 113-बी — देखें — दण्ड संहिता, 1860, धारा 304-बी, (जमना प्रसाद वि. म.प्र. राज्य) ...2686

साक्ष्य अधिनियम (1872 का 1), धारा 116 — किरायेदार का विबन्ध — यह विधि की स्थापित प्रतिपादना है कि जब एक बार किरायेदार द्वारा किसी व्यक्ति को किराया अदा किया जाता है जिसने सम्पत्ति पर अधिकार अर्जित किया है तब उसके पश्चात् किरायेदार को उस व्यक्ति के, जिसे उसने किराया अदा किया, स्वत्व या भूस्वामित्व से इन्कार करने का कोई अधिकार नहीं है। (राम विशाल उर्फ विशाली कछवाहा वि. द्वारका प्रसाद जायसवाल) ...3390

साक्ष्य अधिनियम (1872 का 1), धारा 119, दण्ड प्रक्रिया संहिता, 1973, धारा 282 — मूक एवं बधिर साक्षी की परीक्षा — साक्ष्य अभिलिखित करने की प्रक्रिया और सावधानी — स्पष्ट की गयी। (विनोद वि. म.प्र. राज्य) ...3440

Family Courts Act (66 of 1984), Section 7(1) Explanation (g) -
See - Juvenile Justice (Care and Protection of Children) Act, 2000 [As amended by Act No. 33 of 2006], **Section 41** [Sanjay Mehta v. Superintendent of Matrachhaya] ...2728

Fisheries (Gazetted) Service Recruitment Rules, M.P. 1987, Rule 15(3) - Promotion - Promotion of appellant by DPC to the post of Joint Director considering him to be man of exceptional merits and suitability in comparison to his seniors - Held - DPC did not observe anything except observing that appellant is of exceptional merits and suitability - There is no justification behind such observations - The material which could prima facie satisfy is not produced before the HC - The selection process was contaminated and stood corrupted because of non-application of mind and non-granting of reason - Learned Single Judge was justified in holding that appellant could not be promoted as Officiating Joint Director - WA dismissed with cost. [H.S. Sidhu v. Devendra Bapna] ...2760

General Clauses Act (10 of 1897), Section 9 - See - Negotiable Instruments Act, 1881, Section 138 [Sanjay Gawalani v. Sunil Satwani] ...2731

High Court of Madhya Pradesh Rules, 2008, Chapter IV, Rules 15 & 22 - Subsequent bail applications - Rule 22 is proviso to the preceding Rules contained in Chapter IV including Rule 15 - Rule 22 contains non-obstante clause - Rule 22 will have overriding effect over the other Rules - Regular bench has jurisdiction to hear bail application in view of order passed by Hon'ble Chief Justice on administrative side - Objection to the jurisdiction of Regular Bench overruled. [Jagga @ Jagat Singh v. State of M.P.] ...2643

Hindu Law - Partition of ancestral property - Who is entitled to file suit for partition - Held - When under a partition by father unequal shares are given to the sons and if the partition is unequal and unfair, it is open to the sons if they are majors to repudiate the partition - Any one or several members of the joint family is entitled to require partition of joint family property and therefore it cannot be said that plaintiffs have no right to file a suit for partition. [Choudhary Chhatar Singh (Dead) v. Smt. Harsh Kumar] ...2623

Hindu Marriage Act (25 of 1955), Section 12(1)(a) - Voidable marriage - Impotency - Husband filed a petition that the marriage has not been consummated owing the impotency of the wife - Trial Court dismissed the petition as husband failed to prove his case - Held - Husband deposed that he tried to commit sexual intercourse several times with the wife but on account of excuses and refusal by the wife the marriage was not consummated - Medical evidence showing that wife's vagina was not developed and there was no uterus - Even after treatment she cannot be a fully competent woman - Oral evidence of husband finds support by the medical evidence - It is fully

कुटुम्ब न्यायालय अधिनियम, (1984 का 66), धारा 7(1) स्पष्टीकरण (जी) - देखें - किशोर न्याय (बालकों की देख-रेख और संरक्षण) अधिनियम, 2000, [2006 के अधिनियम क्र. 33 द्वारा यथासंशोधित], धारा 41, (संजय मेहता वि. सुप्रीटेन्डेन्ट ऑफ मातृछाया) ...2728

मत्स्य उद्योग (राजपत्रित) सेवा भर्ती नियम, म.प्र. 1987, नियम 15(3) - पदोन्नति - अपीलार्थी की उसके वरिष्ठों की तुलना में आपवादिक योग्यता और उपयुक्तता को विचार में लेते हुए डी.पी.सी. द्वारा संयुक्त संचालक के पद पर पदोन्नति - अभिनिर्धारित - डी.पी.सी. ने यह राय कि अपीलार्थी आपवादिक योग्यता और उपयुक्तता रखता है, के सिवाय कोई अन्य राय नहीं दी - ऐसी राय को कोई न्यायोचित आधार नहीं - उच्च न्यायालय के समक्ष सामग्री जो प्रथम दृष्ट्या संतुष्ट कर सके पेश नहीं की गयी - चयन प्रक्रिया मस्तिष्क का प्रयोग न करने और कारण न देने के परिणामस्वरूप संदूषित और भ्रष्ट हो गयी - विद्वान एकल न्यायाधीश का यह अभिनिर्धारित करना न्यायोचित था कि अपीलार्थी को स्थानापन्न संयुक्त संचालक के रूप में पदोन्नत नहीं किया जा सकता - रिट अपील खर्च सहित खारिज। (एच.एस. सिद्धू वि. देवेन्द्र बापना) ...2760

साधारण खण्ड अधिनियम (1897 का 10), धारा 9 - देखें - परक्राम्य लिखत अधिनियम, 1881, धारा 138, (संजय ग्वालानी वि. सुनील सतवानी) ...2731

मध्यप्रदेश उच्च न्यायालय नियम, 2008, अध्याय IV, नियम 15 व 22 - पश्चात्पूर्ति जमानत आवेदन - नियम 22, नियम 15 सहित अध्याय IV में अन्तर्विष्ट पूर्ववर्ती नियमों का परन्तुक है - नियम 22 सर्वोपरि खण्ड अन्तर्विष्ट करता है - नियम 22 अन्य नियमों पर अध्यारोही प्रभाव रखेगा - मुख्य न्यायाधीश द्वारा प्रशासनिक पक्ष पर पारित आदेश को देखते हुए नियमित न्यायपीठ जमानत आवेदन सुनने की अधिकारिता रखती है - नियमित न्यायपीठ की अधिकारिता का आक्षेप नामंजूर किया गया। (जग्गा उर्फ जगत सिंह वि. म.प्र. राज्य) ...2643

हिन्दू विधि: - पैतृक सम्पत्ति का विभाजन - विभाजन का वाद पेश करने के लिए कौन हकदार है - अभिनिर्धारित - जब पिता द्वारा विभाजन के अन्तर्गत पुत्रों को असमान हिस्से दिये गये हों और विभाजन असमान और अशुभ हो तो पुत्रों के लिए यह खुला है, यदि वे वयस्क हों, कि विभाजन को निर्रात करायें - संयुक्त परिवार का कोई एक या अनेक सदस्य संयुक्त परिवार की सम्पत्ति के विभाजन की माँग करने के हकदार हैं और इसलिए यह नहीं कहा जा सकता कि वादियों को विभाजन का वाद पेश करने का कोई अधिकार नहीं है। (चौधरी छत्र सिंह (मृतक) वि. श्रीमति हर्ष कुमार) ...2623

हिन्दू विवाह अधिनियम (1955 का 25), धारा 12(1)(ए) - शून्यकरणीय विवाह - नपुंसकता - पति ने याचिका पेश की कि पत्नी की नपुंसकता के कारण विवाह पूर्ण नहीं हुआ - विचारण न्यायालय ने याचिका खारिज की क्योंकि पति अपना मामला साबित करने में असफल रहा - अभिनिर्धारित - पति ने अभिसाक्ष्य दिया कि उसने कई बार उसकी पत्नी से मैथुन का प्रयास किया किन्तु पत्नी द्वारा बहाने बनाने और इनकार करने के कारण विवाह पूर्ण नहीं हुआ - चिकित्सीय साक्ष्य दर्शाती है कि पत्नी की योनि पूर्णतः विकसित नहीं थी और उसके कोई गर्भाशय नहीं था - इलाज के बाद भी वह एक पूर्णतः सक्षम स्त्री नहीं बन सकती - पति की मौखिक साक्ष्य का समर्थन चिकित्सीय साक्ष्य द्वारा होता है - यह पूर्णतः साबित है कि पत्नी की असक्षमता और नपुंसकता के

*established that the marriage was not consummated on account of incapability and impotency of wife - Appellant entitled to get decree u/s 12(1)(a) - Appeal allowed. [Vinay Kumar v. Smt. Jaya] ...*55*

Hindu Marriage Act (25 of 1955), Sections 13, 13-B - Conversion of petition - Divorce to divorce by mutual consent - Supreme Court can, in exercise of its extraordinary powers under Article 142 of the Constitution, convert a proceeding under S. 13 of the Act into one u/s 13-B and pass a decree for mutual divorce, without waiting for the statutory period of six months - None of the other Courts can exercise such powers. [Anil Kumar Jain v. Maya Jain] SC...2739

Hindu Marriage Act (25 of 1955), Section 13-B - Divorce by mutual consent - Civil Court or High Court are not competent to pass a decree for mutual divorce, if one of the consenting parties withdraws his/her consent before the decree is passed - Only the Supreme Court, in exercise of its extraordinary powers under Article 142 of the Constitution, can pass orders to do complete justice to the parties. [Anil Kumar Jain v. Maya Jain] SC...2739

Hindu Marriage Act (25 of 1955), Section 13-B - Divorce by mutual consent - Joint petition u/s 13-B of Act for divorce by mutual consent - After 6 months, on the date of consideration of the petition, wife withdrew her consent - Held - Parties are living separately for more than 7 years - As part of agreement between the parties, husband had transferred valuable property rights in favour of wife and it was after registration of such transfer of property that wife withdrew her consent for divorce - Wife still continues to enjoy the property and insists on living separately from husband - Supreme Court, in special circumstances of the case, by exercising the powers under Article 142 of the Constitution allowed the petition u/s 13-B of the Act. [Anil Kumar Jain v. Maya Jain] SC ...2739

Hindu Marriage Act (25 of 1955), Sections 13, 13-B - Doctrine of irretrievable break down of marriage is not available - Neither the civil courts nor even the High Courts can, therefore, pass orders before the periods prescribed under the relevant provisions of the Act or on grounds not provided for in S. 13 & 13-B of the Act. [Anil Kumar Jain v. Maya Jain] SC ...2739

Hindu Marriage Act (25 of 1955), Sections 13, 13-B - The doctrine of irretrievable break down of marriage is not one of the grounds indicated whether u/ss 13 or 13-B of the Act - Doctrine can be applied to a proceeding under either of the two provisions only where the proceedings are before Supreme Court - In exercise of its extraordinary powers under Article 142 of the Constitution, the Supreme Court can grant relief to the parties without even waiting for the statutory period of six months stipulated in S. 13-B of the Act. [Anil Kumar Jain v. Maya Jain] SC ...2739

Hindu Marriage Act (25 of 1955), Section 13(1) - Divorce - Broken

कारण विवाह पूर्ण नहीं हुआ — अपीलार्थी धारा 12(1)(ए) के अन्तर्गत डिक्री पाने का हकदार — अपील मंजूर। (विनय कुमार वि. श्रीमति जया) ---*55

हिन्दू विवाह अधिनियम (1955 का 25), धाराएँ 13 व 13-बी — याचिका का संपरिवर्तन — विवाह विच्छेद से पारस्परिक सहमति से विवाह विच्छेद में — उच्चतम न्यायालय, संविधान के अनुच्छेद 142 के अन्तर्गत अपनी असाधारण शक्तियों के प्रयोग में, छः माह की वैधानिक कालावधि की प्रतीक्षा किये बिना अधिनियम की धारा 13 के अन्तर्गत कार्यवाही को धारा 13-बी में संपरिवर्तित कर सकता है और पारस्परिक विवाह विच्छेद की डिक्री पारित कर सकता है — अन्य कोई न्यायालय ऐसी शक्तियों का प्रयोग नहीं कर सकता। (अनिल कुमार जैन वि. माया जैन) SC---2739

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13-बी — पारस्परिक सम्मति से विवाह विच्छेद — सिविल न्यायालय या उच्च न्यायालय पारस्परिक विवाह विच्छेद की डिक्री पारित करने के लिए सक्षम नहीं हैं यदि सम्मत पक्षकारों में से कोई एक डिक्री पारित किये जाने के पूर्व अपनी सम्मति वापस ले लेता/लेती है — केवल उच्चतम न्यायालय संविधान के अनुच्छेद 142 के अन्तर्गत अपनी असाधारण शक्तियों के प्रयोग में पक्षकारों के प्रति पूर्ण न्याय करने के लिए आदेश पारित कर सकता है। (अनिल कुमार जैन वि. माया जैन) SC---2739

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13-बी — पारस्परिक सम्मति से विवाह विच्छेद — पारस्परिक सम्मति से विवाह विच्छेद के लिए अधिनियम की धारा 13-बी के अन्तर्गत संयुक्त याचिका — 6 माह बाद, याचिका पर विचार की तारीख को पत्नी ने अपनी सम्मति वापस ले ली — अभिनिर्धारित — पक्षकार 7 वर्ष से अधिक समय से पृथक रह रहे हैं — पक्षकारों के मध्य अनुबन्ध के भाग के रूप में पति ने पत्नी के पक्ष में मूल्यवान सम्पत्ति अधिकार अंतरित कर दिये थे और यह सम्पत्ति के ऐसे अंतरण के रजिस्ट्रेशन के बाद था कि पत्नी ने विवाह विच्छेद की अपनी सम्मति वापस ले ली — पत्नी अभी भी सम्पत्ति का निरंतर उपभोग कर रही है और पति से पृथक रहने पर ज़ोर देती है — उच्चतम न्यायालय मामले की विशेष परिस्थितियों में संविधान के अनुच्छेद 142 के अन्तर्गत शक्तियों का प्रयोग करते हुए अधिनियम की धारा 13-बी के अन्तर्गत याचिका मंजूर कर सकता है। (अनिल कुमार जैन वि. माया जैन) SC---2739

हिन्दू विवाह अधिनियम (1955 का 25), धाराएँ 13, 13-बी — विवाह के असुधार्य भंग का सिद्धांत उपलब्ध नहीं है — इसलिए न तो सिविल न्यायालय और न उच्च न्यायालय अधिनियम के सुसंगत उपबंधों के अन्तर्गत विहित कालावधि के पूर्व या ऐसे आधारों पर जो अधिनियम की धारा 13 या 13-बी में उपबंधित नहीं हैं, आदेश पारित कर सकते हैं। (अनिल कुमार जैन वि. माया जैन) SC ---2739

हिन्दू विवाह अधिनियम (1955 का 25), धाराएँ 13, 13-बी — विवाह के असुधार्य भंग का सिद्धांत अधिनियम की धारा 13 या 13-बी के अन्तर्गत उपदर्शित आधारों में से एक नहीं है — सिद्धांत केवल वहाँ लागू हो सकता है जहाँ दोनों उपबन्धों में से किसी के अधीन कार्यवाहियाँ उच्चतम न्यायालय के समक्ष हो — उच्चतम न्यायालय संविधान के अनुच्छेद 142 के अन्तर्गत अपनी असाधारण शक्तियों के प्रयोग में अधिनियम की धारा 13-बी में बतायी गयी छः माह की वैधानिक कालावधि की प्रतीक्षा किये बिना भी पक्षकारों को अनुतोष प्रदान कर सकता है। (अनिल कुमार जैन वि. माया जैन) SC ---2739

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1) — विवाह विच्छेद — खण्डित

marriage - The Act do not provide for divorce merely on the ground of broken marriage. [Vijay Prakash Chaturvedi v. Preeti Chaturvedi] ...3158

Hindu Marriage Act (25 of 1955), Section 13(1)(ia) - Cruelty - Husband was Captain in Indian Army at the time of marriage - Allegation that wife wanted the husband to leave his job and join her father engaged in the business of contractor - Held - Husband did not produce & prove his father-in-law's registration as contractor - Husband also not furnished details of sites and copies of work orders - No iota of evidence to establish that his father-in-law was engaged in business of contractor - Trial Court rightly concluded that it was not probable that wife would insist the husband to leave a well salaried and well reputed permanent job of Indian Army - Cruelty not proved. [Vijay Prakash Chaturvedi v. Preeti Chaturvedi] ...3158

Hindu Marriage Act (25 of 1955), Section 13(1)(ia) - Cruelty - Threat of implicating husband and his family members in criminal case - No witness examined for corroboration of such bald allegations - Allegation not found proved. [Vijay Prakash Chaturvedi v. Preeti Chaturvedi] ...3158

Hindu Marriage Act (25 of 1955), Section 13(1)(ia) - Cruelty - What amounts to - Held - Wife refused from the very beginning to have sexual intercourse by the husband with her - This amounts to mental cruelty - Ground of cruelty proved - Entitled for decree of divorce. [Raman Kumar v. Smt. Bhawna] ...*44

Hindu Marriage Act (25 of 1955), Section 13(1)(ib) - Desertion - Desertion has not been defined in any statute - However, the essential ingredients of desertion are (i) the factum of separation, and (ii) the intention to bring cohabitation permanently to an end (animus deserendi). [Raman Kumar v. Smt. Bhawna] ...*44

Hindu Marriage Act (25 of 1955), Section 13(1)(ib) - Desertion - Essential Conditions - (i) factum of separation (ii) intention to bring cohabitation permanently to an end (animus deserendi) - Essential conditions for deserted spouse - (i) absence of consent (ii) absence of conduct giving reasonable cause to the spouse leaving matrimonial home to form necessary intention. [Vijay Prakash Chaturvedi v. Preeti Chaturvedi] ...3158

Hindu Marriage Act (25 of 1955), Section 13(1)(ib) - Desertion - What amounts to - After marriage wife remained with husband only for 23 days - Then she went to her parental house and never returned - She lodged the report u/s 498-A IPC and also filed an application u/s 125 Cr.P.C - Held - Wife deserted husband without any cause for a continuous period of more than 2 years - Circumstances indicate that marriage between the parties has been irretrievably broken down completely and practically there is no chance of revival, making them possible to live together in future - Ground of desertion proved - Entitled for decree of divorce. [Raman Kumar v. Smt. Bhawna] ...*44

विवाह - अधिनियम केवल खण्डित विवाह के आधार पर विवाह विच्छेद का उपबंध नहीं करता है। (विजय प्रकाश चतुर्वेदी वि. प्रीति चतुर्वेदी) ...3158

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)(i) - क्रूरता - पति विवाह के समय भारतीय सेना में केप्टन था - अभिकथन कि पत्नी चाहती थी कि पति अपनी नौकरी छोड़ दे और उसके पिता के साथ ठेकेदारी का कारोबार करे - अभिनिर्धारित - पति ने अपने श्वसुर का ठेकेदार के रूप में पंजीयन पेश और साबित नहीं किया - पति ने कार्यस्थल का विवरण और कार्यादेशों की प्रतिलिपियाँ भी प्रस्तुत नहीं कीं - यह साबित करने के लिए रत्तीभर साक्ष्य नहीं कि उसके श्वसुर ठेकेदारी का कारोबार करते थे - विचारण न्यायालय ने उचित रूप से यह निष्कर्ष निकाला कि यह अधिसंभाव्य नहीं था कि पत्नी पति को भारतीय सेना की अच्छे वेतन और उच्च प्रतिष्ठा वाली स्थायी नौकरी छोड़ने के लिए आग्रह करती - क्रूरता साबित नहीं। (विजय प्रकाश चतुर्वेदी वि. प्रीति चतुर्वेदी) ...3158

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)(i) - क्रूरता - पति और उसके परिवार के सदस्यों को दाण्डिक मामले में फंसाने की धमकी - ऐसे सादा अभिकथनों की सम्पुष्टि के लिए किसी साक्षी की परीक्षा नहीं करायी गयी - अभिकथन साबित होना नहीं पाये गये। (विजय प्रकाश चतुर्वेदी वि. प्रीति चतुर्वेदी) ...3158

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)(ia) - क्रूरता - क्या शामिल है - अभिनिर्धारित - पत्नी ने प्रारम्भ से ही उसके साथ पति द्वारा मैथुन से इंकार कर दिया - यह मानसिक क्रूरता की कोटि में आता है - क्रूरता का आधार साबित - विवाह विच्छेद की डिक्री का हकदार। (रमन कुमार वि. श्रीमति भावना) ---*44

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)(ib) - अभित्यजन - अभित्यजन को किसी कानून में परिभाषित नहीं किया गया है - तथापि, अभित्यजन के आवश्यक तत्व हैं (i) पृथक्करण का तथ्य, और (ii) स्थायी रूप से सहवास का अंत करने का आशय (अभित्यजन का आशय)। (रमन कुमार वि. श्रीमति भावना) ---*44

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)(ib) - अभित्यजन - आवश्यक शर्तें - (i) पृथक्करण का तथ्य, और (ii) स्थायी रूप से सहवास का अंत करने का आशय (अभित्यजन का आशय) - अभित्यक्त पति या पत्नी के लिए आवश्यक शर्तें - (i) सम्मति का अभाव (ii) आवश्यक आशय गठित करने के लिए पति या पत्नी को दाम्पत्य निवास छोड़ने का युक्तियुक्त कारण देने वाले आचरण का अभाव। (विजय प्रकाश चतुर्वेदी वि. प्रीति चतुर्वेदी) ...3158

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)(ib) - अभित्यजन - क्या शामिल है - विवाह के बाद पत्नी केवल 23 दिन तक पति के साथ रही - तब वह अपने पैतृक गृह चली गई और कभी नहीं लौटी - उसने भा.द.सं. की धारा 498-ए के अन्तर्गत रिपोर्ट दर्ज करायी और द.प्र.सं. की धारा 125 के अन्तर्गत आवेदन भी पेश किया - अभिनिर्धारित - पत्नी ने बिना किसी कारण के 2 वर्ष से अधिक की निरंतर कालावधि तक पति का अभित्यजन किया - परिस्थितियाँ उपदर्शित करती हैं कि पक्षकारों के मध्य विवाह असुधार्य रूप से पूर्णतः खण्डित हो गया है और व्यवहारिक रूप से भविष्य में उनका एक साथ रहना संभव करते हुए पुनःप्रवर्तन की कोई संभावना नहीं है - अभित्यजन का आधार साबित - विवाह विच्छेद की डिक्री का हकदार। (रमन कुमार वि. श्रीमति भावना) ---*44

Hindu Succession Act (30 of 1956), Section 6(1) proviso [As amended by Hindu Succession (Amendment) Act, 2005 w.e.f. 09.09.2005]
- Effect - Held - A daughter in joint Hindu family governed by Mitakshara Law now becomes a coparcener and thus enjoys right as hitherto enjoyed by a son as coparcener - The legislature has added a proviso to sub-section (1) providing that any disposition or alienation, including a partition or testamentary disposition entered into before 20.12.2004 are not effected.
[Choudhary Chhatar Singh (Dead) v. Smt. Harsh Kumar] ...2623

Industrial Disputes Act (14 of 1947), Section 25-F - *Once it is found that the termination order is violative of S. 25-F of Act then the said order is ab-initio void and the employee is entitled to reinstatement with full back wages - However, the Court can refuse to grant relief of reinstatement for a particular reason which will depend on the facts & circumstances of each case - There is no hard and fast rule that the Court should grant the relief of reinstatement with full back wages in each and every case - Reference answered accordingly.* [Munshi Singh v. Nagar Panchayat Jaura] FB...2748

Industrial Employment (Standing Orders) Rules, M.P. 1963, Rule 2(i) - Classification as permanent employee - Requirements - *Two conditions must be fulfilled i.e., satisfactory service for six months and availability of vacant post - Both the requirements were fulfilled, therefore, Labour Court rightly directed for classification of respondents as permanent employees.*
[Nagar Palik Nigam, Sagar v. Anand Mangal Guru] ...2542

Industrial Employment (Standing Orders) Rules, M.P. 1963, Rule 2(i) - Difference of back wages - Workmen claiming that difference of wages ought to have been granted w.e.f. the date the right had accrued to them of being classified on permanent basis - Held - *There was initial lapse on the part of workmen to adduce evidence with respect to vacant posts - Labour Court granted the wages on being classified - Difference of wages from back date rightly denied.* [Nagar Palik Nigam, Sagar v. Anand Mangal Guru]...2542

Information Technology Act (of 2000), Section 67 - See - Penal Code, 1860, Sections 506 & 509 [Prakash Chatrani v. State of M.P.] ...3454

Jiwaji University, Ordinance 38, Clause (9) & (10) - Permission to appear in examination - *Appellant not permitted to appear in the fourth semester examination of M.Sc. (Computer Science) as he didn't get aggregate 36% marks in theory and laboratory courses in second semester examination - Held - Court interpreted first and second proviso of Clauses (9) & (10) and held that unless the appellant clears the second semester examination by obtaining 36% in aggregate in both theory and laboratory courses separately, he cannot be permitted to appear in the fourth semester examination.* [Sudheer Singh Tomar v. Jiwaji University] ...3254

Judicial Propriety & Decorum - Execution Court, as per direction

हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 6(1) परन्तुक [हिन्दू उत्तराधिकार (संशोधन) अधिनियम, 2005 द्वारा यथासंशोधित तारीख 09.09.2005 से प्रभावी] - प्रभाव - अभिनिर्धारित - मिताक्षरा विधि से शासित संयुक्त हिन्दू परिवार में कोई पुत्री अब सहदायिक हो गयी है और इस प्रकार अधिकार का उपभोग करती है जैसा कि अब तक एक पुत्र द्वारा सहदायिक के रूप में उपभोग किया जाता था - विधायिका ने यह उपबंधित करते हुए उपधारा (1) में एक परन्तुक जोड़ा है कि 20.12.2004 या उससे पूर्व किये गये विभाजन या वसीयती व्ययन को सम्मिलित करते हुए कोई व्ययन या हस्तांतरण प्रभावित नहीं होंगे। (चौधरी छत्र सिंह (मृतक) वि. श्रीमति हर्ष कुमार) ...2623

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25-एफ - जब एक बार यह पाया जाता है कि सेवा समाप्ति आदेश अधिनियम की धारा 25-एफ के उल्लंघनकारी है तब उक्त आदेश आरम्भ से शून्य है और कर्मचारी पूर्ण पिछले वेतन सहित पुनर्नियुक्ति का हकदार है - तथापि, न्यायालय किसी विशिष्ट कारण से, जो प्रत्येक मामले के तथ्यों और परिस्थितियों पर निर्भर करेगा, पुनर्नियुक्ति का अनुतोष देने से इंकार कर सकता है - कोई कठोर नियम नहीं है कि न्यायालय को प्रत्येक मामले में पूर्ण पिछले वेतन सहित पुनर्नियुक्ति का अनुतोष देना चाहिए - निर्देश तदनुसार उत्तरित। (मुन्शी सिंह वि. नगर पंचायत, जौरा) FB ---2748

औद्योगिक नियोजन (स्थायी आदेश) नियम, म.प्र. 1963, नियम 2(i) - स्थायी कर्मचारी के रूप में वर्गीकरण - आवश्यकताएँ - दो शर्तें अवश्य पूरी होनी चाहिए अर्थात् छः माह की संतोषप्रद सेवा और रिक्त पद की उपलब्धता - दोनों आवश्यकताएँ पूरी की गई, इसलिए, श्रम न्यायालय ने स्थायी कर्मचारियों के रूप में प्रत्यर्थियों के वर्गीकरण के लिए उचित रूप से निदेश दिया। (नगर पालिक निगम, सागर वि. आनंद मंगल गुरु) ...2542

औद्योगिक नियोजन (स्थायी आदेश) नियम, म.प्र. 1963, नियम 2(i) - पिछले वेतन का अंतर - कामगारों ने दावा किया कि वेतन का अंतर उस तारीख से दिया जाना चाहिए था जिस तारीख को उन्हें स्थायी आधार पर वर्गीकृत किये जाने का अधिकार प्रोद्भूत हुआ - अभिनिर्धारित - कामगारों की ओर से रिक्त पदों के संबंध में साक्ष्य पेश करने में आरंभिक चूक - श्रम न्यायालय ने वर्गीकृत किये जाने पर वेतन दिलाया - पूर्व की तारीख से वेतन का अंतर उचित रूप से इंकार किया गया। (नगर पालिक निगम, सागर वि. आनंद मंगल गुरु) ...2542

सूचना प्रौद्योगिकी अधिनियम (2000 का), धारा 67 - देखें - दण्ड संहिता, 1860, धाराएँ 506 व 509 (प्रकाश छत्रानी वि. म.प्र. राज्य) ...3454

जीवाजी विश्वविद्यालय, अध्यादेश 38, खण्ड (9) व (10) - परीक्षा में बैठने की अनुमति - अपीलार्थी को एम.एससी. (कम्प्यूटर विज्ञान) के चतुर्थ सेमेस्टर की परीक्षा में बैठने की अनुमति नहीं दी गई क्योंकि उसने द्वितीय सेमेस्टर की परीक्षा में सैद्धांतिक और प्रयोगशाला पाठ्यक्रमों में कुल 36 प्रतिशत अंक प्राप्त नहीं किये - अभिनिर्धारित - न्यायालय ने खण्ड (9) व (10) के प्रथम और द्वितीय परन्तुक का निर्वचन किया और अभिनिर्धारित किया कि जब तक अपीलार्थी सैद्धांतिक और प्रयोगशाला दोनों पाठ्यक्रमों में पृथक-पृथक रूप से कुल 36 प्रतिशत अंक प्राप्त करके द्वितीय सेमेस्टर परीक्षा उत्तीर्ण नहीं करता तब तक उसे चतुर्थ सेमेस्टर की परीक्षा में बैठने की अनुमति नहीं दी जा सकती। (सुधीर सिंह तोमर वि. जीवाजी यूनिवर्सिटी) ...3254

न्यायिक औचित्य और शिष्टाचार - निष्पादन न्यायालय ने उच्च न्यायालय के निदेशानुसार

of the High Court, after leading evidence, concluded that respondent No.1 was the proprietor of respondent No.2 - Order challenged in revision - High Court held that Executing Court could not have decided the issue regarding identity of the proprietor, in exercise of its jurisdiction u/s 47 CPC - Held - While dealing with the second revision petition, the High Court failed to take into consideration the earlier order passed by Single Judge of High Court - Judicial propriety and decorum requires that if a Single Judge, hearing a matter, feels that earlier decision of a Single Judge needs reconsideration, he should not embark upon that inquiry sitting as a Single Judge but should refer the matter to a larger bench. [Century Textiles Industries Ltd. (M/S) v. Deepak Jain] SC...3241

Juvenile Justice (Care and Protection of Children) Act (56 of 2000) [As amended by Act No.33 of 2006], Section 41, Juvenile Justice (Care and Protection of Children) Rules, 2007, Rules 32 & 33, Family Courts Act, 1984, Section 7(1) Explanation (g) - Adoption of orphan - As per Rule 33(3) of Rules, 2007 for the purpose of S. 41(3) of Act of 2000 'court' implies a civil court which has jurisdiction in the matter of adoption - Explanation (g) of S. 7(1) of the Family Courts Act includes the proceedings in relation to the guardianship of the person or the custody of or access to any minor, but it does not include the proceedings relating to adoption - Civil Court has jurisdiction to entertain petition u/s 41 of Act of 2000 and not Family Court. [Sanjay Mehta v. Superintendent of Matrachhaya] ...2728

Juvenile Justice (Care and Protection of Children) Rules, 2007, Rules 32 & 33 - See - Juvenile Justice (Care and Protection of Children) Act, 2000 [As amended by Act No.33 of 2006], Section 41 [Sanjay Mehta v. Superintendent of Matrachhaya] ...2728

Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Sections 2(1)(mmm) & 6 - Petitioner is neither selling, purchasing nor processing tobacco and has not subjected the tobacco to any of the process mentioned in the definition clause u/s 2(1)(mmm) which is a notified agricultural produce within the market area - Therefore, is also outside the purview of S. 6 of the Act. [J.P. Tobacco Products v. Krishi Upaj Mandi] ...3291

Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Sections 2(1)(mmm) & 19 - Tobacco is used for the purpose of preparing Bidi, which is distinct, separate and different marketable commodity - Process of utilization of tobacco for preparation of Bidi amounts to manufacture and falls outside the purview of S. 19 and can not be subject to levy of market fee - Petition allowed. [J.P. Tobacco Products v. Krishi Upaj Mandi] ...3291

Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Sections 25, 46-F & 59 - Power of Managing Director to look into legality or propriety of decision taken or order passed - Mandi committee would be

साक्ष्य लेने के बाद यह निष्कर्ष निकाला कि प्रत्यर्थी क्र. 1 प्रत्यर्थी क्र. 2 का प्रोप्राईटर था - आदेश को पुनरीक्षण में चुनौती दी गई - उच्च न्यायालय ने अभिनिर्धारित किया कि निष्पादन न्यायालय सि. प्र.सं. की धारा 47 के अन्तर्गत अपनी अधिकारिता के प्रयोग में प्रोप्राईटर की पहचान से सम्बन्धित विवादक का विनिश्चय नहीं कर सकता था. - अभिनिर्धारित - उच्च न्यायालय द्वितीय पुनरीक्षण याचिका पर कार्यवाही करते समय, उच्च न्यायालय के एकल न्यायाधीश द्वारा पारित पूर्ववर्ती आदेश को विचार में लेने में असफल रहा - न्यायिक औचित्य और शिष्टाचार यह अपेक्षित करते हैं कि यदि किसी एकल न्यायाधीश को किसी मामले की सुनवाई करते समय यह प्रतीत होता है कि किसी एकल न्यायाधीश के पूर्ववर्ती विनिश्चय के पुनर्विचार की आवश्यकता है, तो उसे एकल न्यायाधीश के रूप में कार्यवाही करते हुए उसकी जाँच आरम्भ नहीं करनी चाहिए बल्कि वृहत्तर न्यायापीठ को मामला निर्देशित करना चाहिए। (सेचुरी टेक्सटाईल्स इंडस्ट्रीज लि. (मे.) वि. दीपक जैन) SC---3241

किशोर न्याय (बालकों की देख-रेख और संरक्षण) अधिनियम (2000 का 56) [2006 के अधिनियम क्र. 33 द्वारा यथासंशोधित], धारा 41, किशोर न्याय (बालकों की देख-रेख और संरक्षण) नियम, 2007, नियम 32 व 33, कुटुम्ब न्यायालय अधिनियम, 1984, धारा 7(1); स्पष्टीकरण (जी) - अनाथ का दत्तक - नियम 2007 के नियम 33(3) के अनुसार अधिनियम 2000 की धारा 41(3) के प्रयोजनों के लिए 'न्यायालय' में सिविल न्यायालय अन्तर्निहित है जो दत्तक के मामले में अधिकारिता रखता है - कुटुम्ब न्यायालय अधिनियम की धारा 7(1) के स्पष्टीकरण (जी) में व्यक्ति की संरक्षकता संबंधी या किसी अप्राप्तवय की अभिरक्षा की या उस तक पहुँच संबंधी कार्यवाहियाँ शामिल हैं किन्तु उसमें दत्तक संबंधी कार्यवाहियाँ शामिल नहीं हैं - अधिनियम 2000 की धारा 41 के अन्तर्गत याचिका ग्रहण करने की अधिकारिता सिविल न्यायालय को है न कि कुटुम्ब न्यायालय को। (संजय मेहता वि. सुप्रिटेन्डेन्ट ऑफ मातृछाया) ...2728

किशोर न्याय (बालकों की देख-रेख और संरक्षण) नियम, 2007, नियम 32 व 33 - देखें - किशोर न्याय (बालकों की देख-रेख और संरक्षण) अधिनियम, 2000 [2006 के अधिनियम क्र. 33 द्वारा यथासंशोधित], धारा 41 (संजय मेहता वि. सुप्रिटेन्डेन्ट ऑफ मातृछाया) ...2728

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धाराएँ 2(1)(एमएमएम) व 6 - याची न तो तम्बाकू विक्रय, क्रय कर रहा है और न उसका विनिर्माण कर रहा है और तम्बाकू को धारा 2(1)(एमएमएम) के अन्तर्गत परिभाषा खण्ड की उल्लिखित किसी प्रक्रिया के अध्याधीन नहीं रखा है जो मण्डी क्षेत्र की अन्दर अधिसूचित कृषि उपज हो - इसलिए अधिनियम की धारा 6 के क्षेत्र से भी बाहर है। (जे.पी. टोबेको प्रोडक्ट्स वि. कृषि उपज मण्डी) ...3291

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धाराएँ 2(1)(एमएमएम) व 19 - तम्बाकू बीड़ी बनाने के प्रयोजन के लिए प्रयुक्त की जाती है, जो सुभिन्न, पृथक और भिन्न मण्डी पदार्थ है - बीड़ी बनाने के लिए तम्बाकू के उपयोग की प्रक्रिया विनिर्माण की कोटि में आती है और धारा 19 के क्षेत्र से बाहर आती है और मण्डी फीस के उद्ग्रहण के अध्याधीन नहीं हो सकती है - याचिका मंजूर। (जे.पी. टोबेको प्रोडक्ट्स वि. कृषि उपज मण्डी) ...3291

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धाराएँ 25, 46-एफ. व 59 - प्रबंध निदेशक की, लिये गये निर्णय या पारित आदेश की वैधता या औचित्य की जाँच पड़ताल करने की शक्ति - मण्डी समिति स्थावर सम्पत्ति में हित के क्रय, विक्रय, पट्टे, बंधक या अन्य अंतरण

entitled to enter into agreement relating to purchases, sale, lease, mortgage or other transfer of, or acquisition of, interest in immovable property - Section does not refer service contract - Mandi Committee would not be entitled to enter into agreement of providing security guard without permission of Managing Director/Board. [Safe Guard, GF-3 v. M.P. State Agriculture Marketing Board] ...2769

Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Section 40-A - Power of State Government to issue direction to Board and market committee - Considering the facts and to avoid anomalous situation State should take action. [Safe Guard, GF-3 v. M.P. State Agriculture Marketing Board] ...2769

Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Section 66-A Krishi Upaj Mandi Rules, M.P. 1974, Rules 15 & 43 - Election of representation of agriculturist - Election Petition - Dismissal on the ground of presentation by counsel - Held - In the Rules for mode of presentation there is no command that election petitioner should present the election petition - In absence of any consequential mandate to the effect that non-presentation of the election petition filed by the election petitioner before the competent authority shall entail in dismissal of the petition, the provision can not be construed as mandatory - Order dismissing election petition quashed - Petition allowed. [Manohar Lal Gole v. Dilip] ...2804

Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Section 67, Civil Procedure Code, 1908, Section 80(2) - Benefit of S.80(2) of CPC cannot be extended to suits against Krishi Upaj Mandi Samiti and the suit, without serving statutory notice under the Adhiniyam, is not maintainable. [Krishi Upaj Mandi Samiti] Banapur v. Chandra Shekhar Raghuvanshi] ...3019

Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Section 67, Municipalities Act, M.P. 1961, Section 319 - The provision of S. 67 of M.P. Krishi Upaj Mandi Adhiniyam is pari materia to S. 319 of M.P. Municipalities Act. [Krishi Upaj Mandi Samiti] Banapur v. Chandra Shekhar Raghuvanshi] ...3019

Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Section 67 - Notice u/s 67 is mandatory and suit without serving a notice is not maintainable. [Krishi Upaj Mandi Samiti] Banapur v. Chandra Shekhar Raghuvanshi] ...3019

Krishi Upaj Mandi Rules, M.P. 1974, Rules 15 & 43 - See - Krishi Upaj Mandi Adhiniyam, M.P., 1973, Section 66-A [Manoharlal Gole v. Dilip] ...2804

Land Acquisition Act (1 of 1894), Section 5-A - Hearing of objections - Held - Simply because a person is entitled to seek compensation for the acquired land, would be no ground to rule out an objection raised by him pleading relevant facts. [Malwa I.T. Park Ltd. v. State of M.P.] ...2863

Land Acquisition Act (1 of 1894), Section 5-A - Hearing of objections

या अर्जन से संबंधित अनुबन्ध करने की हकदार होगी - धारा सेवा संविदा को संदर्भित नहीं करती है - मण्डी समिति प्रबंध निदेशक/बोर्ड की अनुमति के बिना सुरक्षा गार्ड मुहैया कराने का अनुबन्ध करने की हकदार नहीं होगी। (सेफ गार्ड, जी एफ-3 वि. एम.पी. स्टेट एग्रीकल्चर मार्केटिंग बोर्ड) ...2769

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धारा 40-ए - राज्य सरकार की बोर्ड या मण्डी समिति को निदेश जारी करने की शक्ति - तथ्यों पर विचार कर और विषम परिस्थिति से बचने के लिए राज्य को कार्यवाही करनी चाहिए। (सेफ गार्ड, जी एफ-3 वि. एम.पी. स्टेट एग्रीकल्चर मार्केटिंग बोर्ड) ...2769

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धारा 66-ए, कृषि उपज मण्डी नियम, म.प्र. 1974, नियम 15 व 43 - कृषकों के प्रतिनिधित्व का निर्वाचन - निर्वाचन याचिका - अधिवक्ता द्वारा प्रस्तुति के आधार पर खारिजी - अभिनिर्धारित - प्रस्तुति के ढंग के नियमों में ऐसा कोई समावेश नहीं है कि निर्वाचन याचिका को निर्वाचन याचिका पेश करनी चाहिए - इस प्रभाव के किसी पारिणामिक आदेश के अभाव में कि निर्वाचन याचिका द्वारा सक्षम प्राधिकारी के समक्ष पेश निर्वाचन याचिका की अप्रस्तुति याचिका की खारिजी में हो जायेगी, उपबंध का अर्थ आदेशात्मक के रूप में नहीं लगाया जा सकता - निर्वाचन याचिका खारिज करने वाला आदेश अपास्त - याचिका मंजूर। (मनोहर लाल गोले वि. दिलीप) ...2804

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धारा 67, सिविल प्रक्रिया संहिता, 1908, धारा 80(2) - सि.प्र.सं. की धारा 80(2) का लाम कृषि उपज मण्डी समिति के विरुद्ध वादों तक विस्तारित नहीं किया जा सकता और अधिनियम के अन्तर्गत वैधानिक सूचनापत्र तामील किये बिना वाद पोषणीय नहीं है। (कृषि उपज मंडी समिति, बानापुर वि. चन्द्रशेखर रघुवंशी) ...3019

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धारा 67, नगरपालिका अधिनियम, म.प्र. 1961, धारा 319 - म.प्र. कृषि उपज मण्डी अधिनियम की धारा 67 का उपबंध म.प्र. नगरपालिका अधिनियम की धारा 319 के समविषयक (पेरी मटेरिया) है। (कृषि उपज मंडी समिति, बानापुर वि. चन्द्रशेखर रघुवंशी) ...3019

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धारा 67 - धारा 67 के अन्तर्गत सूचनापत्र आज्ञापक है और सूचनापत्र तामील किये बिना वाद पोषणीय नहीं है। (कृषि उपज मंडी समिति, बानापुर वि. चन्द्रशेखर रघुवंशी) ...3019

कृषि उपज मण्डी नियम, म.प्र. 1974, नियम 15 व 43 - देखें - कृषि उपज मण्डी अधिनियम, म.प्र. 1973, धारा 66-ए, (मनोहरलाल गोले वि. दिलीप) ...2804

भूमि अर्जन अधिनियम (1894 का 1), धारा 5-ए - आपत्तियों की सुनवाई - अभिनिर्धारित - केवल इसलिए कि कोई व्यक्ति अर्जित भूमि के लिए प्रतिकर की माँग करने का हकदार है उसके द्वारा सुसंगत तथ्यों का अभिवचन करते हुए उठायी गई आपत्ति को अपवर्जित करने का कोई आधार नहीं होगा। (मालवा आई.टी. पार्क लि. वि. म.प्र. राज्य) ...2863

- Held - The objections, at no stage, had ever been decided by the appropriate authority and therefore a mere approval granted to the report of the Collector by the Commissioner, could neither be treated to be a decision of the objections by the appropriate Government, nor the said order reflects due application of mind. [Malwa I.T. Park Ltd. v. State of M.P.] ...2863

Land Acquisition Act (1 of 1894), Section 5-A - Hearing of objections

- It is well settled principle of law that when a statute requires an act to be done, an order to be passed or a duty to be performed by a statutory authority, in a particular manner, then that act must be done, order passed and duty performed in strict compliance with the statutory provisions, and the manner envisaged thereunder. [Malwa I.T. Park Ltd. v. State of M.P.] ...2863

Land Acquisition Act (1 of 1894), Section 50(2) - Housing Board

has assailed the legal validity of the award on the ground that it was not given a notice or opportunity of hearing as required by the provisions of S. 50(2) - Therefore, award stands vitiated - Held - Housing Board itself moved an application for being impleaded as party and was permitted to participate in the proceeding for determining compensation - Award was passed after hearing Board - Board had knowledge of pendency of acquisition proceeding and has not suffered any prejudice on account of failure to give notice - Provision of S. 50(2) or the law laid down by the Apex Court in Gyan Devi's case [(1995) 2 SCC 326] not violated - Petition dismissed. [M.P. Housing Board, Hoshangabad v. State of M.P.] ...3334

Land Revenue Code, M.P. (20 of 1959), Section 44 - See - Lok

Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, M.P. 1987, Section 3(2) [Maganlal Jain v. State of M.P.] ...3322

Land Revenue Code, M.P. (20 of 1959), Section 51 - Review -

Competent Authority, after seeking the sanction, reviewed the order and passed a fresh order - Held - Competent Authority under the Urban Land (Ceiling and Regulation) Repeal Act, 1999 is not vested with the power to review the earlier order with or without the sanction of the Authority - If the provisions of Code do not apply then the Competent Authority could not make an application u/s 51 to the Commissioner for granting sanction - Subsequent order set-aside and earlier order restored - Writ Appeal allowed. [Biharilal v. State of M.P.] ...2496

Land Revenue Code, M.P. (20 of 1959), Sections 107 & 257 - Suit

challenging order effecting correction in revenue map - Revenue officers named in S. 107 alone are competent to take action in respect of correction in the revenue map - Jurisdiction of Civil Court excluded u/s 257 - Suit rightly held not maintainable - Appeal dismissed. [Nagar Panchayat, Aron v. Shanti Bai] ...*49

Land Revenue Code, M.P. (20 of 1959), Section 117 - On account

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मू. राजस्व संहिता, म.प्र. (1959 का 20), धारा 117 - विक्रय विलेख के आधार पर

of the sale deed, the mutation in the revenue record was effected in favour of plaintiff's father and accordingly Bhu-Adhikar and Rin-Pustika was issued to him - Held - Even if name of plaintiff's father mutated on agricultural land - The entry in revenue record is only a pencil entry and will not confer any substantial right to plaintiff's father. [Motilal Pandey v. Kailash Pathak]...2601

Limitation Act (9 of 1908), Article 142 - Suit for possession must be brought within 12 years of dispossession - Plaintiff failed to file any document in order to demonstrate his possession within 12 years of filing of suit - Date of dispossession is also not disclosed - On the contrary, revenue record showing possession of defendant - Held - Suit barred by limitation - Appeal allowed. [Maniram v. Harikishan] ...*48

Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, M.P. 1987 (1 of 1988), Section 3(2), Land Revenue Code, M.P. 1959, Section 44 - Order passed by Tahsildar exercising powers u/s 3(2) of Adhiniyam for recovering as arrears of Land Revenue is appealable u/s 44 of the Code. [Maganlal Jain v. State of M.P.] ...3322

Madhyamik Shiksha Adhiniyam, M.P. (23 of 1965), Section 28(4), Board of Secondary Education (M.P.) Regulations, 1965, Regulation 97, Proviso - Eligibility of private candidates to appear in Higher Secondary School Examination - Board rejected the application for appearing as private candidate in HSS Examination as candidates have not completed 2 years after passing the HSC Examination - Held - The candidates who have completed four academic years from the date of passing the Class VIII Examination satisfy the conditions in Regulation 97 - This interpretation of the proviso does not destroy the main provision of Regulation 97 but is consistent with the main provision in Regulation 97. [Firoz Khan v. Secretary Board of Secondary Education]...2848

Maxims - "Falsus in uno, falsus in omnibus" - Applicability - The legal maxim "falsus in uno, falsus in omnibus", means false on one point would be false on all points, is not applicable in our country - It is sacrosanct duty of the Court to separate the grain from the chaff. [Rama @ Ramlal v. State of M.P.] ...2660

Medical and Dental Post Graduate Course Entrance Examination Rules, M.P. 2009, Rule 8(1) & 17(6)(i) - Vires of the Rule providing that one seat of orthodontics in Post Graduate Dental Course shall be reserved for a female candidate of unreserved category challenged - Held - Rule 8(1) and Rule 17(6)(i) are saved by Article 15(3) of the Constitution and are not ultra vires of Article 14 of the Constitution. [Satish Menon (Dr.) v. State of M.P.] ...2583

Micro, Small and Medium Enterprises Development Act (27 of 2006), Section 19 - Application for setting-aside decree, award or order -

राजस्व अभिलेख में वादी के पिता के हक में नामांतरण किया गया और तदनुसार उसे भू-अधिकार और ऋण-पुस्तिका जारी की गई - अभिनिर्धारित - यद्यपि वादी के पिता का नाम कृषि भूमि पर नामांतरित कर दिया गया - राजस्व अभिलेख में प्रविष्टि केवल एक पेंसिल प्रविष्टि है और वादी के पिता को कोई सारवान अधिकार प्रदत्त नहीं करती। (मोती लाल पांडे वि. कैलाश पाठक) ...2601

परिसीमा अधिनियम (1908 का 9), अनुच्छेद 142 - कब्जे का वाद बेकब्जा होने से 12 वर्ष के भीतर लाया जाना चाहिए - वादी वाद पेश करने के 12 वर्ष के भीतर अपने कब्जे को प्रदर्शित करने के लिए कोई दस्तावेज पेश करने में असफल रहा - बेकब्जा होने की तारीख भी प्रकट नहीं की गई - इसके प्रतिकूल राजस्व अभिलेख प्रतिवादी का कब्जा दर्शाता है - अभिनिर्धारित - वाद परिसीमा वर्जित - अपील मंजूर। (मनीराम वि. हरीकिशन) ---*48

लोक धन (शोध्य राशियों की वसूली) अधिनियम, म.प्र. 1987 (1988 का 1), धारा 3(2), भू राजस्व संहिता, म.प्र. 1959, धारा 44 - तहसीलदार द्वारा अधिनियम की धारा 3(2) के अन्तर्गत शक्तियों का प्रयोग करते हुए भू राजस्व के बकाया के तौर पर वसूली के लिए पारित आदेश संहिता की धारा 44 के अन्तर्गत अपील योग्य है। (मननमोहन जैन वि. म.प्र. राज्य) ...3322

माध्यमिक शिक्षा अधिनियम, म.प्र. (1965 का 23), धारा 28(4), माध्यमिक शिक्षा मण्डल (म.प्र.) विनियम, 1965, विनियम 97, परन्तुक - स्वाध्यायी अभ्यर्थियों की उच्चतर माध्यमिक परीक्षा में बैठने की पात्रता - बोर्ड ने उच्चतर माध्यमिक परीक्षा में स्वाध्यायी अभ्यर्थी के रूप में बैठने का आवेदन खारिज किया क्योंकि अभ्यर्थियों ने हाईस्कूल परीक्षा उत्तीर्ण करने के बाद 2 वर्ष पूर्ण नहीं किये - अभिनिर्धारित - ऐसे अभ्यर्थी, जिन्होंने कक्षा 8 की परीक्षा उत्तीर्ण करने की तारीख से चार शैक्षणिक सत्र पूर्ण कर लिये हैं, विनियम 97 में दी गई शर्तों को पूरा करते हैं - परन्तुक का यह निर्वचन विनियम 97 के मुख्य उपबंध के अस्तित्व को समाप्त नहीं करता है बल्कि विनियम 97 के मुख्य उपबंध से संगत है। (फिरोज खान वि. सेक्रेटरी, बोर्ड ऑफ सेकेंडरी एजुकेशन) ...2848

सूत्र - "एक बात में मिथ्या तो सब में मिथ्या" - प्रयोज्यनीयता - विधिक सूत्र "एक बात में मिथ्या तो सब बात में मिथ्या" का अर्थ एक बिन्दु पर मिथ्या सभी बिन्दुओं पर मिथ्या होगा, हमारे देश में लागू नहीं होता - यह न्यायालय का अनुल्लंघनीय कर्तव्य है कि भूमी से अज्ञान को पृथक करे। (रामा उर्फ रामलाल वि. म.प्र. राज्य) ...2660

चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र. 2009, नियम 8(1) व 17(6)(i) - यह उपबंधित करने वाले नियम की शक्तिता को चुनौती दी गई कि स्नातकोत्तर दंत पाठ्यक्रम में ऑर्थोडॉन्टिक्स की एक सीट अनारक्षित श्रेणी की महिला अभ्यर्थी के लिए आरक्षित होगी - अभिनिर्धारित - नियम 8(1) व नियम 17(6)(i) संविधान के अनुच्छेद 15(3) द्वारा व्यावृत्त हैं और संविधान के अनुच्छेद 14 के अधिकाराधीन नहीं हैं। (सतीश मेनन (डॉ.) वि. म.प्र. राज्य) ...2583

सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धारा 19 - डिग्री, अधिनिर्णय या आदेश को अपास्त करने के लिए आवेदन - ऐसे आवेदन को ग्रहण करने के लिए

Deposit of 75% of the amount in terms of decree, award or as the case may be, in the manner directed by such Court, is mandatory pre-condition to entertain such application. [R.S. Avtar Singh & Co. (M/s.) v. Vindiyachal Air Products Pvt. Ltd.] ...*50

Micro, Small and Medium Enterprises Development Act (27 of 2006), Section 19 Proviso - Proviso to S. 19 empowers the Court to pass appropriate order with respect to disbursement of the amount to the supplier on conditions as it considers reasonable under the circumstances of the case to impose - Considering the proviso 50% of the amount is ordered to be disbursed to respondent No.1 remaining amount 25% shall be invested in the fixed deposit to be disbursed in terms of final decision. [R.S. Avtar Singh & Co. (M/s.) v. Vindiyachal Air Products Pvt. Ltd.] ...*50

Micro, Small and Medium Enterprises Development Act (27 of 2006), Section 19 - The words used in S. 19 "in the manner directed by the Court" cannot be interpreted so as to dilute the very requirement of deposit of 75% amount itself. [R.S. Avtar Singh & Co. (M/s.) v. Vindiyachal Air Products Pvt. Ltd.] ...*50

Minor Mineral Rules, M.P. 1996, Rules 17, 30(1)(b), 57(2), Clause 3 of Part V - Quarry Lease - Transit Pass - Eligibility for renewal - Rule providing that application for renewal of quarry lease should be made at least one year before the date of expiry - Petitioner did not apply for renewal and filed a petition six days before expiry of quarry lease and got an order of status quo - On the basis of which Collector passed orders for issuing transit pass - Held - It was beyond the powers of Collector to issue transit pass after the expiry of the lease period - Orders passed by Collector, quashed - Competent authority shall proceed afresh for grant of quarry lease in accordance with the Rules. [M.P. State Mining Corporation Ltd. v. Director Geology and Mining Directorate of Geology & Mining, Bhopal] ...2531

Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990, Clause 5 - See - Essential Commodities Act, 1955, Section 3 r/w 7 [Mohd. Shamim v. State of M.P.]...3201

Motor Vehicles Act (59 of 1988), Sections 14(2)(a) & 149 - Death due to accident by tanker - Driver was not authorized to drive heavy transport vehicle - Insured committed breach of promise by handing over tanker to person having no valid license - Insurance Company rightly exonerated from liability. [Sambhudayal v. New India Insurance Company Ltd.] ...3387

Motor Vehicles Act (59 of 1988), Section 82 - Transfer of permit - Held - Where the holder of the permit dies, the person succeeding to the possession of the vehicle covered by the permit may, for a period of three months, use the permit as if it has been granted to him. [National Insurance Co. Ltd. v. Smt. Madhuri Kushwah] ...2968

ऐसे न्यायालय द्वारा निदेशित ढंग से डिक्री, अधिनिर्णय या यथास्थिति के निबंधनों के अनुसार 75% धनराशि जमा करना आज्ञापक पूर्व शर्त है। (आर.एस. अवतार सिंह एण्ड कं. (मे.) वि. विंध्याचल एयर प्रोडक्ट्स प्रा. लि.) ---*50

सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धारा 19 परन्तुक - धारा 19 का परन्तुक न्यायालय को, ऐसी शर्तों पर जो वह मामले की परिस्थितियों में आधिरोपित करना युक्तियुक्त विचारित करे, आपूर्तिकर्ता को धनराशि के संवितरण के सम्बन्ध में समुचित आदेश पारित करने के लिए सशक्त करता है - परिस्थितियों पर विचार कर 50% धनराशि प्रत्यर्थी क्र. 1 को संवितरित करने का आदेश दिया गया और शेष 25% धनराशि अंतिम विनिश्चय के निबंधनों के अनुसार संवितरित की जाने के लिए सावधि जमा में निवेशित की जाए। (आर.एस. अवतार सिंह एण्ड कं. (मे.) वि. विंध्याचल एयर प्रोडक्ट्स प्रा. लि.) ---*50

सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धारा 19 - धारा 19 में प्रयुक्त शब्द "न्यायालय द्वारा निदेशित ढंग से" का ऐसा निर्वचन नहीं किया जा सकता जो स्वमेव 75% धनराशि जमा करने की अति आवश्यकता को कम करे। (आर.एस. अवतार सिंह एण्ड कं. (मे.) वि. विंध्याचल एयर प्रोडक्ट्स प्रा. लि.) ---*50

गौण खनिज नियम, म.प्र. 1996, नियम 17, 30(1)(बी), 57(2), भाग 8 का खण्ड 3 - खदान पट्टा - अभिवहन पास - नवीनीकरण के लिए पात्रता - नियम उपबंधित करते हैं कि खदान पट्टे के नवीनीकरण का आवेदन अवसान की तारीख से कम से कम एक वर्ष पूर्व किया जाना चाहिए - याची ने नवीनीकरण के लिए आवेदन नहीं किया और खदान पट्टे के अवसान के छः दिन पूर्व याचिका पेश की और यथास्थिति का आदेश प्राप्त किया - जिसके आधार पर कलेक्टर ने अभिवहन पास जारी करने के लिए आदेश पारित किये - अभिनिर्धारित - पट्टा अवधि के अवसान के बाद अभिवहन पास जारी करना कलेक्टर की शक्तियों से परे था - कलेक्टर द्वारा पारित आदेश अभिखंडित - सक्षम प्राधिकारी नियमों के अनुसार खदान पट्टा प्रदान करने के लिए नये सिरे से कार्यवाही करे। (एम.पी. स्टेट माइनिंग कारपोरेशन लि. वि. डाइरेक्टर जियोलॉजी एण्ड माइनिंग डायरेक्टोरेट ऑफ जियोलॉजी एण्ड माइनिंग, मोपाल) ...2531

मोटर स्पिड और हाईस्पीड डीजल (आपूर्ति और वितरण में अनुचारे का निवारण) आदेश, 1990, खण्ड 5 - देखें - आवश्यक वस्तु अधिनियम, 1955, धारा 3 सहपठित धारा 7 (मोहम्मद शमीम वि. म.प्र. राज्य) ...3201

मोटर यान अधिनियम (1988 का 59), धाराएँ 14(2)(ए) व 149 - टेंकर द्वारा दुर्घटना के कारण मृत्यु - चालक भारी परिवहन वाहन चलाने के लिए अधिकृत नहीं था - बीमाकृत ने ऐसे व्यक्ति को जिसके पास वैध लायसेंस नहीं था, को टेंकर सुपुर्द करके वचन मंग किया - बीमा कंपनी दायित्व से उचित रूप से उन्मुक्त। (शम्सुदयाल वि. न्यू इंडिया इश्योरेन्स कं. लि.) ...3387

मोटर यान अधिनियम (1988 का 59), धारा 82 - परमिट का अंतरण - अभिनिर्धारित - जहाँ परमिट के धारक की मृत्यु हो जाती है तो परमिट के अन्तर्गत वाहन के कब्जे का उत्तरवर्ती व्यक्ति तीन माह की कालावधि तक परमिट का उपयोग कर सकेगा मानो यह उसे प्रदान किया गया हो। (नेशनल इश्योरेन्स कं. लि. वि. श्रीमति माधुरी कुशवाह) ...2968

Motor Vehicles Act (59 of 1988), Section 147(1)(b)(i) - Claimants have specifically pleaded that the deceased was travelling in the vehicle on payment of fare along with the vegetables which he was taking for sale - Claimants produced oral as well as documentary evidence - Insurance Co. has not denied the fact specifically and not produced any contrary evidence in rebuttal - Held - It is established that deceased was travelling in the vehicle along with his goods (vegetables) for which he had paid the charges - Insurance Co. cannot escape from its liability. [Resham Bai (Smt.) v. Jabbar] ...2926

Motor Vehicles Act (59 of 1988), Sections 147 & 149 - Liability of insurer - Collision of Jeep & Truck - Person sitting in Jeep died - Tribunal exonerated insurer of Jeep - Whereas High Court fastened the liability on insurer of Jeep - Held - Deceased was travelling as a passenger in a Jeep - Therefore in view of the terms of contract of insurance, insurer of Jeep cannot be held liable - Appeal allowed. [New India Assurance Co. Ltd. v. Bismillah Bai] SC...3247

Motor Vehicles Act (59 of 1988), Sections 147 & 149 - Requirement of policies and limits of liability & duty of insurers - Whether owner can be exonerated and Insurance Co. alone may be fastened with liability of compensation - Held - Chapter XI of Act does not empower the tribunal or Court to fasten the liability of compensation on Insurance Co. alone - The liability of compensation is to be necessarily fastened on owner and Insurance Co. in joint and several manner. [Vimla Bai v. Sharif Khan] FB...2490

Motor Vehicles Act (59 of 1988), Section 149 - Compensation - Liability of the Insurance Company - On the date of the accident the vehicle was not having the valid permit to ply the vehicle on a particular route - Claims Tribunal holding the Insurance Co. liable to pay compensation - Held - If there are violation of terms and conditions of the insurance policy, then the Insurance Co. is not liable to indemnify the insured, however the Insurance Co. shall pay the compensation to the claimants and it recover the same from the owner of the vehicle. [National Insurance Co. Ltd. v. Smt. Madhuri Kushwah] ...2968

Motor Vehicles Act (59 of 1988), Section 149 - Liability of the Insurance Company - Driver of the offending vehicle not having valid driving licence - Insurance Company still held liable - Held - Tribunal has committed error in saddling the liability to indemnify the claim jointly and severally against the Insurance Company with the owner & driver - Insurance Company was exonerated from the liability to indemnify the claim to the claimant - However, Insurance Company is directed to pay the awarded sum first to the claimant and recover the same from the owner - Appeal allowed. [National Insurance Company Ltd. v. Mohar Singh] ...*53

Motor Vehicles Act (59 of 1988), Sections 149 & 166 - Liability of insurer - Collision of Jeep & Truck - Person sitting in Jeep died - Tribunal

मोटर यान अधिनियम (1988 का 59), धारा 147(1)(बी)(i) — दावेदारों ने विनिर्दिष्ट रूप से अभिवचन किया कि मृतक वाहन में किराये के भुगतान पर सज्जियों के साथ यात्रा कर रहा था जो वह विक्रय के लिए ले जा रहा था — दावेदारों ने सौखिक तथा दस्तावेजी साक्ष्य पेश की — बीमा कम्पनी ने तथ्य से विनिर्दिष्ट रूप से इंकार नहीं किया और खण्डन में कोई प्रतिकूल साक्ष्य पेश नहीं की — अभिनिर्धारित — यह साबित होता है कि मृतक वाहन में अपने माल (सज्जियों) के साथ यात्रा कर रहा था जिसके लिए उसने शुल्क का भुगतान किया था — बीमा कम्पनी अपने दायित्व से बच नहीं सकती। (रेशम बाई (श्रीमति) वि. जब्बार) ...2926

मोटर यान अधिनियम (1988 का 59), धाराएँ 147 व 149 — बीमाकर्ता का दायित्व — जीप और ट्रक की टक्कर — जीप में बैठे व्यक्ति की मृत्यु — अधिकरण ने जीप के बीमाकर्ता को उन्मुक्त किया — जबकि उच्च न्यायालय ने जीप के बीमाकर्ता पर दायित्व आरोपित किया — अभिनिर्धारित — मृतक जीप में एक सवारी के रूप में यात्रा कर रहा था — इसलिए बीमा की संविदा के निबंधनों को दृष्टिगत रखते हुए जीप का बीमाकर्ता दायी नहीं ठहराया जा सकता — अपील मंजूर। (न्यू इंडिया इश्योरेंस कं. लि. वि. विसमिल्हा बाई) SC---3247

मोटर यान अधिनियम (1988 का 59), धाराएँ 147 व 149 — पॉलिसियों की आवश्यकता और दायित्व की सीमाएँ व बीमाकर्ता का कर्तव्य — क्या स्वामी को दायित्व से विमुक्त और केवल बीमा कम्पनी पर प्रतिकर का दायित्व डाला जा सकता है — अभिनिर्धारित — अधिनियम का अध्याय XI अधिकरण या न्यायालय को प्रतिकर का दायित्व केवल बीमा कम्पनी पर डालने के लिए सशक्त नहीं करता — प्रतिकर का दायित्व आवश्यक रूप से स्वामी और बीमा कम्पनी पर संयुक्ततः और पृथकतः डाला जाना चाहिए। (विमला बाई वि. शरीफ खान) FB ---2490

मोटर यान अधिनियम (1988 का 59), धारा 149 — प्रतिकर — बीमा कम्पनी का दायित्व — दुर्घटना की तारीख को वाहन का विशिष्ट मार्ग पर वाहन चलाने का विधिमान्य परमिट नहीं था — दावा अधिकरण ने प्रतिकर अदा करने के लिए बीमा कम्पनी को दायी ठहराया — अभिनिर्धारित — यदि बीमा पॉलिसी के शर्तों और निबंधनों का उल्लंघन हो तब बीमा कम्पनी पॉलिसी धारक की क्षतिपूर्ति करने के लिए दायी नहीं है, तथापि बीमा कम्पनी दावेदारों को प्रतिकर का संदाय करेगी और वह उसकी वसूली वाहन के स्वामी से करेगी। (नेशनल इश्योरेंस कं. लि. वि. श्रीमति माधुरी कुशवाह) ...2968

मोटर यान अधिनियम (1988 का 59), धारा 149 — बीमा कम्पनी का दायित्व — दोषी वाहन के चालक के पास वैध ड्रायविंग लायसेंस नहीं था — तब भी बीमा कम्पनी को दायी ठहराया गया — अभिनिर्धारित — अधिकरण ने स्वामी व चालक के साथ बीमा कम्पनी के विरुद्ध संयुक्ततः और पृथकतः दावे की क्षतिपूर्ति करने का दायित्व डालने में त्रुटि की — बीमा कम्पनी को दावेदार के दावे की क्षतिपूर्ति करने के दायित्व से उन्मुक्त किया गया — तथापि, बीमा कम्पनी को निदेश दिया गया कि पहले दावेदार को अधिनिर्णीत रकम अदा करे और उसकी वसूली स्वामी से करे — अपील मंजूर। (नेशनल इश्योरेंस कं. लि. वि. मोहर सिंह) ---*53

मोटर यान अधिनियम (1988 का 59), धाराएँ 149 व 166 — बीमाकर्ता का दायित्व — जीप और ट्रक की टक्कर — जीप में बैठे व्यक्ति की मृत्यु — अधिकरण ने पाया कि घटना ट्रक

found accident occurred due to rash & negligent driving of the Truck driver - Truck not insured - Award passed only against owner & driver of Truck - Owner, driver and insurance company of Jeep exonerated - On filing appeal High Court setting-aside the part of award exonerating the insurer of Jeep and making insurer of Jeep also liable for payment - Held - High Court having not reversed the finding of the tribunal that Jeep driver was not at fault it could not have fastened liability on insurer of Jeep - Judgement of High Court set-aside - Appeal allowed. [New India Assurance Co. Ltd. v. Bismillah Bai] SC ... 3247

Motor Vehicles Act (59 of 1988), Section 163-A - Deduction of personal expenses of a bachelor deceased - Computation - Claim application u/s 163-A - Victim is a bachelor - Held - In the note appended to the Second Schedule, for compensation for third party fatal accident cases, there is no mention of fact that what would have been happened if the victim is a bachelor - Claim shall be reduced by 1/3rd towards personal expenses. [Banwarilal v. Rajendra Singh] ...*40

Motor Vehicles Act (59 of 1988), Section 166, Civil Procedure Code, 1908, Order 32 Rule 7 - Agreement or compromise by next friend or guardian for the suit - Claim for Rs. 3,80,000 filed - Matter compromised between parties at Rs. 35,000 - Claimants Nos. 2 to 5 were minor at relevant time - Claims Tribunal did not consider the provisions of Order 32 Rule 7 - Compromise not shown to have been entered on behalf of minor claimants - Leave of Court ought to have been asked for - Compromise not in the interest of minors - Order recording compromise set-aside. [Tijauwa v. Rajmani]...2616

Motor Vehicles Act (59 of 1988), Section 166 - Claim Petition - Supreme Court in Sarla Verma's case [2009 ACJ 1298] has laid down the guidelines in respect of application of multiplier and determining personal expenses for maintaining uniformity - Deceased aged 35 years - Number of dependents are 7 - As per guidelines - Multiplier 16 would be applied and deduction towards personal and living expenses of deceased would be 1/5 - Compensation enhanced accordingly - Appeal allowed. [Resham Bai (Smt.) v. Jabbar] ...2926

Motor Vehicles Act (59 of 1988), Section 166 - Contributory negligence - Jeep was stopped and claimant alighting from the Jeep met with an accident by a tractor which was driven rashly - Driver and owner of the Jeep were impleaded as party but were not examined and exonerated by the Claims Tribunal - Held - It was the duty of the Jeep driver to see that the vehicle was stopped at a safe place where from immediately after alighting there could be no possibility of any accident with any other vehicle - It is a case of contributory negligence of the Jeep driver - Claims Tribunal not justified in rejecting the claim against the owner, driver and Insurance Co. of the Jeep. [Mahendra Kumar v. Amar Singh] ...2640

ड्रायवर के उतावलेपन और उपेक्षापूर्ण ड्रायविंग के कारण हुई - ट्रक बीमित नहीं - अधिनिर्णय केवल ट्रक के स्वामी और ड्रायवर के विरुद्ध पारित - जीप के स्वामी, ड्रायवर और बीमा कम्पनी को उन्मुक्त किया गया - अपील पेश किये जाने पर उच्च न्यायालय ने अधिनिर्णय का जीप के बीमाकर्ता को उन्मुक्त करने वाला भाग अपास्त किया और जीप के बीमाकर्ता को भी संदाय के लिए दायी बनाया - अभिनिर्धारित - उच्च न्यायालय अधिकरण का यह निष्कर्ष न उलटते हुए कि जीप ड्रायवर का दोष नहीं था, जीप के बीमाकर्ता पर दायित्व आरोपित नहीं कर सकता था - उच्च न्यायालय का निर्णय अपास्त - अपील मंजूर। (न्यू इंडिया इश्योरेंस कं. लि. वि. विसमिल्हा बाई) SC---3247

मोटर यान अधिनियम (1988 का 59), धारा 163-ए - अविवाहित मृतक के व्यक्तिगत खर्चों की कटौती - संगणना - धारा 163-ए के अन्तर्गत दावा आवेदन - पीड़ित अविवाहित - अभिनिर्धारित - द्वितीय अनुसूची से संलग्न टिप्पणी में तृतीय पक्ष घातक दुर्घटना मामलों में प्रतिकर के लिए इस तथ्य का कोई उल्लेख नहीं है कि यदि पीड़ित अविवाहित है तो क्या होगा - दावा व्यक्तिगत खर्चों के लिए 1/3 कम किया जायेगा। (बनवारी लाल वि. राजेन्द्र सिंह) ---*40

मोटर यान अधिनियम (1988 का 59), धारा 166, सिविल प्रक्रिया संहिता, 1908, आदेश 32 नियम 7 - वादमित्र या वादार्थ संरक्षक द्वारा अनुबन्ध या समझौता - 3,80,000 रुपये के लिए दावा पेश - मामले में पक्षकारों के मध्य 35,000 रुपये पर समझौता हुआ - दावेदार क्र. 2 लगायत 5 सुसंगत समय पर अवयस्क थे - दावा अधिकरण ने आदेश 32 नियम 7 के उपबंधों पर विचार नहीं किया - अवयस्क दावेदारों की ओर से समझौता होना नहीं दर्शाया गया - न्यायालय की अनुमति माँगनी चाहिए थी - समझौता अवयस्कों के हित में नहीं - समझौता अभिलिखित करने का आदेश अपास्त। (तिजौआ वि. राजमनी) ...2616

मोटर यान अधिनियम (1988 का 59), धारा 166 - दावा याचिका - उच्चतम न्यायालय ने एकरूपता बनाये रखने के लिए सरला वर्मा के मामले [2009 एसीजे 1298] में गुणक प्रयोग और व्यक्तिगत खर्च का निर्धारण करने के सम्बन्ध में गाइडलाईन निर्धारित की हैं - मृतक की उम्र 35 वर्ष - आश्रितों की संख्या 7 - गाइडलाईन के अनुसार - 16 का गुणक लागू होगा और मृतक के व्यक्तिगत और निर्वाह खर्च के सम्बन्ध में कटौती 1/5 होगी - तदनुसार प्रतिकर में वृद्धि की गई - अपील मंजूर। (रेशम बाई (श्रीमति) वि. जब्बार) ...2926

मोटर यान अधिनियम (1988 का 59), धारा 166 - योगदायी उपेक्षा - जीप रुकी और दावेदार जीप से उतरते हुए एक ट्रेक्टर द्वारा दुर्घटनाग्रस्त हुआ जो उतावलेपन से चलाया जा रहा था - जीप के ड्रायवर और स्वामी को पक्षकार बनाया गया किन्तु उनकी परीक्षा नहीं की गई और दावा अधिकरण द्वारा विमुक्त किया गया - अभिनिर्धारित - यह देखना जीप ड्रायवर का कर्तव्य था कि वाहन सुरक्षित स्थान पर रोकता जहाँ उतरने के तुरन्त बाद किसी अन्य वाहन से दुर्घटना की कोई आशंका न हो - यह जीप ड्रायवर की योगदायी उपेक्षा का मामला है - दावा अधिकरण का, जीप के स्वामी, ड्रायवर और बीमा कम्पनी के विरुद्ध दावा खारिज करना न्यायोचित नहीं। (महेन्द्र कुमार वि. अमर सिंह) ...2640

Motor Vehicles Act (59 of 1988), Section 166 Proviso - Without impleading minor children of deceased earlier claim petition filed by widow which was compromised - Subsequent claim petition filed by minor children - Held - Since the right to demand compensation u/s 166 flows in favour of minor children being legal representatives of deceased - Can not be denied on the basis of compromise entered into with opposite party by widow of deceased - Subsequent claim petition to be adjudicated independently on its merit - Appeal allowed. [Saraswati Bai v. Asgar Ali] ...2919

Motor Vehicles Act (59 of 1988), Section 166(1) Proviso - Duty of claims tribunal - Claim application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and who have not so joined shall be impleaded as respondents - It was the bounden duty of the claims tribunal to ascertain the position of all legal representatives of the deceased and to get them impleaded in claim case. [Saraswati Bai v. Asgar Ali] ...2919

Motor Vehicles Act (59 of 1988), Section 173 - Insurance Co. at the stage of appeal raised a plea that deceased was not travelling in the cabin of the vehicle - No such defence was raised before the tribunal - Insurance Co. cannot be permitted to raise the factual issue for the first time in the appeal. [Resham Bai (Smt.) v. Jabbar] ...2926

Municipal Corporation Act, M.P. (23 of 1956), Sections 293 & 299 - Petitioner was granted the permission to construct commercial cum residential complex - After completion of more than 50% work, permission was cancelled - Held - S. 299 provides that the Commissioner may, before any work has been commenced in pursuance to any permission u/s 293, revoke such permission and may give fresh permission in lieu thereof on conditions - Petitioner had already commenced work and it was in progress - Commissioner at that stage was having no powers to cancel the permission granted earlier - The recourse was only to refer the matter to State Government u/s 299-A to cancel or revise the permission for construction. [Adarsh Thok Fal Sabji Vikreta Vyapari Sangh v. State of M.P.] ...3365

Municipal Corporation Act, M.P. (23 of 1956), Sections 293, 299 & 299-A - Natural Justice - Petitioner was granted the permission to construct commercial cum residential complex - After completion of more than 50% work, permission was cancelled without notice - Held - It is settled laws that any action having any civil consequence, should be taken by following the principles of natural justice but in the case the permission accorded to the petitioner was cancelled without issuance of any show cause notice or extending an opportunity of hearing - Order not sustainable under the law. [Adarsh Thok Fal Sabji Vikreta Vyapari Sangh v. State of M.P.] ...3365

Municipal Corporation Act, M.P. (23 of 1956), Sections 299 & 299-

मोटर यान अधिनियम (1988 का 59), धारा 166 परन्तुक — मृतक की अवयस्क संतानों को पक्षकार बनाये बिना पूर्व दावा याचिका विधवा महिला द्वारा पेश की गई जिसमें समझौता हो गया — पश्चात्पूर्ती दावा याचिका अवयस्क संतानों द्वारा पेश की गयी — अभिनिर्धारित — चूंकि मृतक के विधिक प्रतिनिधि होने से प्रतिकर की माँग करने का अधिकार अवयस्क संतानों के पक्ष में प्रवाहित होता है — मृतक की विधवा द्वारा विरोधी पक्षकार के साथ किये गये समझौते के आधार पर इंकार नहीं किया जा सकता — पश्चात्पूर्ती दावा याचिका उसके गुणदोषों पर स्वतंत्र रूप से न्यायनिर्णीत की जाए — अपील मंजूर। (सरस्वती बाई वि. असगर अली) ...2919

मोटर यान अधिनियम (1988 का 59), धारा 166(1) परन्तुक — दावा अधिकरण का कर्तव्य — दावा आवेदन मृतक के सभी विधिक प्रतिनिधियों की ओर से या उनके लाम के लिए किया जायेगा और जो इस प्रकार संयोजित नहीं किये गये हैं, प्रत्यर्थी के रूप में पक्षकार बनाये जायेंगे — दावा अधिकरण का यह बाध्यकारी कर्तव्य है कि मृतक के सभी विधिक प्रतिनिधियों की स्थिति अभिनिश्चित करे और दावा मामले में उन्हें पक्षकार बनवाये। (सरस्वती बाई वि. असगर अली) ...2919

मोटर यान अधिनियम (1988 का 59), धारा 173 — बीमा कम्पनी ने अपील के प्रक्रम पर अभिवचन किया कि मृतक वाहन के केबिन में यात्रा नहीं कर रहा था — ऐसा बचाव अधिकरण के समक्ष नहीं उठाया — बीमा कम्पनी को प्रथम बार अपील में तथ्यात्मक विवादक उठाने की अनुमति नहीं दी जा सकती। (रेशम बाई (श्रीमति) वि. जब्बार) ...2926

नगर पालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएँ 293 व 299 — याची को वाणिज्यिक सह नैवासिक कॉम्पलेक्स का निर्माण करने की अनुज्ञा प्रदान की गयी — 50 प्रतिशत से अधिक कार्य पूर्ण हो जाने के बाद अनुज्ञा रद्द की गयी — अभिनिर्धारित — धारा 299 उपबोधित करती है कि कमिशनर, धारा 293 के अन्तर्गत किसी अनुज्ञा के अनुसरण में कोई कार्य प्रारम्भ होने के पूर्व, ऐसी अनुज्ञा प्रतिसंहत कर सकेगा और उसके बदले में शर्तों पर नहीं अनुज्ञा दे सकेगा — याची पहिले से कार्य प्रारम्भ कर चुका था और वह प्रगति पर था — कमिशनर को उस प्रक्रम पर पूर्व में दी गई अनुज्ञा रद्द करने की कोई शक्ति नहीं थी — निर्माण के लिए प्रदान की गयी अनुज्ञा को रद्द या पुनरीक्षित करने के लिए केवल धारा 299-ए के अन्तर्गत राज्य सरकार को मामला संदर्भित करने का आश्रय लेना था। (आर्दश थोक फल सब्जी ब्रिकेता व्यापारी संघ वि. म.प्र. राज्य) ...3365

नगर पालिक निगम अधिनियम, म.प्र. (1956 का 23); धाराएँ 293, 299 व 299-ए — नैसर्गिक न्याय — याची को वाणिज्यिक सह नैवासिक कॉम्पलेक्स का निर्माण करने की अनुज्ञा प्रदान की गयी — 50 प्रतिशत से अधिक कार्य पूर्ण हो जाने के बाद बिना किसी सूचना के अनुज्ञा रद्द की गयी — अभिनिर्धारित — यह स्थापित विधि है कि सिविल परिणाम रखने वाली कोई कार्यवाही नैसर्गिक न्याय के सिद्धांतों का पालन कर की जानी चाहिए किन्तु मामले में याची को प्रदान की गयी अनुज्ञा बिना कोई कारण बताओ सूचनापत्र जारी किये या सुनवाई का अवसर दिये रद्द कर दी गयी — आदेश विधि के अन्तर्गत कायम रखने योग्य नहीं। (आर्दश थोक फल सब्जी ब्रिकेता व्यापारी संघ वि. म.प्र. राज्य) ...3365

नगर पालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएँ 299 व 299-ए

A Proviso - Opportunity of hearing - S. 299 of the Act does not provide any proviso like S. 299-A but guidance can be taken from S. 299-A which specifically provide that the State Government shall not pass any order unless the aggrieved party has been given an opportunity of hearing. [Adarsh Thok Fal Sabji Vikreta Vyapari Sangh v. State of M.P.] ...3365

Municipal Employees Recruitment and Conditions of Service Rules, M.P. 1968, Rule 12 - See - *Service Law* [Munnalal Karosiya v. State of M.P.] ...2854

Municipalities Act, M.P. (37 of 1961), Section 94 - See - *Service Law* [Munnalal Karosiya v. State of M.P.] ...2854

Municipalities Act, M.P. (37 of 1961), Section 319 - *Bar of suit in absence of notice* - Civil suit filed against the Municipality for perpetual injunction - Held - Bar contained in S. 319 is not applicable in a suit for perpetual injunction by virtue of sub-section (3) of S. 319. [Nagarpalika Parishad, Shivpuri v. Mohan Singh Sisodiya] ...3395

Municipalities Act, M.P. (37 of 1961), Section 319 - See - *Krishi Upaj Mandi Adhinyam, M.P., 1973, Section 67*, [Krishi Upaj Mandi Samiti] Banapur v. Chandra Shekhar Raghuvanshi] ...3019

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 20(b)(ii)(B) - Conscious possession - Ganja seized from a room of house - House does not belong to appellant - No evidence that room was in exclusive possession of appellant - No evidence that appellant was found in room near the sack of Ganja - No evidence that appellant was in conscious possession of Ganja - Appeal allowed. [Aasif Malik v. State of M.P.] ...3012

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 52-A - Disposal of seized narcotic drugs and psychotropic substance - Non-compliance of mandatory provision - Effect - When the personal liberty of a man is at stake then the mandatory provisions of law take sacrosanct nature and their observation become mandatory - Court would find no hesitation in acquitting the accused if it finds that the provisions of mandatory nature have been violated. [Laxminarayan v. State of M.P.] ...2652

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 52-A - Disposal of seized narcotic drugs and psychotropic substance - Prosecution would be obliged to produce the bulk quantity or in case the prosecution successfully proves that the seized bulk quantity was destroyed then the prosecution would be obliged to produce the additional samples drawn from the bulk quantity before its destruction - Prosecution failed to prove destroy or destruction of bulk quantity - Neither seized bulk quantity nor samples drawn from the bulk quantity were produced - Prosecution failed to prove its case beyond shadow of doubt - Appeal allowed. [Laxminarayan v. State of M.P.] ...2652

परन्तुक - सुनवाई का अवसर - अधिनियम की धारा 299 धारा 299-ए के समान किसी परन्तुक का उपबंध नहीं करती है किन्तु धारा 299-ए से मार्गदर्शन लिया जा सकता है जो विनिर्दिष्टतः उपबंधित करती है कि राज्य सरकार तब तक कोई आदेश पारित नहीं करेगी जब तक व्यंथित पक्षकार को सुनवाई का अवसर न दे दिया गया हो। (आदर्श थोक फल सब्जी विक्रेता व्यापारी संघ वि. म.प्र. राज्य) ...3365

नगरपालिका कर्मचारी भर्ती तथा सेवा की शर्तें नियम, म.प्र. 1968, नियम 12 - देखें - सेवा विधि (मुन्नालाल करोसिया वि. म.प्र. राज्य) ...2854

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 94 - देखें - सेवा विधि (मुन्नालाल करोसिया वि. म.प्र. राज्य) ...2854

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 319 - सूचनापत्र के अभाव में वाद का वर्जन - नगरपालिका के विरुद्ध शाश्वत व्यादेश के लिए वाद पेश - अभिनिर्धारित - धारा 319 में अन्तर्विष्ट वर्जन धारा 319 की उपधारा (3) के आधार पर शाश्वत व्यादेश के वाद में लागू नहीं होता है। (नगरपालिका परिषद, शिवपुरी वि. मोहन सिंह सिसोदिया) ...3395

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 319 - देखें - कृषि उपज मण्डी अधिनियम, म.प्र., 1973, धारा 67, (कृषि उपज मंडी समिति, बानापुर वि. चन्द्रशेखर रघुवंशी)...3019

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 20(बी)(ii)(बी) - सचेतन कब्जा - गृह के एक कमरे से गांजा अभिग्रहीत किया गया - गृह अपीलार्थी से संबंधित नहीं - कोई साक्ष्य नहीं कि कमरा अपीलार्थी के अनन्य कब्जे में था - कोई साक्ष्य नहीं कि अपीलार्थी कमरे में गांजे के पैक के पास पाया गया - कोई साक्ष्य नहीं कि अपीलार्थी गांजे के सचेतन कब्जे में था - अपील मंजूर। (आसिफ मलिक वि. म.प्र. राज्य) ...3012

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 52-ए - अभिग्रहीत स्वापक औषधि और मनःप्रभावी पदार्थ का व्ययन - आज्ञापक उपबंध का अननुपालन - प्रभाव - जब किसी व्यक्ति की व्यक्तिगत स्वतंत्रता खतरे में हो तब विधि के आज्ञापक उपबंध अनुल्लंघनीय प्रकृति में लिये जाते हैं और उनका पालन आज्ञापक हो जाता है - न्यायालय यदि यह पाता है कि आज्ञापक प्रकृति के उपबंधों का उल्लंघन किया गया है तो अभियुक्त को दोषमुक्त करने में कोई संकोच नहीं होना चाहिए। (लक्ष्मीनारायण वि. म.प्र. राज्य) ...2652

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 52-ए - अभिग्रहीत स्वापक औषधि और मनःप्रभावी पदार्थ का व्ययन - अभियोजन सम्पूर्ण मात्रा पेश करने के लिए बाध्य होगा अथवा यदि अभियोजन सफलतापूर्वक यह साबित कर देता है कि अभिग्रहीत सम्पूर्ण मात्रा नष्ट कर दी गई तब अभियोजन सम्पूर्ण मात्रा के विनाश के पूर्व उससे निकाले गए अतिरिक्त नमूने पेश करने के लिए बाध्य होगा - अभियोजन सम्पूर्ण मात्रा का नष्ट करना या विनाश साबित करने में असफल रहा - न तो अभिग्रहीत सम्पूर्ण मात्रा और न सम्पूर्ण मात्रा से निकाले गए नमूने पेश किये गये - अभियोजन अपना मामला शंका से परे साबित करने में असफल रहा - अपील मंजूर। (लक्ष्मीनारायण वि. म.प्र. राज्य) ...2652

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 52-A - Disposal of seized narcotic drugs and psychotropic substance - Provision does not require the concerned officer to seek permission from the Judicial Magistrate or an Executive Magistrate to destruct or destroy the remaining article - But, concerned officer has to state on oath before the Court that he had destroyed the balance articles - Otherwise Court shall presume that the articles were not destroyed and an adverse inference can always be drawn against the prosecution agency for not producing the balance article. [Laxminarayan v. State of M.P.] ...2652

National Family Scheme - Deceased was neither included in the list of Below Poverty Line nor was he the head or the bread earner of the family - Disentitled for compensation under the National Family Scheme. [Badri Nath v. State of M.P.] ...*39.

National Security Act (65 of 1980), Section 3(2) - Detention challenged on the ground that allegations against the petitioner are general in nature and no proper investigation has been done - Held - Petitioner has indulged in looting, arson, stone-pelting and as a consequence disturbed the communal harmony and has created enmity between the two communities - He has caused public disorder in the town - Acts of the petitioner have created panic in town and has put fear in general public - Members of general public do not dare to lodge a report against the petitioner - Therefore, it has become essential to initiate action against him u/s 3(2) of the Act and pass the order of detention - Petition dismissed. [Tahir v. State of M.P.] ...3101

National Security Act (65 of 1980), Section 3(2) - Detention - Challenged that others who participated in the communal riots have not been detained under the Act and are only facing regular trials in criminal courts and witnesses in the criminal cases against the petitioner are turned hostile - Held - These facts are not relevant for deciding whether the detention of the petitioner under the Act was necessary - DM was satisfied on the materials that it was necessary considering the active role played by the petitioner in communal riots to detain him under the Act and not to detain others who may have relatively a lesser role in the communal riots - The order of detention cannot be held to be bad. [Tahir v. State of M.P.] ...3101

National Security Act (65 of 1980), Section 3(2) - Preventive detention - "Law and Order" and "Public Order" - Grounds of detention based on incidents which have no proximity to the impugned order of detention and incidents which can not be said to have affected the even tempo of life of any locality and has no nexus with public order - Held - No necessity for detaining the petitioner under the Act - Order of detention quashed - Petition allowed. [Sanju Devre v. State of M.P.] ...2570

Negotiable Instruments Act (26 of 1881), Section 138, Criminal

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 52-ए - अभिग्रहीत स्वापक औषधि और मनःप्रभावी पदार्थ का व्ययन - उपबंध संबंधित अधिकारी से यह अपेक्षा नहीं करता कि न्यायिक मजिस्ट्रेट अथवा कार्यपालक मजिस्ट्रेट से अवशिष्ट वस्तु विनष्ट या नष्ट करने की अनुज्ञा मांगे - किन्तु संबंधित अधिकारी को न्यायालय के समक्ष शपथ पर यह कथन करना होगा कि उसने अतिशेष वस्तुएँ नष्ट कर दी थीं - अन्यथा न्यायालय यह उपधारणा करेगा कि वस्तुएँ नष्ट नहीं की गईं और अभियोजन एजेंसी के विरुद्ध सदा ही विशिष्ट वस्तुएँ पेश न करने के लिए विपरीत अनुमान निकाला जा सकता है। (लक्ष्मीनारायण वि. म.प्र. राज्य) ...2652

राष्ट्रीय परिवार योजना - मृतक को न तो गरीबी रेखा से नीचे की सूची में सम्मिलित किया गया और न ही वह परिवार का मुखिया या रोजी-रोटी कमाने वाला था - राष्ट्रीय परिवार योजना के अन्तर्गत प्रतिकर के लिए निर्हकित। (बद्री नाथ वि. म.प्र. राज्य) ---*39

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) - निरोध को इस आधार पर चुनौती कि याची के विरुद्ध अभिकथन सामान्य प्रतीति के हैं और कोई उचित अन्वेषण नहीं किया गया है - अभिनिर्धारित - याची लूटने, आग लगाने, पत्थर फेंकने में, आसक्त हुआ और उसके परिणामस्वरूप साम्प्रदायिक सौहार्द में विघ्न किया और दो समुदायों के मध्य शत्रुता पैदा की - उसने नगर में लोक अव्यवस्था कारित की - याची के त्यों ने नगर में आतंक पैदा किया और लोक सामान्य को भय में डाला - लोक सामान्य याची के विरुद्ध रिपोर्ट दर्ज कराने का साहस नहीं करते हैं - इसलिए, यह आवश्यक हो गया कि उसके विरुद्ध अधिनियम की धारा 3(2) के अन्तर्गत कार्यवाही प्रारम्भ की जाए और निरोध का आदेश पारित किया जाए - याचिका खारिज। (ताहिर वि. म.प्र. राज्य) ...3101

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) - निरोध - निरोध को चुनौती दी गई कि अन्य व्यक्तियों, जिन्होंने साम्प्रदायिक दंगों में भाग लिया, को अधिनियम के अन्तर्गत निरुद्ध नहीं किया गया और वे केवल दाण्डिक न्यायालयों में नियमित विचारण का सामना कर रहे हैं और याची के विरुद्ध दाण्डिक मामलों में साक्षी पक्षद्रोही हो गये हैं - अभिनिर्धारित - ये तथ्य यह विनिश्चित करने के लिए सुसंगत नहीं हैं कि क्या अधिनियम के अन्तर्गत याची का निरोध आवश्यक था - जिला मजिस्ट्रेट का इस सामग्री पर समाधान हुआ कि याची द्वारा साम्प्रदायिक दंगों में निभायी गयी सक्रिय भूमिका को विचार में लेते हुए यह आवश्यक था कि अधिनियम के अन्तर्गत उसे निरुद्ध किया जाए न कि अन्य व्यक्तियों को जिनकी साम्प्रदायिक दंगों में तुलनात्मक रूप से कम भूमिका रही - निरोध का आदेश दोषपूर्ण होना अभिनिर्धारित नहीं किया जा सकता। (ताहिर वि. म.प्र. राज्य) ...3101

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) - निवारक निरोध - "विधि और व्यवस्था" एवं "लोक व्यवस्था" - निरोध के आधार उन घटनाओं पर आधारित जिनका निरोध के आक्षेपित आदेश और घटनाओं से कोई निकटता नहीं, जो किसी परिक्षेत्र के जीवन की गति को प्रभावित करने वाले भी नहीं कहे जा सकते और लोक व्यवस्था से कोई सम्बन्ध नहीं रखते - अभिनिर्धारित - अधिनियम के अन्तर्गत याची को निरुद्ध करने की कोई आवश्यकता नहीं - निरोध का आदेश अभिखंडित - याचिका मंजूर। (संजू देवरे वि. म.प्र. राज्य) ...2570

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138, दण्ड प्रक्रिया संहिता,

Procedure Code, 1973, Section 200 - Whether at the time of taking cognizance of an offence u/s 138 of Act, examination of complainant u/s 200 Cr.P.C. is mandatory - Held - Yes - Non obstante clause either in S. 142 or in S. 145(1) of Act does not relieve the Magistrate of his duty to examine the complainant on oath as examination u/s 200 Cr.P.C. is altogether different from evidence as contemplated in S. 145(1) of the Act. [Banshilal v. Abdul Munnar] ...3032

Negotiable Instruments Act (26 of 1881); Section 138 - Dismissal of complaint in default - Complaint was dismissed in default - Complaint was filed on 15.05.1996 - Evidence of a witness recorded on 03.08.2000 - Complainant availed series of adjournments for adducing remaining evidence - Held - Instead of dismissing the complaint in default, the Magistrate should have decided the complaint on merits in the light of the evidence already brought on record - Matter remanded back with a direction to proceed from the stage where it had reached, however, no further adjournment to be granted to the complainant. [Uma Dubey (Smt.) v. Roopesh Kumar] ...3452

Negotiable Instruments Act (26 of 1881), Section 138, General Clauses Act, 1897, Section 9 - Computation of 30 days - Date on which cheque was returned and received by complainant has to be excluded. [Sanjay Gawalani v. Sunil Satwani] ...2731

Negotiable Instruments Act (26 of 1881), Sections 138 & 141 - Dishonour of cheque - Appellant was General Manager of the Company and was held vicariously liable for Company for the offence u/s 138 - Conviction challenged - Held - No specific role attributed to him in the complaint - No notice was given to him - No evidence that at the relevant time appellant was in charge and responsible for the conduct of the business of the Company - Conviction & sentence set-aside - Appeal allowed. [Ramraj Singh v. State of M.P.] SC...3035

Notaries Act (53 of 1952), Section 8, Notaries Rules, 1956, Rule 4 - Application for appointment as a notary - Memorial of the petitioner not countersigned by a manager of a nationalized Bank - Since the application was incomplete he could not be appointed as notary - Action challenged - Held - Use of word "shall" in sub-rule (3) of Rule 4 and also in the note appended to Form-I raises a strong presumption that the provision is mandatory - Memorial was incomplete as it was not countersigned as required by sub-rule (3)(b) of Rule 4 - Petition dismissed. [Panah Mohammed v. State of M.P.] ...3148

Notaries Rules, 1956, Rule 4 - Incomplete memorial - No such provision in the Rules making it obligatory on the Competent Authority to inform the applicant about the defect in the application (memorial) and get it corrected - Only an application which complies with the requirement of Rule 4 is considered by the Competent Authority u/R 6. [Panah Mohammed v. State of M.P.] ...3148

1973, धारा 200 — क्या अधिनियम की धारा 138 के अन्तर्गत अपराध का संज्ञान लेते समय द. प्र.सं. की धारा 200 के अन्तर्गत परिवादी की परीक्षा आज्ञापक है — अभिनिर्धारित — हाँ — अधिनियम की धारा 142 में या धारा 145(1) में सर्वोपरि खण्ड मजिस्ट्रेट को परिवादी की शपथ पर परीक्षा करने के उसके कर्तव्य से मुक्त नहीं करता है क्योंकि द.प्र.सं. की धारा 200 के अन्तर्गत परीक्षा अधिनियम की धारा 145(1) में अनुध्यात साक्ष्य से पूर्णतया भिन्न है। (बंशीलाल वि. अब्दुल मुन्नार) ...3032

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 — व्यतिक्रम के कारण परिवाद की खारिजी — परिवाद व्यतिक्रम के कारण खारिज — परिवाद 15.05.1996 को पेश — एक साक्षी की साक्ष्य 03.08.2000 को अभिलिखित की गई — परिवादी ने शेष साक्ष्य पेश करने के लिए स्थगनों की श्रृंखला का उपयोग किया — अभिनिर्धारित — मजिस्ट्रेट को परिवाद व्यतिक्रम में खारिज करने के बजाय अभिलेख पर पहले से लायी गई साक्ष्य के प्रकाश में गुणदोषों पर परिवाद का विनिश्चय करना चाहिए था — मामला इस निदेश के साथ प्रतिप्रेषित किया गया कि उस प्रक्रम से आगे कार्यवाही की जाए जहाँ वह पहुँच चुका था, तथापि, परिवादी को आगे और कोई स्थगन प्रदान नहीं किया जाए। (उमा दुबे (श्रीमति) वि. रूपेश कुमार) ...3452

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138, साधारण खण्ड अधिनियम, 1897, धारा 9 — 30 दिनों की संगणना — तारीख, जिसको चैक वापस किया गया और परिवादी द्वारा प्राप्त किया गया, अपवर्जित करना होगी। (संजय ग्वालानी वि. सुनील सतवानी) ...2731

परक्राम्य लिखत अधिनियम (1881 का 26), धाराएँ 138 व 141 — चैक का अनादरण — अपीलार्थी कम्पनी का प्रबंध निदेशक था और धारा 138 के अन्तर्गत अपराध के लिए कम्पनी के लिए प्रतिनिधिक रूप से दायी ठहराया गया — दोषसिद्धि को चुनौती — अभिनिर्धारित — परिवाद में उस पर उपरोपित कोई विनिर्दिष्ट भूमिका नहीं — उसे कोई सूचनापत्र नहीं दिया गया — कोई साक्ष्य नहीं कि सुसंगत समय पर अपीलार्थी कम्पनी के कारोबार के संचालन के लिए भारसाधक और उत्तरदायी था — दोषसिद्धि और दण्डोद्देश अपास्त — अपील मंजूर। (रामराज सिंह वि. म.प्र. राज्य) SC ---3035

नोटरी अधिनियम (1952 का 53), धारा 8, नोटरी नियम, 1956, नियम 4 — नोटरी के रूप में नियुक्ति के लिए आवेदन — याची का अभ्यावेदन किसी राष्ट्रीयकृत बैंक के प्रबंधक द्वारा प्रतिहस्ताक्षरित नहीं — चूंकि आवेदन अपूर्ण था इसलिए उसे नोटरी के रूप में नियुक्त नहीं किया जा सका — कार्यवाही को चुनौती — अभिनिर्धारित — नियम 4 के उपनियम (3) में और प्रारूप I से जुड़े हुए नोट में भी शब्द "किया जायेगा" का प्रयोग सशक्त उपधारणा करता है कि उपबंध आज्ञापक है — अभ्यावेदन अपूर्ण था क्योंकि वह नियम 4 के उपनियम (3)(बी) की अपेक्षानुसार प्रतिहस्ताक्षरित नहीं किया गया — याचिका खारिज। (पनाह मोहम्मद वि. म.प्र. राज्य) ...3148

नोटरी नियम, 1956, नियम 4 — अपूर्ण अभ्यावेदन — नियमों में सक्षम प्राधिकारी पर यह बाध्यकर करने वाला ऐसा कोई उपबंध नहीं है कि आवेदक को आवेदन (अभ्यावेदन) में त्रुटि के बारे में सूचित करे और उसमें सुधार कराये — सक्षम प्राधिकारी द्वारा नियम 6 के अन्तर्गत केवल ऐसे आवेदन पर, जो नियम 4 की आवश्यकताओं को पूरा करता है, विचार किया जाता है। (पनाह मोहम्मद वि. म.प्र. राज्य) ...3148

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 21 - Recall of Sarpanch - Motion for recall of Sarpanch moved and signed by 987 members of Gram Sabha - SDO for the purposes of verification of signature directed that such members who signed the requisition for recall shall present themselves in his office and file affidavit - Held - No such type of enquiry in respect of signatures of members on prayer of recall is contemplated by the Act or the Rules - SDO should be prima facie satisfied but satisfaction should not be arbitrary-- Case remitted back to the SDO to proceed further in accordance with law. [Santosh Kumar Ahirwar v. State of M.P.] ...2517

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 40 - SDO ordering the removal of Sarpanch including disqualification to contest the election - Enquiry conducted by CEO on complaint was not bipartite - No opportunity to cross-examine witnesses afforded - In the proceedings u/s 40 of the Adhiniyam, none of the witnesses including complainant whose statements were recorded by the Inquiry Officer, were examined - Opportunity to cross-examine witnesses and to adduce evidence was also not afforded - No due and proper enquiry was conducted by the SDO - Denial of fair hearing resulted in serious prejudice to petitioner - Case remitted to SDO - Petition allowed. [Manita Jaiwar (Smt.) v. State of M.P.] ...3067

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 53(2) - This general provision will apply where instead of the Panchayats performing functions entrusted to them, the State Government itself undertakes to execute such functions of the Panchayats through its own agencies - This provision obviously does not apply where the Panchayat fails to perform a particular duty conferred on it under the Adhiniyam despite a direction by the State Government or prescribed authority to perform such duty. [Pawan Rana v. State of M.P.] FB...2752

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Sections 69(1), 70(1), 86(1) & 86(2) - Appointment of Panchayat Karmi - In case Gram Panchayat fails to make appointment of a Panchayat Karmi despite direction issued by State Government or prescribed authority - State Government or prescribed authority can direct C.E.O. of Janpad Panchayat within whose territorial jurisdiction a Gram Panchayat is located to appoint a Panchayat Karmi - View taken by D.B. in Leelawati's case [ILR (2008) MP 2817] approved - Whereas view taken in W.P. No.206/2008 Smt. Madhu Bhadoria Vs. State of M.P. & ors. overruled. [Pawan Rana v. State of M.P.] FB...2752

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 86(2) - Object of provision is to ensure that if the Panchayat fails to perform any particular duty conferred on it under the Act despite directions

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 21 — सरपंच का पुनः बुलाया जाना — सरपंच को पुनः बुलाये जाने का प्रस्ताव प्रस्तुत हुआ और ग्राम सभा के 987 सदस्यों द्वारा हस्ताक्षरित किया गया — एस.डी.ओ. ने हस्ताक्षर के सत्यापन के प्रयोजनों के लिए निदेश दिया कि ऐसे सदस्य जिन्होंने पुनः बुलाये जाने की अध्यक्षता हस्ताक्षरित की उसके कार्यालय में उपस्थित हों और शपथपत्र पेश करें — अभिनिर्धारित — अधिनियम अथवा नियमों द्वारा पुनः बुलाये जाने की प्रार्थना पर सदस्यों के हस्ताक्षरों के सम्बन्ध में इस प्रकार की कोई जाँच अनुष्ठान नहीं है — एस.डी.ओ. को प्रथम दृष्टया संतुष्ट होना चाहिए परन्तु संतुष्टि मनमानी नहीं होनी चाहिए — मामला विधि अनुसार आगे कार्यवाही करने के लिए एस.डी.ओ. को वापस भेजा गया। (संतोष कुमार अहिरवार वि. म.प्र. राज्य) ...2517

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 40 — एस.डी.ओ. ने चुनाव लड़ने से निरर्हता के साथ सरपंच को हटाने का आदेश दिया — सी.ई.ओ. द्वारा शिकायत पर से की गई जाँच उभयपक्षी नहीं थी — साक्षियों की प्रतिपरीक्षा करने का कोई अवसर नहीं दिया गया — अधिनियम की धारा 40 के अन्तर्गत कार्यवाहियों में परिवादी सहित किसी भी साक्षी जिनके जाँच अधिकारी द्वारा कथन अभिलिखित किये गये, की परीक्षा नहीं की गयी — साक्षियों की प्रतिपरीक्षा करने और साक्ष्य पेश करने का भी अवसर नहीं दिया गया — एस.डी.ओ. द्वारा कोई सम्यक् और उचित जाँच नहीं की गई — ऋजु सुनवाई से इकाई के परिणामस्वरूप यात्री को गंभीर पूर्वाग्रह हुआ — मामला एस.डी.ओ. को भेजा गया — याचिका मंजूर। (मनीता जयवार (श्रीमति) वि. म.प्र. राज्य) ...3067

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 53(2) — यह सामान्य उपबंध वहाँ लागू होगा जहाँ पंचायतों को सौंपे गये कार्यों का निष्पादन करने के स्थान पर स्वयं राज्य सरकार अपनी स्वयं की एजेंसियों द्वारा पंचायतों के ऐसे कार्यों के निष्पादन का दायित्व लेती है — यह उपबंध स्पष्ट रूप से वहाँ लागू नहीं होता जहाँ पंचायत, अधिनियम के अधीन उसे प्रदत्त किसी विशिष्ट कर्तव्य का निष्पादन करने में, राज्य सरकार या विहित प्राधिकारी द्वारा ऐसे कर्तव्य का निष्पादन करने का निदेश देने के बावजूद विफल रहती है। (पवन राना वि. म.प्र. राज्य) FB ---2752

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धाराएँ 69(1), 70(1), 86(1) व 86(2) — पंचायत कर्मों की नियुक्ति — यदि राज्य सरकार या विहित प्राधिकारी द्वारा जारी निदेश के बावजूद ग्राम पंचायत, पंचायत कर्मों की नियुक्ति करने में विफल रहती है — राज्य सरकार या विहित प्राधिकारी जनपद पंचायत के मुख्य कार्यपालक अधिकारी, जिसकी क्षेत्रीय अधिकारिता के भीतर ग्राम पंचायत स्थित है, को पंचायत कर्मों की नियुक्ति करने का निदेश दे सकते हैं — खण्ड न्यायपीठ द्वारा लीलावती के मामले [ILR (2008) MP 2817] में लिये गये दृष्टिकोण को अनुमोदित किया गया — जबकि रिट याचिका क्र. 206/2008 श्रीमती मधु भदोरिया बनाम म.प्र. राज्य व अन्य में लिये गये दृष्टिकोण के विरुद्ध निर्णय दिया गया। (पवन राना वि. म.प्र. राज्य) FB ---2752

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 86(2) — उपबंध का उद्देश्य यह सुनिश्चित करना है कि यदि पंचायत राज्य सरकार या विहित प्राधिकारी द्वारा धारा 86(1) के अन्तर्गत जारी निदेशों के बावजूद अधिनियम के अन्तर्गत उसे प्रदत्त किसी विशिष्ट

issued by State Government or prescribed authority u/s 86(1) - State Government or prescribed authority must have the required powers to get the directions complied with and when State Government or prescribed authority exercises such necessary powers, it will be deemed as if Panchayat has exercised its powers under the Act. [Pawan Rana v. State of M.P.]FB...2752

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 87(1) & 86(2) - A drastic measure contemplated by the legislature against a Panchayat and can be resorted to strictly in the circumstances mentioned in S. 87(1) and not otherwise and these circumstances are different from those mentioned in S. 86(2). [Pawan Rana v. State of M.P.] FB...2752

Partnership Act (9 of 1932), Section 53 - See - Civil Procedure Code, 1908, Order 39 Rule 1 & 2, [Ishwarchand Jain v. Sushil Kumar Jain] ...2796

Penal Code (45 of 1860), Section 34 - Common intention - Four appellants came on a jeep - All of them alighted from the jeep and appellant No.2 to 4 exhorted appellant No.1 to kill deceased - Appellant No.1 fired from his rifle - Held - Exhortation given by appellant No.2 to 4 confirms predetermination - It was a planned case of appellants with common intention to kill the deceased. [Gajendra Singh v. State of M.P.] ...*41

Penal Code (45 of 1860), Section 99 - Right of private defence - How plea can be raised - Plea of self defence can be raised in cross-examination of prosecution witnesses or by way of defence evidence or otherwise - It need not be specifically raised in statement u/s 313 Cr.P.C. [Pardeshi @ Peetambhar v. State of M.P.] ...2706

Penal Code (45 of 1860), Section 120-B - Criminal conspiracy - Criminal conspiracy can be proved by circumstantial evidence. [State of M.P. v. Mohan] ...2692

Penal Code (45 of 1860), Section 201 - Causing disappearance of evidence - No iota of evidence that cloths of respondent No.1 were seized from the house of respondent No.2 - No evidence that respondent No.2 washed the blood stained cloths of respondent No.1 - Acquittal proper. [State of M.P. v. Habib Ahmad] ...3187

Penal Code (45 of 1860), Section 302 - Circumstantial evidence - Use of vehicle by relative for committing offence would not be sufficient to prove the involvement of owner of vehicle. [State of M.P. v. Mohan] ...2692

Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Section 3 - Murder - Appreciation of evidence - Election party was not allowed to go - When the S.H.O. along with other police personnels reached on the spot he was attacked by more than 200 persons as a result of which he died and 5 police personnels received injuries - Held - Where a Court has to deal with evidence pertaining to the commission of an offence involving a large number

कर्तव्य का पालन करने में विफल हो जाती है - राज्य सरकार या विहित प्राधिकारी को निदेशों का अनुपालन कराने की अपेक्षित शक्तियाँ, अवश्य होनी चाहिए और जब राज्य सरकार या विहित प्राधिकारी ऐसी आवश्यक शक्तियों का प्रयोग करते हैं, यह समझा जायेगा मानो पंचायत ने अधिनियम के अन्तर्गत अपनी शक्तियों का प्रयोग किया हो। (पवन राना वि. म.प्र. राज्य) FB ---2752

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 87(1) व 86(2) - विधायिका द्वारा पंचायत के विरुद्ध एक प्रबल उपाय अनुध्यात किया गया है और धारा 87(1) में उल्लिखित परिस्थितियों में कठोरतापूर्वक आश्रय लिया जा सकता है न कि अन्यथा और ये परिस्थितियाँ उनसे भिन्न हैं जो धारा 86(2) में उल्लिखित हैं। (पवन राना वि. म.प्र. राज्य) FB ---2752

मागीदारी अधिनियम (1932 का 9), धारा 53 - देखें - सिविल प्रक्रिया संहिता, 1908, आदेश 39 नियम 1 व 2, (ईश्वरचन्द्र जैन वि. सुशील कुमार जैन) ...2796

दण्ड संहिता (1860 का 45), धारा 34 - सामान्य आशय - चार अपीलार्थी एक जीप में आये - सभी जीप से नीचे उतरे और अपीलार्थी क्र. 2 लगायत 4 ने अपीलार्थी क्र. 1 को मृतक को मारने के लिये प्रेरित किया - अपीलार्थी क्र. 1 ने अपनी रायफल से गोली चलायी - अभिनिर्धारित - अपीलार्थी क्र. 2 लगायत 4 द्वारा दी गई प्रेरणा पूर्वचिंतन की पुष्टि करती है - यह अपीलार्थियों का सामान्य आशय के साथ मृतक को मारने का सुनियोजित मामला था। (गजेन्द्र सिंह वि. म.प्र. राज्य) ---*41

दण्ड संहिता (1860 का 45), धारा 99 - प्राइवेट प्रतिरक्षा का अधिकार - अभिवचन कैसे उठाया जा सकता है - आत्म रक्षा का अभिवचन अभियोजन साक्षियों की प्रतिपरीक्षा में या बचाव साक्ष्य में या अन्यथा किया जा सकता है - उसे द.प्र.सं. की धारा 313 के अन्तर्गत कथन में विनिर्दिष्टतः उठाया जाना आवश्यक नहीं है। (परदेशी उर्फ पीताम्बर वि. म.प्र. राज्य) ... 2706

दण्ड संहिता (1860 का 45), धारा 120-बी - आपराधिक षड्यंत्र - आपराधिक षड्यंत्र परिस्थितिजन्य साक्ष्य से साबित किया जा सकता है। (म.प्र. राज्य वि. मोहन) ...2692

दण्ड संहिता (1860 का 45), धारा 201 - साक्ष्य का गोंयब होना कारित करना - कण मात्र भी साक्ष्य नहीं कि प्रत्यर्थी क्र. 1 के कपड़े प्रत्यर्थी क्र. 2 के घर से अभिग्रहीत किये गये - कोई साक्ष्य नहीं कि प्रत्यर्थी क्र. 2 ने प्रत्यर्थी क्र. 1 के रक्तरंजित कपड़े धोये - दोषमुक्ति उचित। (म.प्र. राज्य वि. हबीब अहमद) ...3187

दण्ड संहिता (1860 का 45), धारा 302 - परिस्थितिजन्य साक्ष्य - नातेदार द्वारा अपराध करने के लिए वाहन का प्रयोग वाहन के स्वामी के अन्तर्ग्रस्त होने को साबित करने के लिए पर्याप्त नहीं होगा। (म.प्र. राज्य वि. मोहन) ...2692

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872, धारा 3 - हत्या - साक्ष्य का अधिमूल्यन - चुनाव दल को जाने नहीं दिया गया - जब एस.एच.ओ. अन्य पुलिस कर्मचारियों के साथ घटनास्थल पर पहुँचा तब उस पर 200 से अधिक व्यक्तियों द्वारा आक्रमण किया गया जिसके परिणामस्वरूप उसकी मृत्यु हो गयी और 5 पुलिस कर्मचारियों को क्षतियाँ आयीं - अभिनिर्धारित - जहाँ किसी न्यायालय को बड़ी संख्या में अपराधियों और बड़ी संख्या में पीड़ितों को अन्तर्ग्रस्त करने वाले किसी अपराध के किये जाने से सम्बन्धित साक्ष्य पर कार्यवाही करना हो, वहाँ यह परीक्षण अपनाया प्रायिक है कि दोषसिद्धि केवल तब कायम रखी जा सकती है यदि वह दो या

of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or more witnesses who give a consistent account of the incident - Those appellants, who were named by all witnesses, their conviction u/s 302 maintained and those appellants, who were named by only one witness, acquitted. [Bhaskar Rao v. State of M.P.] ...3401

Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Section 3 - *Murder - Appreciation of evidence - Last seen with the deceased - Held - Prosecution has failed to prove exact time when the deceased was seen in the company of appellant and there was long gap seeing the appellant in the company of deceased and finding his dead body on the public road - In these circumstances, it cannot be said that appellant was the perpetrator of the crime.* [Goru @ Goriya v. State of M.P.] ...2994

Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Section 3 - *Reliability of witness - Deceased a pillion rider going on scooter with eye witness - After stopping the scooter, deceased was assaulted by knife - Conduct of eye witness in not informing the family members of the deceased about the incident and running away from the place of occurrence immediately after the incident not unnatural as no one would dare to remain present - As this witness became perplexed, he could not see the other witnesses - Witness reliable.* [State of M.P. v. Habib Ahmad] ...3187

Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Sections 3, 7 & 8 - *Murder - Circumstantial evidence - Appellant's wife met with homicidal death - Appellant was present with deceased in his house and took her to hospital - Appellant had given false intimation to police about consumption of poisonous substance by deceased - Appellant was having doubt on the character of deceased and also ill treating her - No explanation that how the deceased met a homicidal death - All these circumstances sufficient to bring home the guilt of appellant beyond reasonable doubt - Conviction u/s 302 IPC maintained - Appeal dismissed.* [Devendra Singh @ Pappu v. State of M.P.] ...*47

Penal Code (45 of 1860), Section 302 - *Murder - Allegation that deceased was taken to room by dragging and assaulting and thereafter coiled a cable wire around his neck and pulled it from both ends and thereafter was hanged - However, only one ligature mark was found on the neck with mark of knot on the left side of ligature - There should have been 2 ligature marks in case the cable wire was coiled around his neck - Evidence of witnesses contrary to medical evidence - It creates doubt about truthfulness of witnesses.* [Lal Bahadur Dubey v. State of M.P.] ...3214

Penal Code (45 of 1860), Section 302 - *Murder - Circumstantial evidence - Last seen together - Deceased was seen for the last time in the*

अधिक साक्षियों द्वारा, जिन्होंने घटना का संगत लेखा दिया, समर्थित हो — वे अपीलार्थी, जिन्हें सभी साक्षियों द्वारा नामित किया गया, उनकी धारा 302 के अन्तर्गत दोषसिद्धि कायम रखी गयी और उन अपीलार्थियों को, जिन्हें केवल एक साक्षी द्वारा नामित किया गया, दोषमुक्त किया गया। (भास्कर राव वि. म.प्र. राज्य) ...3401

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872, धारा 3 — हत्या — साक्ष्य का अधिमूल्यन — मृतक के साथ अंतिम बार देखा गया — अभिनिर्धारित — जब मृतक अपीलार्थी के साथ देखा गया उसका निश्चित समय साबित करने में अभियोजन असफल रहा और अपीलार्थी के मृतक के साथ देखे जाने और सार्वजनिक सड़क पर उसके शव के मिलने में लम्बा अंतराल था — इन परिस्थितियों में यह नहीं कहा जा सकता कि अपीलार्थी अपराध का कर्ता था। (गोरु उर्फ गोरिया वि. म.प्र. राज्य) ...2994

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872, धारा 3 — साक्षी की विश्वसनीयता — मृतक स्कूटर पर पीछे बैठकर प्रत्यक्षदर्शी साक्षी के साथ जा रहा था — स्कूटर रोकने के बाद मृतक पर चाकू से हमला किया गया — प्रत्यक्षदर्शी साक्षी का मृतक के परिवार के सदस्यों को घटना के बारे में सूचित न करना और घटना के तुरन्त बाद घटनास्थल से भागने का आचरण अस्वामाधिक नहीं, क्योंकि कोई भी खड़े रहने का साहस नहीं करेगा — चूंकि यह साक्षी दुविधाग्रस्त हो गया, इसलिए वह अन्य साक्षियों को नहीं देख सका — साक्षी विश्वसनीय। (म.प्र. राज्य वि. हबीब अहमद) ...3187

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872, धाराएँ 3, 7 व 8 — हत्या — परिस्थितिजन्य साक्ष्य — अपीलार्थी की पत्नी की मानवघाती मृत्यु हुई — अपीलार्थी मृतक के साथ उसके घर में मौजूद था और उसे अस्पताल ले गया — अपीलार्थी ने पुलिस को मृतक द्वारा विषाक्त पदार्थ सेवन करने के बारे में मिथ्या सूचना दी — अपीलार्थी को मृतक के चरित्र पर संदेह था और उसके साथ दुर्व्यवहार भी करता था — कोई स्पष्टीकरण नहीं कि मृतक की मानवघाती मृत्यु कैसे हुई — ये सभी परिस्थितियाँ अपीलार्थी का दोषयुक्तियुक्त शंका से परे सिद्ध करने के लिए पर्याप्त — भा.द.सं. की धारा 302 के अन्तर्गत दोषसिद्धि कायम — अपीलार्थी खारिज। (देवेन्द्र सिंह उर्फ पप्पू वि. म.प्र. राज्य) --- *47

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — अभिकथन कि मृतक को कमरे तक घसीटते हुए और हमला करते हुए ले जाया गया और उसके बाद केबिल का तार उसकी गर्दन के चारों ओर लपेटा गया और उसे दोनों सिरों से खींचा गया और उसके बाद लटकाया गया — तथापि, गर्दन पर केवल एक बन्ध निशान बन्ध के बायीं ओर गॉठ के निशान सहित पाया गया — उसकी गर्दन के चारों ओर केबिल का तार लपेटे जाने की दशा में 2 बन्ध निशान होने चाहिए थे — साक्षियों की साक्ष्य चिकित्सीय साक्ष्य के प्रतिकूल — यह साक्षियों की सत्यनिष्ठा के बारे में संदेह स्पष्ट करता है। (लाल बहादुर दुबे वि. म.प्र. राज्य) ...3214

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — परिस्थितिजन्य साक्ष्य — अंतिम बार साथ-साथ देखे गये — मृतक अंतिम बार अपीलार्थी के साथ देखी गयी जब अपीलार्थी मृतक

company of the appellant when he was taking the deceased, his step mother, to his house against her wishes and also assaulted her - Appellant bound to explain that thereafter where she was taken and left by him - In absence of such explanation there is sufficient material on record to draw inference that it was appellant, who caused the alleged injuries and committed her murder. [Nehru Singh v. State of M.P.] ...3205

Penal Code (45 of 1860), Section 302 - Murder - Circumstantial evidence - Motive - Deceased, step mother of appellant was given 1/3 share in ancestral property - Appellant was not happy with partition - Deceased was also not residing with appellant - Appellant could have got her share only after her demise - Motive of appellant could be assumed that in the temptation of property he had committed murder. [Nehru Singh v. State of M.P.] ...3205

Penal Code (45 of 1860), Section 302 - Murder - Dead body of deceased found hanging in the room - Room was found bolted from inside - There is no evidence on record to indicate that there was any other door or outlet in room - This creates serious dent in prosecution story. [Lal Bahadur Dubey v. State of M.P.] ...3214

Penal Code (45 of 1860), Section 302 - Murder - Defective Investigation - Defective investigation by itself is not ground of acquittal if prosecution case is established by other cogent evidence. [State of M.P. v. Mohan] ...2692

Penal Code (45 of 1860), Section 302 - Murder - Non-disclosure of name of assailant to Doctor - Witness cannot be discarded on this ground. [State of M.P. v. Mohan] ...2692

Penal Code (45 of 1860), Section 302 - Murder - Non-seizure of blood from spot - Seizure of blood from spot could only have corroborative value - Non-seizure of blood from spot not fatal in view of categorical statement of P.W. 2. [State of M.P. v. Mohan] ...2692

Penal Code (45 of 1860), Section 302 - See - Evidence Act, 1872, Section 3, [Rama @ Ramlal v. State of M.P.] ...2660

Penal Code (45 of 1860), Sections 302 & 304 Part II - Murder or culpable homicide not amounting to murder - Appellant took lift in a truck - Appellant stretched his legs outside the window of running truck - Action of appellant objected by deceased who was second driver - Truck was parked near a Dhaba where all the persons alighted from truck - Appellant inflicted a blow by means of bamboo stick - Held - Appellant was not known to deceased from before - Incident of assault occurred at spur of moment in sudden quarrel - No evidence that assault was premeditated - Since appellant inflicted blow on the head of deceased, therefore, it could be inferred that he knew that he was likely to cause his death - Appellant acquitted for charge u/s 302 and convicted u/s 304 Part II - Appeal partly allowed. [Hariram v. State of M.P.] ...*42

अर्थात् अपनी सौतेली माँ को उसकी इच्छा के विरुद्ध अपने घर ले जा रहा था और उस पर हमला भी किया — अपीलार्थी यह स्पष्ट करने के लिए आबद्ध था कि उसके बाद उसके द्वारा उसे कहाँ ले जाया और छोड़ा गया — ऐसे स्पष्टीकरण के अभाव में यह निष्कर्ष निकालने के लिए अभिलेख पर पर्याप्त सामग्री है कि वह अपीलार्थी ही था जिसने तथाकथित क्षतियाँ कारित कीं और उसकी हत्या की। (नेहरू सिंह वि. म.प्र. राज्य) ...3205

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — परिस्थितिजन्य साक्ष्य — हेतु — मृतक, अपीलार्थी की सौतेली माँ को पैतृक सम्पत्ति में 1/3 हिस्सा दिया गया — अपीलार्थी विभाजन से खुश नहीं था — मृतक भी अपीलार्थी के साथ नहीं रह रही थी — उसका हिस्सा अपीलार्थी केवल उसके निधन के बाद ही प्राप्त कर सकता था — अपीलार्थी का हेतु यह माना जा सकता था कि सम्पत्ति के लालच में उसने हत्या की थी। (नेहरू सिंह वि. म.प्र. राज्य) ...3205

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — मृतक का शव कमरे में लटका हुआ पाया गया — कमरे में अन्दर से सिटकिनी लगी हुई पायी गयी — यह उपदर्शित करने के लिए अभिलेख पर कोई साक्ष्य नहीं है कि कमरे में कोई अन्य दरवाजा या निकास था — यह अभियोजन की कहानी को गम्भीर रूप से प्रभावित करता है। (लाल बहादुर दुबे वि. म.प्र. राज्य) ...3214

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — दोषपूर्ण अन्वेषण — दोषपूर्ण अन्वेषण अपने आप में दोषमुक्ति का आधार नहीं है, यदि अभियोजन मामला अन्य अकाट्य साक्ष्य से साबित हो जाता है। (म.प्र. राज्य वि. मोहन) ...2692

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — चिकित्सक को हमलावर का नाम प्रकट न किया जाना — इस आधार पर साक्षी अमान्य नहीं किया जा सकता। (म.प्र. राज्य वि. मोहन) ...2692

दण्ड संहिता (1860 का 45), धारा 302 — हत्या — घटनास्थल से रक्त का अभिग्रहण न किया जाना — घटनास्थल से रक्त का अभिग्रहण केवल संपुष्टिकारक मूल्य रख सकता था — घटनास्थल से रक्त का अभिग्रहण न किया जाना अ.सा. 2 के सुस्पष्ट कथन को दृष्टिगत रखते हुए घातक नहीं। (म.प्र. राज्य वि. मोहन) ...2692

दण्ड संहिता (1860 का 45), धारा 302 — देखें — साक्ष्य अधिनियम, 1872, धारा 3, (रामा उर्फ रामलाल वि. म.प्र. राज्य) ...2660

दण्ड संहिता (1860 का 45), धाराएँ 302 व 304 भाग II — हत्या या हत्या की कोटि में न आने वाला आमराधिक मानव वध — अपीलार्थी ने ट्रक में लिट ली — अपीलार्थी ने अपने पैर चलते हुए ट्रक की खिड़की से बाहर की ओर फैलाये — अपीलार्थी के कार्य पर मृतक द्वारा, जो द्वितीय ड्रायवर था, आपत्ति की गई — ट्रक एक ढाबे के निकट खड़ा किया गया जहाँ सभी व्यक्ति ट्रक से नीचे उतरे — अपीलार्थी ने बांस की छड़ी द्वारा एक प्रहार किया — अभिनिर्धारित — अपीलार्थी मृतक को पहले से नहीं जानता था — हमले की घटना अचानक झगड़े में क्षणिक प्रेरणा में घटित हुई — कोई साक्ष्य नहीं कि हमला पूर्वचिन्तित था — चूंकि अपीलार्थी ने मृतक के सिर पर प्रहार किया, इसलिये यह निष्कर्ष निकाला जा सकता था कि वह जानता था कि उसके कार्य से मृत्यु कारित होना संभाव्य था — अपीलार्थी को धारा 302 के आरोप से दोषमुक्त किया गया और धारा 304 भाग II के अन्तर्गत दोषसिद्ध किया गया — अपील अंशतः मंजूर। (हरिराम वि. म.प्र. राज्य) ---*42

Penal Code (45 of 1860), Section 304-B, Evidence Act, 1872, Section 113-B - Dowry death - Presumption -- Deceased, a pregnant lady and her 2 year old daughter died due to burn injuries - Oral evidence that deceased was persistently subjected to torture by both appellants for demand of Rs.20,000 - Held - Marriage was solemnized in Samuhik Vivah Sammelan - No complaint was made either to police or any respectable member of society - Evidence of neighbor did not corroborate the evidence of domestic cruelty - No allegation of demand of dowry made in dying declaration - Medical evidence did not rule out possibility of accidental fire - Presumption u/s 113-B of Evidence Act not attracted - Conviction u/s 304-B IPC set-aside - Appeal allowed. [Jamna Prasad v. State of M.P.] ...2686

Penal Code (45 of 1860), Section 304-B, Evidence Act, 1872, Section 113-B - Dowry Death - Presumption - "Soon before" her Death - Deceased committed suicide by burning herself within 5 weeks of marriage - Appellants in ordinary and general manner expressed dissatisfaction about dowry - No evidence that deceased was subjected to harassment or cruelty in connection with any demand of dowry soon before her death - Presumption u/s 113-B of Act would not apply - Appellants acquitted - Appeal allowed. [Sumati Jain v. State of M.P.] ...2713

Penal Code (45 of 1860), Sections 304-B & 498-A, Evidence Act, 1872, Section 32(1) - Cruelty - Oral complaints made by deceased to her relatives regarding demand of dowry and ill treatment - Statements of relatives although admissible in respect of offence u/s 304-B by virtue of S. 32(1) of Evidence Act as it related to cause of death - But, such evidence not admissible for the offence punishable u/s 498-A and has to be termed as hearsay evidence - Therefore, could not form legal or substantive evidence for offence u/s 498-A - Appeal allowed. [Ram Milan v. State of M.P.] ...2999

Penal Code (45 of 1860), Sections 306, 498-A, Evidence Act, 1872, Section 113-A - Presumption - No evidence that any of the appellants instigated deceased to commit suicide - No evidence for alleged harassment or cruelty - Evidence shows that the appellants were in good relations with deceased - In such circumstances, presumption u/s 113-A of Evidence Act will not arrive at - Appellants cannot be held guilty for the offence punishable u/ss 306 & 498-A of IPC. [Anamika (Smt.) v. State of M.P.] ...3003

Penal Code (45 of 1860), Section 307 - Attempt to murder - Medical evidence - Appellant 'A' inflicted axe blow on neck and other appellants inflicted Lathi's blows on skull, shoulders and elbow - Appellants have been convicted u/s 307/34 IPC - Held - There is no medical opinion that injuries were dangerous to life - Complainant has not given any evidence that appellant 'A' gave repeated blow and therefore intention to kill cannot be established - Offence u/s 326/34 made out and not u/s 307. [Ashok v. State of M.P.] ...2675

दण्ड संहिता (1860 का 45), धारा 304-बी, साक्ष्य अधिनियम, 1872, धारा 113-बी - दहेज मृत्यु - उपधारणा - मृतक, एक गर्भवती महिला और उसकी 2 वर्ष की पुत्री की जलने से आयी क्षतियों के कारण मृत्यु हुई - मौखिक साक्ष्य कि दोनों अपीलार्थियों द्वारा 20,000 रुपये की माँग के लिए मृतक को बार-बार यंत्रणा दी गई - अभिनिर्धारित - विवाह सामूहिक विवाह सम्मेलन में अनुष्ठापित हुआ - पुलिस या समाज के किसी प्रतिष्ठित सदस्य से कोई शिकायत नहीं की गई - पड़ोसी के साक्ष्य ने घरेलू क्रूरता के साक्ष्य की सम्पुष्टि नहीं की - मृत्युकालिक कथन में दहेज की माँग का कोई अभिकथन नहीं किया गया - चिकित्सीय साक्ष्य दुर्घटनावश आग लगने की सम्भावना को वर्जित नहीं करती - साक्ष्य अधिनियम की धारा 113-बी के अन्तर्गत उपधारणा आकृष्ट नहीं - भा.द.सं. की धारा 304-बी के अन्तर्गत दोषसिद्धि अपास्त - अपील मंजूर। (जमना प्रसाद वि. म.प्र. राज्य) ...2686

दण्ड संहिता (1860 का 45), धारा 304-बी, साक्ष्य अधिनियम, 1872, धारा 113-बी - दहेज मृत्यु - उपधारणा - उसकी मृत्यु से "ठीक पूर्व" - मृतक ने विवाह के 5 सप्ताह के भीतर स्वयं को जलाकर आत्महत्या की - अपीलार्थियों ने मामूली और सामान्य तरीके से दहेज के बारे में असंतोष व्यक्त किया - कोई साक्ष्य नहीं कि मृतक को उसकी मृत्यु के ठीक पूर्व दहेज की किसी माँग के सम्बन्ध में परेशान किया गया या क्रूरता की गई - अधिनियम की धारा 113-बी के अन्तर्गत उपधारणा लागू नहीं होगी - अपीलार्थी दोषमुक्त - अपील मंजूर। (सुमति जैन वि. म.प्र. राज्य) ...2713

दण्ड संहिता (1860 का 45), धाराएँ 304-बी व 498-ए, साक्ष्य अधिनियम, 1872, धारा 32(1) - क्रूरता - मृतक द्वारा अपने नातेदारों से दहेज की माँग और दुर्व्यवहार के सम्बन्ध में मौखिक शिकायतें की गई - नातेदारों के कथन यद्यपि साक्ष्य अधिनियम की धारा 32(1) के आधार पर धारा 304-बी के अन्तर्गत अपराध के सम्बन्ध में ग्राह्य हैं क्योंकि वह मृत्यु के कारण से सम्बन्धित है - किन्तु ऐसी साक्ष्य धारा 498-ए के अन्तर्गत दण्डनीय अपराध के लिए ग्राह्य नहीं है और अनुश्रुत साक्ष्य की कोटि में आती है - इसलिए, धारा 498-ए के अन्तर्गत अपराध के लिए विधिक और पर्याप्त साक्ष्य नहीं बन सकती - अपील मंजूर। (राम मिलन वि. म.प्र. राज्य) ...2999

दण्ड संहिता (1860 का 45), धाराएँ 306, 498-ए, साक्ष्य अधिनियम, 1872, धारा 113-ए - उपधारणा - कोई साक्ष्य नहीं कि किसी अपीलार्थी ने मृतक को आत्महत्या करने के लिए दुष्प्रेरित किया - कथित तंग करने या क्रूरता के संबंध में कोई साक्ष्य नहीं - साक्ष्य दर्शाता है कि अपीलार्थियों के मृतक के साथ अच्छे सम्बन्ध थे - इन परिस्थितियों में साक्ष्य अधिनियम की धारा 113-ए की उपधारणा नहीं की जायेगी - अपीलार्थियों को भा.द.सं. की धारा 306, 498-ए के अन्तर्गत दण्डनीय अपराध के लिए दोषी नहीं ठहराया जा सकता। (अनामिका (श्रीमति) वि. म.प्र. राज्य) ...3003

दण्ड संहिता (1860 का 45), धारा 307 - हत्या का प्रयत्न - चिकित्सीय साक्ष्य - अपीलार्थी 'अ' ने गर्दन पर कुल्हाड़ी का प्रहार किया और अन्य अपीलार्थियों ने खोपड़ी, कंधे और कोहनी पर लाठी के प्रहार किये - अपीलार्थियों को भा.द.सं. की धारा 307/34 के अन्तर्गत दोषसिद्ध किया गया - अभिनिर्धारित - कोई चिकित्सीय राय नहीं कि क्षतियों जीवन के लिए खतरनाक थीं - परिवादी ने कोई साक्ष्य नहीं दी कि अपीलार्थी 'अ' ने कई बार प्रहार किये और इसलिए हत्या का आशय साबित नहीं हो सकता - धारा 326/34 के अन्तर्गत अपराध बनता है न कि धारा 307 के अन्तर्गत। (अशोक वि. म.प्र. राज्य) ...2675

Penal Code (45 of 1860), Section 307 - See - Criminal Procedure Code, 1973, Section 227, [Sanjay Mishra v. State of M.P.] ...3462

Penal Code (45 of 1860), Section 308 - Appellants caused life threatening injuries using lethal weapons to complainant under grave and sudden provocation on account of beating given by the complainant party to the female members of the family of appellants - Injuries caused to the female members of the appellants were not of grievous nature - Held - Right of private defence in no case extends to the inflicting of more harm than necessary for the purpose of defence - Appellants exceeded the right of private defence - Conviction u/s 308/34 upheld. [Pardeshi @ Peetambhar v. State of M.P.] ...2706

Penal Code (45 of 1860), Section 318, Evidence Act, 1872, Section 106 - Appellant convicted for concealment of birth of her child by secret disposal of dead body - Lady Doctor categorically opined that the appellant had delivered a full term child - Held - It is sufficient to show that a child was born - Offence becomes complete when birth of child is concealed by any means - It is not the law that the prosecution has to eliminate all possible evidence and circumstances which may exonerate appellant - If those facts are within the special knowledge of the appellant then she has to prove that - Non-explanation of the circumstances leading to removal of a newly born child from appellant's care and custody was the strongest possible circumstance to reject the plea of false implication - Conviction maintained - However, in the facts of the case, appellant released on probation of good conduct - Appeal partly allowed. [Fareeda v. State of M.P.] ...3437

Penal Code (45 of 1860), Section 326 r/w 34 - Sentence - Parties entered into compromise despite the fact that offence was non-compoundable - Though compromise was not accepted, but in view of the fact that the appellant 'A' has suffered jail sentence of 2 years and other appellants 9-10 months, the interest would be sub-served if they are released on the period already undergone. [Ashok v. State of M.P.] ...2675

Penal Code (45 of 1860), Section 354 - Attempt to outrage modesty - Prosecutrix having grudge against appellant - Her evidence with respect to rape already disbelieved by trial Court - Prosecutrix not a truthful witness - Plea of alibi taken by appellant appears probable - Unsafe to convict appellant u/s 354 - Appellant acquitted - Appeal allowed. [Pavinder Ahluwallia v. State of M.P.] ...3426

Penal Code (45 of 1860), Section 363 - Kidnapping - Word 'takes' does not necessary connote taking by force and is not confined only to use of force, actual or constructive but means 'to cause to go', 'to escort' or 'to get into possession'. [Nanda v. State of M.P.] ...3221

Penal Code (45 of 1860), Section 376, Criminal Procedure Code,

दण्ड संहिता (1860 का 45), धारा 307 — देखें — दण्ड प्रक्रिया संहिता, 1973, धारा 227, (संजय मिश्रा वि. म.प्र. राज्य) ...3462

दण्ड संहिता (1860 का 45), धारा 308 — अपीलार्थियों ने परिवादी पक्ष द्वारा अपीलार्थियों के परिवार की महिला सदस्यों से की गई मार-पीट के कारण गम्भीर और अचानक प्रकोपन के अधीन घातक आयुधों का प्रयोग कर परिवादी को जीवन के लिए घातक क्षतियाँ कारित कीं — अपीलार्थियों की महिला सदस्यों को कारित क्षतियाँ गम्भीर प्रकृति की नहीं थीं — अभिनिर्धारित — प्राइवेट प्रतिरक्षा का अधिकार किसी भी दशा में प्रतिरक्षा के प्रयोजन के लिए आवश्यक से अधिक हानि पहुँचाने तक विस्तृत नहीं है — अपीलार्थियों ने प्राइवेट प्रतिरक्षा के अधिकार का अतिक्रमण किया — धारा 308/34 के अधीन दोषसिद्धि की पुष्टि की गई। (परदेशी उर्फ पीताम्बर वि. म.प्र. राज्य) ...2706

दण्ड संहिता (1860 का 45), धारा 318, साक्ष्य अधिनियम, 1872, धारा 106 — अपीलार्थी को शव का गुप्त व्ययन करके अपने शिशु का जन्म छिपाने के लिए दोषसिद्ध किया गया — महिला चिकित्सक ने स्पष्ट रूप से राय दी कि अपीलार्थी ने एक पूर्ण अवधि के शिशु को जन्म दिया — अभिनिर्धारित — यह दर्शाना पर्याप्त है कि एक शिशु का जन्म हुआ — अपराध पूर्ण हो जाता है जब किसी साधन द्वारा शिशु का जन्म छिपाया जाता है — यह विधि नहीं है कि अभियोजन को सभी संभाव्य साक्ष्य और परिस्थितियाँ, जो अपीलार्थी को उन्मुक्त कर सकती हैं, दूर करनी होंगी — यदि वे तथ्य अपीलार्थी के विशिष्ट ज्ञान में हैं तब उसे ही उन्हें साबित करना होगा — हाल ही उत्पन्न हुए शिशु को अपीलार्थी की देखरेख और अभिरक्षा से हटाने वाली परिस्थितियों का स्पष्टीकरण न देना मिथ्या आलिंगन करने के अभिवचन को अस्वीकार करने के लिए प्रबलतम संभाव्य परिस्थिति थी — दोषसिद्धि कायम रखी गयी — तथापि, मामले के तथ्यों में, अपीलार्थी को सदाचरण की परीक्षा पर छोड़ा गया — अपील अंशतः मंजूर। (फरीदा वि. म.प्र. राज्य) ...3437

दण्ड संहिता (1860 का 45), धारा 326 सहपठित धारा 34 — दण्डादेश — पक्षकारों ने इस तथ्य के बावजूद समझौता किया कि अपराध शमनीय नहीं था — यद्यपि समझौता स्वीकार नहीं किया गया किन्तु इस तथ्य को दृष्टिगत रखते हुए कि अपीलार्थी 'अ' ने 2 वर्ष का और अन्य अपीलार्थियों ने 9-10 माह का जेल दण्डादेश भुगत लिया है, न्याय का हित पूर्ण हो जायेगा यदि उन्हें पहले से भुगती जा चुकी अवधि पर छोड़ा जाता है। (अशोक वि. म.प्र. राज्य) ...2675

दण्ड संहिता (1860 का 45), धारा 354 — लज्जा भंग करने का प्रयत्न — अभियोक्त्री अपीलार्थी के विरुद्ध दुर्भाव रखती थी — विचारण न्यायालय द्वारा बलात्संग सम्बन्धी उसके साक्ष्य पर पूर्व में ही अविश्वास किया गया — अभियोक्त्री सच्ची साक्षी नहीं — अपीलार्थी द्वारा लिया गया अन्यत्र उपस्थित होने का अभिवाक् अधिसंभाव्य प्रतीत होता है — अपीलार्थी को धारा 354 के अन्तर्गत दोषसिद्ध करना असुरक्षित — अपीलार्थी दोषमुक्त — अपील मंजूर। (पविन्दर अहलुवालिया वि. म.प्र. राज्य) ...3426

दण्ड संहिता (1860 का 45), धारा 363 — व्यपहरण — शब्द 'ले जाता है' आवश्यक रूप से बलपूर्वक ले जाने का संकेत नहीं करता है और केवल वास्तविक अथवा प्रत्यक्ष बल के प्रयोग तक सीमित नहीं है, बल्कि इसका अर्थ 'जाना कारित करना', 'अनुरक्षित करना' या 'कब्जे में प्राप्त करना' है। (नंदा वि. म.प्र. राज्य) ...3221

दण्ड संहिता (1860 का 45), धारा 376, दण्ड प्रक्रिया संहिता, 1973, धारा 154

1973, Section 154 - *Delay in lodging FIR - FIR was lodged after the father returned back to home as reputation of the family and future of the prosecutrix were at stake - Explanation is sufficient and delay in lodging FIR is inconsequential.* [Nanda v. State of M.P.] ...3221

Penal Code (45 of 1860), Section 376, Evidence Act, 1872, Section 9 - *No test identification parade - Effect - Prosecutrix remained in company of accused persons for a pretty long time - She had sufficient time to see, identify and keep their features and personality in mind - Description and features of accused persons was stated in FIR which was lodged without any delay - No harm would cause to prosecution case if no test identification parade was held.* [Subhash v. State of M.P.] ...3226

Penal Code (45 of 1860), Section 376 - *Rape - Absence of injuries - Prosecutrix has stated about pain and sufferings - Neither prosecution nor Court took pain to brought the medical report on record in accordance with provisions of Evidence Act - However, FSL report is sufficient to corroborate the statement of prosecutrix.* [Subhash v. State of M.P.] ...3226

Penal Code (45 of 1860), Section 376 - *Rape - Appellant and prosecutrix residents of Delhi - Prosecutrix was called at Jhansi by the appellant for procuring job for her brother or in the alternative for refund of amount which prosecutrix has given to appellant - Railway ticket of train alleged to be of appellant produced by prosecutrix - Held - Railway ticket did not contain name of appellant - Merely because age of passenger was about 40 years would not prove that ticket belonged to appellant - Ticket also not seized from the place of incident but was produced by prosecutrix - Prosecution failed to prove that railway ticket was of appellant.* [Pavinder Ahluwallia v. State of M.P.] ...3426

Penal Code (45 of 1860), Section 376 - *Rape - Prosecutrix alleged that she was thrown on the ground and rape was committed - No injury on the body of the prosecutrix found - No seminal stains or spermatozoa detected on her clothes or in slides prepared of her vaginal swab - No injury on her private part - Acquittal of appellant of offence u/s 376 by trial Court proper - Appeal by State dismissed.* [Pavinder Ahluwallia v. State of M.P.] ...3426

Penal Code (45 of 1860), Section 376(2)(g) - *Gang rape - Prosecutrix an unmarried minor girl - Presence of semen and human spermatozoa in slide of vaginal swab as well as on her Kurti is very incriminating evidence and corroborating to testimony of prosecutrix.* [Subhash v. State of M.P.] ...3226

Penal Code (45 of 1860), Section 376(2)(g) - *Prosecutrix dumb & deaf - It is true that normally conviction for commission of offence u/s 376 of IPC can be based on the statement of prosecutrix without any corroboration - Moreover, the statements of the prosecutrix in the present case are not corroborated by any evidence even Doctor has not given a definite opinion*

— एफ.आई.आर. दर्ज कराने में विलम्ब — एफ.आई.आर. पिता के घर वापस आ जाने के बाद दर्ज करायी गयी क्योंकि परिवार की प्रतिष्ठा और अभियोक्त्री का भविष्य दांव पर थे — स्पष्टीकरण पर्याप्त है और एफ.आई.आर. दर्ज कराने में हुआ विलम्ब महत्वहीन है। (नंदा वि. म.प्र. राज्य) ...3221

दण्ड संहिता (1860 का 45), धारा 376, साक्ष्य अधिनियम, 1872, धारा 9 — कोई शिनाख्त परेड नहीं — प्रभाव — अभियोक्त्री काफी लम्बे समय तक अभियुक्तों के साथ रहीं — उसके पास देखने, पहचानने और उनकी शक्ल और व्यक्तित्व ध्यान में रखने का पर्याप्त समय था — अभियुक्तों का हुलिया और शक्ल का उल्लेख एफ.आई.आर. में किया गया जो बिना किसी विलम्ब के दर्ज करायी गयी थी — अभियोजन के मामले को कोई हानि कारित नहीं होगी यदि कोई शिनाख्त परेड न करायी गयी। (सुभाष वि. म.प्र. राज्य) ...3226

दण्ड संहिता (1860 का 45), धारा 376 — बलात्संग — क्षतियों का अभाव — अभियोक्त्री ने वेदना और कष्ट के बारे में कथन किया — न तो अभियोजन ने और न न्यायालय ने साक्ष्य अधिनियम के उपबंधों के अनुसार चिकित्सीय रिपोर्ट अभिलेख पर लाने का कष्ट उठाया — तथापि, एफ.एस.एल. रिपोर्ट अभियोक्त्री के कथन की संपुष्टि करने के लिए पर्याप्त है। (सुभाष वि. म.प्र. राज्य) ...3226

दण्ड संहिता (1860 का 45), धारा 376, — बलात्संग — अपीलार्थी और अभियोक्त्री दिल्ली के निवासी — अपीलार्थी द्वारा अभियोक्त्री को उसके भाई के लिए नौकरी उपान्त करने या विकल्प में रकम, जो अभियोक्त्री ने अपीलार्थी को दी है, की वापसी के लिए झाँसी बुलाया गया — रेलगाड़ी का रेल टिकिट जो अपीलार्थी का होना कथित किया गया, अभियोक्त्री द्वारा पेश किया गया — अभिनिर्धारित — रेल टिकिट में अपीलार्थी का नाम अन्तर्विष्ट नहीं — केवल इसलिए कि यात्री की आयु लगभग 40 वर्ष थी यह साबित नहीं होता कि वह टिकिट अपीलार्थी का था — टिकिट भी घटनास्थल से अभिग्रहीत नहीं किया गया बल्कि अभियोक्त्री द्वारा पेश किया गया — अभियोजन यह साबित करने में असफल हो गया कि रेल टिकिट अपीलार्थी का था। (पविन्दर अहलुवालिया वि. म.प्र. राज्य) ...3426

दण्ड संहिता (1860 का 45), धारा 376 — बलात्संग — अभियोक्त्री ने अभिकथन किया कि उसे जमीन पर पटक गया और बलात्संग किया गया — अभियोक्त्री के शरीर पर कोई क्षति नहीं पायी गयी — उसके कपड़ों पर या उसके वेजाइनल स्वेब से तैयार की गयी स्लाईडों में कोई वीर्य सम्बन्धी धब्बा या शुक्राणु का पता नहीं लगा — उसके गुप्तांग पर कोई क्षति नहीं — विचारण न्यायालय द्वारा धारा 376 के अन्तर्गत अपराध से अपीलार्थी की दोषमुक्ति उचित — राज्य की अपील खारिज। (पविन्दर अहलुवालिया वि. म.प्र. राज्य) ...3426

दण्ड संहिता (1860 का 45), धारा 376(2)(जी) — सामूहिक बलात्संग — अभियोक्त्री एक अविवाहित अवयस्क बालिका — वैजाइनल स्वेब की स्लाइड में और उसकी कुर्ती पर वीर्य और मानव शुक्राणुओं की उपस्थिति बहुत अभिशंसी साक्ष्य है और अभियोक्त्री के परिसाक्ष्य की पुष्टि हो रही है। (सुभाष वि. म.प्र. राज्य) ...3226

दण्ड संहिता (1860 का 45), धारा 376(2)(जी) — अभियोक्त्री मूक एवं बधिर — यह सही है कि सामान्यतः भा.द.सं. की धारा 376 के अन्तर्गत अपराध करने के लिए दोषसिद्धि बिना किसी सम्पुष्टि के अभियोक्त्री के कथन पर आधारित हो सकती है — इसके अतिरिक्त, प्रस्तुत मामले में अभियोक्त्री के कथनों की किसी साक्ष्य से सम्पुष्टि नहीं हुई और चिकित्सक ने भी बलात्संग किये जाने के

about the commission of rape - Evidence of the prosecutrix is not legal evidence to support the conviction - Conviction & sentence set-aside - Appeal allowed. [Vinod v. State of M.P.] ...3440

Penal Code (45 of 1860), Section 376(2)(g) - See - Evidence Act, 1872, Sections 3 & 119 [Vinod v. State of M.P.] ...3440

Penal Code (45 of 1860), Section 376(2)(g), 376, Criminal Procedure Code, 1973, Section 215 - Defect in charge - Appellants charged simplicitor for offence u/s 376 of IPC - Not mentioned that they committed sexual intercourse with prosecutrix in furtherance of common intention - Appellants' conviction converted from S. 376(2)(g) to S. 376 IPC and sentenced to 7 years R.I. - Appeal partly allowed. [Subhash v. State of M.P.] ...3226

Penal Code (45 of 1860), Section 420 - See - Criminal Procedure Code, 1973, Section 482, [TCL India Holdings Pvt. Ltd. v. Murtaza] ...*46

Penal Code (45 of 1860), Section 498-A, Criminal Procedure Code, 1973, Section 177 - Cruelty - Territorial jurisdiction - Complaint for offence u/s 498-A I.P.C. made before JMFC, Neemuch - No allegation that any demand of dowry was made at Neemuch - Complainant specifically mentioned that demand was made at Indore - Nothing to show that any part of offence was committed at Neemuch - Court directed to return complaint with liberty to file it before competent Court - Petition allowed. [Jitendra v. State of M.P.]...*43

Penal Code (45 of 1860), Section 498-A - Cruelty - Illicit relations - Illicit relations with another women being first wife alive, could not be treated to be the act of cruelty - Wife also could not state any specific act of cruelty or harassment - Particulars like date, place and time of incident also not stated - Mere vague allegations of demanding some articles could not deemed that any such demand was ever made - Acquittal of respondents proper - Leave refused. [State of M.P. v. Santosh Kumar] ...*52

Penal Code (45 of 1860), Sections 506 & 509, Information Technology Act, 2000, Section 67 - Publishing of information which is obscene in electronic form - Photographs of a girl taken, transmitted by bluetooth in electronic form and published by CD recovered from the possession of applicant - Counsel for applicant conceding framing of charge u/ss. 506 & 509 of IPC - Basis for framing of charge is some obscene photographs and gestures of a girl - Objection with regard to framing of charge u/s 67 of Act, 2000 cannot be accepted - Application dismissed. [Prakash Chatrani v. State of M.P.] ...3454

Prevention of Corruption Act (49 of 1988), Section 19 - Proof of sanction - Sanction order was clearly passed by District Magistrate in discharge of routine official functions - Hence, there is a presumption that the same was done in a bona fide manner - There was no requirement for the District Magistrate to be examined as a witness by the prosecution. [State of M.P. v. Jiyalal] SC...2487

बारे में कोई निश्चित राय नहीं दी है - अभियोक्त्री की साक्ष्य दोषसिद्धि का समर्थन करने के लिए विधिक साक्ष्य नहीं है - दोषसिद्धि और दण्डादेश अपास्त - अपील मंजूर। (विनोद वि. म.प्र. राज्य) ...3440

दण्ड संहिता (1860 का 45), धारा 376(2)(जी) - देखें - साक्ष्य अधिनियम, 1872, धाराएँ 3 व 119, (विनोद वि. म.प्र. राज्य) ...3440

दण्ड संहिता (1860 का 45), धारा 376(2)(जी), 376, दण्ड प्रक्रिया संहिता, 1973, धारा 215 - आरोप में त्रुटि - अपीलार्थियों पर केवल भा.द.सं. की धारा 376 के अन्तर्गत आरोप लगाया गया - कोई उल्लेख नहीं किया गया कि उन्होंने सामान्य आशय के अग्रसरण में अभियोक्त्री के साथ मैथुन किया - अपीलार्थियों की दोषसिद्धि भा.द.सं. की धारा 376(2)(जी) से धारा 376 में परिवर्तित और 7 वर्ष के सश्रम कारावास का दण्डादेश दिया गया - अपील अंशतः मंजूर। (सुभाष वि. म.प्र. राज्य) ...3226

दण्ड संहिता (1860 का 45), धारा 420 - देखें - दण्ड प्रक्रिया संहिता, 1973, धारा 482, (टी.सी.एल इंडिया होलडिंग्स प्रा. लि. वि. मुर्तजा) ---*46

दण्ड संहिता (1860 का 45), धारा 498-ए, दण्ड प्रक्रिया संहिता, 1973, धारा 177 - क्रूरता - क्षेत्रीय अधिकारिता - भा.द.सं. की धारा 498-ए के अपराध के लिए परिवाद न्यायिक मजिस्ट्रेट प्रथम श्रेणी, नीमच के समक्ष किया गया - कोई अभिकथन नहीं कि दहेज की कोई माँग नीमच में की गई - परिवादी ने विनिर्दिष्ट रूप से उल्लिखित किया कि माँग इन्दौर में की गई - यह दर्शाने के लिए कुछ नहीं कि अपराध का कोई भाग नीमच में किया गया - न्यायालय को निदेश दिया गया कि परिवाद उसे सक्षम न्यायालय के समक्ष पेश करने की स्वतंत्रता के साथ वापस करे - याचिका मंजूर। (जितेन्द्र वि. म.प्र. राज्य) ---*43

दण्ड संहिता (1860 का 45), धारा 498-ए - क्रूरता - अवैध सम्बन्ध - प्रथम पत्नी के जीवित रहते हुए अन्य स्त्री से अवैध सम्बन्ध क्रूरता का कृत्य होना नहीं माना जा सकता था - पत्नी भी क्रूरता या तंग करने का कोई विनिर्दिष्ट कृत्य कथित नहीं कर सकी - विशिष्टियाँ जैसे कि घटना की तारीख, स्थान और समय का भी कथन नहीं किया गया - केवल कुछ वस्तुओं की माँग करने के अस्पष्ट अभिकथन से यह नहीं समझा जा सका कि ऐसी कोई माँग कभी की गई - प्रत्यर्थियों की दोषमुक्ति उचित - अनुमति से इन्कार किया गया। (म.प्र. राज्य वि. संतोष कुमार) ---*52

दण्ड संहिता (1860 का 45), धाराएँ 506 व 509, सूचना प्रौद्योगिकी अधिनियम, 2000, धारा 67 - इलेक्ट्रॉनिक रूप में सूचना का प्रकाशन जो अश्लील है - आवेदक के कब्जे से एक लड़की के छायाचित्र जो ब्लूटूथ द्वारा इलेक्ट्रॉनिक रूप में संचारित और सीडी के द्वारा प्रकाशित, बरामद किये गये - आवेदक के अधिवक्ता ने भा.द.सं. की धारा 506 व 509 के अन्तर्गत आरोप विरचित करने को स्वीकार किया - आरोप विरचित करने का आधार एक लड़की के कुछ अश्लील छायाचित्र और अंगविक्षेप है - अधिनियम, 2000 की धारा 67 के अन्तर्गत आरोप विरचित करने के सम्बन्ध में आपत्ति स्वीकार नहीं की जा सकती - आवेदन खारिज। (प्रकाश छत्रानी वि. म.प्र. राज्य) ...3454

घृष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 - मंजूरी का सबूत - मंजूरी आदेश स्पष्टतः जिला मजिस्ट्रेट द्वारा उनके नियमित कार्यालयीन कर्तव्यों के निर्वहन में पारित किया गया - इसलिए, यह उपधारणा की जाएगी कि वह सद्भाविक ढंग से किया गया - अभियोजन द्वारा साक्षी के रूप में जिला मजिस्ट्रेट की परीक्षा करवाया जाना अपेक्षित नहीं। (म.प्र. राज्य वि. जियालाल) SC ---2487

Prevention of Corruption Act (49 of 1988), Section 19(3) - Error, omission or irregularity in sanction order - High Court reversed the judgment of conviction on the ground of irregularity in passing of the sanction order as well as sanction order has not been proved - Held - No finding has been made which shows that serious failure of justice had been caused to respondent - High Court was not justified in setting-aside the judgment of conviction in absence of such finding - Matter remanded back to High Court to consider the appeal on merits and dispose of accordingly. [State of M.P. v. Jiyala] SC...2487

Prisoners' Release on Probation Act, M.P. (16 of 1954), Section 9, Prisoners' Release on Probation Rules, M.P. 1964, Rule 2 - Consideration for release - Held - The manner of commission of offence is a relevant consideration - In the instant case, petitioners along with others committed brutal and preplanned murder with lethal weapons in broad day light - Not entitled for release on licence under the provisions of the Act and rules - No perversity or material irregularity found in rejecting the application of the petitioners for releasing on probation. [Siyaram v. State of M.P.] ...*51

Prisoners' Release on Probation Rules, M.P. 1964, Rule 2 - See - Prisoners' Release on Probation Act, M.P., 1954, Section 9 [Siyaram v. State of M.P.] ...*51

Public Trusts Act, M.P. (30 of 1951) - Review by a Quasi-Judicial Authority - Permissibility - Registrar reviewed its earlier order and recorded a finding that the Church should be registered as a Public Trust and declared the Church property as a public trust property - Held - A Quasi-Judicial Authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction - Provisions of Act and the rules made thereunder do not confer any power of review on the Registrar - Order of review quashed. [Julious Prasad v. State of M.P.] ...2886

Public Trusts Act, M.P. (30 of 1951), Sections 5, 6 & 7 - Registrar directed that the registered society of disciples of Christ Church be registered as a Public Trust - Held - All societies registered under the M.P. Society Registrarian Adhiniyam, 1973 and formed for charitable purposes are not Public Trusts and the provisions of Act, 1951 are not applicable - Order passed by Registrar, Public Trusts quashed. [Julious Prasad v. State of M.P.]...2886

Public Trusts Act, M.P. (30 of 1951) vis a vis Society Registrarian Adhiniyam, M.P. 1973 - Distinguished - Held - Under the Adhiniyam, 1973, the Registrar and the State Government exercise more powers of control over a registered society in comparison to powers exercised by the Registrar under the Act, 1951 over a registered Public Trust - The object of the Act, 1951 was to provide for control over the affairs of a Public Trust - The same object is

धष्टाचार निवारण अधिनियम (1988 का 49), धारा 19(3) - मंजूरी आदेश में त्रुटि, लोप या अनियमितता - उच्च न्यायालय ने दोषसिद्धि का निर्णय मंजूरी आदेश पारित करने में अनियमितता और साथ ही मंजूरी आदेश साबित नहीं किये जाने के आधार पर उलट दिया - अभिनिर्धारित - कोई निष्कर्ष नहीं किया गया जो यह दर्शित करता हो कि प्रत्यर्थी को न्याय की गम्भीर विफलता कारित हुई थी - उच्च न्यायालय का ऐसे निष्कर्ष के अभाव में दोषसिद्धि का निर्णय अपास्त करना न्यायोचित नहीं - मामला अपील में गुणदोषों पर विचार करने और तदनुसार निपटारा करने के लिए उच्च न्यायालय को प्रतिप्रेषित। (म.प्र. राज्य वि. जियालाल) SC ---2487

बंदियों का परिवीक्षा पर छोड़ा जाना अधिनियम, म.प्र. (1954 का 16), धारा 9 बंदियों का परिवीक्षा पर छोड़ा जाना नियम, म.प्र. 1964, नियम 2 - छोड़े जाने के लिए विचार करना - अभिनिर्धारित - अपराध कारित करने का ढंग एक सुसंगत विचार है - वर्तमान मामले में, याचियों ने अन्यो के साथ दिनदहाड़े घातक आयुधों से नृशंस और पूर्वनियोजित हत्या की - अधिनियम और नियमों के उपबंधों के अन्तर्गत लायसेंस पर छोड़े जाने के हकदार नहीं - याचियों का परिवीक्षा पर छोड़े जाने का आवेदन नामंजूर करने में कोई विपर्यस्तता या तात्त्विक अनियमितता नहीं पायी गयी। (सियाराम वि. म.प्र. राज्य) ---*51

बंदियों का परिवीक्षा पर छोड़ा जाना नियम, म.प्र. 1964, नियम 2 - देखें - बंदियों का परिवीक्षा पर छोड़ा जाना अधिनियम, म.प्र., 1954, धारा 9 (सियाराम वि. म.प्र. राज्य) ---*51

लोक न्यास अधिनियम, म.प्र. (1951 का 30) - अर्ध-न्यायिक प्राधिकारी द्वारा पुनर्विलोकन - अनुज्ञेयता - रजिस्ट्रार ने अपने पूर्व के आदेश का पुनर्विलोकन किया और यह निष्कर्ष अभिलिखित किया कि गिरजाघर को लोक न्यास के रूप में रजिस्ट्रीकृत किया जाना चाहिए और गिरजाघर की सम्पत्ति को लोक न्यास सम्पत्ति घोषित किया - अभिनिर्धारित - कोई अर्ध-न्यायिक प्राधिकारी अपने स्वयं के आदेश का पुनर्विलोकन नहीं कर सकता, जब तक उसे, उस कानून द्वारा जिसके अन्तर्गत वह अपनी अधिकारिता प्राप्त करता है, अभिव्यक्त रूप से पुनर्विलोकन की शक्ति प्रदान नहीं की जाती - अधिनियम और उसके अन्तर्गत बनाये गये नियमों के उपबंध रजिस्ट्रार को पुनर्विलोकन की कोई शक्ति प्रदान नहीं करते - पुनर्विलोकन का आदेश अभिखंडित। (जूलियस प्रसाद वि. म.प्र. राज्य) ...2886

लोक न्यास अधिनियम, म.प्र. (1951 का 30), धाराएँ 5, 6 व 7 - रजिस्ट्रार ने निदेशित किया कि मसीह गिरजाघर अनुयायियों की रजिस्ट्रीकृत सोसायटी लोक न्यास के रूप में रजिस्ट्रीकृत की जाए - अभिनिर्धारित - म.प्र. सोसायटी रजिस्ट्रीकरण अधिनियम, 1973 के अन्तर्गत रजिस्ट्रीकृत और पूर्ण प्रयोजनों के लिए सृष्ट सभी सोसायटियाँ लोक न्यास नहीं हैं और अधिनियम, 1951 के उपबंध लागू नहीं होते - रजिस्ट्रार, लोक न्यास द्वारा पारित आदेश अभिखंडित। (जूलियस प्रसाद वि. म.प्र. राज्य) ...2886

लोक न्यास अधिनियम, म.प्र. (1951 का 30) के मुकाबले में सोसायटी रजिस्ट्रीकरण अधिनियम, म.प्र. 1973 - सुभिन्न किये गये - अभिनिर्धारित - रजिस्ट्रार द्वारा अधिनियम, 1951 के अन्तर्गत रजिस्ट्रीकृत लोक न्यास पर प्रयोग की जाने वाली शक्तियों की तुलना में अधिनियम, 1973 के अन्तर्गत रजिस्ट्रार और राज्य सरकार रजिस्ट्रीकृत सोसायटी पर नियंत्रण की अधिक शक्तियों का प्रयोग करते हैं - अधिनियम, 1951 का उद्देश्य लोक न्यास के कार्यों पर नियंत्रण का उपबंध करना

achieved in case of societies by elaborate provisions contained in the Adhiniyam, 1973. [Julious Prasad v. State of M.P.] ...2886

Rajya Suraksha Adhiniyam, M.P., 1990 (4 of 1991), Section 5(b) - Removal of person about to commit offence - Externment - Ingredients when not attracted - Held - If a person was engaged in commission of offence or in abetment of an offence of type mentioned in S. 5(b), several years or several months back, there cannot be any reasonable ground for believing that the person is engaged or is about to be engaged in commission of such offence. [Ashok Kumar Patel v. State of M.P.] ...3090

Rajya Suraksha Adhiniyam, M.P., 1990 (4 of 1991), Section 5(b) - Removal of person about to commit offence - Externment - Ingredients when not attracted - In absence of any existence of material to show that witnesses are not coming forward by a reason of apprehension to danger to their person or property to give evidence against the concerned person in respect of alleged offences, an order u/s 5(b) of the Act cannot be passed by District Magistrate by merely repeating the language of S. 5(b) of the Act. [Ashok Kumar Patel v. State of M.P.] ...3090

Registration Act (16 of 1908), Section 17 - See - Transfer of Property Act, 1882, Section 53-A [Champat Giri v. Ramdayal] ...2630

Representation of People Act (of 1950), Section 20 - See - Constitution (Scheduled Caste) Order, 1950, Clause 2 & Entry 22 [Rashmi Khedle (Kumari) v. State of M.P.] ...2563

Representation of Peoples Act (43 of 1951), Section 28-A - See - Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rule 9, [S.K. Tripathi v. State of M.P.] ...2567

Representation of the People Act (43 of 1951), Section 87, Civil Procedure Code, 1908, Order 17 - It is well settled - The provisions of Order 17 of the Code are applicable to an election petition. [Rajkumar Patel v. Shivraj Singh Chauhan] ...3063

Representation of the People Act (43 of 1951), Section 87 - See - Civil Procedure Code, 1908, Order 6 Rule 17, [Rampal Singh v. Devendra Patel] ...2915

Revenue Book Circular, Part VI, Para 4, Clause (7) - Natural calamity - Petitioner's son died of drowning - Claimed compensation under the Revenue Book Circular - Held - Financial assistance under the RBC is available only in the case of loss, damage or death on account of the natural calamity like heavy rains, hail, cold wave, loss caused by insect, flood, storm, earth quake and fire - Petitioner's son not died as a result of natural calamity - Application rightly rejected. [Badri Nath v. State of M.P.] ...*39

था - सोसायटियों के मामले में वही उद्देश्य अधिनियम, 1973 में अन्तर्विष्ट विस्तृत उपबंधों द्वारा प्राप्त किया जाता है। (जुलियस प्रसाद वि. म.प्र. राज्य) ...2886

राज्य सुरक्षा अधिनियम, म.प्र., 1990 (1991 का 4), धारा 5(बी) - अपराध करने के बारे में व्यक्ति को हटाया जाना - निष्कासन - संघटक कब आकृष्ट नहीं होते - अभिनिर्धारित - यदि कोई व्यक्ति कई वर्षों और कई माह पूर्व अपराध करने में या धारा 5(बी) में उल्लिखित प्रकार के अपराध के-दुष्प्रेरण में लगा हुआ था, तो यह विश्वास करने के लिए कोई युक्तियुक्त आधार नहीं हो सकता है कि ऐसे अपराध को किये जाने में व्यक्ति को लगाया गया है या लगाया जाने वाला है। (अशोक कुमार पटेल वि. म.प्र. राज्य) ...3090

राज्य सुरक्षा अधिनियम, म.प्र., 1990 (1991 का 4), धारा 5(बी) - अपराध करने के बारे में व्यक्ति को हटाया जाना - निष्कासन - संघटक कब आकृष्ट नहीं होते - यह दर्शित करने वाली सामग्री के किसी अस्तित्व के अभाव में कि साक्षी उनके शरीर या सम्पत्ति को खतरे की आशंका के कारण संबंधित व्यक्ति के विरुद्ध कथित अपराधों के सम्बन्ध में साक्ष्य देने के लिए आगे नहीं बढ़ रहे हैं, जिला मजिस्ट्रेट द्वारा केवल अधिनियम की धारा 5(बी) की भाषा को दोहराकर अधिनियम की धारा 5(बी) के अधीन आदेश पारित नहीं किया जा सकता। (अशोक कुमार पटेल वि. म.प्र. राज्य) ...3090

रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 17 - देखें - सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 53-ए, (चंपत गिरि वि. रामदयाल) ...2630

लोक प्रतिनिधित्व अधिनियम (1950 का), धारा 20 - देखें - संविधान (अनुसूचित जाति) आदेश, 1950, खण्ड 2 एवं प्रविष्टि 22 (रश्मि खेडले (कु०) वि. म.प्र. राज्य) ...2563

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 28-ए - देखें - सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9, (एस. के. त्रिपाठी वि. म.प्र. राज्य) ...2567

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 87, सिविल प्रक्रिया संहिता, 1908, आदेश 17 - यह सुस्थापित है - संहिता के आदेश 17 के उपबंध निर्वाचन याचिका को भी लागू हैं। (राज कुमार पटेल वि. शिवराज सिंह चौहान) ...3063

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 87 - देखें - सिविल प्रक्रिया संहिता, 1908, आदेश 6 नियम 17, (रामपाल सिंह वि. देवेन्द्र पटेल) ...2915

राजस्व पुस्तक परिपत्र, भाग VI, पैरा 4, खण्ड (7) - प्राकृतिक विपत्ति - याची के पुत्र की मृत्यु डूबने से हुई - राजस्व पुस्तक परिपत्र के अन्तर्गत प्रतिकर का दावा किया - अभिनिर्धारित - राजस्व पुस्तक परिपत्र के अन्तर्गत वित्तीय सहायता केवल भारी वर्षा, ओलावृष्टि, शीत लहर, कीट से कारित हानि, बाढ़, तूफान, भूकम्प और अग्नि के सदृश प्राकृतिक विपत्ति के कारण हानि, क्षति या मृत्यु की दशा में उपलब्ध है - याची के पुत्र की मृत्यु प्राकृतिक विपत्ति के परिणामस्वरूप नहीं - आवेदन उचित रूप से नामंजूर। (बद्री नाथ वि. म.प्र. राज्य) ---*39

Right to Information Act (22 of 2005), Section 8(1) - Exemption from disclosure of information - Department claiming exemption u/s 8(1) from disclosure of information regarding materials forming the basis for issuance of the charge-sheet and initiation of a D.E. - Held - A Govt. Servant have an access to the material forming basis of the charges and initiation of D.E., which can be utilized for his defence - It cannot be presumed that the D.E. gets impeded. [Union of India v. Central Information Commissioner] ...2824

Right to Information Act (22 of 2005), Section 8(1)(e) - Exemption from disclosure of information - Disclosure of vigilance investigation report - Department claiming exemption on the basis of fiduciary relationship - Held - Vigilance Department is not a private secret service but an establishment operating under the rules - It, therefore, cannot be said that a fiduciary relationship exist between the Vigilance Department and other department of Union of India as would deprive an employee, who has been subjected to a D.E. on the basis of Vigilance Department's investigation report, to have an access to the information or the record. [Union of India v. Central Information Commissioner] ...2825

Right to Information Act (22 of 2005), Section 8(1)(g) - Exemption from disclosure of information - Department claiming exemption on the basis that the disclosure of information sought for would endanger the life or physical safety of person associated with the investigation - Held - No such material is brought on record to justify the averments - Since the investigation report forms the basis of initiation of a D.E. - It cannot be presumed that the report was submitted for law enforcement or for the security purposes. [Union of India v. Central Information Commissioner] ...2824

Right to Information Act (22 of 2005), Section 8(1)(h) - Exemption from disclosure of information - Department claiming exemption on the basis that grant of information would impede the powers of investigation or apprehension on prosecution of offenders and being the basic document on which charges were framed, will affect the prosecution - Held - There is no chance for impeding of process of investigation as apprehended, because already a charge-sheet has been framed and the D.E. is initiated. [Union of India v. Central Information Commissioner] ...2824

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(x), Evidence Act, 1872, Section 76 - Caste Certificate - Caste Certificate is not a public document - Prosecution bound to prove the same as other documents are proved in a criminal case. [Mangal Singh v. State of M.P.] ...2671

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Section 13(2),

सूचना का अधिकार अधिनियम (2005 का 22), धारा 8(1) - सूचना के प्रकटीकरण से मुक्ति - विभाग ने आरोप-पत्र जारी किये जाने और विभागीय जाँच प्रारम्भ किये जाने का आधार बनाने वाली सामग्री से सम्बन्धित सूचना के प्रकटीकरण से धारा 8(1) के अन्तर्गत मुक्ति का दावा किया - अभिनिर्धारित - कोई शासकीय कर्मचारी आरोपों और विभागीय जाँच के प्रारम्भ का आधार बनाने वाली सामग्री तक पहुँच रखता है, जो उसकी प्रतिरक्षा के लिए उपयोगी हो सकती है - यह उपधारित नहीं किया जा सकता कि विभागीय जाँच रुकवायी गयी। (यूनियन ऑफ इंडिया वि. सेंट्रल इनफॉर्मेशन कमिशनर) ...2824

सूचना का अधिकार अधिनियम (2005 का 22), धारा 8(1)(ई) - सूचना के प्रकटीकरण से मुक्ति - सतर्कता अन्वेषण रिपोर्ट का प्रकटीकरण - विभाग ने वैश्वसिक सम्बन्ध के आधार पर मुक्ति का दावा किया - अभिनिर्धारित - सतर्कता विभाग गैर-सरकारी गोपनीय सेवा नहीं है बल्कि नियमों के अन्तर्गत परिचालित एक स्थापना है - इसलिए यह नहीं कहा जा सकता कि सतर्कता विभाग और भारत संघ के अन्य विभाग के मध्य वैश्वसिक सम्बन्ध विद्यमान है, जिससे किसी कर्मचारी को, जिसे सतर्कता विभाग की अन्वेषण रिपोर्ट के आधार पर विभागीय जाँच के अधीन रखा गया है, सूचना या अभिलेख तक पहुँच से वंचित रखा जाए। (यूनियन ऑफ इंडिया वि. सेंट्रल इनफॉर्मेशन कमिशनर) ...2824

सूचना का अधिकार अधिनियम (2005 का 22), धारा 8(1)(जी) - सूचना के प्रकटीकरण से मुक्ति - विभाग ने इस आधार पर मुक्ति का दावा किया कि चाही गई सूचना का प्रकटीकरण अन्वेषण से सम्बद्ध किसी व्यक्ति के जीवन या दैहिक सुरक्षा को संकट में डालेगा - अभिनिर्धारित - प्रकथनों को न्यायोचित ठहराने के लिए ऐसी कोई सामग्री अभिलेख पर नहीं लायी गयी - चूंकि अन्वेषण रिपोर्ट विभागीय जाँच आरम्भ करने का आधार बनाती है - यह उपधारित नहीं किया जा सकता कि रिपोर्ट विधि प्रवर्तन या सुरक्षा प्रयोजनों के लिए पेश की गयी। (यूनियन ऑफ इंडिया वि. सेंट्रल इनफॉर्मेशन कमिशनर) ...2824

सूचना का अधिकार अधिनियम (2005 का 22), धारा 8(1)(एच) - सूचना के प्रकटीकरण से मुक्ति - विभाग ने इस आधार पर मुक्ति का दावा किया कि सूचना का दिया जाना अन्वेषण की शक्तियों पर अड़चन डालेगा या अपराधियों के अभियोजन पर आशंका डालेगा और आरोपों विरचित किये जाने का आधारीय दस्तावेज होने से अभियोजन को प्रभावित करेगा - अभिनिर्धारित - अन्वेषण की प्रक्रिया में अड़चन डालने की कोई संभावना नहीं है जैसा कि आशंकित है, क्योंकि एक आरोप-पत्र पहले ही विरचित किया जा चुका है और विभागीय जाँच प्रारम्भ की गई है। (यूनियन ऑफ इंडिया वि. सेंट्रल इनफॉर्मेशन कमिशनर) ...2824

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(ख), साक्ष्य अधिनियम, 1872, धारा 76 - जाति प्रमाण पत्र - जाति प्रमाण पत्र लोक दस्तावेज नहीं है - अभियोजन उसे साबित करने के लिए बाध्य है जैसे कि किसी दण्डिक मामले में अन्य दस्तावेज साबित किये जाते हैं। (मंगल सिंह वि. म.प्र. राज्य) ...2671

वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम (2002 का 54), धारा 13(2), संविधान, अनुच्छेद 226 - रिट याचिका -

Constitution, Article 226 - Writ Petition - Maintainability - Held - Proceeding under the Act and violation of guidelines framed by Reserve Bank of India in respect of a Cooperative Bank - Writ petition is not maintainable as an alternative remedy is available under the Act. [Aman Trading Company (M/s) v. Vyavisayik Evam Audhyogik Sahakari Bank] ...2830.

Service Law - Appointment & Selection - Whether the High Court can scrutinize the list of selected candidates furnished by the District Judge - Held - Yes, as per advertisement, computer operation was an essential condition apart from eligibility - But, according to the selection list, most of the candidates did not possess qualification in computer operation - No test was conducted in that regard by District Judge - Only one candidate produced a certificate from a registered institution in this regard - However, it was thought proper by the High Court not to select one candidate but to go for a re-advertisement in respect of the vacant post - Decision taken by High Court is correct - Stamp of approval given by learned Single Judge cannot be found fault with - Writ Appeal dismissed. [Ramakant Choudhary v. District & Sessions Judge, Guna] ...3265

Service Law - Back wages - Workmen were involved in criminal case on their own and absented for considerable period - Department was not involved in criminal prosecution - Workmen not entitled for back wages - Petition dismissed. [State of M.P. v. Ram Kumar Pathak] ...2514

Service Law - Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rule 10 - Warning - ASJ has made certain observations against the SDM (petitioner) in his order - On this basis show cause notice issued and thereafter a warning was issued to petitioner - Held - An opportunity was given to the petitioner and there has been adequate compliance with the principle of natural justice - Competent Authority considered the facts and circumstances of the case and thereafter passed the order of warning which does not constitute punishment - Petition dismissed. [Prakash Chandra Prasad v. State of M.P.] ...3139

Service Law - Civil Services (Classification, Control & Appeal) Rules, M.P. 1966, Rule 10 - Warning - Whether is a punishment - Held - No - Warning is not a penalty in Rule 10 and as such does not require the detailed enquiry procedure as contemplated under Rule 14 - It will not come on the way of the petitioner for his further promotion. [Prakash Chandra Prasad v. State of M.P.] ...3139

Service Law - Compassionate appointment - Petitioner's application for compassionate appointment rejected - Held - Compassionate appointment is an exception and is not a right of an employee - Petitioner for the first time approached before High Court after 6 years of submitting application - Petitioner's case has been rightly considered twice by the Competent Authority and a finding

पोषणीयता - अभिनिर्धारित - अधिनियम के अन्तर्गत कार्यवाही और भारतीय रिजर्व बैंक द्वारा कॉपरेटिव बैंक के सम्बन्ध में विरचित गाइडलाईनों का उल्लंघन - रिट याचिका पोषणीय नहीं है क्योंकि अधिनियम के अन्तर्गत वैकल्पिक उपचार उपलब्ध है। (अमन ट्रेडिंग कम्पनी (मे.) व्यवसायिक एवं औद्योगिक सहकारी बैंक) ...2830

सेवा विधि - नियुक्ति और चयन - क्या उच्च न्यायालय जिला न्यायाधीश द्वारा प्रेषित चयनित अभ्यर्थियों की सूची की जाँच कर सकता है - अभिनिर्धारित - हाँ, विज्ञापन के अनुसार, अर्हता के अतिरिक्त कम्प्यूटर का संचालन एक आवश्यक शर्त थी - किन्तु चयन सूची के अनुसार अधिकांश अभ्यर्थी कम्प्यूटर संचालन की योग्यता नहीं रखते थे - जिला न्यायाधीश द्वारा उस सम्बन्ध में कोई परीक्षा नहीं ली गई - केवल एक अभ्यर्थी ने इस सम्बन्ध में पंजीत संस्थान का प्रमाणपत्र पेश किया - तथापि, उच्च न्यायालय ने एक अभ्यर्थी को चयनित न करके रिक्त पदों के सम्बन्ध में पुनः विज्ञापन जारी करना उचित समझा - उच्च न्यायालय द्वारा लिया गया निर्णय उचित न विद्वान एकल न्यायाधीश द्वारा उस पर अनुमोदन की मुहर लगाने में कोई त्रुटि नहीं की गयी - रिट अपील खारिज। (रमाकांत चौधरी वि. जिला एवं सत्र न्यायाधीश, गुना) ...3265

सेवा विधि - पिछला वेतन - कर्मकार स्वयं दाण्डिक मामले में अंतर्गृह्ये हुए और बड़ी कालावधि तक अनुपस्थित रहे - विभाग दाण्डिक अभियोजन में अंतर्गृह्ये नहीं हुआ - कर्मकार पिछले वेतन के हकदार नहीं - याचिका खारिज। (म.प्र. राज्य वि. रामकुमार पाठक) ...2514

सेवा विधि - सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10 - चेतावनी - अतिरिक्त सत्र न्यायाधीश ने अपने आदेश में एस.डी.एम. (याची) के विरुद्ध कतिपय प्रेक्षण किये - इसके आधार पर कारण बताओ सूचनापत्र जारी किया गया और उसके बाद याची को चेतावनी जारी की गई - अभिनिर्धारित - याची को एक अवसर दिया गया था और नैसर्गिक न्याय के सिद्धांत का पर्याप्त अनुपालन किया गया - सक्षम प्राधिकारी ने मामले के तथ्यों और परिस्थितियों पर विचार किया और तत्पश्चात् चेतावनी का आदेश पारित किया जो दण्ड का गठन नहीं करता है - याचिका खारिज। (प्रकाश चंद्र प्रसाद वि. म.प्र. राज्य) ...3139

सेवा विधि - सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10 - चेतावनी - क्या एक दण्ड है - अभिनिर्धारित - नहीं - नियम 10 में चेतावनी शास्ति नहीं है और इस रूप में नियम 14 के अन्तर्गत अपेक्षित विस्तृत जाँच प्रक्रिया की आवश्यकता नहीं है - यह याची की आगे प्रदोन्नति के लिए उसके रास्ते में नहीं आयेगी। (प्रकाश चंद्र प्रसाद वि. म.प्र. राज्य) ...3139

सेवा विधि - अनुकम्पा नियुक्ति - याची का अनुकम्पा नियुक्ति का आवेदन नामंजूर - अभिनिर्धारित - अनुकम्पा नियुक्ति एक अपवाद है किसी कर्मचारी का अधिकार नहीं - याची आवेदन पेश करने के 6 वर्ष बाद सर्वप्रथम उच्च न्यायालय की शरण में आया - सक्षम प्राधिकारी द्वारा याची के मामले पर दो बार उचित रूप से विचार किया गया और यह निष्कर्ष दिया कि याची अभाव में

has been arrived at that the petitioner is not living in penury and her financial condition is not such making her entitle for compassionate appointment - No case is made out to make interference in the decision taken by Competent Authority - Petition dismissed. [Sushma Yadav (Smt.) v. State Bank of Indore] ...3382

Service Law - Compassionate appointment - Powers of High Court to interfere with the decision of the Competent Authority - Petitioner's application for compassionate appointment rejected - Held - Courts should not normally interfere with the decision of Competent Authority - Competent Authority twice in the year 2004 & 2006 taking into consideration that petitioner was getting family pension and also entitled for terminal benefits of her husband and she inherited a double storied house - It was found that she was financially well placed and is not living in penury - Decision of Competent Authority needs no interference by High Court. [Sushma Yadav (Smt.) v. State Bank of Indore] ...3382

Service Law - Constitution, Articles 16(2) & (3), Circular dated 10.07.2007 of the State Government - Equality of employment - Appointment of Aaganwadi Worker for Aaganwadi Centre, Devpur - As per State Government's policy with regard to eligibility criteria for appointment that the applicant must be resident of the same village and ward - Candidature of petitioner has been rejected only on the ground that she is not a resident of village Devpur - Held - State Government's policy suffers from constitutional infirmity and is against the provision of Article 16(2) of the Constitution - In fact petitioner is a resident of village Gurichchha which is part and parcel of Gram Panchayat, Devpur - Hence, exclusion of petitioner for consideration to the post of Aaganwadi Worker for Aaganwadi Centre, Devpur is arbitrary and illegal. [Lalita Tomar v. State of M.P.] ...3302

Service Law - Constitution, Article 226 - House Rent Allowance - Petitioner filed an application for allotment of a quarter - Subsequently, constructed his own house with the permission of respondent Board and withdrew his application prior to allotment - Held - Rejection for grant of H.R.A. on the ground that he had refused to occupy the house allotted to him per se indicates total non-application of mind when the respondents themselves had full knowledge of the fact that the petitioner has withdrawn his request - Petitioner is entitled to H.R.A. in accordance with the circular - Petition allowed. [Ravindra Kumar Jain v. M.P. State Electricity Board] ...*36

Service Law - Constitution, Article 226 - Termination without departmental enquiry - Petitioners daily wager workmen, due to involvement in criminal case absented from service - Termination without departmental proceedings - Held - Petitioners were acquitted in criminal proceedings - Termination without departmental enquiry cast stigma upon workmen - Order of termination rightly set-aside by Labour Court - Writ petition dismissed. [State of M.P. v. Ram Kumar Pathak] ...2514

नहीं रह रही है और उसकी वित्तीय स्थिति ऐसी नहीं है जो उसे अनुकम्पा नियुक्ति का हकदार बनाती हो — सक्षम प्राधिकारी द्वारा लिये गये निर्णय में हस्तक्षेप करने का कोई मामला नहीं बनता — याचिका खारिज। (सुषमा यादव (श्रीमति) वि. स्टेट बैंक ऑफ इंदौर) ...3382

सेवा विधि — अनुकम्पा नियुक्ति — उच्च न्यायालय की सक्षम प्राधिकारी के निर्णय में हस्तक्षेप करने की शक्तियाँ — याची का अनुकम्पा नियुक्ति का आवेदन नामंजूर — अभिनिर्धारित — न्यायालयों को सामान्यतः सक्षम प्राधिकारी के विनिश्चय में हस्तक्षेप नहीं करना चाहिए — सक्षम प्राधिकारी ने दो बार वर्ष 2004 व 2006 में यह विचार में लेते हुए कि याची परिवार पेंशन प्राप्त कर रही है और उसके पति के सेवांत लाभों की भी हकदार है और उसे दो मंजिला मकान भी दाय में प्राप्त हुआ है — यह पाया कि उसकी स्थिति वित्तीय रूप से सुस्थापित है और वह अभाव में नहीं रह रही है — उच्च न्यायालय द्वारा सक्षम प्राधिकारी के विनिश्चय में हस्तक्षेप की कोई आवश्यकता नहीं। (सुषमा यादव (श्रीमति) वि. स्टेट बैंक ऑफ इंदौर) ...3382

सेवा विधि — संविधान, अनुच्छेद 16(2) व (3), राज्य सरकार का परिमत्र तारीख 10.07.2007 — रोजगार की समता — आंगनवाड़ी केन्द्र, देवपुर के लिए आंगनवाड़ी कार्यकर्ता की नियुक्ति — नियुक्ति की पात्रता के सम्बन्ध में राज्य सरकार की पॉलिसी के अनुसार आवेदक उसी ग्राम या वार्ड का निवासी होना चाहिए — याची की अभ्यर्थिता केवल इस आधार पर अस्वीकार की गई कि वह ग्राम देवपुर की निवासी नहीं है — अभिनिर्धारित — राज्य सरकार की पॉलिसी संवैधानिक अशक्तता से ग्रस्त और संविधान के अनुच्छेद 16(2) के उपबंध के विरुद्ध है — वास्तव में याची ग्राम गुरिछा की निवासी है जो ग्राम प्रंचायत देवपुर का अभिन्न अंग है — इसलिए, आंगनवाड़ी केन्द्र, देवपुर के आंगनवाड़ी कार्यकर्ता के पद हेतु विचार करने के लिए याची का अपवर्जन मनमाना और अवैध है। (ललिता तोमर वि. म.प्र. राज्य) ...3302

सेवा विधि — संविधान, अनुच्छेद 226 — गृह भाड़ा भत्ता — याची ने क्वार्टर के आवंटन के लिए आवेदन पेश किया — तत्पश्चात् प्रत्यर्थी बोर्ड की अनुमति से अपने स्वयं के मकान का निर्माण किया और आवंटन के पूर्व अपना आवेदन वापस ले लिया — अभिनिर्धारित — इस आधार पर कि उसने उसे आवंटित गृह का कब्जा लेने से इनकार कर दिया था, एच.आर.ए. दिया जाना नामंजूर करना, पूर्णतः मस्तिष्क का प्रयोग न करना उपदर्शित करता है जबकि स्वयं प्रत्यर्थियों को इस तथ्य का पूरा ज्ञान था कि याची ने अपना निवेदन वापस ले लिया है — याची परिपत्र के अनुसार एच.आर.ए. का हकदार — याचिका मंजूर। (रवीन्द्र कुमार जैन वि. एम.पी. स्टेट इलेक्ट्रिसिटी बोर्ड) ...*36

सेवा विधि — संविधान, अनुच्छेद 226 — विभागीय जाँच के बिना सेवा समाप्ति — याची दैनिक वेतन पाने वाले कर्मकार दाण्डिक मामले में शामिल होने के कारण सेवा से अनुपस्थित रहे — विभागीय कार्यवाहियों के बिना सेवा समाप्ति — अभिनिर्धारित — याची दाण्डिक कार्यवाहियों में दोषमुक्त किये गये — विभागीय जाँच के बिना सेवा समाप्ति कर्मकारों पर कलंक लगाता है — श्रम न्यायालय द्वारा सेवा समाप्ति का आदेश उचित रूप से अपास्त — रिट याचिका खारिज। (म.प्र. राज्य वि. रामकुमार पाठक) ...2514

Service Law - Constitution, Article 235 - Appointment & Selection - Whether the High Court has supervisory control on the appointment and selection of ministerial staff of the District Court when the District Judge is the Competent Authority to appoint - Held - Yes, High Court has control over the ministerial and official services of the subordinate courts on the basis of the language employed in Article 235 of the Constitution. [Ramakant Choudhary v. District & Sessions Judge, Guna] ...3265

Service Law - Correction of Date of Birth - At the fag end of the career - Permissibility - Held - Not permissible - But, once the employer took up the claim and on the basis of mark-sheet of Board of Secondary Education placed by employee referred the matter to the Age Determination Committee, employer is estopped to raise a plea that there has been belated approach by the employee - It is a somersault which has to be taken exception to - The same is not permissible. [South Eastern Coalfields Ltd. v. Nijamuddin] ...3053

Service Law - Departmental Promotion Committee - Powers of judicial review by High Court - Can the High Court reassess the findings of the Departmental Promotion Committee - Held - No - Normally, High Court or the Tribunal should not sit as an appellate court over the decision of the selection committee and should not take the task of selection on itself by considering the fitness of the candidates unless there are mala fides or the selection is arbitrary. [Amolak Singh Chhabra v. State of M.P.] ...3046

Service Law - Deputation - Petitioner working as Deputy Director, NVDA, Indore - His services repatriated to his parent department, i.e. Water Resource Dept. - Action challenged that Secretary, NVDA is not competent authority to pass such order - Held - Petitioner cannot claim his retention in NVDA merely because other employees have been retained in NVDA - At the relevant time Secretary was empowered to discharge the functions of Commissioner (Admn.) of NVDA - Thus, order was passed by competent authority - Order is well within jurisdiction - Petition dismissed. [Mukesh Nahar v. State of M.P.] ...2599

Service Law - Disciplinary proceedings - Joint enquiry - Quantum of punishment - Three officials tried in a joint enquiry - All three awarded punishment - In appeal, the penalty of two officials reduced substantially but the appeal filed by the petitioner dismissed and punishment, of demotion was maintained - Held - Petitioner has been singled out in regard to imposition of penalty by awarding a severe penalty as against the other two similarly placed employees - Respondents directed to reconsider the matter keeping view that in a joint enquiry other two employees have been awarded lesser punishment. [Jeevanram v. State of M.P.] ...3125

Service Law - Irregular appointments and illegal appointments - Distinction - A distinction has been drawn between the irregular appointments

सेवा विधि - संविधान, अनुच्छेद 235 - नियुक्ति और चयन - क्या उच्च न्यायालय जिला न्यायालय के अनुसचिवीय कर्मचारियों की नियुक्ति और चयन पर पर्यवेक्षणीय नियंत्रण रखता है जबकि जिला न्यायाधीश नियुक्त करने के लिए सक्षम प्राधिकारी है - अभिनिर्धारित - हाँ, उच्च न्यायालय संविधान के अनुच्छेद 235 में प्रयोग की गई भाषा के आधार पर अधीनस्थ न्यायालयों की अनुसचिवीय और अधिकारिक सेवाओं पर नियंत्रण रखता है। (रमाकांत चौधरी वि. जिला एवं सत्र न्यायाधीश, गुना) ...3265

सेवा विधि - जन्म तिथि का सुधार - कार्यकाल के अंतिम छोर पर - अनुज्ञेयता - अभिनिर्धारित - अनुज्ञेय नहीं - किन्तु जब एक बार नियोक्ता ने दावा ग्रहण कर लिया और कर्मचारी द्वारा लगायी गयी माध्यमिक शिक्षा मण्डल की अंकसूची के आधार पर मामला आयु अवधारण समिति के पास भेज दिया, तो नियोक्ता यह अभिवचन उठाने से विवक्षित है कि कर्मचारी द्वारा विलम्ब से निवेदन किया गया है - यह एक कायापलट है जिसे उसके अपवाद में लेना होगा - यह अनुज्ञेय नहीं है। (साउथ ईस्टर्न कोलफील्ड्स लि. वि. निजामुद्दीन) ...3053

सेवा विधि - विभागीय पदोन्नति समिति - उच्च न्यायालय द्वारा न्यायिक पुनर्विलोकन की शक्तियाँ - क्या उच्च न्यायालय विभागीय पदोन्नति समिति के निष्कर्षों को पुनर्निर्धारित कर सकता है - अभिनिर्धारित - नहीं - सामान्यतः उच्च न्यायालय या अधिकरण को चयन समिति के विनिश्चय पर विचार करते समय अपीलीय न्यायालय की तरह कार्य नहीं करना चाहिए और अभ्यर्थियों की उपयुक्तता पर विचार कर चयन का कार्य स्वयं नहीं करना चाहिए जब तक कि चयन मनमाना या असदभावपूर्ण न हो। (अमोलक सिंह छाबड़ा वि. म.प्र. राज्य) ...3046

सेवा विधि - प्रतिनियुक्ति - याची उपसंचालक, एन.वी.डी.ए., इन्दौर के रूप में कार्यरत - उसकी सेवाएँ उसके मूल विभाग अर्थात् जल संसाधन विभाग में प्रत्यावर्तित की गयीं - कृत्य को चुनौती दी गई कि सचिव, एन.वी.डी.ए. ऐसा आदेश पारित करने के लिए सक्षम प्राधिकारी नहीं है - अभिनिर्धारित - केवल इसलिए कि अन्य कर्मचारी एन.वी.डी.ए. में प्रतिधारित किये गये हैं याची एन.वी.डी.ए. में अपने प्रतिधारण का दावा नहीं कर सकता - सुसंगत समय पर सचिव, एन.वी.डी.ए. के कमिश्नर (प्रशासन) के कार्यों को करने के लिए सशक्त थे - इस प्रकार आदेश सक्षम प्राधिकारी द्वारा पारित किया गया - आदेश पूर्णतः अधिकारिता के भीतर - याचिका खारिज। (मुकेश नाहर वि. म.प्र. राज्य) ...2599

सेवा विधि - अनुशासनिक कार्यवाहियाँ - संयुक्त जाँच - दण्ड की मात्रा - तीन कर्मचारियों का संयुक्त जाँच में विचारण - तीनों को दण्ड अधिनिर्णीत - अपील में दो कर्मचारियों की शास्ति सारतः कम की गयी किन्तु याची द्वारा प्रस्तुत अपील खारिज और पदावनति का दण्ड कायम रखा गया - अभिनिर्धारित - कठोर शास्ति अधिनिर्णीत करके शास्ति के अधिरोपण के विषय में समरूप रखे गये दो अन्य कर्मचारियों के मुकाबले याची को चुना गया है - प्रत्यर्थियों को निदेश दिया गया कि यह दृष्टिगत रखते हुए मामले पर पुनर्विचार करें कि संयुक्त जाँच में अन्य दो कर्मचारियों को न्यूनतम दण्ड दिया गया है। (जीवनराम वि. म.प्र. राज्य) ...3125

सेवा विधि - अनियमित नियुक्तियाँ और अवैध नियुक्तियाँ - अनियमित नियुक्तियों और अवैध नियुक्तियों में विभेद किया गया है और एक स्पष्टीकरण जारी किया गया है कि विज्ञापन

and illegal appointments, and a clarification has been issued that appointments made without advertisement and inviting names from employment exchange would be treated as irregular appointments, and therefore, as one time measure, would be entitled to be regularized, as per the law laid down by the Supreme Court, whereas the illegal appointments could not be rectified. [Rajesh Ahirwar v. Principal Secretary Health Department] ...2590

Service Law - Judicial Review - Decision of the Age Determination Committee - Order passed by the authorities suffers from procedural irregularity - Procedural irregularity would include where relevant factors have not been considered - Age Determination Committee has not considered at all mark-sheet of Board of Secondary Education - Held - An error has crept in the decision of the Committee as it has ignored the mark-sheet of Board of Secondary Education which reflects the date of birth. [South Eastern Coalfields Ltd. v. Nijamuddin] ...3053

Service Law - Municipalities Act, M.P. (37 of 1961), Section 94, Municipal Employees Recruitment and Conditions of Service Rules, M.P. 1968, Rule 12 - Promotion - Absorption - Competent Authority - Promotion of an employee of Municipal Council from feeder post to higher post can be considered by any other Municipal Council and not by a particular Municipal Council to which he belongs - Absorption of such employee can be made with the approval of State Government. [Munna Lal Karosiya v. State of M.P.]...2854

Service Law - Punishment - Double jeopardy - Disciplinary Authority initially imposed a punishment of reversion to a lower post for 2 years upon the petitioner - Authority modified the order of punishment to stoppage of four increments with cumulative effect but by that time the petitioner had already suffered reversion for 2 years - Held - No further punishment would have been imposed upon petitioner for the same incident - Order of second punishment smacks of total arbitrariness and perversity - Second order quashed. [K.R. Rai v. State of M.P.] ...2526

Service Law - Punishment - Petitioner directly appointed as an Additional Treasury Accountant - After conducting the departmental enquiry punished with reversion to the post of Accountant Assistant for a period of 2 years - Held - A direct recruitee could not be reverted to a post below the one to which he was recruited. [K.R. Rai v. State of M.P.] ...2526

Service Law - Standing Order No.79 (Revised w.e.f. 04.10.2007), Clause 2(b) - Modification in cut off date of age for recruitment - Petitioner contended that modification in Clause 2(b) of Order 79 w.e.f. 04.10.2007 i.e. much after the advertisement dated 15-21.09.2007 and was thus not applicable retrospectively for a recruitment process of Sub-Inspectors in RPF/RPSF already initiated - Held - Modification was in pursuance to decision dated 31.07.2007 which was taken before the issuance of advertisement -

और रोजगार कार्यालय से नाम आमंत्रित किये के बिना की गई नियुक्तियाँ अनियमित नियुक्तियाँ मानी जायेंगी और इसलिए एक समय माप के रूप में उच्चतम न्यायालय द्वारा निर्धारित विधि के अनुसार नियमित होने के हकदार होंगे, जबकि अवैध नियुक्तियाँ सुधारी नहीं जा सकतीं। (राजेश अहिरवार वि. प्रिंसिपल सेक्रेटरी हेल्थ डिपार्टमेंट) ...2590

सेवा विधि - न्यायिक पुनर्विलोकन - आयु अवधारण समिति का विनिश्चय - प्राधिकारियों द्वारा पारित आदेश प्रक्रियात्मक अनियमितता से ग्रस्त - प्रक्रियात्मक अनियमितता वहाँ सम्मिलित होगी जहाँ सुसंगत कारणों पर विचार नहीं किया गया है - आयु अवधारण समिति ने माध्यमिक शिक्षा मण्डल की अंकसूची पर किसी भी ढंग से विचार नहीं किया - अभिनिर्धारित - समिति के विनिश्चय में त्रुटि है क्योंकि उसने माध्यमिक शिक्षा मण्डल की अंकसूची की उपेक्षा की है जो जन्म तिथि को प्रकट करती है। (साउथ ईस्टर्न कोलफील्ड्स लि. वि. निजामुद्दीन) ...3053

सेवा विधि - नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 94, नगरपालिका कर्मचारी भर्ती तथा सेवा की शर्तें नियम, म.प्र. 1968, नियम 12 - पदोन्नति - संविलयन - सक्षम प्राधिकारी - नगरपालिका परिषद के किसी कर्मचारी की भरक पद से उच्चतर पद पर पदोन्नति पर किसी अन्य नगरपालिका परिषद द्वारा विचार किया जा सकता है न कि किसी विशिष्ट नगरपालिका परिषद द्वारा जिससे वह सम्बद्ध है - राज्य सरकार के अनुमोदन से ऐसे कर्मचारी का संविलयन किया जा सकता है। (मुन्ना लाल करोसिया वि. म.प्र. राज्य) ...2854

सेवा विधि - दण्ड - दोहरा संकट - अनुशासनिक प्राधिकारी ने प्रारम्भ में याची पर 2 वर्ष के लिए निम्नतर पद पर पदावनति का दण्ड अधिरोपित किया - प्राधिकारी ने दण्ड का आदेश संचयी प्रभाव से चार वेतनवृद्धियाँ रोकने में उपांतरित किया किन्तु उस समय तक याची 2 वर्ष के लिए पदावनति भोग चुका था - अभिनिर्धारित - याची पर एक ही घटना के लिए कोई अतिरिक्त दण्ड अधिरोपित नहीं किया जाएगा - द्वितीय दण्ड का आदेश सम्पूर्ण मनमानेपन और विपर्यस्तता का संकेत देता है - द्वितीय आदेश अभिखंडित। (के.आर. राय वि. म.प्र. राज्य) ...2526

सेवा विधि - दण्ड - याची सीधे अतिरिक्त राजकोष लेखाकार नियुक्त किया गया - विभागीय जाँच करने के बाद दो वर्ष की कालावधि के लिए लेखाकार सहायक के पद पर पदावनति से दण्डित किया गया - अभिनिर्धारित - कोई सीधे भर्ती किया गया व्यक्ति उस पद से, जिस पर उसे भर्ती किया गया, नीचे के पद पर पदावनत नहीं किया जा सकता। (के.आर. राय वि. म.प्र. राज्य) ...2526

सेवा विधि - स्टैंडिंग ऑर्डर क्र. 79 (04.10.2007 से यथा संशोधित), खण्ड 2(बी) - भर्ती के लिए आयु की सीमा तारीख में उपांतरण - याची ने प्रतिवाद किया कि ऑर्डर 79 के खण्ड 2(बी) में उपांतरण 04.10.2007 से यथा प्रभावी अर्थात् विज्ञापन तारीख 15-21.09.2007 के बहुत बाद और इस प्रकार पूर्व से प्रारम्भ की जा चुकी आरपीएफ/आरपीएसएफ में उप-निरीक्षकों की भर्ती प्रक्रिया के लिए भूतलक्षी रूप से लागू नहीं - अभिनिर्धारित - उपांतरण विनिश्चय तारीख 31.07.2007 के अनुसरण में था जो विज्ञापन जारी करने के पूर्व लिया गया - याची के पक्ष में कोई

There being no accrual of right in favour of the petitioner - The contention that change of cut off date for the purpose of age has prejudicially effected the chance of the petitioner to participate in the selection is of no consequence because the entitlement of a person is only for consideration and the same is on the basis of the rules in vogue - Petition dismissed. [Ashwini Kumar Mishra v. Union of India] ...3133

Service Law - State Road Transport Employees Conduct, Discipline and Appeal Regulations, M.P. 1975, Regulations 34 & 36 - Inquiry Officer - Competence - An authority under the regulation could be delegated the power to inquire into the truth by the Competent Authority as Inquiry Officer - Admittedly, Inquiry Officer posted on deputation as Deputy Secretary and not an employee of Corporation - His substantive post was Professor in Higher Education Department - Consequently, enquiry conducted by such officer is against the provisions of Regulations and beyond his power - Proceedings null & void - Appointment of Inquiry Officer and subsequent proceedings conducted by him quashed - Petition allowed. [Mohd. Ismail Khan v. M.P. Road Transport Corporation] ...3115

Service Law - Termination - Petitioners appointed to various posts of paramedical staff on a regular basis - They worked for more than 10 years and were getting all service benefits of regular employees - State Govt. suddenly termed their appointment as illegal and being contrary to rules and thereby ordered their termination - Held - At the time of appointment a regular selection process had been resorted to and on the recommendations made by District Selection Committee, they were selected and so appointed - Petitioners were eligible for the posts and they had worked for a period of more than ten years - In the circumstances of the case High Court found that at the most the appointments of the petitioners were to be treated as irregular and not illegal - It would be hardship not only to the petitioners, but to their families if the termination orders were to be maintained - Termination orders quashed - Petition allowed. [Rajesh Ahirwar v. Principal Secretary Health Department] ...2590

Specific Relief Act (47 of 1963), Section 20 - Suit for specific performance of contract - When plaintiff has to prove that he was bona fide purchaser - Suit resisted by defendants that there was earlier agreement and this fact was in the knowledge of plaintiff - Held - No such agreement was placed on record - On the contrary, defendants have not even appeared in the witness box to establish the existence of earlier agreement - Plaintiff and her husband had nowhere admitted the existence of earlier agreement - In absence of establishment of earlier agreement, plaintiff was not required to prove that she was bona fide purchaser - Decree for specific performance rightly granted by the first appellate Court. [Omprakash v. Dharma Bai] ...3177

अधिकार प्रोद्भूत नहीं होता - यह प्रतिविरोध कि आयु के प्रयोजन के लिए सीमा तारीख के परिवर्तन ने चयन में भाग लेने के याची के अवसर को प्रतिकूल रूप से प्रभावित किया है, का कोई परिणाम नहीं क्योंकि किसी व्यक्ति की हकदारी विचार के लिए है और यह प्रचलित नियमों के आधार पर है - याचिका खारिज। (अश्वनी कुमार मिश्रा वि. यूनिन ऑफ इंडिया) ...3133

सेवा विधि - राज्य सड़क परिवहन कर्मचारी आचरण, अनुशासन और अपील विनियम, म.प्र. 1975, विनियम 34 व 36 - जाँच अधिकारी - सक्षमता - सक्षम प्राधिकारी द्वारा विनियम के अन्तर्गत किसी प्राधिकारी को जाँच अधिकारी के रूप में वास्तविकता का पता लगाने की शक्ति प्रत्यायोजित की जा सकती थी - स्वीत रूप से जाँच अधिकारी उप-सचिव के रूप में प्रतिनियुक्ति पर पदस्थ था और निगम का कर्मचारी नहीं था - उसका मूल पद उच्च शिक्षा विभाग में प्राध्यापक का था - परिणामतः ऐसे अधिकारी द्वारा की गयी जाँच विनियम के उपबंधों के विरुद्ध और उसकी शक्ति से परे है - कार्यवाहियाँ अकृत और शून्य - जाँच अधिकारी की नियुक्ति और उसके द्वारा की गयी पश्चात्वर्ती कार्यवाहियाँ अभिखंडित - याचिका मंजूर। (मोहम्मद इस्माइल खान वि. एम.पी. रोड ट्रांसपोर्ट कारपोरेशन) ...3115

सेवा विधि - सेवा समाप्ति - याचियों को नियमित आधार पर पराचिकित्सीय कर्मचारी वर्ग के विभिन्न पदों पर नियुक्त किया गया - उन्होंने 10 वर्षों से अधिक कार्य किया और नियमित कर्मचारियों के सभी सेवा लाभ प्राप्त कर रहे थे - राज्य सरकार ने आकस्मिक रूप से उनकी नियुक्ति अवैध और नियमों के प्रतिकूल मानी और उनकी सेवा समाप्ति का आदेश दिया - अभिनिर्धारित - नियुक्ति के समय एक नियमित चयन प्रक्रिया का प्रयोग किया गया था और जिला चयन समिति द्वारा की गई अनुशंसाओं पर उनका चयन किया गया और नियुक्त किया गया - याची पदों के हकदार थे और वे दस वर्ष की कालावधिक से अधिक कार्य कर चुके थे - मामले की परिस्थितियों में उच्च न्यायालय ने पाया कि अधिक से अधिक याचियों की नियुक्तियाँ अनियमित मानी जानी थीं न कि अवैध - यदि सेवा समाप्ति के आदेश बनाये रखे गये तो न केवल याचियों को बल्कि उनके परिवारों को कठिनाई होगी - सेवा समाप्ति के आदेश अभिखंडित - याचिका मंजूर। (राजेश अहिरवार वि. प्रिंसिपल सेक्रेटरी हेल्थ डिपार्टमेंट) ...2590

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 20 - संविदा के विनिर्दिष्ट पालन के लिए वाद - कब वादी को यह साबित करना होगा कि वह सद्भाविक क्रेता है - प्रतिवादी द्वारा वाद का विरोध किया गया कि पूर्ववर्ती अनुबन्ध था और यह तथ्य वादी के ज्ञान में था - अभिनिर्धारित - ऐसा कोई अनुबन्ध अभिलेख पर नहीं - इसके विपरीत, पूर्ववर्ती अनुबन्ध का अस्तित्व साबित करने के लिए प्रतिवादी भी कठघरे में उपस्थित नहीं हुए - वादी और उसके पति ने कहीं भी पूर्ववर्ती अनुबन्ध के अस्तित्व को स्वीकार नहीं किया - पूर्ववर्ती अनुबन्ध के साबित होने के अभाव में वादी को यह साबित करना आवश्यक नहीं था कि वह सद्भाविक क्रेता थी - प्रथम अपीलीय न्यायालय द्वारा विनिर्दिष्ट पालन की डिक्री उचित रूप से प्रदान की गयी। (ओमप्रकाश वि. धर्मा बाई) ...3177

Specific Relief Act (47 of 1963), Section 38 - Possession - Plaintiff has come forward with a case that he is possessing the agricultural land - **Held - Plaintiff failed to prove the factum of possession by filing and proving the necessary revenue record - Plaintiff cannot take any advantage of the weakness of the defendant if defendant has not filed any revenue record.** [Motilal Pandey v. Kailash Pathak] ...2601

Stamp Act (2 of 1899), Sections 35 & 36 - Agreement of sale - Document admitted in evidence without its being questioned on the ground that it is not duly stamped - Held - Admissibility of documents can not be questioned at any subsequent stage of proceeding or before appellate court. [Champat Giri v. Ramdayal] ...2630

Stamp Act (2 of 1899), Schedule I-A Article 33; Exemption - An agricultural lease for a period of one year - Such document is exempted from payment of stamp duty - Could not have been impounded in view of exemption under Article 33 of Schedule I-A of Act - Order of trial Court set-aside. [Ramlakhan v. Rambahadur] ...2811

Stamp Act (2 of 1899), Schedule I-A Article 33 - Exemption from payment of stamp duty - Lease for the purpose of cultivation for a period of one year or when the average annual rent reserved does not exceed one hundred rupees - Both the requirement should not be read together - In case lease does not exceed one year, may be that average annual rent reserved exceed one hundred rupees - Such lease would be exempted from payment of stamp duty. [Ramlakhan v. Rambahadur] ...2811

State Road Transport Employees Conduct, Discipline and Appeal Regulations, M.P. 1975, Regulations 34 & 36 - See - Service Law [Mohd. Ismail Khan v. M.P. Road Transport Corporation] ...3115

Succession Act (39 of 1925), Section 372 - Grant of succession certificate to the nominee - Effect - Deceased before marriage nominated his mother for provident fund governed by the Imperial Bank of India Employees Provident Fund Rules - Held - Amount in any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with law of succession governing them - Nomination does not confer any beneficial interest in the nominee - Wife of deceased entitled for half of the amount of GPF. [Shipra Sengupta v. Mridul Sengupta] SC...2735

Tender - Tender condition - Appellant had not purchased tender form - No tenderer challenged the condition - Held - Condition was not essential and the Board had power to relax - Non-fulfilment of condition while submitting tender would not invalidate tender submitted by respondent company. [Safe Guard, GF-3 v. M.P. State Agriculture Marketing Board]...2769

Transfer of Property Act (4 of 1882), Section 53-A, Registration

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), 38 - कब्जा - वादी का मामला यह है कि कृषि भूमि उसके कब्जे में है - अभिनिर्धारित - वादी आवश्यक राजस्व अभिलेख पेश और साबित करके कब्जे का तथ्य साबित करने में असफल हो गया - वादी प्रतिवादी की कमजोरी का कोई लाभ नहीं ले सकता, यदि प्रतिवादी ने कोई राजस्व अभिलेख पेश नहीं किया हो। (मोती लाल पांडे वि. कैलाश पाठक) ...2601

स्टाम्प अधिनियम (1899 का 2), धाराएँ 35 व 36 - विक्रय अनुबन्ध - दस्तावेज को इस आधार पर प्रश्नगत किये बिना कि यह सम्यक रूप से स्ताम्पित नहीं है, साक्ष्य में ग्रहण किया गया - अभिनिर्धारित - दस्तावेजों की ग्राह्यता कार्यवाही के किसी पश्चात्कर्त्तृ प्रक्रम पर या अपीलीय न्यायालय के समक्ष प्रश्नगत नहीं की जा सकती। (चंपत गिरि वि. रामदयाल) ...2630

स्टाम्प अधिनियम (1899 का 2), अनुसूची I, अनुच्छेद 33, छूट - कृषि पट्टा एक वर्ष की कालावधि के लिए - ऐसा दस्तावेज स्टाम्प शुल्क से छूट-प्राप्त - अधिनियम की अनुसूची I, के अनुच्छेद 33 के अन्तर्गत छूट को दृष्टिगत रखते हुए परिबद्ध (impound) नहीं करना चाहिए था - विचारण न्यायालय का आदेश अपास्त। (रामलखन वि. रामबहादुर) ...2811

स्टाम्प अधिनियम (1899 का 2), अनुसूची I, अनुच्छेद 33 - स्टाम्प शुल्क के संदाय से छूट - कृषि प्रयोजन के लिए एक वर्ष की कालावधि का पट्टा या जब आरक्षित औसत वार्षिक भाड़ा एक सौ रुपये से अधिक नहीं है - दोनों ही आवश्यकताएँ एक साथ नहीं पढ़ी जानी चाहिए - पट्टा एक वर्ष से अधिक न होने की दृष्टि में आरक्षित औसत वार्षिक भाड़ा एक सौ रुपये से अधिक हो सकता है - ऐसे पट्टे को स्टाम्प शुल्क के संदाय से छूट प्राप्त होगी। (रामलखन वि. रामबहादुर) ...2811

राज्य सड़क परिवहन कर्मचारी आचरण, अनुशासन और अपील विनियम, म.प्र. 1975, विनियम 34 व 36 - देखें - सेवा विधि (मोहम्मद स्माइल खान वि. एम.पी. रोड ट्रांसपोर्ट कारपोरेशन) ...3115

उत्तराधिकार अधिनियम (1925 का 39), धारा 372 - नामनिर्देशिनी को उत्तराधिकार प्रमाण पत्र का अनुदान - प्रभाव - अभिनिर्धारित - मृतक ने इंपीरियल बैंक ऑफ इंडिया इम्प्लॉईज प्रोविडेंट फंड रूल्स से शासित भविष्य निधि के लिए विवाह के पूर्व अपनी माता को नामनिर्देशित किया - अभिनिर्धारित - किसी शीर्ष में कोई धनराशि नामनिर्देशिनी द्वारा प्राप्त की जा सकती है, किन्तु मृतक के वारिसों द्वारा उन्हें शासित करने वाली उत्तराधिकार विधि के अनुसार धनराशि का दावा किया जा सकता है - नामनिर्देशन नामनिर्देशिनी को कोई फायदाप्रद हित प्रदत्त नहीं करता - मृतक की पत्नी जी.पी.एफ. की आधी धनराशि की हकदार। (शिप्रा सेनगुप्ता वि. मृदुल सेन गुप्ता) SC---2735

निविदा - निविदा शर्त - अपीलार्थी ने निविदा फार्म क्रय नहीं किये थे - किसी निविदाकार ने शर्त को चुनौती नहीं दी - अभिनिर्धारित - शर्त आवश्यक नहीं थी और बोर्ड को शिथिल करने की शक्ति थी - निविदा प्रस्तुत करते समय शर्त का पालन न किया जाना प्रत्यर्थी कम्पनी द्वारा प्रस्तुत निविदा को अविधिमाम्य नहीं बना देगा। (सेफ गार्ड, जी एफ-3 वि. एम.पी. स्टेट एग्रीकल्चर मार्केटिंग बोर्ड) ...2769

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 53-ए, रजिस्ट्रीकरण अधिनियम,

Act, 1908, Section 17 - Contract to sell immovable property does not require to be registered - An unregistered document can be treated as evidence of part performance of contract. [Champat Giri v. Ramdayal] ...2630

Transfer of Property Act (4 of 1882), Section 54 - Sale or loan transaction - Suit for restraining defendant to take possession of agricultural land on the basis of sale deed executed by defendant in favour of plaintiff's father - Held - Original sale deed produced by defendant from his possession - A note that defendant has repaid the loan amount to plaintiff's father is mentioned in sale deed - It was a loan transaction - Sale deed executed to secure the loan amount - Judgment & decree of two courts below set-aside - Suit dismissed. [Motilal Pandey v. Kailash Pathak] ...2601

Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2 - WA can be filed against the judgment or order passed by a Single Judge, in exercise of original jurisdiction under Article 226 of the Constitution, but no provision has been made in the Act for filing a WA against the judgment & decree passed by the Single Bench in appellate jurisdiction - Judgment & decree passed by Single Judge in First Appeal - WA can not be entertained - WA dismissed. [Laxminarayan v. Shiv Lal Gujar] ...2503

Value Added Tax Act, M.P. (20 of 2002), Section 70 - Whether Emulsified Bitumen would not fall under Entry No. 16 of Schedule II Part 2 appended to the Act - Held - Yes - Bitumen and Emulsified Bitumen are two different commodities in the commercial world, though use of the said articles some times may be common, but some times, even the cost of the use as would also require to be considered to vary and use of the new product which is commercially different economically to some extent. [Tiki Enterprises (M/s.) v. Commissioner of Commercial Tax, M.P., Inodre] ...3098

Vaniyik Kar Adhiniyam, M.P. 1994 (5 of 1995), Entry 22 Part V of Schedule II - Refund of Commercial Tax - Petitioner claimed refund of commercial tax wrongly collected on mill rejected coal from petitioner - Held - Petitioner not entitled to claim refund of wrongly collected tax, unless he proves that he had not passed on the liability to third persons and had consumed the commodity himself - Petition dismissed. [S.C. Agrawal & Brothers (M/s.) v. M.P. State Electricity Board] ...2557

Van Upaj Vyapar (Viniyaman) Adhiniyam, M.P. (9 of 1969), Sections 5 & 15 - Confiscation - Trucks were seized for transporting timber - Trees were cut after sanction and timber was loaded in trucks in supervision of officials - Transit passes were also prepared - Held - It can not be said that timber was unauthorizedly carried out as transit passes were not in physical possession - There has to be a knowledge or connivance for holding a person guilty of an offence u/s 5 - Order of confiscation of trucks quashed - Petition allowed. [Ravi Dubey v. State of M.P.] ...2818

धारा 17 — स्थावर सम्पत्ति विक्रय करने की संविदा रजिस्ट्रीकृत होना आवश्यक नहीं है — कोई अरजिस्ट्रीकृत दस्तावेज संविदा के भागिक पालन की साक्ष्य के रूप में माना जा सकता है। (चंपत गिरि वि. रामदयाल) ...2630

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 54 — विक्रय या ऋण संव्यवहार — प्रतिवादी द्वारा वादी के पिता के हक में निष्पादित विक्रय विलेख के आधार पर प्रतिवादी को कृषि भूमि का कब्जा लेने से अवरुद्ध करने के लिए वाद — अभिनिर्धारित — मूल विक्रय विलेख प्रतिवादी द्वारा अपने कब्जे से पेश किया गया — यह टीप कि प्रतिवादी ने वादी के पिता को ऋण राशि प्रतिसंदत्त कर दी है, विक्रय विलेख में उल्लिखित की गयी — यह एक ऋण संव्यवहार था — विक्रय विलेख ऋण राशि को प्रतिभूत करने के लिए निष्पादित किया गया — दोनों अधीनस्थ न्यायालयों के निर्णय व डिक्री अपास्त — वाद खारिज। (मोती लाल पांडे वि. कैलाश पाठक) ...2601

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2 — एकल न्यायाधीश द्वारा संविधान के अनुच्छेद 226 के अन्तर्गत मूल अधिकारिता के प्रयोग में पारित निर्णय या आदेश के विरुद्ध रिट अपील पेश की जा सकती है, किन्तु एकल न्यायपीठ द्वारा अपीलीय अधिकारिता में पारित निर्णय व डिक्री के विरुद्ध रिट अपील पेश करने के लिए अधिनियम में कोई उपबंध नहीं किया गया है — निर्णय व डिक्री एकल न्यायाधीश द्वारा प्रथम अपील में पारित की गई — रिट अपील ग्रहण नहीं की जा सकती — रिट अपील खारिज। (लक्ष्मीनारायण वि. शिवलाल गूजर) ...2503

मूल्य वर्धित कर अधिनियम, म.प्र. (2002 का 20), धारा 70 — क्या मिश्रित डामर (emulsified bitumen) अधिनियम से संलग्न अनुसूचित II भाग 2 की प्रविष्टि क्र. 16 के अन्तर्गत नहीं आयेगा — अभिनिर्धारित — हाँ — वाणिज्यिक संस्करण में डामर (bitumen) और मिश्रित डामर (emulsified bitumen) दो भिन्न पदार्थ हैं, यद्यपि उक्त पदार्थों का उपयोग किसी समय सामान्य हो सकता है, किन्तु किसी समय अन्तर करने और नये उत्पाद जो वाणिज्यिक रूप से कुछ सीमा तक आर्थिक रूप से मिश्र हैं, के उपयोग के लिए उपयोग की कीमत पर भी विचार करना आवश्यक होगा। (टीकी इंटरप्राइजेस (मे.) वि. कमिश्नर ऑफ कमर्शियल टैक्स, एम.पी. इंदौर) ...3098

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), अनुसूची II का भाग V प्रविष्टि 22 — वाणिज्यिक कर का प्रतिदाय — याची ने मिल द्वारा रद्द कोयले पर याची से गलती से संग्रहीत वाणिज्यिक कर के प्रतिदाय का दावा किया — अभिनिर्धारित — याची गलती से संग्रहीत कर के प्रतिदाय का दावा करने का हकदार नहीं, जब तक वह यह साबित नहीं करता कि उसने दायित्व परव्यक्ति को नहीं दिया था और वस्तु का स्वयं उपयोग किया था — याचिका खारिज। (एस.सी. अग्रवाल एण्ड ब्रदर्स (मे.) वि. एम.पी. स्टेट इलेक्ट्रीसिटी बोर्ड) ...2557

वन सभ्य व्यापार (विनियमन) अधिनियम, म.प्र. (1969 का 9), धारा 5 व 15 — अधिहरण — इमारती लकड़ी का परिवहन करने के लिए ट्रक अभिग्रहीत किये गये — वृक्ष मंजूरी के बाद काटे गये और इमारती लकड़ी अधिकारियों के पर्यवेक्षण में ट्रकों में लादी गयी — अभिवहन पास भी तैयार किये गये — अभिनिर्धारित — यह नहीं कहा जा सकता कि इमारती लकड़ी अप्राधिकृत रूप से ले जायी गयी क्योंकि अभिवहन पास भौतिक कब्जे में नहीं थे — किसी व्यक्ति को धारा 5 के अन्तर्गत अपराध का दोषी ठहराने के लिए ज्ञान या मौनानुकुलता होनी चाहिए — ट्रकों के अधिहरण का आदेश अभिखंडित — याचिका मंजूर। (रवि दुबे वि. म.प्र. राज्य) ...2818

Wakf Act (43 of 1995), Section 54(4) - Removal of encroachment from Wakf property - Application u/s 54 filed before CEO for removal of encroachment raised by resp. No.2 - CEO has given a finding that resp. No.2 had not encroached upon the land belonging to Wakf and resp. No.2 is a tenant - Order challenged in W.P. - Held - Wakf has the remedy of filing the suit u/s 54(4), but in the instant case as the basic procedure for deciding such dispute has not been followed and finding has been recorded by the CEO contrary to the case set up by the resp. No.2 - Order set-aside with direction to decide the case afresh after recording the evidence of the parties - Petition allowed. [Wakf Masjid Dhuman Khan, Jabalpur v. Chief Executive Officer] ...3273

Water (Prevention and Control of Pollution) Act (6 of 1974), Sections 25 & 47, Criminal Procedure Code, 1973, Section 48 - Prosecution of Director - Complaint filed by Pollution Control Board against the Director of a Company that construction is being raised without obtaining permission from Board - Held - Offence was committed by Company - Company not impleaded as accused in complaint - Complaint cannot be filed only against Director - Complaint quashed - However, Board is at liberty to file fresh complaint. (Sudhir Garg v. M.P. Pollution Control Board) ...*37

Water (Prevention and Control of Pollution) Act (6 of 1974), Sections 25 & 47 - Prosecution of Director - Necessary allegations in the complaint - In the complaint, it should be stated that at the time of commitment of the alleged offence Director was In-charge and was responsible to the Company for the conduct of the business of the Company - It is the essential ingredient for constituting the offence u/s 25 of the Act - In absence of such allegation, Director cannot be prosecuted. [Sudhir Garg v. M.P. Pollution Control Board] ...*37

WORDS & PHRASES

"Any consumer dispute" - Meaning - Looking to the context of S. 21(b) of the Consumer Protection Act, 1986 - The word "any consumer dispute" would mean not only consumer dispute arising out of an original complaint filed before the District Forum, but also a consumer dispute arising out of an appeal from the orders of the District Forum before the State Commission. [Rajendra Singh Sisodiya v. M.P. Housing Board, Indore] ...2552

Conscious possession - Awareness of particular act - It is a state of mind, which is deliberated or intended. [Aasif Malik v. State of M.P.] ...3012

Pension - Ex gratia - Employee resigned from service after rendering more than 26 years of service - Employee had opted for pension while she was in service - Voluntarily tendering resignation is an act by which employee voluntarily gives up his job - Such situation would be covered by expression

वक्फ अधिनियम (1995 का 43), धारा 54(4) - वक्फ सम्पत्ति से अतिक्रमण का हटाया जाना - सी.ई.ओ. के समक्ष प्रत्यर्थी क्र. 2 द्वारा किये गये अतिक्रमण को हटाने के लिए धारा 54 के अन्तर्गत आवेदन पेश - सी.ई.ओ. ने निष्कर्ष दिया कि प्रत्यर्थी क्र. 2 ने वक्फ की भूमि पर अतिक्रमण नहीं किया है और प्रत्यर्थी क्र. 2 किरायेदार है - आदेश को रिट याचिका में चुनौती - अभिनिर्धारित - वक्फ को धारा 54(4) के अन्तर्गत वाद पेश करने का उपचार है, किन्तु प्रस्तुत मामले में ऐसे विवाद का विनिश्चय करने की मौलिक प्रक्रिया का पालन नहीं किया गया है और सी.ई.ओ. द्वारा प्रत्यर्थी क्र. 2 द्वारा स्थापित मामले के प्रतिकूल निष्कर्ष अभिलिखित किये गये हैं - आदेश इस निदेश के साथ अपास्त किया गया कि पक्षकारों का साक्ष्य अभिलिखित करने के बाद मामले का नये सिरे से विनिश्चय किया जाए - याचिका मंजूर। (वक्फ मस्जिद धुमानखान, जबलपुर वि. चीफ एग्जीक्यूटिव ऑफिसर)

...3273

जल (प्रदूषण निवारण तथा नियंत्रण) अधिनियम (1974 का 6), धाराएँ 25 व 47, दण्ड प्रक्रिया संहिता, 1973, धारा 48 - निदेशक का अभियोजन - प्रदूषण नियंत्रण बोर्ड द्वारा कम्पनी के निदेशक के विरुद्ध परिवाद पेश किया गया कि बोर्ड से अनुमति अभिप्राप्त किये बिना निर्माण किया जा रहा है - अभिनिर्धारित - अपराध कम्पनी द्वारा किया गया - परिवाद में कम्पनी को अभियुक्त के रूप में पक्षकार नहीं बनाया गया - केवल निदेशक के विरुद्ध परिवाद पेश नहीं किया जा सकता - परिवाद अभिखंडित - तथापि, बोर्ड नया परिवाद पेश करने के लिए स्वतंत्र। (सुधीर गर्ग वि. एम.पी. पोल्यूशन कंट्रोल बोर्ड)

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जल (प्रदूषण निवारण तथा नियंत्रण) अधिनियम (1974 का 6), धाराएँ 25 व 47 - निदेशक का अभियोजन - परिवाद में आवश्यक अभिकथन - परिवाद में यह कथित किया जाना चाहिए कि कथित अपराध किये जाते समय निदेशक कम्पनी का प्रभारी था और कम्पनी के कारबार के संचालन के लिए उत्तरदायी था - यह अधिनियम की धारा 25 के अन्तर्गत अपराध गठित करने के लिए आवश्यक तत्व है - ऐसे अभिकथन के अभाव में, निदेशक को अभियोजित नहीं किया जा सकता। (सुधीर गर्ग वि. एम.पी. पोल्यूशन कंट्रोल बोर्ड)

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शब्द और वाक्यांश

"कोई उपभोक्ता विवाद" - अर्थ - उपभोक्ता संरक्षण अधिनियम, 1986 की धारा 21(बी) के संदर्भ में - शब्द "कोई उपभोक्ता विवाद" का अर्थ न केवल जिला फोरम के समक्ष पेश मूल परिवाद से उत्पन्न उपभोक्ता विवाद से है बल्कि जिला फोरम के आदेशों से राज्य आयोग के समक्ष अपील से उत्पन्न उपभोक्ता विवाद से भी है। (राजेन्द्र सिंह सिसोदिया वि. एम.पी. हाउसिंग बोर्ड, इंदौर)

...2552

सचेतन कब्जा - किसी विशिष्ट कार्य का ज्ञान - यह मस्तिष्क की एक अवस्था है, जो जानबूझकर या आशयित है। (आसिफ मलिक वि. म.प्र. राज्य)

...3012

पेंशन - अनुग्रहपूर्वक - कर्मचारी ने 26 वर्ष से अधिक सेवा करने के बाद सेवा से त्यागपत्र दिया - कर्मचारी ने, जब वह सेवा में थी, पेंशन का विकल्प चुना था - स्वेच्छया त्यागपत्र निविदत्त करना ऐसा कार्य है जिसके द्वारा कर्मचारी स्वेच्छया अपनी नौकरी छोड़ देता है - ऐसी स्थिति शब्द स्वेच्छिक सेवानिवृत्ति के अन्तर्गत आयेगी - कर्मचारी अनुग्रह पेंशन की हकदार - केंद्रीय

voluntary retirement - Employee entitled for ex gratia pension - Order of CAT upheld - Petition dismissed. [Union of India v. Smt. Shashi Bai] ...2813

Workmen's Compensation Act (8 of 1923), 4-A(3)(a) - *Payment of interest and penalty - It commences from the date of accident. [United India Insurance Co. Ltd. v. Lavkush Prasad] ...2607*

Workmen's Compensation Act (8 of 1923), Section 4-A(3)(a) - *Power of Commissioner to award interest on compensation - Where there is no exclusion clause in policy, Insurance Company is liable to pay interest. [United India Insurance Co. Ltd. v. Lavkush Prasad] ...2607*

Workmen's Compensation Act (8 of 1923), Section 4-A(3)(b) - *Power of Commissioner to impose penalty in default of payment of compensation - Commissioner has no power or jurisdiction to direct payment of penalty in absence of any clause in insurance policy about acceptability of such liability. [United India Insurance Co. Ltd. v. Lavkush Prasad] ...2607*

प्रशासनिक अधिकरण के आदेश की पुष्टि की गई — याचिका खारिज। (यूनियन ऑफ इंडिया वि. शाशि बाई) ...2813

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 4-ए(3)(ए) — ब्याज और शास्ति का संदाय — यह दुर्घटना की तारीख से प्रारम्भ होता है। (यूनाइटेड इंडिया इश्योरेन्स कं. लि. वि. लवकुश प्रसाद) ...2607

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 4-ए(3)(ए) — प्रतिकर पर ब्याज अधिनिर्णीत करने की कमिश्नर की शक्ति — जहाँ पॉलिसी में कोई अपवर्जन खण्ड न हो वहाँ बीमा कम्पनी ब्याज अदा करने के लिए दायी है। (यूनाइटेड इंडिया इश्योरेन्स कं. लि. वि. लवकुश प्रसाद) ...2607

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 4-ए(3)(बी) — प्रतिकर के संदाय के व्यतिक्रम में शास्ति अधिरोपित करने की कमिश्नर की शक्ति — कमिश्नर को शास्ति के संदाय का निदेश देने की, बीमा पॉलिसी में ऐसे दायित्व की प्रतिग्राह्यता के बारे में किसी खण्ड के अभाव में, कोई शक्ति या अधिकारिता नहीं है। (यूनाइटेड इंडिया इश्योरेन्स कं. लि. वि. लवकुश प्रसाद) ...2607

APPOINTMENT TO THE MADHYA PRADESH HIGH COURT

We congratulate Shri S. Rafat Alam on his appointment as Chief Justice of the High Court of Madhya Pradesh. Shri Justice S. Rafat Alam, took oath as Chief Justice of the High Court of M.P. on 20/12/2009 at Bhopal.



S. RAFAT ALAM, CHIEF JUSTICE

Born on August 8, 1950. Graduated in Art with Honours from St. Columbus College, Hazaribagh in the year 1970 and did LL.B. from Patna Law College. Enrolled as an Advocate on April 1, 1975. Worked as Standing Counsel for the State of Bihar and also as Standing Counsel for the Bihar State Electricity Board, Patna University and Magadh University. Served as Part Time Lecturer in Law Faculty of College of Commerce, Patna from 1983 till his elevation as Judge of the High Court. Elevated as Permanent Judge of the Patna High Court from November 8, 1994. Transferred to Allahabad High Court on November 28, 1994. He was a senior judge at the Allahabad High Court. Appointed twice as Acting Chief Justice from December 30, 2004 to January 10, 2005 and from January 27, 2007 to March 6, 2007.

Sworn-in the 20th Chief Justice of Madhya Pradesh High Court on December 20, 2009 and took the charge on December 21, 2009.

We wish Shri S. Rafat Alam, Chief Justice, a successful tenure on the Bench.

OVATION TO NEW JUDGE

Hon'ble Shri Justice R. S. Garg, while felicitating the new Judge, said :-

Today we have assembled here to welcome our new Chief Justice, Hon'ble Shri Justice Syed Rafat Alam, who took oath of office on 20th December, 2009 at Bhopal. It is my proud privilege to welcome Your Lordship as the 20th Chief Justice of the Madhya Pradesh High Court.

Your Lordship was born on 8th August, 1950. Your Lordship graduated in Art with Honours from St. Columbus College, Hazaribagh in the year 1970 and did LL.B. from Patna Law College, Patna. Your Lordship was enrolled as an Advocate of Patna High Court on 01.04.1975 and practised in Patna High Court in Constitutional, Civil, Taxation, Labour and University matters. Your Lordship was appointed Counsel of Patna University, Magadh University and Bihar State Electricity Board. Your Lordship was also part-time Lecturer of Law in the Faculty of Law, College of Commerce, Patna from 1983 to 1994. Your Lordship also functioned as Standing Counsel for the State of Bihar. Your Lordship was elevated as Judge of the Patna High Court on 8th November, 1994. On being transferred, Your Lordship joined at Allahabad High Court on 28th November, 1994. Your Lordship was a Member in the Administrative Committee of the Allahabad High Court. Your Lordship also functioned as Acting Chief Justice of Allahabad High Court for sometime.

Your Lordship was Executive Chairman of U.P. State Legal Services Authority.

I understand that during Your Lordship's tenure in Allahabad High Court, Your Lordship has delivered several landmark judgments, which adorn law journals.

It may be mentioned that our High Court is one of the oldest High Courts in India. Since last so many years we have been trying our best to achieve new heights for disposal of cases. As on today our High Court's disposal per Judge is highest in the country. Our Judges are taking great pains for reducing the pendency of cases in the High Court so that the litigant-public may get justice in time.

My Lord, many of the Hon'ble Judges of this High Court were elevated as Judges of the Supreme Court and Chief Justices of other High Courts, which is a great honour to this Institution. Four Hon'ble Judges of this Court were also elevated as the Chief Justice of India namely, Hon'ble Shri Justice B.P. Sinha, Hon'ble Shri Justice Hidayatullah, Hon'ble Shri Justice J.S. Verma and Hon'ble Shri Justice R.C. Lahoti. Similarly, Hon'ble Shri Justice A.P. Sen, Hon'ble Shri Justice Faizanuddin, Hon'ble Shri Justice G.L. Oza, Hon'ble Shri Justice D.M. Dharmadhikari, Hon'ble Shri Justice P.P. Naolekar, Hon'ble Shri Justice A.K. Mathur, Hon'ble Shri Justice R.V. Raveendran, Hon'ble Shri Justice Deepak Verma and Hon'ble Shri Justice A.K. Patnaik from this High Court were also elevated to the Supreme Court.

The sanctioned strength of Courts in various cadres in the subordinate Judiciary of the State is 1288 and 1207 Judicial Officers are working. In the recent past, 49 Additional District Judges and 390 Civil Judges have been appointed, training was imparted to them and these officers have started functioning. With a view to provide justice at the door step to the litigant public, in Madhya Pradesh 39 Gram Nyayalayas have been established and made functional on 2nd October, 2009. With a view to cater the need of the Courts, more than 1100 Assistant Grade-III have been appointed and posted in various districts.

The pendency of cases in the High Court is 2,01,086 and in subordinate Court is 11,30,561.

Judicial Officers Training & Research Institute, Jabalpur is imparting training to the Judicial Officers in various branches of law. The Institute is publishing a journal namely 'JOTI Journal' on bi-monthly basis and provides it to all the Judicial Officers of the State free of cost. From time to time, Hon'ble Judges, Judicial Officers and experts in the field of law contribute illuminating articles on legal issues of day to day importance for publication in JOTI Journal for guidance of Judicial Officers. Latest pronouncements of the Apex Court as well as the High Court are also included in this Journal for information of the Judicial Officers as some of the Journals are not easily available to the Judicial Officers who are posted at far-flung areas.

I feel confident that under the dynamic leadership of Your Lordship, this Court will have glorious future. On this occasion, while greeting you for taking over the reins of the Administration of justice of this State, I extend warm welcome and wish a successful tenure while adorning the office of Chief Justice, High Court of Madhya Pradesh. I on my behalf and on behalf of all my learned Brother and sister Judges assure Your Lordship our full cooperation.

My Lord, I shall fail in my duty if I do not say something about Bar. Lawyers and the association are like Maa Narmada. They accept everything. Long back when I came they accepted me with my shortcomings. I am sure, they would accept Your Lordship, when there are no shortcomings, with open door, open hands and open heart.

Shri R. D. Jain, Advocate General of M. P. while felicitating the new Judge, said :-

I heartily welcome and felicitate Hon'ble Justice S. Rafat Alam on his appointment as Chief Justice of Madhya Pradesh High Court, on my own behalf and on behalf of the Law Officers of the State.

Born on 8th of August 1950 you successfully graduated in Arts with Honours from St. Columbus College Hazaribagh in the year 1970. You did LL. B. from Patna Law College, Patna. After completing studies you were enrolled as Advocate on 1st of April 1975. You practiced in Patna High Court in Constitutional, Civil, Taxation, Labour and University matters. You were standing Counsel for the State of Bihar and also Standing Counsel for the Bihar State Electricity Board. On account of your proficiency in Educational matters you were also appointed as Standing Counsel of Patna and Magadh Universities.

Your Lordship had keen interest in imparting education to persons who wanted to study law and to remain in close contact with them. To fulfill this object Your Lordship also accepted the assignment of Part Time Lecturer in Law Faculty of College of Commerce Patna.

Your Lordship continued to March ahead and looking to your outstanding qualities and extraordinary performance in the field of advocacy elevated as permanent Judge of Patna High Court on 8th of NOVEMBER 1994. Thereafter your Lordship were transferred to ALLAHABAD High Court on 28th November 1994. In Allahabad your Lordship were respected as outstanding judge having deep insight of law in all fields and the judgments delivered by Your Lordship speak volumes about your legal acumen. A short resume of the above chronology would reveal that Justice Syed Rafat Alam never looked behind after he started his career in the field of law.

Your Lordship continued to touch heights and in whatever walks of life your Lordship marched, success was easily achieved and if I quote Faiz Ahmed Faiz it can be said that :-

“फैज की राह सरबसर मंजिल,
हम जहाँ पहुँचे कामयाब आये”

All the above achievements also reflect on the labour which was put by you and if we repeat the words of Milton we can say that:

“Heights by great men were achieved
Not by sudden flight, but
While their companions slept
They toiled upwards at night”

The Supreme court has rightly said that the judges and lawyers are partners in administration of justice. It is therefore of utmost importance that there should be respect and proper understanding between the bench and the bar.

My lord has keen desire to bring an era of modernization in the judicial circles.

As acting Chief Justice of Allahabad High Court Hon'ble Justice Alam inaugurated a computer centre of District court Allahabad and it was due to the effort of my lord that Allahabad was chosen as the pilot district for full computerization of District courts under city civil courts where a browser based software is being used. The website has been designed by High court unit of National Informatics Centre. At that time Justice Rafat Alam emphasized the need of knowledge about computer in judicial working.

Your Lordship delivered several memorable judgements which will guide us in solving our disputes and some of them touching subjects of common occurrence can be profitably quoted here.

Mr. Justice Rafat Alam sitting with Justice Sudhir Agarwal laid down certain guidelines to be followed by the administrators in matters which crop up before the courts more often than not. Justice Rafat Alam tried to thwart the corrupt practice usually followed in administrative circles where by favoritism is shown to wait listed candidates in public employment. This mal practice was disdained by them in their judgement. Similarly my lord frowned the attempts of regularizing candidates who have no proper qualification for the job since in these fields corruption was found rampant. The disputes, which consume major time of the courts, are about the problem of employees who are transferred contrary to policy and my lord very emphatically laid down that mid session transfers or transfers against the policy can not be the subject matter of challenge. However my lord was also conscious about the fate of casual laborers and the need of settling them within the frame work of law was also emphasized. These are some of the instances where my lord took note of malpractices and tried to device ways and means to cure them. Besides these cases, my lord has decided a large numbers of cases having impact on public life.

Today we the Advocates are celebrating your Lordship's appointment but the day is not far when every citizen of this state will celebrate it and be happy to have your Lordship as chief justice of this court. Your Lordship has wide experience of functioning of legal system in this country and you will utilize it to make this court a great institution under your leadership.

Once again I felicitate your lordship on this occasion.

Shri Radhelal Gupta, Asstt. Solicitor General, Union of India while felicitating the new Judge, said :-

It is great pleasure for all of us to welcome Hon'ble Shri Justice Syed Rafat Alam as Chief Justice of this great temple of justice. We offer our heartiest welcome and congratulations to his Lordship and wish to tell him how greatly we rejoice that he has become the Chief Justice of this traditionally rich High Court. My Lord has already taken oath on twentieth of this month as Chief Justice of this High Court of Madhya Pradesh. Today is 21st and my Lord is stepping in the highest office of State judiciary, which is co-incidentally sum total of "786". So it is 'BISMILLAH' means beginning with the name of almighty.

My Lord Justice Rafat Alam was born on 8th Aug 1950 in Bihar where the holy river Ganga flows in serenity. After completing his graduation in Art with Honours from St. Columbus College Hazaribagh, LL.B. from Patna College, Patna, in April 1975 his Lordship was enrolled as an Advocate with Bar Council of Bihar. Thereafter he practised in Patna High Court on Constitutional, Civil, Taxation, Labour and University matters. His Lordship was standing counsel for the State of Bihar, Electricity Board, Patna, Patna University and Magadh University. His Lordship also served as lecturer in Law Faculty of College of Commerce, Patna from 1983 till his elevation as Judge of High Court of the State of Bihar. His Lordship was elevated as Judge of the Patna High Court on 8th Nov 1994, and was transferred to Allahabad High Court on 28th Nov 1994. The journey of your Lordship started from the holy river of Ganga and continued upto Allahabad, where there is Sangam of three holy rivers "Ganga, Jamna and Saraswati" wherein the pilgrims of the country takes pious dips to take blessing of holy rivers. Now your Lordship has come to a place where also a holy river Narmada flows. About which it is said that merely by having a glimpse a person can have the blessings and further I wish the blessings of Maa Narmada be bestowed upon your Lordship.

Fortunately as much as I know your Lordship and I understand his personality, what I feel is that Hon'ble Shri Justice Rafat Alam is justice conscious. Although Office of the Chief Justice of MP has been proven to be the gate way to Supreme Court, because right from the first Chief Justice of High Court of MP Shri Justice Hidayat Ullah upto the former Chief Justice, Shri Justice A.K. Patnaik and most of Chief Justices have been elevated to the Apex Court of the nation and despite my best wishes for his Lordship for his further elevation to Supreme Court, I believe that he is a justice conscious judge not merely a career conscious. To my knowledge, probably, it is because of his faith on holy "Quran" which persistently and consistently mandates for delivery of Justice to the subjects of the nation, without expecting any return.

Your Lordship has already succeeded to touch the mount of glory, in the judicial field and has proven to be proud of great judicial system of the country like the meaning of his name which in isolation "Rafat" means "Elevation and "Alam" means "Universe" and in combination it means, a person who has achieved the "Heights of Universe". To my little mind Hindi translation of your Lordship's

name "Rafat Alam" is "दुनिया की बुलंदियों को छुने वाला" which my Lord has proven. Actually my words in respect of your Lordship are just like throwing scent on Jasmine.

I, on behalf of Govt. of India all the Law Officers of Central Govt and on my own behalf, welcome and congratulate Hon'ble Shri Justice Syed Rafat Alam as Chief Justice of this High Court. I wish that your Lordship's future will be bright one, which will bring glory and will-enhance, dignity of the Judicial System.

At the end, I again welcome and congratulate my Lord Shri Justice Rafat Alam with the following lines :-

"May flowers, always line your path and sunshine light your day,
May songbirds serenade you every step along the way,
May a rainbow run beside you in a sky that's always blue,
And may happiness fill your heart each day your whole life through."

Shri R. P. Agrawal, President, High Court Advocates' Bar Association, Jabalpur while felicitating the new Judge, said :-

I, on behalf of the High Court Advocates' Bar Association and my own behalf, do hereby warmly welcome My Lord the Chief Justice on his appointment as such of this High Court.

My Lord went from Patna to Allahabad. Both these eminent and historical cities of the country are located on the banks of river Ganga. From the bank of river Ganga, My Lord has now come to Jabalpur which is located on the banks of holy river Mother Narmada. It is said that whatever a person spiritually gains by taking a dip in the holy river Ganga, he gets the same by having a mere glimpse of river Narmada. My Lord will get here respect, love, affection, peace and solace in abundance.

My Lord was born on 08.8.1950; elevated as a permanent Judge of Patna High Court on 08.11.1994 and thereafter transferred to the Allahabad High Court on 28.11.1994 and now My Lord has taken oath as Chief Justice of the High Court of Madhya Pradesh having thus earned a long judicial experience.

On coming into force of the State Re-organization Act, 1956 a new State of Madhya Pradesh was formed comprising within itself the erstwhile States of Madhya Bharat, Vindhya Pradesh and Bhopal. The High Court of old Madhya Pradesh was at Nagpur and under section 49 of the 1956 Act, the High Courts exercising immediately before the appointed day, the jurisdiction in relation to the existing States of Bombay, Madhya Pradesh and Punjab, as from the appointed day were deemed to be the High Courts for the new States of Bombay, Madhya Pradesh and Punjab. Thus, the High Court of Madhya Pradesh is the successor High Court of the erstwhile Nagpur High Court. The High Court of Madhya Bharat and the courts of Judicial Commissioners for Bhopal and Vindhya Pradesh were abolished with effect from 01.11.1956 and the President of India under sub-section

(1) of Section 51 of the 1956 Act issued an order dated 30.10.1956 appointing Jabalpur as the principal seat of High Court of the present State of Madhya Pradesh. The Madhya Pradesh High Court is, thus, functioning since then with principal seat at Jabalpur and benches at Indore and Gwalior.

The High Court of Madhya Pradesh, like other High Courts of the country, has a glorious past. It had very eminent judges like Sir Gilbert Stone, Vivian Bose, M. Hidayatullah, P.V.Dixit, A.P.Sen, G.P.Singh, J.S. Verma, R.C. Lahoti, R.V. Raveendran and A.K.Patnaik. My Lord is now next in the series. Although I did not have the privilege of appearing before My Lord, but my fellow advocates at Allahabad have told me that My Lord is a very kind hearted and straight forward Judge, hearing cases patiently and delivering justice in the real sense within the four corners of law. The sobriety, sincerity and pleasing manners are the valuable assets of My Lord. During my brief interaction at Bhopal immediately after oath taking ceremony, I found my Lord to be simple, unassuming, yet a man of firm conviction having great concern for the independence and integrity of the institution. I trust and hope that My Lord would attain summit of literary renown and would be remembered as one of the eminent judges.

The State of Madhya Pradesh is comparatively a peaceful state. It is largely inhabited by members of scheduled caste/ scheduled tribe communities and although, improvement of their lot is primarily the concern of the State, yet the judiciary in the past had taken their care in this regard within permissible limits of law.

One of the problems, practically of all the High Courts, which is often raised, is about huge pendency of cases. This problem, as far as Madhya Pradesh High Court is concerned, is not so alarming, and instead, it appears to be on much better footing as compared to other High Courts. Even so, the members of the Bar are equally concerned, in whatever shape, the problem exists, and on behalf of the members of the Association, I would like to say, that they will give their fullest cooperation to tackle the same.

The powers and duties of the Hon'ble Chief Justice and Judges have been spoken of by the Apex Court in the case of High Court of Judicature, Rajasthan vs. Ramesh Chand Paliwal, AIR 1998 SC 1079 and I respectfully quote:-

"40. As pointed out above, under the constitutional scheme, Chief Justice is the supreme authority and the other Judges, so far as officers and servants of the High Court are concerned, have no role to play on the administrative side. Some Judges, undoubtedly, will become Chief Justice in their own turn one day, but it is imperative under constitutional discipline that they work in tranquility. Judges have been described as "hermits". They have to live and behave like "hermits" who have no desire or aspiration, having shed it through penance. Their mission is to supply light and not heat. This is necessary so that their latent desire to run the High Court administration may not sprout before time, at least, in some cases."

I wish My Lord a very happy and glorified tenure as the Chief Justice of this High Court.

I am sure that, my Lord would soon join the Galaxy of Judges of the Supreme Court. I on behalf of High Court Advocates' Bar Association, and my own behalf, once again welcome My Lord as the Chief Justice of this High Court.

Shri Anil Khare, President, M. P. High Court Bar Association, Jabalpur while felicitating the new Judge, said :-

I feel it to be my proud privilege when I stand here on behalf of more than 3000 members of the M.P. High Court Bar Association, Jabalpur to welcome My Lord, Justice Shri Syed Rafat Alam on his appointment as the Chief Justice of the M.P. High Court.

On this glorifying moment, I feel it to be my duty to apprise My Lord with the background of this Bar Association. The inception of the M.P. High Court Bar Association, Jabalpur relegates back to the year 1956 when the High Court of Madhya Pradesh was constituted. Right from its inception, the legal fraternity has witnessed and felt the M.P. High Court Bar Association's well etched principles, determination and endeavor for the purpose of strengthening the legal system through its great luminaries like late Shyama Charan Upadhyaya, late Y.P. Verma, late Diwan Bahadur Sita Charan Dubey, late M. Adhikari, late R.K. Tankha, late Rajendra Singh, late R.S. Dabir, late R.P. Verma and late Y.S. Dharmadhikari to name a few, though the list is very long.

It is an honour for both the Bar and the Bench that Justice M. Hidayatullah was the first Chief Justice of the High Court of Madhya Pradesh. Years have passed by and the legacy of Justice M. Hidayatullah has been carried forward. My Lord has now been appointed as the Chief Justice of this Court to glorify it further.

This is a time where a feeling of jubilation is surrounding My Lord. Amidst this moment of joy and happiness, a conscious feeling of responsibility and duty is also surrounding within My Lord's mind. This is also an occasion where the expectation of the Bar can be put forth to My Lord. We feel that it is only the independent judiciary which can protect our Constitution given by 'We the People'. To preserve the rule of law is also the domain of judiciary. Such a hope was expressed by Justice Shri Kania at the inaugural ceremony of the Supreme Court of India on 28.1.1950 who said; "We hope and trust that the Courts will maintain the high traditions of the judiciary and perform its duties without fear and favour. If we succeed in doing so, we shall contribute our share to the progress of our Republic and render service to this country which none else can render." The hope so expressed by Justice Kania in the year 1950 is still to be achieved.

Never before was there a criticism of the judicial system in the manner as it is being done today. The judiciary though having become more innovative is under

the clouds which is shaking the confidence of 'We the People' who gave this Constitution. The concept of judicial accountability in the shape of introduction of a Bill is indicative of the fear and distrust prevailing in the minds of 'We the People'.

I put a question as to who owes the responsibility of this fear? Whether it is the Bench or the Bar. To put it precisely, the members of the Bar are the officers of the Court and without their contribution the chariot of Justice cannot move. I can also put it in a way that they are the same side of one coin. It is a time when the Bench and the Bar are required to understand their duties without exercising the right of might. It is said that, "for every right that you cherish you have a duty which you must fulfill. For every hope that you entertain, you have a task you must perform. For every good that you wish could happen, you will have to sacrifice your comfort and ease. There is nothing for nothing any longer"

I feel that the concept of accountable Judiciary was not incorporated by the framers of the Constitution because it was not thought necessary. The oath under the Constitution makes a Judge accountable, to the expectations of the people. Once a person is appointed as a Judge he is beyond any criticism or question and is supposed to be above board. However there has to be transparency and accountability in the selection for appointment of Judges of the High Court.

Honorable Justice J.S. Verma in the case of **Supreme Court Advocates-on-Record Association v/s Union of India** observed as follows:- "It is obvious that only those persons should be considered fit for appointment as Judges of the Superior Judiciary who combine the attribute essential for making an able, independent and fearless Judge. Several attributes together combined to constitute such a personality. Legal expertise, ability to handle cases, proper personal conduct and ethical behavior, firmness and fearlessness are obvious attributes of a person suitable for appointment as a Superior Judge".

It is said that the Bar is the judge of the Judges. Though the necessary requirements for considering a person for appointment as a Judge of the Superior Judiciary have been spelled out by the Apex Court but, still something is lacking. The necessity of consultation with the Bar has not been included but still the same requires transparency to the extent of disclosing the names considered for appointment to the Bar. Any resentment, after the appointment of a Judge, towards his conduct by the Bar may be uncalled for.

The accountability of the Judiciary is towards the Constitution and the preservation of the rule of the law.

I assure My lord on behalf of the Bar that it would always stand as a live link between the expectations of the people and the bench. The Bar is a shield and a protector for the bench against unscrupulous forces.

The professional profile of My Lord has been read out by my earlier speaker and without any hesitation I can perceive that the erudition and perspicuity were the hallmarks of My Lord's action. On the appointment of My Lord as the Chief Justice of this prestigious High Court, great responsibilities have been shouldered

upon you. The Chief Justice is the leader of the institution and the captain of the team. My Lords has all the abilities of leadership and has the strength to bind the institution together.

I take this opportunity to apprise My Lord that a balance is required to be maintained while exercising the powers under Article 235 of the Constitution of India which deals with the control of the subordinate Courts. It appears that the control exercised by the High Court over the District Court and the Courts subordinate thereto has taken away their fearlessness up to a great extent. We earnestly hope that hinder the able leadership of My Lord a balance would be maintained so as to make the subordinate Judiciary independent and fearless.

I am conscious that the occasion which I am addressing is the ovation to My Lord which literary means enthusiastic display of appreciation from an audience. In Roman it means the ceremonial entrance of a commander whose victories did not warrant a triumph. I as President of High Court Bar Association feel duty bound to express the sentiments and emotions of the Bar to My Lord on this occasion. During the tenure of My Lord as Chief Justice of this Court great laurels would be achieved. The expectations and hope of 'We the People' are very high from My Lord. I may take this opportunity to express the hope of 'We the People' in the words of Late Nani Palkhivala, the great Jurist and the great Lawyer, who said

"When I die give my sight to the man who has never seen a sunrise. Give my heart to one who has known the agony of the heart. Give my blood to a youth pulled from the wreckage of a car so that he might live to see his grandchildren play. Let my kidneys drain the poison from another's body. Let my bones be used to make a crippled child walk. Burn what is left of me and scatter the ashes to the wind to let the flowers grow. If you must bury something, let it be my faults and my prejudices against my fellowmen. Give my sins to the devil. Give my soul to the God. If you wish to remember me, do it with a kind deed or words to someone who needs you. If you do all I've asked, I'll live for ever".

With these words I on behalf of M. P. High Court Bar Association and also on my own behalf once again warmly welcome you. I hope for a bright and a successful tenure as the Chief Justice with all the goodness of the almighty to be showered upon you.

Shri Rameshwar Neekhara, President, M. P. State Bar Council, while felicitating the new Judge, said :-

मध्य प्रदेश उच्च न्यायालय के न्याय क्षितिज पर 20वें मुख्य न्यायाधिपति के रूप में फिर एक नया सूरज आलोकमान हुआ है। आज के यह क्षण हम सभी के लिये गौरव और अभिमान से भरे हैं जब हम अपने प्रदेश में नव नियुक्त न्यायाधिपति माननीय श्री जस्टिस सैयद रफत आलम के पदभार ग्रहण करने पर उनका स्वागत कर रहे हैं।

माननीय श्री जस्टिस सैयद रफत आलम जी-

आपके पदभार ग्रहण करने के इस अवसर पर सर्वप्रथम मैं मध्यप्रदेश राज्य अधिवक्ता परिषद, सभी सदस्यों एवं प्रदेश के 70 हजार अधिवक्ताओं की ओर से आपके इस प्रदेश के मुख्य न्यायाधिपति के रूप में पदभार ग्रहण करने पर आपको शुभकामनाएँ देते हुए आपके सफल कार्यकाल की मंगलकामना करता हूँ।

आपके बहुआयामी व्यक्तित्व की गूँज पिछले कुछ दिनों से सारं मध्य प्रदेश में प्रतिध्वनित हो रही थी, विशेष कर जब से आपके मध्य प्रदेश के मुख्य न्यायाधिपति के रूप में आने के समाचारों को बल मिला था, तब से प्रदेश का न्याय जगत एवं विधि जगत उत्सुकता से इंतजार कर रहा था।

आपका जन्म 8 अगस्त 1950 को बिहार प्रदेश में हुआ था एवं विधि शिक्षा पूर्ण करने के पश्चात् आपने पटना उच्च न्यायालय में विधि व्यवसाय प्रारम्भ किया और आपके कानून के गहन ज्ञान, अनुभवों एवं बुद्धि कौशल से शीघ्र ही आपने पटना उच्च न्यायालय के विधि वेत्ताओं में अपनी पृथक् पहचान बनाई। वर्ष 1994 में 8 नवम्बर को आपको पटना उच्च न्यायालय का न्यायाधिपति नियुक्त किया गया एवं तत्पश्चात् 28 नवम्बर 1994 से आप इलाहाबाद उच्च न्यायालय में न्यायाधिपति के रूप में पद को गरिमा प्रदान कर रहे थे। पिछले 15 वर्षों में इलाहाबाद उच्च न्यायालय में आपके द्वारा दिये गये न्याय निर्णय, आपके गहन ज्ञान और चिंतन को परिलक्षित करते हैं।

एक विधि व्यवसायी के रूप में आपने गंगा की भूमि के गौरव को नई आभा प्रदान की और इलाहाबाद में न्यायदान के महान दायित्व का सफलतापूर्वक निर्वाह कर गंगा की भूमि के गौरव को फिर आलोकमान किया। मध्य प्रदेश में आपकी कर्मस्थली नर्मदा के अंचल पर बसी है और अब आपके व्यक्तित्व की आभा से नर्मदा अंचल का गौरव भी उसी अनुरूप आलोकमान होगा और प्रदेश के न्याय जगत में नये युग का सूत्रपात होगा, इस हेतु मैं आशावित हूँ।

आपके पदभार ग्रहण करने के इस अवसर पर मैं विशेष रूप से यह भी कहना चाहूँगा कि आज के बदलते परिवेश में आम आदमी के लिये न्याय व्यवस्था ही विश्वास की अंतिम कड़ी है। जिस स्तर पर सनाज में विसंगतियाँ जन्म ले रही हैं उससे हमारा सामाजिक ढाँचा घरमरा रहा है और इन प्रतिकूलताओं का असर हमारी न्याय व्यवस्था पर भी हो रहा है। कानूनी पेंचीदगियों के चलते न्याय में अनावश्यक विलंब अनेक भ्रांतियों और कुंठाओं को जन्म दे रहा है। ऐसी स्थिति में आपका मार्गदर्शन प्रदेश की न्याय व्यवस्था को अपेक्षाकृत रूप में और अधिक विश्वसनीय एवं मजबूत करेगा, इस हेतु भी मैं आशावित हूँ।

प्रदेश के 70 हजार अधिवक्ताओं की ओर से मैं न्यायदान की प्रक्रिया को सरलीकृत करने में आपकी परिकल्पनाओं और योजनाओं में सहयोग देने हेतु आपको आश्वस्त करता हूँ।

इन्हीं भावनाओं के साथ आपके पदभार ग्रहण करने के अवसर पर मैं मध्य प्रदेश राज्य अधिवक्ता परिषद की ओर से एवं स्वयं अपनी ओर से आपका स्वागत एवं अभिनंदन करता हूँ एवं यह मंगलकामना करता हूँ कि आपकी प्रगति का यह क्रम आगे भी आपको नई ऊँचाईयों को स्पर्श करने में निरंतर रूप से बना रहे।

जय हिन्द,

Shri S. C. Datt, President, Senior Advocates' Council, Jabalpur while felicitating the new Judge, said :—

My Lord, on behalf of Senior Advocates' Council and on my own behalf, I welcome you on your appointment as the Chief Justice of Madhya Pradesh High Court. I offer Your Lordship felicitations on this appointment.

Your Lordship comes from Patna, which has seen great Judges and Allahabad, which has produced eminent judges. They are great High Courts with rich history. Your Lordship brings rich experience of the two High Courts.

The High Court of Madhya Pradesh, too has a great tradition of fearless dispensation of justice. High Court of a State is unique in Constitution and is guardian of constitutional governance and the rule of law. We are sure that with Your Lordship's rich and varied experience Your Lordship would be able to give direction to the dispensation of justice in this High Court which would take it to new heights.

My Lord, the office of the Chief Justice is not simply lustrous but carries with it great duties and responsibilities which few can appreciate. You, being the leader, have to carry other brother judges with you to maintain high traditions of this High Court. You have to inspire in them the cooperative spirit and lead them to work to enhance the prestige of this Court. As Chief Justice, you have the authority and responsibility to constitute the Benches. My Lord, the Benches may be so constituted as the best of the talents of the Judge can be taken out of him.

You are new to this High Court but we are sure that in a short time you will be able to find out the talents of your brother Judges.

My Lord, the Bar of this State has produced great lawyers, eminent in law, bold on demanding occasions, generous and gentlemen to the core. The qualities of Judges reflect the quality of the Bar. The tone is not only set by eminent lawyers but also by good Judges. We are sure that Your Lordship would endeavour to strengthen the Bar so that the Bench may stay stronger.

This will also help in quick and speedy dispensation of Justice and in deciding cases early.

I again offer Your Lordship sincere felicitations and wish you a very successful tenure as the Chief Justice of Madhya Pradesh High Court.

Reply to Ovation by Hon'ble Shri S. Rafat Alam, Chief Justice :-

First of all I would like to express my deep gratitude to all those who have assembled here for the Reference on my assumption of office of the Chief Justice of this majestic and grandiose High Court, which has its peculiar glory and high traditions.

The Madhya Pradesh High Court is the successor High Court of Nagpur High Court which was established on 2nd June, 1936 by the Letters Patent issued by King George. On reorganization of the States, the Madhya Pradesh High Court was constituted on 1st November, 1956. Both, the Bench and the Bar in Madhya Pradesh have established healthy traditions and practices on account of which this Court is known as one of the best High Courts of the country.

I feel proud that I have come to serve this High Court which has the distinction of producing eminent jurist like justice M. Hidayatullah, who made his mark and brought fame to this Court by adorning the highest seat of Chief Justice of India. Hon'ble Mr. Justice J.S. Verma and Hon'ble Mr. Justice R.C. Lahoti were also from this Court, who, by their versatile talent adorned the highest seat of the Chief Justice of India. The contribution made by Hon'ble Mr. Justice G.P. Singh, former Chief Justice of this Court and author of many law books, cannot be ignored in the field of law.

After my elevation at Patna High Court, most of the years as a Judge were spent in Allahabad High Court which had a long tradition of Reference for welcoming the new Chief Justice. However, by the passage of time this practice has been curtailed there apparently for the reason that such references threatened to become too frequent and time consuming which a High Court grappling with staggering arrears could ill afford.

The State of Madhya Pradesh being a vast State, I had an impression that like Uttar Pradesh this High Court would also be struggling with arrears. However, I feel relieved to learn that the arrears in this Court is not as high as in Uttar Pradesh and as I have learnt, the total pendency in this Court is 2,01,086 (Two lacs one thousand eighty six). I feel this is also on higher side and needs urgent steps to reduce it. The Courts of law are flooded with arrears and this Court is no exception to it. It is the duty of every one of us to try to refurbish the legal system so as to avoid long delay in the disposal of cases. The lengthy argument without any relevance with the issues involved is to be avoided. I strongly believe that the agenda of quick disposal cannot be accomplished without the active cooperation of the learned members of the Bar. The Bar of this Court have made great contribution to bring fame to this Court. I feel that for a strong judiciary there must be a strong Bar, which plays a very important role in maintaining the dignity and standard of judiciary.

The legal profession has direct impact and has relevancy in the society. The profession of law is not only of being professionally successful but one should be sensitive to the plight of the disadvantaged and downtrodden sections of the society. The lawyers not only counsel his clients interest as profession for a fee but he is also a social activist, politician, critic of the socio political system and agent for positive social and political change and, therefore, they are considered to be the most intelligent section of the society. Their contribution in achieving the goal of freedom of our country will always be remembered by the nation.

Today, after more than sixty years of independence, the judiciary can take legitimate pride in its contribution towards strengthening of the democracy of the country. It has always acted as a vigilant institution against the erosion of values and ethics in public life. The High Court has earned the respect of the people because of its sober reflection on matters brought before it, the wisdom and knowledge of its Judges and lawyers, their power of dispassionate reasoning and their deep sensitivity towards the idea of fair play. Liberty and justice are safe in the hands of judiciary.

The greatest problem which our judiciary is facing these days is mounting arrears and delay in dispensation of justice. I believe that the Bar of this Court will render all cooperation to the Bench for speedy disposal of cases so that justice may be dispensed without delay. It is generally said that the Bench and Bar are the two wheels of chariot of justice. I also endorse the same and am of the view that Bar also plays an important role in dispensation of justice. If the Bar is learned and renders good assistance to the Bench, certainly justice will be done to the parties without delay. The quality of judgment depends upon the standard of arguments advanced by the lawyers. No doubt, a lawyer when accepts brief, is bound by the interest of his client but at the same time he being a responsible person of the society, cannot ignore the duty which he owes towards the Bench, i.e. to assist the Court in arriving at a correct conclusion so that justice and justice alone is done.

In my entire career as a Judge, I have always tried to give my best out of my anxiety to ensure that injustice is not done. We must bear in mind that Judges dispensing justice are under constant gaze of the Lord of the Universe. Every Judge is accountable to divine power for what he dispenses as a Judge. It is a sovereign function and must be discharged with complete devotion and dedication.

I assure all of you that I will discharge my function as Chief Justice of this Court with the cooperation of my brother Judges, members of the Bar, officers of the Registry and other officers and employees of the Court, who are part of the system and if anyone is lacking the system will not work properly. Therefore, my efforts would be to ensure that all the wings of this

Court work in harmony, cooperation and in the interest of the institution so that the glory and high tradition of this Court is maintained.

I am thankful for the words of appreciation expressed by the learned speakers. I shall make all endeavour to prove myself to your expectation.

Thank you.

APPOINTMENT TO THE MADHYA PRADESH HIGH COURT

We congratulate Shri Alok Aradhe on his appointment as Judge of the High Court of Madhya Pradesh. Shri Alok Aradhe took oath of the High Office on 29th of December, 2009.



JUSTICE ALOK ARADHE

Born on April 13, 1964 at Raipur. Passed B.Sc. and LL.B. Enrolled as Advocate on July 12, 1988. Practiced on Civil & Constitutional, Arbitration and Company Matters in the High Court of Madhya Pradesh at Jabalpur.

Elevated as Additional Judge of the High Court of Madhya Pradesh on December 29, 2009.

We wish Shri Justice Alok Aradhe, a successful tenure on the Bench.

Shri Prashant Singh, Additional Advocate General of M. P. while felicitating the new Judge, said :-

It gives me immense pleasure to extend your Lordship a very hearty welcome in this Hon'ble High court. We are very happy to find Hon'ble Shri Justice Alok Aradhe.

My Lord, Hon'ble Shri Justice Alok Aradhe is today adorning the office of a Judge and it is matter of joy for all of us that a young man amongst us holding this Godly Assignment and starting his journey with the blessings of Maa Narmada.

My Lord, as we know you did your schooling and college education at Raipur. Thereafter, you came to Jabalpur, acquired the degree of Law from Hitkarni Law college in the year 1988 in the clasp of Maa Narmada. Thereafter, he joined the legal profession and started practice under the able guidance of Late Shri N.S. Kale, Senior Advocate. As his Senior Late Shri N.S. Kale was expert of Civil and Constitutional matters he also acquired huge expertise and knowledge about Civil, Constitutional, Arbitration, Banking Law, Administrative and Companies matters. Looking to his ability to deal with such matters various Corporate Bodies and Public Sectors i.e. BHEL, SAIL and many others engaged him as their retainer. Not only this he had also been appointed as Government Advocate for the State. Looking to his ability this Hon'ble Court had also been pleased to designate him as Senior Counsel. Having acquired such vast experience, knowledge and ability Hon'ble Chief Justice Shri G.P. Singh has chosen him as his associate for revising and issuing the 5th Edition of his well known book "Principles of Administrative Law". At present he was busy in revising and issuing the 6th edition of the said book.

My Lord, Hon'ble Shri Justice Alok Aradhe while practicing in this court was associated with such group of lawyers out of which most of them namely, Hon'ble Shri Justice R.S.Jha, Hon'ble Shri Justice Preetinkar Diwakar, Hon'ble Shri Justice Manindra Shrivastava and Hon'ble Shri Justice Prashant Mishra have been elevated as Judge and adorned the office of Judge and dispensing the justice. In that series of same garland Shri Aradhe is the next pearl.

My Lord, dispensation of justice is an attribute of God. We wish that you will acquit yourself of the assignment with pride, dignity and honour.

My Lord, people have high expectations from a Judge. My Lord with your intrinsic ability you have the capacity to extract the truth from the judicial proceedings by application of the law and that's why you have been appointed as a judge.

My Lord, now a days every person and society is hungry of justice. In that matter Your Lordship may consider how your Lordship should approach the litigants before you with the magnanimity and understanding that is expected from Your Lordship. The justice delivered by you should be like this that the High court has

touched the heart on the subject. I am confident that your Lordship would put up an excellent performance fearlessly, courteously patiently, by hearing the lawyers to the view points that are propounded and exerted and Your Lordship will uphold the cherished ideals symbolised in the constitution and I am certain that this is not an empty hope.

My Lord, this Hon'ble High Court has very high traditions and we have very high expectations and hope that you shall do your utmost to uphold the dignity and decorum of this Hon'ble High Court.

My Lord, I am holding the office of the Addl. Advocate General representing the State of MP, therefore, for and on behalf of the Advocate General, Law officers and the State I assure that the Law officers of the State will extend their fullest cooperation in the discharge of your difficult duties.

My Lord, I wish you a very successful and happy tenure as a Judge of this Hon'ble Court.

Shri Radhelal Gupta, Asstt. Solicitor General of India while felicitating the new Judge, said :-

Before this August gathering today, I have the honour of introducing a legal personality Shri Justice Alok Aradhe, who have traversed a lengthy but equally enlightening, prolonged but preserved, steady but progressive odyssey towards this constitutional responsibility. I am thankful to Hon'ble Justice Shri A. K. Patnaik, the then Chief Justice of High Court of Madhya Pradesh and Hon'ble Judges of Collegiums for recommending such a worthy appointment of Hon'ble Judge Shri Alok Aradhe.

Right from beginning of his career, My lord Justice Aradhe was deemed High Court Judge in the making. Today Bar finds that the same gentleman always looking like a Judge has attained the same expected position by his elevation.

We have never seen him loosing temper during the course of Argument howsoever contesting the case may be. He is known for maintaining pleasant aura around him in the Bar also. He has not earned displeasure of any member of the Bar on the contrary he commands good reputation and respect in the Bar. He looks like a professor more than the advocate, which reflects his academic bent of mind.

His academic creativity was recognized by a great jurist Shri Justice G.P. Singh as well, who solicited my lord's assistance in revising the addition of a famous legal work.

My Lord's professional efficiency has been unique one. He has proved to be versatile as he has dealt with all sort of problem of any wing of law with full clarity and perfection.

On this occasion, with all my humility let me take liberty to convey a message that passing orders, writing decisions and pronouncing judgments is indeed easier than the task of dispensation of justice

Therefore, today each member of Madhya Pradesh High Court is highly indebted to Hon'ble Shri Justice Aradhe for initiating the crucial task and shouldering this Herculean responsibility of dispensing Justice to the State as well as to the Nation.

On behalf of Government of India, Law Officers of the Central Government and my own behalf I sincerely offer my whole hearted welcome & best wishes to Shri Justice Aradhe the newly appointed judge for his successful tenure. I would like to sum up in the following words: -

**"May the sun shine, all day long,
everything go right and nothing wrong
May those you, love bring love back to you
and may all the wishes you wish come true".**

Shri R. P. Agrawal, President, High Court Advocates' Bar Association, Jabalpur while felicitating the new Judge, said :-

I, on behalf of the High Court Advocates' Bar Association and my own behalf, welcome Hon'ble Shri Justice Alok Aradhe on his appointment as an Additional Judge of the Madhya Pradesh High Court. My Lord has been an active member of the High Court Advocates' Bar Association since its inception and has also richly contributed in giving the present shape to the Association Hall. He was always very affectionately treated by the senior members of the Bar and the junior members of the Bar have been holding him in high respect.

My Lord was born on 13.4.1964 at Raipur. He obtained his B.Sc. degree and thereafter, LL.B. degree from Hitkarni Law College, Jabalpur in the year 1988. He was enrolled as an Advocate on 12.7.1988 and started his practice by joining the office of his Late maternal uncle Shri N.S. Kale, who was a renowned and Senior Advocate of Jabalpur. My Lord had the blessings of Shri Kale.

My Lord has been handling Civil, Constitutional, Company and Arbitration matters. He soon acquired imminence by his thorough knowledge of law and master preparation of the cases. My Lord's professional efficiency spread throughout the nook and corner of the entire State and he caught the imagination of the Corporate Sectors and has been counsel for M/s Century Textiles and Industries Limited, Prism Cement, Jaypee Cement, Diamond Cement, Sasan Power Limited (Reliance Group) Essar Limited, Grasim, BLA Power Limited, Indian Oil Corporation, M.P. Human Rights Commission, Maharishi Mahesh Yogi Vedic University, Engineering Projects India Limited, Steel Authority of India Limited

and the High Court. My Lord also revised the fifth edition of 'Principles of Administrative Law' by M.P. Jain and S.N. Jain with Hon'ble ex. Chief Justice Shri G.P. Singh. He has also been the Guest Faculty member for delivering lectures in 'Judicial Officers Training & Research Institute, Jabalpur'. My Lord also attended foundation training course in 'Mediation Procedures' held at Jabalpur on 8th and 9th July, 2006 by Judicial Officers Training & Research Institute, High Court and M.P. State Legal Services Authority. He was thus empanelled as a Mediator. My Lord was designated as Senior Advocate by the High Court of Madhya Pradesh w.e.f. 22.4.2007. The rapid growth and progress of my Lord in the legal field as enumerated above bear testimony to the fact that my Lord's career as a lawyer has been brilliant.

The Bar nurtures an Advocate for decades and the brilliant ones are selected as Hon'ble Judges. Although this is a matter of pride for the Association on the one hand yet on the other it leaves a shadow of little sadness because of parting. I take this opportunity to remind my Lord of what Socrates had said centuries back and I quote:-

"Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially".

Cicero, a famous Roman orator had said that 'We are all servants of the laws to the end'. It is also often said that 'A judge must bear in mind that when he tries a case he is himself on trial'.

I earnestly hope that my Lord would stand the test in such trial and would not let us down.

God has given an opportunity to my Lord to serve the humanity by delivering justice according to law. In this context I would like to quote what a Russian Author 'Nicoli Ostrovsky' had said long back.

"Man's dearest possession is life, and since it is given to him to live but once, he must so live as not to be seared with the shame of a cowardly and trivial past, so live as not to be tortured for years without purpose, so live that dying he can say: "All my life and my strength were given to the first cause of the word -the liberation of mankind".

It would not be out of place to mention that, the Constitution of India has been in force since 26th of January 1950. An independent judiciary with the establishment of the Apex court and High Courts has been envisaged in the Constitution.

I, just read in the newspaper only yesterday that, the Union Government is going to introduce a Bill in both the Houses of Parliament for exercising control over the higher judiciary. Why the introduction of such Bill has become imperative is not a question to be examined here, but, I feel that it is the joint responsibility of

the Bar and the Bench to see that even if such a law is enacted, it may not be required to be invoked which means that we have to keep our Houses in order. If, we are unable to do so, the independence of judiciary would be at peril as independence of judiciary is a great guarantee and should be transcendently kept beyond the power of the Executive, Commission or Authority. Therefore, we by our concerted efforts have to avoid such a traumatic situation.

I, on behalf of the Association assure fullest cooperation to my Lord in the dispensation of justice.

I, once again thank and congratulate my Lord on my own behalf and on behalf of the Association on his assumption of the high office of the Judge of this Court.

Shri Anil Khare, President, M. P. High Court Bar Association, Jabalpur while felicitating the new Judge, said :-

This is a moment which was long awaited by the Bar. It is also a moment when the dream of the Bar has come true. It gives me a feeling of proud when I welcome Hon'ble Justice Shri Alok Aradhe on behalf of the Bar, on his elevation to the Bench from amongst us.

Justice Alok Aradhe is a name which does not require any introduction. He is a personality of sterling character, impeccable integrity and upright behavior, which a Judge is supposed to be possessed of.

The Madhya Pradesh High Court Bar Association has a glittering history and the elevation of Justice Alok Aradhe from the Bar to the Bench has further glorified us and we have no doubts that he will prove himself as an asset to the Institution.

A feeling of jubilation is surrounding us today and we are sure that My Lord has the same feeling. This is a festive occasion for My Lord, but we all know that you are fully aware with the onerous task bestowed upon with. The changing of robes by My Lord will put him to great challenges. The protection of the constitution and the preservation of the rule of law has become the foremost duty of My Lord.

The appointment of My Lord is at the time when debate about judicial activism and judicial restraint are in the air. My Lord has become the part of Justice Delivery System. I may take this opportunity to say that the power and strength of any Justice Delivery System is derived from the faith and confidence of the people in it. Unfortunately, in recent times there has been a decline of that faith and confidence. The Bar and the Bench which are the wheels of the same chariot are required to restore it. A Judge is on trial everyday.

I may take this opportunity to quote the words of Lord Denning which are as follows:-

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"When a Judge sits to try a case..... He himself is on a trial before his fellow countrymen. It is on his behavior that they will form their opinion of our system of Justice. A Judge must be dignified so as to earn their respect of all who appears before him. He must be alert to follow all that goes on. He must understand that he is aware of the temptations that beset everyone. He must be merciful so as to show that he too has that quality which drops as the gentle rain from the heaven upon the place beneath".

The professional profile of Justice Alok Aradhe has been already read out by the earlier speakers and as such I am not repeating the same. The professional profile of My Lord clearly evinces of his outstanding merit and legal acumen. While My Lord was taking his basic lessons from his senior Late Shri N.S. Kale, it could be easily perceived that here is a lawyer who would leave a mark in the legal fraternity. He demonstrated his ability while arguing the cases, his efforts of hard work were also explicitly seen when he revised the fifth edition of the Principles of the Administrative Law by M.P. Jain and S.N. Jain along with Hon'ble Justice Shri G.P. Singh, former Chief Justice of this court. My Lord was also a guest faculty member for delivering lectures in the Judicial Officers Training in Official Institute Jabalpur. My Lord was designated as a Senior Advocate by the High Court with effect from 22nd April 2007. The journey of My Lord as a lawyer was always towards the higher altitudes. Each day that passes by exhibited My Lord to be more matured as a lawyer and also as a human being.

My Lord Justice Shri Alok Aradhe was always venerated and loved by the members of the Bar. The personality of My Lord can be summed up in the Shakespearian language, in the following words:-

"His life is gentle and elements so mixed in him, that nature might stand up and say to the whole world that this is the man."

As I stated above that a debate about the Judicial activism and judicial restraint are in the air. I may put it that a balance is required to be maintained. I may quote the words of former Chief Justice:-

"The first principle to observe is that the wisdom of the law must be accepted, a little incursion into law making interstitially may be permissible. For other cases the attention of Parliament or the Government can be drawn to the flaw. There are many ways of skinning a cat. You can do it quietly or you can do it ostentatiously.

I may put it to My Lord at this moment, that the expectations of the Bar are very high from you. We sincerely hope that you would stand to the emotions expressed through the expectations. The expectations from My Lord are being put forth in the words of Lord Mansfield in the case of R v/s Wilkes:-

"I will not do that which my conscience tells me is wrong.....to gain the huzzas of thousands, or the daily praise of the papers which come from the press. I will not avoid doing what I think is right though it may draw on me the whole artillery of libels"

I assure My Lord, that the cooperation of the Bar in fulfilling your duties would always be a privilege. we all wish that judgments rendered by My Lord, would be written not in ink but in wisdom and prudence.

With these words I on behalf of the Madhya Pradesh High Court Bar Association and also on my own behalf, once again warmly welcome you, and hope for a bright and successful tenure with all the goodness of the almighty to be showered upon you. I believe that justice shall be done though heaven may fall.

Shri Rameshwar Neekhara, President, M. P. State Bar Council, while felicitating the new Judge, said :-

सर्वप्रथम मैं नवनियुक्त माननीय न्यायाधिपति श्री जस्टिस आलोक अराधे के पदभार ग्रहण करने के इस अवसर पर उन्हें अपनी ओर से मध्यप्रदेश राज्य अधिवक्ता परिषद की ओर से एवं प्रदेश के सभी अधिवक्ताओं की ओर से हार्दिक बधाई देते हुये उनका गर्मजोशी से स्वागत करता हूँ।

माननीय श्री जस्टिस आलोक अराधे जी-

संस्कारधानी आपकी कर्मभूमि रही है, जहाँ आपने 12 जुलाई 1988 से प्रदेश के ख्यातिलब्ध विधिवेत्ता स्वर्गीय श्री एन. एस. काले के मार्गदर्शन में अपना विधि व्यवसाय प्रारंभ किया। अपने अथक परिश्रम, लगन एवं बुद्धिकौशल से आपने विधि व्यवसाय में स्वयं की अपनी एक पृथक पहचान भी बनाई। वर्ष 1997-98 के मध्य आपने शासकीय अधिवक्ता के रूप में भी अपनी सेवाएं दी एवं समय के अंतराल में आपने अनेक प्रतिष्ठित संस्थानों जिनमें मेसर्स सेन्चुरी टेक्सटाईलस एंड इंडस्ट्रीज, डायमंड सीमेंट, जे. पी. सीमेंट, प्रिज्म सीमेंट, सेशन पावर लिमिटेड, रिलायन्स ग्रुप, इंडियन ऑयल कॉर्पोरेशन, महेश योगी वैदिक विश्वविद्यालय, स्टील ऑथारिटी ऑफ इंडिया के स्थाई अधिवक्ता के रूप में अनेक पेचीदा एवं जटिल मुकदमों में उनकी ओर से सफल पैरवी कर विजयी भी प्राप्त की।

आपने विधि की इस अवधि में ज्यूडिशियल आफिसर ट्रेनिंग एंड रिसर्च इंस्टीट्यूट में भी गेस्ट फेलोशिप के रूप में अपनी सेवाएं दी और अधिवक्ता के रूप में निरंतर सफलताओं के क्रम को जारी रखते हुए विधि के अन्य क्षेत्रों में भी अपना योगदान दिया।

आपके अनुभव, विधि के गहन ज्ञान एवं अद्वितीय कार्यक्षमता के चलते वर्ष 2007 में आपको माननीय उच्च न्यायालय द्वारा वरिष्ठ अधिवक्ता के रूप में भी अलंकृत किया गया।

आज मध्य प्रदेश उच्च न्यायालय के न्यायाधिपति के रूप में आपकी नियुक्ति सर्वथा योग्य निर्णय के साथ ही अपार संभावनाओं से भरी हुई है। मैं मध्य प्रदेश राज्य अधिवक्ता परिषद, प्रदेश के 70 हजार अधिवक्ताओं एवं स्वयं अपनी ओर से आपके पदभार ग्रहण करने के इन क्षणों में अनेकों शुभकामनाओं के साथ आपके मंगल कार्यकाल की कामना भी करता हूँ एवं इस हेतु आशावित हूँ कि उच्च न्यायालय के न्यायाधिपति के रूप में आप अपने दायित्वों को गौरवशाली और गरिमा के साथ निर्वह करेंगे और शनैः-शनैः उन ऊँचाईयों को भी स्पर्श करेंगे जो न केवल आपको वरन् संपूर्ण संस्कारधानी और संपूर्ण मध्य प्रदेश को भी भविष्य में गौरवान्वित करेगी।

आपकी नियुक्ति के इस अवसर पर मैं पूरी विनम्रतापूर्वक यह भी व्यक्त करना चाहूंगा कि तेजी से परिवर्तित होती स्थितियों में न्यायिक जवाबदेहिता भी अपेक्षाकृत रूप में और अधिक गंभीर होती जा रही है, जबकि आमजन मानस न्याय तंत्र के प्रति अपने विश्वास को अंतिम कसौटी के रूप में मान्यता दे रहा है एवं अपनी समस्याओं, पीड़ा एवं वेदना के निराकरण के लिये न्याय तंत्र के प्रति आशा भरी निगाहों से देख रहा है। ऐसी स्थिति में कतिपय संदर्भों में न्याय तंत्र भी प्रश्नांकित हुआ है, तब हम सभी के लिये भी आवश्यक है कि परंपरागत रूप में हमारे देश का न्याय तंत्र जिस सम्मान और विश्वास का हकदार रहा है उसी के अनुरूप श्रेष्ठता और गरिमा बनाये रखने के लिये कुछ ऐसे ठोस और विश्वसनीय कदम उठाये जाये जिससे आमजन की अपेक्षाएं समय की कसौटी पर खरी उतरे।

मैं आपके पदभार ग्रहण के अवसर पर इस हेतु आशावित हूँ कि न्यायदान की अवधि में आपके चिंतन और दर्शन में इन संदर्भों में भी आप इस ओर ध्यान देकर समाधान के नये मार्ग भी प्रशस्त करेंगे।

मैं इन्हीं शुभकामनाओं और सद्भावनाओं के साथ आपका अभिनंदन करते हुए आपके सफल एवं उपलब्धियों से युक्त कार्यकाल की मंगलकामना करता हूँ।

सादर जय हिन्द,

Shri Rajendra Tiwari, Secretary, Senior Advocates' Council, while felicitating the new Judge, said :-

I rise on behalf of the Senior Council as its Secretary to felicitate Hon'ble Justice Alok Aradhe on his induction as an Additional Judge of this Court. Your Lordship has taken oath of your office and hereafter you have to devote yourself to the cause of dispensation of justice.

I have been very closely associated with your Lordship ever since you entered the profession of Advocacy at Jabalpur and I had the occasion to see you growing from step to step. Talented you were, all that was required was that the talent should have congenial atmosphere for its efflorescence. You were studying at Jabalpur for your law degree and used to come to this Court during your free hours. Your maternal uncle the late N.S.Kale, Senior Advocate, who is no more, was very anxious about your brilliant career getting full manifestation.

Your Lordship has not betrayed the confidence of the late N.S.Kale. In his lifetime you had come to the first rank of Lawyers and you were honoured with conferral of the Senior Advocate's distinction by the High Court in 2007. Your Lordship is very affable, soft spoken and ever smiling. I have never seen a person - even a client - complaining about any ill-treatment at your instance at any time. It is this good nature which goes to make a good human being and a good human being attains heights in his lifetime by his brilliance, intelligence intermingled with diligence.

Your Lordship has touched the heights in the profession. It has been rightly said by Kautilya in his Arthshastra that "the fragrance of flowers spread only in the direction of the wind but the goodness of a person spreads in all directions".

Your Lordship's bio-data which the speakers preceding me have presented, is a scintillating one. Your Lordship's experience in civil, constitutional, Company and arbitration matters is so rich that, as I believe, there is no possibility of injustice to any-one. The 5th edition of the Principles of Administrative Law by M.P. Jain and S.N. Jain which was revised by your Lordship with Hon'ble Mr. Justice G. P. Singh shows the amount of knowledge your Lordship has in the subject and also the amount of labour your Lordship has put in to reach perfection in making the book possessing high quality of referensive value.

Your Lordship has been associated with delivering lectures as Guest Faculty in the Judicial Officers Training and Research Institute and also at other places. This your Lordship could do only because your Lordship is fully confident of your go into the subjects.

The age of a person is not of much importance. It is said :

गुणः पूजा स्थानं गुणिषु न च लिङ्गं न च वयः ।

Therefore, I am not making reference to your Lordship's age and the date of birth and other features which my learned predecessors have vividly depicted. What is of great concern today is the disposal of cases which have piled up. There is delay in dispensation of justice. Many times it is heard in discourses that delay in delivery of justice may lead to in anarchical-situation. Neither the Judges nor the Lawyers alone are responsible for arrears of cases pending for decision. The cases are not to be merely disposed of. They are to be decided. Decision requires sometime because the contesting parties have to be heard to their satisfaction and then the Judge comes to his own conclusion. A Judge has also to see that the decision is not given unconcern with human problems. In Brahaspati Smriti it is said :

केवलं शास्त्रमाश्रित्य क्रियते यत्र निर्णयः ।

व्यवहारस्य विशेषो धर्मस्तेनाऽपि दीयते ।

A random translation of the verse gives us to understand that "a decision should not be rendered just relying on Shastras or the rules of interpretation and words of a statute, rather a Judge must apply careful reasoning before reaching a conclusion or else there would be miscarriage of justice". Relying upon rules is not enough. They should be properly interpreted by careful reasoning before reaching the conclusion. It is why some juristic critics say "justice has been describe as a lady who has been subject to so many miscarriages so as to cast serious reflection upon her virtue". Now with growing awareness of law, the litigating public has become wise and have started even making comments on the judicial procedure.

Eliot has rightly said "justice is not a clustered virtue, she must be allowed to suffer the scrutiny and respectable, even though outspoken comments of ordinary man". In the midst of this ambience prevailing in the country, your Lordship is entering the office of the High Court Judge - a very prestigious office, full of expectations from every quarter. Your Lordship has to be cautious, pragmatic and concerned with the prevailing atmosphere while discharging duties of your office akin to the oath you have just taken.

Having known you for a long time of more than two decades, I can safely say that your Lordship will successfully perform your duties as a judge and will always be loved and respected by the entire fraternity of Lawyers.

On behalf of the senior council and on my own behalf once again I felicitate your Lordship's appointment as a High Court Judge. I salute you and offer you congratulations.

May God, bestow his choicest blessings upon your Lordship in the endeavour of performance of your duties as a Judge and your tenure as a Judge may be described as bright and illuminious as the Sun.

Thank You.

Reply to Ovation by Hon'ble Shri Justice Alok Aradhe :-

I am extremely thankful for the kind words spoken about me.

I take this opportunity to express my gratitude to my parents, for the values and principles they have instilled in me from a very young age. It is on account of their blessings that I stand here today.

My vocabulary is limited and my expression inadequate to express my gratitude towards my senior late Mr. N.S. Kale who was an eminent lawyer of this court. I owe my existence in the legal profession to him. He guided me in the profession in my formative years.

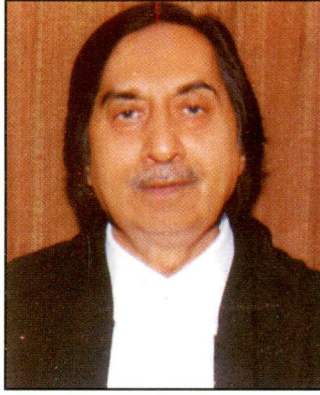
I am extremely indebted to Hon'ble Justice G.P. Singh for providing me the rare privilege to revise the book '*principles of administrative law*', under his able guidance. The experience and knowledge which I have acquired during my association with him is invaluable. Justice G.P. Singh is an epitome of legal excellence and an institution of knowledge. He has been and would continue to be a source of inspiration for me.

The parting of ways is always difficult. Members of the bar both senior and juniors have bestowed love, affection and cooperation during my practice as an advocate. I am sure that I will continue to get the cooperation from the Bar to enable me to perform the pious duty of dispensation of justice. I assure you that it shall be my constant endeavor to come up to your expectations and perform my duties as a fair and impartial judge.

Last but not the least, I appreciate the assistance provided to me by my juniors and office staff.

I pray to God to give me the strength and wisdom to discharge the pious responsibility conferred upon me.

I once again thank you all.



Justice A. P. Shrivastava

Born on 26.11.1947. Joined the judicial services as Civil Judge Class II on 17.07.72 at Khandwa and promoted as Civil Judge Class I in the year 1983, as C.J.M. in the year 1986 and officiating District Judge in the year 1991. Granted Selection grade on 18.07.98 and super time scale on 01-07-2001. Worked as Deputy Secretary and Additional Secretary [Law] from 1994-97, and also held additional charge of Secretary, Churhat Enquiry Commission. Was posted as Special Judge (Atrocities) in the year 1997. Was posted as District Judge, Raigarh in the year 1998 and after formation of State of Chhattisgarh, was posted as Registrar, Office of the Welfare Commissioner, Bhopal Gas Victims, Bhopal, in the month of February, 2001. He functioned as such till 23.11.2005. Elevated as the Additional Judge of High Court of Madhya Pradesh on 25.11 .05, became permanent Judge on 25.11.08 and demitted the Office on 25.11.09.

We wish his Lordship a healthy, happy and prosperous life.

farewell

Hon'ble Mr. Justice A. K. Shrivastava bids farewell to the demitting Judge—

Today we have assembled here to honour and to give farewell/ovation to My Lord Justice Anil Prakash Shrivastava, who after playing successful judicial career is retiring today in the evening.

My Lord Hon'ble Shri Justice A.P. Shrivastava was born on 26/11/1947. His father Late Shri H.P. Shrivastava was in subordinate judiciary of this State. His elder brother Late Shri Arun Prakash Shrivastava was also in the subordinate judiciary of this State. My Lord joined his judicial services as Civil Judge, Class II on 17/7/1972 at Khandwa and promoted as Civil Judge, Class I in the year 1983, as C.J.M. in the year 1986 and officiating District Judge in the year 1991. He was granted selection grade on 18/7/1998 and super time scale on 1/7/2001. My Lord has worked as Deputy Secretary and Additional Secretary (Law) from 1994-97. He was also holding the additional charge of Secretary Churahat Enquiry Commission. He was posted as Special Judge (Atrocities) in the year 1997. Looking to his ability and deep depth in law he was promoted on the post of District & Sessions Judge and was posted at Raigarh which was a district of erstwhile Madhya Pradesh. Thereafter, My Lord was posted on the post of Registrar in the office of Welfare Commissioner, Bhopal Gas Victims at Bhopal till My Lord was elevated as an Additional Judge of this prestigious High Court on 25/11/2005 and became permanent Judge on 25/11/2008.

I am well acquainted to My Lord since the beginning of his career as Civil Judge and had an occasion to appear before him when he was Civil Judge, Class-II in Gwalior. My Lord is kind hearted and courteous towards the members of the Bar while hearing the cases. The judicial approach of My Lord is excellent and we can admire it, if we go through his various landmark decisions. Once, in a gathering Justice S.K. Dubey, now Senior Advocate Supreme Court while admiring His Lordship, told that the lawyers of the Supreme Court are unable to convince the Supreme Court that the reasonings given by His Lordship are wrong in the appeal against the judgment passed by My Lord. Hence, we can think the depth of the legal knowledge and judicial approach of his Lordship while deciding the cases.

His Lordship has given umpteen landmark judgments, which are published in various Law Journals enlightening the lawyers as well as the Bench.

The fourfold responsibilities of a judge in the words of Socrates are :-

- "i- to hear courteously;
- ii- to answer wisely;
- iii- to consider soberly; and
- iv- to decide impartially".

All these four qualities are inherent in My Lord.

Today, when My Lord is demitting his office, I on behalf of the High Court and on my own behalf congratulate My Lord for his successful judicial career and pray the Almighty God that he may live with great joy and enthusiasm.

Shri Syam Bihari Mishra, Addl. Adv. General of M. P. bids farewell :-

माननीय म. प्र. उच्च न्यायालय के माननीय न्यायमूर्ति श्री अनिलप्रकाश श्रीवास्तव जी न्यायाधिपति के पद से आज सेवानिवृत्त होने जा रहे हैं । इस अवसर पर आयोजित इस समारोह में हम माननीय न्यायमूर्ति श्री अनिलप्रकाश श्रीवास्तव जी का अभिवादन एवं सम्मान करने उपस्थित हुए हैं ।

माननीय न्यायमूर्ति श्री अनिलप्रकाश श्रीवास्तव जी साहब आपका जन्म 26.11.1947 को चरकारी, उत्तरप्रदेश के एक संभ्रान्त परिवार में हुआ था । मान्यवर आपके पिता श्री एच. जी. श्रीवास्तव सुप्रसिद्ध न्यायिक अधिकारी के पद पर रहकर न्यायदान कर चुके हैं ।

मान्यवर आपके प्रारंभिक शिक्षा पूर्ण करने के पश्चात् विधि स्नातक की उपाधि प्राप्त की तथा दिनांक 17.7.1972 को मध्यप्रदेश न्यायिक सेवा में चयन उपरान्त व्यवहार न्यायाधीश नियुक्त हुए तत्पश्चात् आपकी पदोन्नति व्यवहार न्यायाधीश वर्ग-1 तथा मुख्य न्यायिक दण्डाधिकारी के पद पर दिनांक 18.9.1986 को हुई । इसके पश्चात् मान्यवर आप अतिरिक्त जिला एवं सत्र न्यायाधीश के पद पर आसीन हुए । तत्पश्चात् विशेष न्यायाधीश (अनुसूचित जाति अधिनियम के अंतर्गत) शहडोल में 12.5.97 से मार्च 1998 तक रहे । उसके पश्चात् जिला जज के पद पर दिनांक 18.7.1998 को पदोन्नत हुए । मान्यवर आपने म. प्र. शासन के विधि और विधायी कार्य विभाग भोपाल में अतिरिक्त सचिव के पद पर आसीन होकर मलीमांति कार्य सम्पादित किया । इसके पश्चात् जिला एवं सत्र न्यायाधीश जिला रायगढ़ के पद पर आसीन रहे और इस पद के न्यायिक व प्रशासनिक कर्तव्यों का निष्ठापूर्वक निर्वाहन किया ।

इसके अतिरिक्त आपने रजिस्ट्रार, गैस त्रासदी भोपाल के पद पर भी आसीन रहकर इस पद के दायित्वों का सफलतापूर्वक निर्वाहन किया ।

माननीय न्यायमूर्ति श्री अनिलप्रकाश श्रीवास्तव साहब आपने म. प्र. उच्च न्यायालय में दिनांक 25.11.2005 को माननीय न्यायाधिपति के महान पद की शपथ ग्रहण की ।

मान्यवर आप विधि के प्रकाण्ड विद्वान, सफल एवं कुशल न्यायाधिपति के रूप में जाने जाते रहेंगे । मैं स्वयं और इस न्यायालय के वरिष्ठ अभिभाषकगण एवं युवा अभिभाषकगण आपके न्यायदान प्रक्रिया की भूरि-भूरि प्रशंसा करते रहे हैं । उच्च न्यायालय के न्यायाधिपति के रूप में आपने निर्भीक, निष्पक्ष न्यायदान किया है और इस गौरवपूर्ण महत्वपूर्ण पद पर अपने कर्तव्यों का क्षमता, दृढ़ता तथा कर्तव्य परायणता के साथ सफलतापूर्वक निर्वाहन करते हुए आप सेवानिवृत्त हो रहे हैं । आपकी प्रकरणों का निराकरण करने के लिए सूक्ष्म परीक्षण व सन्निहित विधि प्रश्नों का निराकरण करने की पद्धति सराहनीय रही है । आपके निर्णयों व आदेशों में कारण सहित पारदर्शिता, निष्पक्षता परिलक्षित होते हैं । मान्यवर आपने अभिभाषकगण को प्रकरण में सुनवाई का समुचित अवसर प्रदान किया । आपकी निष्पक्षता, निर्भीकता, कर्तव्यपरायणता, विधि एवं न्याय जगत में प्रशंसनीय रही है । आपके द्वारा प्रतिपादित न्याय सिद्धांत विधि व न्याय जगत का मार्गदर्शन करते रहेंगे ।

भगवत गीता के अनुसार "कर्ममण्डेय बाधिकास्ते मां फलेषु कदाचन"

मान्यवर आप न्यायिक क्षेत्र के कर्मयोगी हैं ।

मान्यवर आपके अभिभाषक संघ के सदस्यगण के साथ न्यायपीठ पर आसीन रहते

हुए अच्छा व शालीन व्यवहार रहा है। न्यायपीठ पर प्रकरणों का न्यायिक और विधि सम्मत निर्णय करने के पश्चात् भी मान्यवर आपका अभिभाषकगण के प्रति मधुर व अच्छा व्यवहार रहा है, इन कारणों से अभिभाषकगण आपकी भूरि-भूरि प्रशंसा करते रहे हैं ।

मनुस्मृति के अनुसार—

सर्वो दण्डजितो लोके दुर्लभो हि शुचिर्नरः ।

दण्डस्य हि भयात्सर्व जगद्-भोगाय कल्पते ॥

संसार के लोग दण्ड के डर से ही नियमों तथा अनुशासन का पालन करते हैं । संसार में ऐसे व्यक्तियों का मिलना कठिन है जो स्वभाव से ही पवित्र हो । सारे संसार के लोग दण्ड के भय से ही अपने कर्तव्य का पालन कर सुख शान्ति प्राप्त करते हैं ।

मान्यवर आपके निर्णयों/दण्डादेशों के भय से सम्पूर्ण न्याय क्षेत्र में जहाँ-जहाँ आप पदस्थ रहे, वहाँ विधि और नियमों का पालन कराते हुए निवासीगण सुख-शान्ति की अनुभूति करते रहे हैं ।

मान्यवर आपका अभिभाषकों के साथ सम्मानपूर्वक सहहृदय और आत्मीय व्यवहार हमेशा स्मरणीय रहेगा । आपने युवा अभिभाषकों को प्रकरणों में पक्ष समर्थन करने के लिए सदैव प्रोत्साहित किया, जिसके कारण उनका मनोबल बढ़ा है ।

मान्यवर आप हंसमुख स्वभाव के मिलनसार, व्यक्तित्व के धनी हैं । मान्यवर आपने म. प्र. उच्च न्यायालय के न्यायाधिपति के गौरवशाली व महत्वपूर्ण पद पर अपने कर्तव्यों और दायित्वों को दृढ़ता तथा कर्तव्यपरायणता के साथ सफलतापूर्वक निर्वाहन करते हुए आप सेवानिवृत्त हो रहे हैं ।

मैं अपनी ओर से तथा अपने सहयोगी शासकीय अधिकारियों की ओर से और मध्यप्रदेश शासन की ओर से आपका हार्दिक अभिवादन करता हूँ तथा सर्वशक्तिमान ईश्वर से प्रार्थना है कि मान्यवर आपको वह दीर्घायु और स्वस्थ व यशस्वी जीवन प्रदान करें और राष्ट्रीय सेवा करने का वह अवसर भी आगे प्रदान करें ।

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**Shri D. K. Katare, President, High Court Bar Association, Gwalior,
bids farewell :-**

Your Lordship Shri Justice A. P. Shrivastava is now demitting the office after four years of dedicated service as a Judge of M.P. High Court. Your lordship was elevated to the Bench on 25th nov. 2005 which was widely acclaimed and the members of the Legal Fraternity were happy that an excellent choice has been made your Lordship has rendered number of landmark judgements during his tenure.

Justice Shrivastava has been very Kind to juniors. He never lost his temper in his court. Justice Shrivastava has always understood and appreciated the problems of the members of the Bar, Your lordship accommodated and adjusted the members of the bar. Members of the Bar whether seniors or juniors, had very much appreciated Justice Shrivastava in understanding their problem.

The time has come back to look back and adjudge my lord, I believe I speak for each one of us at the bar when I say that we have always found you to be very a very good judge, and we will be missing an eminent judge of this High court and his place will remain vacant and your lordship will be remembered by your landmark judgement.

We wish and pray for a prosperous and bright long life for Hon'ble Shri Justice A.P. Shrivastava and his Family .

Shri Prem Singh Bhadoria, Advocate, Gwalior, Member, M. P. State Bar Council, bids farewell :-

आज का यह विशेष क्षण हम सभी के लिये अत्यन्त महत्वपूर्ण है जब हम ५० प्र० उच्च न्यायालय के माननीय न्यायमूर्ति श्री ए० पी० श्रीवास्तव जी के न्यायाधिपति के रूप में यशस्वी एवं सफल कार्यकाल पूर्ण होने पर उन्हें अपनी ओर से भावभीनी विदाई दे रहें ।

न्यायमूर्ति श्री ए० पी० श्रीवास्तव जी का जन्म स्वतंत्र भारत में 26.11.1947 को हुआ था । श्री श्रीवास्तव जी ने जन्म से ही कर्मयोगी पुरुष की भांति न्यायदान का संकल्प लेते हुये शिक्षा अध्ययन किया और उसी के तहत उन्होंने दिनांक 17.07.1972 में न्यायिक सेवा प्रारम्भ की और उन्हें व्यवहार न्यायधीश वर्ग 2 के पद पर नियुक्त किया गया ।

५० प्र० न्यायिक सेवा में आपको शनैः-शनैः दिये गये सभी दायित्वों का आपके द्वारा सफलता पूर्वक निर्वहन करते हुये वर्ष 1986 में सी०जे०एम० एवं वर्ष 1988 में आपको पदेन जिला जज का दायित्व सौंपा गया एवं वर्ष 1994-97 में विधि विभाग में आपको उप सचिव नियुक्त किया गया और आपको चुरहट लाटरी कमीशन का सचिव भी बनाया गया एवं 12.05.1997 को आपको एस०सी०एस०टी० कोर्ट के लिये विशेष न्यायधीश नियुक्त किया गया और तदोपरान्त आपको जिला जज रायगढ़ बनाया गया और आपके विधि अनुभव के आधार पर आपको दिनांक 25.11.2005 को इस महान न्याय मन्दिर में माननीय न्यायमूर्ति के रूप में नियुक्त किया गया आपने इस उच्च न्यायालय के महान न्यायमूर्ति के पद का अत्यन्त गरिमा शालीनता और सादगी के साथ निर्वहन किया और जिस सहजता से आपने उलझे कानूनी प्रश्नों को सरलता से सुलझा कर पक्ष और विपक्ष के पक्षकारों के मन में सन्तोष का बोध कराया निश्चित ही वे आपकी अद्वितीय कार्यशैली के अंग बन गये हैं ।

आपके व्यवहार में सहजता मधुरता और अपनत्व की जो भावना झलकती थी वह सदैव हमारे लिये अत्यन्त प्रेरणादायी रही न्यायदान की प्रक्रिया में आपने जिस प्रकार पक्षकारों के मन की पीड़ा को समझकर प्रकरणों का त्वरित निराकरण किया गया है उससे सभी पक्ष सदैव संतुष्ट नजर आये ।

आने वाले समय में आपकी अनुपस्थिति से जो शून्य और रिक्तता उत्पन्न होगी वह हमेशा महसूस होती रहेगी ।

न्यायदान में आपका योगदान अमूल्य एवं अभिनन्दनीय है । आपके सफल कार्यकाल पूर्ण करने पर आपसे यह अनुरोध करता हूँ कि इस अर्द्धविराम के बाद प्रवाहमान होने वाली समय की गति के साथ-साथ आप उसी सहजता एवं सुलभता के साथ प्रदेश के विधि व्यवसायियों एवं समाज के अन्य वर्गों के सामाजिक विकास में एवं दीन-हीन की सेवा में अपना रचनात्मक योगदान देकर समाज के विकास में नई भूमिका का निर्वहन करेंगे ।

इन्हीं शुभकामनाओं के साथ मैं अपनी ओर से एवं म. प्र. राज्य अधिवक्ता परिषद के सभी सदस्यों एवं प्रदेश के विधि जगत की ओर से आपके प्रति कृतज्ञता तथा आभार व्यक्त करता हूँ एवं आपके उत्तम स्वास्थ्य एवं मंगल पारिवारिक जीवन की कामना करता हूँ ।

धन्यवाद सहित ।

2 **Farewell Speech delivered by Hon'ble Shri Justice A. P. Shrivastava.**

It is a matter of coincidence that, I take oath as the Judge of this Court on 25th November, became permanent judge on 25th November and now demit the office on the same date.

Today is the day when memory goes into the flashback. I have a vivid recollection how I, on 17th July, 1972 almost Thirty Seven years ago, entered into the court-room for the first time as a Judge and step by step and tier by tier completed the journey in the State Judiciary. Twice I went on deputation as Additional Secretary [Law] and as Registrar in the Office of the Welfare Commissioner, Bhopal Gas Victims, Bhopal. My father late Shri. H.P. Shrivastava and elder brother late Shri. Arun Prakash Shrivastava were also in the State Judiciary. What I achieved is all due to grace of God & blessings of my Late parents and family members.

It was a matter of pride for me that my name was recommended by His Lordship, Chief Justice Hon. Shri. Justice R. V. Raveendran (as he then was) who is now the Judge of the Supreme Court of India and the then collegium. I am also grateful to our former Chief Justice Hon. Shri Justice A.K. Patnaik now the Judge of the Apex Court & members of the collegium by whose recommendation I became permanent judge of this Court. I am also thankful to Hon'ble Shri Justice Deepak Verma, now the Judge of the Supreme Court of India who has always given blessings and guidance to shape my career. My association with Gwalior Bar is very old. Twice I was posted here as subordinate Judge first in 1977 and secondly in 1986. Late Shri Bhagwandas Gupta, Late Hon'ble Shri Justice Hargovind Mishra, late Shri Puttupal Dubey, Late Shri. J.P. Gupta and many other renowned personalities (few of them are in the bench) appeared before me and argued the cases. I learnt a lot from them. After elevation, I came to Gwalior on Third tenure and got full co-operation from all the members of the Bar whether senior or junior alike. I don't remember any unhappy event with you. I also got full co-operation from the office of the Additional Advocate General, Govt. Advocates and Panel Lawyers deputed to my court.

A judge always judge others. It is too difficult for a judge to judge himself. It has been said that the Bar is judge of the judges and you have been judging me all these years. Even if for a fraction of what has been expressed today is true, I feel that I am going with achievement and contentment. I held the members of the Bar in highest esteem through out my judicial career. I lost no opportunity to learn from them and imbibe their ideals.

I also express my gratitude towards my senior brother judges. Whenever I had difficulties they solved my legal riddles. I got affection and good will of all my brother judges and the sister judges.

I am thankful for the same. I am thankful for the Registrar for being helping hand to me. The other members of the Registry and District Judiciary were always helpful to me. I am also thankful to my Personal Assistants i.e. Smt. Valsala Vasudevan and Shri Pawan Dharkar, Reader Shri. Fazl-ur-Rehman, and Jamadar Shri Hashmat Ali. They imparted their acute endeavours with me during the full term of my office sincerely and faithfully.

I also express my gratitude and thanks for the sentiments and feelings expressed by you all.

God gives only what is the part of my destiny. I am grateful to the Almighty God who gave me an opportunity to sit on this pious and highly dignified chair and to serve as the Judge.

Lastly, my special thanks to my wife Smt. Alka who is sitting before me and who has always inspired me in performance of my duties honestly and sincerely.

Now, the moment has come where my long journey as a Judge which was started step by step and tier by tier comes to an end as it has reached to its destination.

Thanks.

NOTES OF CASES SECTION

D.D. Bhargava, for the petitioners.

Samdarshi Tiwari, G.A., for the respondents/State.

*W.P. No.4257/2008 (Jabalpur), D/- 1 September, 2009.

Short Note

(52)

U.C. Maheshwari, J

STATE OF M.P.

Vs.

SANTOSH KUMAR & anr.

Penal Code (45 of 1860), Section 498-A - Cruelty - Illicit relations - *Illicit relations with another women being first wife alive, could not be treated to be the act of cruelty - Wife also could not state any specific act of cruelty or harassment - Particulars like date, place and time of incident also not stated - Mere vague allegations of demanding some articles could not deemed that any such demand was ever made - Acquittal of respondents proper - Leave refused. 2003 CrLJ 4708. (ref.)*

दण्ड संहिता (1860 का 45), धारा 498-ए - क्रूरता - अवैध सम्बन्ध - प्रथम पत्नी के जीवित रहते हुए अन्य स्त्री से अवैध सम्बन्ध क्रूरता का कृत्य होना नहीं माना जा सकता था - पत्नी भी क्रूरता या तंग करने का कोई विनिर्दिष्ट कृत्य कथित नहीं कर सकी - विशिष्टियाँ जैसे कि घटना की तारीख, स्थान और समय का भी कथन नहीं किया गया - केवल कुछ वस्तुओं की माँग करने के अस्पष्ट अभिकथन से यह नहीं समझा जा सका कि ऐसी कोई माँग कभी की गई - प्रत्यर्थियों की दोषमुक्ति उचित - अनुमति से इंकार किया गया। 2003 CrLJ 4708 (संदर्भित)

T.K. Modh, Dy.A.G., for the appellant.

None, for the respondents.

*Cr.A. No.469/2001 (Jabalpur), D/- 9 July, 2009.

Short Note

(53)

U.C. Maheshwari, J

NATIONAL INSURANCE
COMPANY LTD.

Vs.

MOHAR SINGH & ors.

Motor Vehicles Act (59 of 1988), Section 149 - Liability of the Insurance Company - *Driver of the offending vehicle not having valid driving licence - Insurance Company still held liable - Held - Tribunal has committed error in saddling the liability to indemnify the claim jointly and severally against the Insurance Company with the owner & driver - Insurance Company was exonerated from the liability to indemnify the claim to the claimant - However, Insurance Company is directed to pay the awarded sum first to the claimant and recover the same from the owner - Appeal allowed. (2008) 3 SCC 193, 2009(1) MPLJ 288 (SC), AIR 2003 SC 1292, 2008(3) TAC 748 (SC) (ref.).*

NOTES OF CASES SECTION

मोटर यान अधिनियम (1988 का 59), धारा 149 – बीमा कम्पनी का दायित्व – दोषी वाहन के चालक के पास वैध ड्रायविंग लायसेंस नहीं था – तब भी बीमा कम्पनी को दायी ठहराया गया – अभिनिर्धारित – अधिकरण ने स्वामी व चालक के साथ बीमा कम्पनी के विरुद्ध संयुक्ततः और पृथक्तः दावे की क्षतिपूर्ति करने का दायित्व डालने में त्रुटि की – बीमा कम्पनी को दावेदार के दावे की क्षतिपूर्ति करने के दायित्व से उन्मुक्त किया गया – तथापि, बीमा कम्पनी को निदेश दिया गया कि पहले दावेदार को अधिनिर्णीत रकम अदा करे और उसकी वसूली स्वामी से करे – अपील मंजूर। (2008) 3 SCC 193, 2009(1) MPLJ 288 (SC), AIR 2003 SC 1292, 2008(3) TAC 748 (SC) (संदर्भित)।

Rakesh Jain, for the appellant.

Lalji Kushwaha, for the respondent No.1.

Hemant Bhannanwar, for the respondent No.2.

None, for the respondent No.3.

*M.A. No.3645/2006 (Jabalpur), D/- 30 October, 2009.

Short Note

(54)

Indrani Datta, J

PIYUSHKANT SHARMA

Vs.

SMT. PRAGATI SHARMA & anr.

Criminal Procedure Code, 1973 (2 of 1974) [As amended by Code of Criminal Procedure (Amendment) Act, 2001 w.e.f. 24.09.2001], Section 125 - Amount of maintenance - Interim order of maintenance challenged as maximum maintenance can be awarded upto sum of Rs.3000 - Held - As per State's amendment for the words "five hundred rupees" words "3000 rupees" were substituted w.e.f. 29.05.1998 - This State amendment was made prior to the enactment of Code of Criminal Procedure (Amendment) Act, 2001 by which the words "not exceeding five hundred rupees in the whole" have been omitted - The ceiling which was fixed under the original enactment of Rs.500 p.m. has been removed and now it is open to Court under the amended law to fix such amount as it thinks fit - Looking to the social & economic status of parties and facts & circumstances of the case, Court has fixed a reasonable amount of interim maintenance - No interference warranted - Revision dismissed. 2009(1) MPLJ (Cri) 11 (ref.)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) [दण्ड प्रक्रिया संहिता (संशोधन) अधिनियम, 2001 से यथासंशोधित 24.09.2001 से प्रभावी], धारा 125 – भरण पोषण की रकम – अंतरिम आदेश को चुनौती दी गई क्योंकि अधिकतम भरण-पोषण 3000 रुपये की रकम तक अधिनिर्णीत किया जा सकता है – अभिनिर्धारित – राज्य संशोधन के अनुसार शब्द "पाँच सौ रुपया" के लिए शब्द "3000 रुपया" 29.05.1998 से प्रतिस्थापित कर दिये गये हैं – यह राज्य संशोधन दण्ड प्रक्रिया संहिता (संशोधन) अधिनियम, 2001 के पूर्व किया गया था जिसके द्वारा शब्द "कुल पाँच सौ रुपया से अधिक नहीं" हटा दिये गये हैं – मूल अधिनियम के अन्तर्गत नियत की गई 500 रुपये की सीमा हटा दी गई है और अब संशोधन अधिनियम के अन्तर्गत यह न्यायालय की

NOTES OF CASES SECTION

स्वतंत्रता है कि ऐसी रकम नियत करे जैसी वह ठीक समझे — पक्षकारों की सामाजिक और आर्थिक प्रास्थिति एवं मामले के तथ्यों और परिस्थितियों को देखते हुए न्यायालय ने अंतरिम भरण-पोषण की युक्तियुक्त रकम नियत की है — कोई हस्तक्षेप की आवश्यकता नहीं — रिवीज़न खारिज। 2009(1) MPLJ (Cri) 11 (संदर्भित)।

Neeraj Kalbhor, for the applicant.

***Cr.R. No.668/2009 (Gwalior), D/- 31 August, 2009.**

Short Note

(55)

K.K. Lahoti & K.S. Chauhan, JJ

VINAY KUMAR

Vs.

SMT. JAYA

Hindu Marriage Act (25 of 1955), Section 12(1)(a) - Voidable marriage - Impotency - Husband filed a petition that the marriage has not been consummated owing the impotency of the wife - Trial Court dismissed the petition as husband failed to prove his case - Held - Husband deposed that he tried to commit sexual intercourse several times with the wife but on account of excuses and refusal by the wife the marriage was not consummated - Medical evidence showing that wife's vagina was not developed and there was no uterus - Even after treatment she cannot be a fully competent woman - Oral evidence of husband finds support by the medical evidence - It is fully established that the marriage was not consummated on account of incapability and impotency of wife - Appellant entitled to get decree u/s 12(1)(a). - Appeal allowed. AIR 2003 P&H 327, AIR 1971 MP 168, AIR 2003 Guj 222, 1977 Cal 213 (ref).

हिन्दू विवाह अधिनियम (1955 का 25), धारा 12(1)(ए) — शून्यकरणीय विवाह — नपुंसकता — पति ने याचिका पेश की कि पत्नी की नपुंसकता के कारण विवाह पूर्ण नहीं हुआ — विचारण न्यायालय ने याचिका खारिज की क्योंकि पति अपना मामला साबित करने में असफल रहा — अभिनिर्धारित — पति ने अभिसाक्ष्य दिया कि उसने कई बार उसकी पत्नी से मैथुन का प्रयास किया किन्तु पत्नी द्वारा बहाने बनाने और इनकार करने के कारण विवाह पूर्ण नहीं हुआ — चिकित्सीय साक्ष्य दर्शाती है कि पत्नी की योनि पूर्णतः विकसित नहीं थी और उसके कोई गर्भाशय नहीं था — इलाज के बाद भी वह एक पूर्णतः सक्षम स्त्री नहीं बन सकती — पति की मौखिक साक्ष्य का समर्थन चिकित्सीय साक्ष्य द्वारा होता है — यह पूर्णतः साबित है कि पत्नी की असक्षमता और नपुंसकता के कारण विवाह पूर्ण नहीं हुआ — अपीलार्थी धारा 12(1)(ए) के अन्तर्गत डिक्ली पाने का हकदार — अपील मंजूर। AIR 2003 P&H 327, AIR 1971 MP 168, AIR 2003 Guj 222, 1977 Cal 213 (संदर्भित)।

T.S. Ruprah with Harpreet Singh Ruprah, for the appellant.

None, for the respondent though served & represented.

***F.A. No.743/2005 (Jabalpur), D/- 31 July, 2009.**

CENTURY TEXTILES INDUSTRIES LTD. (M/S) Vs. DEEPAK JAIN

I.L.R. [2009] M. P., 3241
SUPREME COURT OF INDIA

Before Mr. Justice D.K. Jain & Mr. Justice R.M. Lodha

20 March, 2009*

CENTURY TEXTILES INDUSTRIES LTD. (M/S)

... Appellant

Vs.

DEEPAK JAIN & anr.

... Respondents

A. Civil Procedure Code (5 of 1908), Section 47 - Scope - Identity of judgment debtor disputed - A decree was passed against respondent No.2 in a recovery suit filed by the appellant - At the stage of execution proceedings, respondent No.1 has filed objection stating that he was not the proprietor of respondent No.2 and hence not liable to honour the decree - Held - The issue could be adjudicated u/s 47 notwithstanding the fact that respondent No.1 was not a party in the suit, wherein the decree in question was passed. (Para 15)

क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 47 - विस्तार - निर्णीत ऋणी की पहचान विवादित - अपीलार्थी द्वारा पेश वसूली के वाद में प्रत्यर्थी क्र. 2 के विरुद्ध डिक्री पारित की गयी - निष्पादन कार्यवाहियों के प्रक्रम पर प्रत्यर्थी क्र. 1 ने यह कथन करते हुए आपत्ति पेश की कि वह प्रत्यर्थी क्र. 2 का प्रोप्राइटर नहीं था इसलिए डिक्री का आदर करने के लिए दायी नहीं है - अभिनिर्धारित - इस तथ्य के होते हुए भी कि प्रत्यर्थी क्र. 1 उस वाद में पक्षकार नहीं था, जिसमें प्रश्नगत डिक्री पारित की गई, विवादक धारा-47 के अन्तर्गत न्यायनिर्णीत किया जा सकता है।

B. Civil Procedure Code (5 of 1908), Section 152 - Scope - A decree was passed against respondent No.2 - At the stage of execution proceedings, respondent No.1 has filed objection stating that he was not the proprietor of respondent No.2 and hence not liable to honour the decree - Held - High Court was not right in holding that the only course available to the appellant was to seek amendment of the decree u/s S. 152 - S. 152 makes it clear that the power of Court under the said provision is limited to rectification of clerical and arithmetical errors arising from any accidental slip or omission - There cannot be reconsideration of the merits of the matter. (Para 16)

ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 152 - विस्तार - प्रत्यर्थी क्र. 2 के विरुद्ध डिक्री पारित की गयी - निष्पादन कार्यवाहियों के प्रक्रम पर प्रत्यर्थी क्र. 1 ने यह कथन करते हुए आपत्ति पेश की कि वह प्रत्यर्थी क्र. 2 का प्रोप्राइटर नहीं था इसलिए डिक्री का आदर करने के लिए दायी नहीं है - अभिनिर्धारित - उच्च न्यायालय यह अभिनिर्धारित करने में सही नहीं थे कि अपीलार्थी को केवल यह उपचार उपलब्ध था कि धारा 152 के अन्तर्गत डिक्री के संशोधन की माँग करे - धारा 152 यह स्पष्ट करती है कि उक्त उपबंध के अन्तर्गत न्यायालय की शक्ति किसी आकस्मिक भूल या लोप से हुई लिपिकीय या गणितीय भूलों के सुधार तक सीमित है - मामले के गुणदोषों पर पुनर्विचार नहीं हो सकता है।

C. Judicial Propriety & Decorum - Execution Court, as per direction of the High Court, after leading evidence, concluded that respondent No.1 was the proprietor of respondent No.2 - Order challenged in revision - High Court held that Executing Court could not have decided the issue regarding identity of the proprietor, in exercise of its jurisdiction u/s 47 CPC - Held - While dealing with the second revision petition, the High Court failed to take into consideration the earlier order passed by Single Judge of High Court - Judicial propriety and decorum requires that if a Single Judge, hearing a matter, feels that earlier decision of a Single Judge needs reconsideration, he should not embark upon that inquiry sitting as a Single Judge but should refer the matter to a larger bench. (Para 17)

ग. न्यायिक औचित्य और शिष्टाचार. — निष्पादन न्यायालय ने उच्च न्यायालय के निदेशानुसार साक्ष्य लेने के बाद यह निष्कर्ष निकाला कि प्रत्यर्थी क्र. 1 प्रत्यर्थी क्र. 2 का प्रोप्राइटर था — आदेश को पुनरीक्षण में चुनौती दी गई — उच्च न्यायालय ने अभिनिर्धारित किया कि निष्पादन न्यायालय सि.प्र.सं. की धारा 47 के अन्तर्गत अपनी अधिकारिता के प्रयोग में प्रोप्राइटर की पहचान से सम्बन्धित विवादक का विनिश्चय नहीं कर सकता था — अभिनिर्धारित — उच्च न्यायालय द्वितीय पुनरीक्षण याचिका पर कार्यवाही करते समय, उच्च न्यायालय के एकल न्यायाधीश द्वारा पारित पूर्ववर्ती आदेश को विचार में लेने में असफल रहा — न्यायिक औचित्य और शिष्टाचार यह अपेक्षित करते हैं कि यदि किसी एकल न्यायाधीश को किसी मामले की सुनवाई करते समय यह प्रतीत होता है कि किसी एकल न्यायाधीश के पूर्ववर्ती विनिश्चय के पुनर्विचार की आवश्यकता है, तो उसे एकल न्यायाधीश के रूप में कार्यवाही करते हुए उसकी जाँच आरम्भ नहीं करनी चाहिए बल्कि वृहत्तर न्यायपीठ को मामला निर्देशित करना चाहिए।

Cases referred :

AIR 1960 SC 388, AIR 1956 SC 359, (2003) 8 SCC 289.

J U D G M E N T

The Judgment of the Court was delivered by D.K. JAIN, J. :-Leave granted.

2. Challenge in this appeal is to the judgment and order dated 18th November, 2004 rendered by a learned Single Judge of the High Court of Madhya Pradesh at Jabalpur, in Civil Revision No. 364 of 2004 filed under Section 115 of the Code of Civil Procedure, 1908 (for short 'the CPC'). By the impugned judgment, the learned Judge allowing the Revision Petition has set aside the order passed by the Second Additional District Judge, Jabalpur in Execution Case No. 2 of 2004, whereby and whereunder he had held that the objector Deepak Jain and D.K. Jain are the same person and proprietor of M/s Surya Trading Company--the judgment debtor.

3. Shorn of unnecessary details, the case of the appellant, in brief, is that it is engaged in the business of manufacture of cement. It required the services of Clearing and Forwarding Agents. Respondent No.1, namely, Deepak Jain applied for the said agency in the name of a proprietary concern 'M/s. Deepak Jain' at

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743, Sarafa Bazaar. In the application, he gave the reference of his father Shri S.C. Jain, Advocate, 744, Sarafa Bazaar. Both the properties, namely, 743 and 744 at Sarafa Bazaar are stated to be ancestral properties of Deepak Jain/D.K. Jain. The said respondent operated a Bank Account No. 454 with Punjab & Sind Bank for his dealings. He also had another account No. 453 with the same branch of the bank operated under the name and style of "M/s Surya Trading Company, Proprietor, D.K. Jain", respondent No.2 in this appeal.

4. According to the appellant, though the agency was in the name of a proprietary concern, styled as M/s. Deepak Jain, but after sometime, Deepak Jain started dealing with them as "M/s. Surya Trading Company, Proprietor, D.K. Jain" as well. He corresponded from both the addresses, namely, 743 and 744, Sarafa Bazaar. In discharge of his liability towards the appellant, the first respondent issued a Cheque in the sum of Rs. 10,68,335/- dated 2nd August, 1992 from Account No. 453 of "Surya Trading Company" as D.K. Jain. However, the Cheque was returned unpaid. The appellant filed a Civil Suit for recovery of the said amount against "M/s. Surya Trading Company, Proprietor D.K. Jain". The Suit was decreed ex-parte on 10th March, 1997. On summons being issued by the Executing Court, Deepak Jain appeared before the Court and filed objections, pleading that he was neither D.K. Jain nor proprietor of M/s. Surya Trading Company and not even a resident of 744, Sarafa Bazaar. Accepting the objections preferred by Deepak Jain, by order dated 14th August, 2001, the Executing Court held that the decree could be executed only against D.K. Jain and not against Deepak Jain. Aggrieved by the order passed by the executing Court, the appellant filed a Civil Revision before the High Court. Vide order dated 21st August, 2002, the High Court disposed of the Revision Petition with the following direction:

"After hearing the learned counsel for the petitioner, this Revision is disposed of with the direction that in case petitioner files an appropriate application disclosing and specifying the identity of the proprietor, an enquiry thereon shall be held by the Executing Court and the same shall be decided in accordance with law."

5. None of the parties questioned the said order and thus it attained finality. On 2nd December, 2002, the appellant moved an application before the Executing Court disclosing and specifying the identity of the judgment debtor. The first respondent - Deepak Jain contested the said application by stating that he was not the proprietor of M/s. Surya Trading Company and that he had no connection with 744 Sarafa Bazaar as well. The Executing Court framed the following issues:

1. Whether the objector Deepak Jain, Advocate S/O Late Shri Sumer Chandra, Advocate, R/O 744, Saraffa Bazar, Kamaina Road, Jabalpur is the proprietor of M/s. Surya Trading Company?

2. Relief and expenses.

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6. Parties led evidence on the first issue. The Executing Court, upon analysis of the evidence so led, came to the conclusion that Deepak Jain was the proprietor of M/s. Surya Trading Company and Deepak Jain and D.K. Jain are the same person. For the sake of ready reference, the relevant portion of the order passed by the Executing Court is extracted below:

"It appears from the perusal of the letter, Exh. P-4 that above letter has been written on the Letter Head in the name of Deepak Jain, 743, Saraffa Bazar, Kamania Gate. The letter has been addressed to M/s. Manikgarh Cement, Nagpur. The contents of the letter was related to sending cement and in place of account, M/s. Surya Trading Company has been written. It has not been clarified by the Objector that when he has no concern with M/s. Surya Trading Company, then on what basis name of M/s. Surya Trading Company has been mentioned on the letter, Exh. P-4 dated 2.11.1990? Thus, it is evident from the letter verified by the Objector himself that business of M/s. Surya Trading Company is being managed by Deepak Jain himself. Because as per statement of Objector as per letter, Exh. P-4, it is his Firm and writer of this letter on the Letter Head, is no one other than Deepak Jain himself. In this letter, demand has been given for M/s. Surya Trading Company. Thus it is evident from the letter, Exh. P-4 that owner of M/s. Deepak Jain and proprietor of M/s. Surya Trading Company Shri D.K. Jain are the same person."

7. Obviously, being aggrieved by the said order, Deepak Jain filed Civil Revision No. 364 of 2004. The main ground of challenge was that the Executing Court had wrongly placed the onus on him to prove that he was not D.K. Jain. However, there was no challenge to the jurisdiction or power of the Executing Court to decide the issues framed.

8. As noted earlier, by the impugned order, the High Court has come to the conclusion that the Executing Court could not decide issue No.1 in exercise of its jurisdiction under Section 47 of the CPC. It has been held that the Executing Court could not go behind the pleadings and the judgment in the Civil Suit, wherein the case of the appellant related to the transaction with "M/s. Surya Trading Company proprietor D.K. Jain" and there was no reference of objector Deepak Jain, S/o late Sumer Chandra Jain, Advocate, 743 Sarafa Bazaar, Jabalpur in the judgment of the Civil Court. It has been observed that without seeking amendment under Section 152 of the CPC of the judgment-decree, the appellant was erroneously endeavouring to execute the money decree against Deepak Jain.

9. Being aggrieved by the decision of the learned Single Judge, the appellant is before us in this appeal, by special leave.

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10. Mr. Sunil Gupta, learned senior counsel appearing on behalf of the appellant, strenuously urged before us that by the impugned order, the High Court has in effect overturned its earlier order dated 21st August, 2002 in Civil Revision No. 379 of 2002 (extracted above), whereby the Executing Court had been directed to hold an inquiry into the question of identity of the proprietor of M/s. Surya Trading Company. It was submitted that the High Court failed to appreciate that its own earlier order mandated the Executing Court to determine the identity of the proprietor of the judgment debtor and, therefore, the Executing Court was certainly competent and entitled to go into the said question in terms of Section 47, CPC. It was also contended that adjudication on the question of identity being a pure question of fact, it could not be interfered by the High Court in exercise of its jurisdiction under Section 115, CPC. In support of the proposition that the High Court should have taken into consideration the decision of the Co-ordinate Bench of the same High Court, dated 21st August, 2002, which had attained finality, learned counsel placed reliance on the decisions of this Court in *Topanmal Chhotamal Vs. M/s. Kundomal Gangaram & Ors.* 1; *Jai Narain Ram Lundia Vs. Kedar Nath Khetan & Ors.* 2 and *Ravinder Kaur Vs. Ashok Kumar & Anr.* 3.

1 AIR 1960 SC 388

2 AIR 1956 SC 359

3 (2003) 8 SCC 289

11. Per contra, Mr. Shiv Sagar Tiwari, learned counsel appearing on behalf of the respondents, supported the impugned judgment and submitted that the Executing Court had misread the evidence while coming to the conclusion that Deepak Jain and D.K. Jain are one and the same person and proprietor of M/s. Surya Trading Company. Learned counsel submitted that the High Court was justified in holding that the Executing Court could not go behind the decree and that the only remedy available to the appellant herein was to seek rectification of the decree by moving proper application under Section 152 of the CPC.

12. Having bestowed our anxious consideration to the background facts obtaining in the present case, in particular, the order passed by the High Court on 21st August, 2002, in the first round of litigation in execution proceedings, subject matter of Civil Revision No. 379 of 2002, in our opinion, the impugned judgment is unsustainable.

13. There is no quarrel with the general principle of law and indeed, it is unexceptionable that a court executing a decree cannot go behind the decree; it must take the decree according to its tenor; has no jurisdiction to widen its scope and is required to execute the decree as made. However, the question which falls for consideration in the present case is that when a specific issue regarding the identity of the judgment-debtor had been raised and entertained by the High Court in the first Civil Revision Petition, decided on 21st August, 2002, and the

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Court having remitted the matter to the Executing Court, the enquiry conducted by the Executing Court in furtherance of the said direction, could its order be said to be without jurisdiction?

14. In our opinion, on facts in hand, the Executing Court had no option but to determine the question of identity of the judgment-debtor because of the direction of the High Court and the issues raised before it. Indeed, no objection to the jurisdiction of the Executing Court to determine the issue could or was raised. It is also manifest that the said direction by the High Court was keeping in view the provisions of Section 47 of the CPC.

15. Section 47 of the CPC contemplates that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of decree, have got to be determined by the court executing the decree and not by a separate suit. In the instant case, the controversy before the High Court, in the first instance, was whether the decree against "M/s Surya Trading, Proprietor, D.K. Jain" could be executed against Deepak Jain, who according to the decree holder, was no one else but D.K. Jain. It is true that Deepak Jain, as such, was not a party to the suit but the fact remains that "M/s Surya Trading Company, Proprietor, D.K. Jain" was Deepak Jain himself and, therefore, the question referred to the Executing Court by the High Court for determination was whether "D.K. Jain" and "Deepak Jain" were two different entities. We have no hesitation in holding that in the peculiar situation arising in the case, the said issue could be adjudicated under Section 47 of the CPC, notwithstanding the fact that Deepak Jain was not a party in the suit, wherein the decree in question was passed.

16. Moreover, it is evident from the order of the Executing Court that no plea regarding the applicability of Section 47 of the CPC was raised on behalf of the judgment-debtor before that Court. We are unable to persuade ourselves to agree with the High Court that the only course available to the decree holder was to seek amendment of the decree under Section 152 of the CPC, as was canvassed before us by learned counsel for the respondents. A bare reading of Section 152 CPC makes it clear that the power of the Court under the said provision is limited to rectification of clerical and arithmetical errors arising from any accidental slip or omission. There cannot be re-consideration of the merits of the matter and the sole object of the provision is based on the maxim *actus curiae neminem gravabit* i.e., an act of court shall prejudice no man. In our judgment, the issue requiring adjudication by the Executing Court did not call for and was clearly beyond the scope of Section 152 CPC.

17. We are also constrained to observe that while dealing with the second Revision Petition, the High Court failed to take into consideration the order passed by a learned Single Judge on 21st August, 2002, whereby the Executing Court was

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directed to conduct inquiry in regard to the status of the objector to the execution proceedings. Time and again it has been emphasised that judicial propriety and decorum requires that if a Single Judge, hearing a matter, feels that earlier decision of a Single Judge needs re-consideration, he should not embark upon that enquiry, sitting as a Single Judge, but should refer the matter to a larger Bench. Regrettably, in the present case, the learned Single Judge departed from the said healthy principle and chose to re-examine the same question himself.

18. Before parting, we note with some anguish that this case is a classic example of how a judicial process can be misused by unscrupulous litigants, more so, when the person concerned himself happens to be an advocate. In the first instance, neither "D.K. Jain" nor "Deepak Jain", actually one and the same person, challenged the ex-parte decree dated 10th March, 1997 and it was only when execution proceedings were initiated against "Deepak Jain", that to obstruct execution, he raised a frivolous plea of the identification of the judgment-debtor, with the result that although over a decade has gone by yet the decree holder has not been able to enjoy the fruits of the money decree so far.

19. In view of the foregoing discussion, the appeal is allowed and the impugned judgment of the High Court is set aside with costs, quantified at Rs.20,000/-.

Appeal allowed.

I.L.R. [2009] M. P., 3247

SUPREME COURT OF INDIA

Before Mr. Justice S.B. Sinha & Mr. Justice P. Sathasivam

20 March, 2009*

NEW INDIA ASSURANCE CO. LTD.

... Appellant

Vs.

BISMILLAH BAI & ors.

... Respondents

A. Motor Vehicles Act (59 of 1988), Sections 149 & 166 - Liability of insurer - Collision of Jeep & Truck - Person sitting in Jeep died - Tribunal found accident occurred due to rash & negligent driving of the Truck driver - Truck not insured - Award passed only against owner & driver of Truck - Owner, driver and insurance company of Jeep exonerated - On filing appeal High Court setting-aside the part of award exonerating the insurer of Jeep and making insurer of Jeep also liable for payment - Held - High Court having not reversed the finding of the tribunal that Jeep driver was not at fault it could not have fastened liability on insurer of Jeep - Judgement of High Court set-aside - Appeal allowed. (Paras 9 to 11)

क. मोटर यान अधिनियम (1988 का 59), धाराएँ 149 व 166 - बीमाकर्ता का दायित्व - जीप और ट्रक की टक्कर - जीप में बैठे व्यक्ति की मृत्यु - अधिकरण ने पाया कि घटना

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ट्रक ड्रायवर के उतावलेपन और उपेक्षापूर्ण ड्रायविंग के कारण हुई — ट्रक बीमित नहीं — अधिनिर्णय केवल ट्रक के स्वामी और ड्रायवर के विरुद्ध पारित — जीप के स्वामी, ड्रायवर और बीमा कम्पनी को उन्मुक्त किया गया — अपील पेश किये जाने पर उच्च न्यायालय ने अधिनिर्णय का जीप के बीमाकर्ता को उन्मुक्त करने वाला भाग अपास्त किया और जीप के बीमाकर्ता को भी संदाय के लिए दायी बनाया — अभिनिर्धारित — उच्च न्यायालय अधिकरण का यह निष्कर्ष न उलटते हुए कि जीप ड्रायवर का दोष नहीं था, जीप के बीमाकर्ता पर दायित्व आरोपित नहीं कर सकता था — उच्च न्यायालय का निर्णय अपास्त — अपील मंजूर।

B. Motor Vehicles Act (59 of 1988), Sections 147 & 149 - Liability of insurer - Collision of Jeep & Truck - Person sitting in Jeep died - Tribunal exonerated insurer of Jeep - Whereas High Court fastened the liability on insurer of Jeep - Held - Deceased was travelling as a passenger in a Jeep - Therefore in view of the terms of contract of insurance, insurer of Jeep cannot be held liable - Appeal allowed. (Para 12)

खा. मोटर यान अधिनियम (1988 का 59), धाराएँ 147 व 149 — बीमाकर्ता का दायित्व — जीप और ट्रक की टक्कर — जीप में बैठे व्यक्ति की मृत्यु — अधिकरण ने जीप के बीमाकर्ता को उन्मुक्त किया — जबकि उच्च न्यायालय ने जीप के बीमाकर्ता पर दायित्व आरोपित किया — अभिनिर्धारित — मृतक जीप में एक सवारी के रूप में यात्रा कर रहा था — इसलिए बीमा की संविदा के निबंधनों को दृष्टिगत रखते हुए जीप का बीमाकर्ता दायी नहीं ठहराया जा सकता — अपील मंजूर।

Case referred :

(2008) 7 SCC 428.

ORDER

Leave granted.

2. The Insurance Company is before us, aggrieved by and dissatisfied with the judgment and order dated 07th February, 2006 passed by a Division Bench of the High Court of Madhya Pradesh, Indore Bench, Indore in M.A. No.1377 of 2003, whereby and whereunder the High Court has modified the judgment of the Motor Accident claims Tribunal, Indore (for short 'the Tribunal') exonerating the Insurance Company-appellant herein from paying any amount of compensation passed in Claim Case No. 285 of 1997 awarding a total sum of Rs.3,12,000/- with interest to the claimants for the death of one Israel, in a motor vehicle's accident holding that the Insurance Company is liable to pay the compensation to the claimants.

3. Facts of the case giving rise to this appeal are:

The deceased-Israel was travelling in a Jeep bearing No.MPA-09-1658 on 26.08.1995. The said Jeep collided with a truck bearing No.MPF 07158 and Israel died of the injuries suffered by him at the site of accident. His family members filed an application under Section 166, 140 of the Motor Vehicles Act (for short 'the Act').

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before the Tribunal for compensation.

4. The appellant raised a contention in the said proceeding that since the driver of the jeep was not responsible for causing the said accident, it was not liable to pay any compensation to the claimants.

5. The Tribunal by reason of the aforementioned award, inter alia, held in paras 22 & 23 as under:

"22. Therefore due to want of averments of Petitioners in the application and from the certified copy of charge sheets Ex.P-1 to Ex.P-5 produced by the Petitioners, the Petitioners remained successful in proving that accident occurred due to rash and negligent driving of truck by opposite party No.4.

23. Therefore on the basis of evidence produced, the Petitioners remained successful in proving their case against opposite party No.3 and 4 in lieu of opposite party No.1 and 2, and as per the record the jeep owner Raees Khan and Insurance company cannot be held accountable to pay the compensation amount as the driver of jeep Israeel was not driving his jeep rashly and negligently and he had no fault."

6. It was also held by the Tribunal that as the Insurance Company is not held accountable for payment of compensation amount, it is entitled to receive the amount of Rs.25,000/-, deposited with the Tribunal by an interim order, from the claimants with interest at the rate of 9% per annum. However, an award for a sum of Rs.3,12,000/- was passed against the driver and owner of the truck in question.

7. Claimants, however, preferred an appeal against the said award.

8. The High Court by reason of the impugned judgment set aside that part of the order of the Tribunal whereby the appellant herein was exonerated from payment of any liability for reimbursement of the claim so far as the driver and owner of the jeep were concerned, stating:

"7. So far as finding in relation exonerating of Insurance Company is concerned, we are inclined to reverse the same in favour of claimants. Firstly, no evidence in rebuttal was led by the Company and then for all practical purposes remained ex parte in the sense that except to file written statement, they did nothing. On the other hand, the claimants led evidence and discharged their initial burden. Israel was neither owner of the offending Jeep, not insurer. He was, therefore, third party, as one of the person sitting in Jeep. Ajij was the driver. There is nothing on record to hold that Jeep was responsible for

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causing accident and hence, claimants are not entitled to get any compensation. The driver of Truck was not examined. We cannot conclude on the strength of evidence that Jeep was responsible for the accident.

8. In this view of the matter, we set aside the finding of the Tribunal on this issue and modify the impugned award by passing the same also against the insurance company i.e. respondent No.3/non applicant No.3."

9. A bare perusal of the order clearly shows that no reason whatsoever has been assigned in support thereof. The finding of the learned Tribunal and the material noticed by it for the said purpose has not been considered by the High Court.

10. The question as to whether the driver of the jeep or the truck and/or both of them were responsible for negligence in driving their respective vehicles, which led to the said accident is essentially a question of fact. While reversing the said finding of fact, so as to fasten the liability on the insurance company, the High Court was required to assign sufficient and cogent reasons. No such finding to the effect that both driver as also the jeep contributed to the negligence having been recorded by the High Court, the question of fastening the joint liability by the insurance company did not arise. Only because the truck was not insured, the same by itself did not mean that the appellant-insurance company can be held liable to reimburse the claim to the claimants wherefor liability had been incurred by the owner and driver of the truck and, therefore, no liability has been incurred by the driver and owner of the jeep is concerned. The Tribunal has categorically recorded a finding that the driver of the jeep was not driving his jeep rashly and negligently and he was not at fault and that the accident occurred due to rash and negligent driving of truck by its driver.

11. Since, the High Court has not reversed this finding of the Tribunal, fastening of the liability on the insurance company which is the insurer of the jeep did not arise.

12. Even otherwise, the insurance company cannot be held liable to pay compensation to the claimants in view of the decision of this Court in *Oriental Insurance Company Limited v. Sudhakaran K.V. & Ors.* [(2008) 7 SCC 428] wherein this Court opined:

"11. This Court in a catena of decisions has categorically held that a gratuitous passenger in a goods carriage would not be covered by a contract of insurance entered into by and between the insurer and the owner of the vehicle in terms of Section 147 of the Act. [See *New India Assurance Co. Ltd. v. Asha Rani* (2003) 2 SCC 223]"

NEW INDIA ASSURANCE CO. LTD. Vs. BISMILLAH BAI

12. A Division Bench of this Court in *United India Insurance Co. Ltd., Shimla v. Tilak Singh and Ors.* extended the said principle to all other categories of vehicles also, stating as under:

In our view, although the observations made in *Asha Rani* case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

It was held:

"14. The provisions of the Act and, in particular, Section 147 of the Act were enacted for the purpose of enforcing the principles of social justice. It, however, must be kept confined to a third party risk. A contract of insurance which is not statutory in nature should be construed like any other contract.

15. We have noticed the terms of the contract of insurance. It was entered into for the purpose of covering the third party risk and not the risk of the owner or a pillion rider. An exception in the contract of insurance has been made, i.e., by covering the risk of the driver of the vehicle. The deceased was, indisputably, not the driver of the vehicle.

16. The contract of insurance did not cover the owner of the vehicle, certainly not the pillion rider. The deceased was travelling as a passenger, *stricto sensu* may not be as a gratuitous passenger as in a given case she may not be a member of the family, a friend or other relative. In the sense of the term which is used in common parlance, she might not be even a passenger.

In view of the terms of the contract of insurance, however, she would not be covered thereby."

13. For the aforementioned reasons, the impugned judgment cannot be sustained and it is set aside accordingly. The appeal is allowed. No costs.

Appeal allowed.

GRASIM INDUSTRIES LTD. Vs. AGARWAL STEEL

I.L.R. [2009] M. P., 3252

SUPREME COURT OF INDIA

Before Mr. Justice Markandey Katju & Mr. Justice Asok Kumar Ganguly
20 October, 2009*

GRASIM INDUSTRIES LTD. & anr.

... Appellants

Vs.

AGARWAL STEEL

.... Respondent

Evidence Act (1 of 1872), Sections 61 & 73 - Presumption of signature on a document - Held: *When a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted.* (Para 4)

साक्ष्य अधिनियम (1872 का 1), धाराएँ 61 व 73 - किसी दस्तावेज पर हस्ताक्षर की उपधारणा - अभिनिर्धारित - जब कोई व्यक्ति किसी दस्तावेज को हस्ताक्षरित करता है, तब जब तक बल या कपट का सबूत न हो, यह उपधारणा की जाती है कि उसने दस्तावेज को उचित रूप से पढ़ लिया है और उसे समझ लिया है और केवल तब उसने उस पर अपने हस्ताक्षर किये हैं, अन्यथा दस्तावेज पर कोई हस्ताक्षर कभी भी स्वीकार नहीं किये जा सकते हैं।

O R D E R

Heard learned counsel for the parties.

This appeal by special leave has been filed against the judgment and order dated 14th May, of the High Court of Judicature at Madhya Pradesh at Jabalpur.

2. The facts in detail have been set out in the impugned judgment and hence we are not repeating the same here. Briefly stated the facts are that the appellant herein entered into an agreement with the respondent and appointed the appellant as a principal dealer for sale of its cement 'Vikram Premium Brand'. On 21.3.1997, the respondent became the consignment agent of the appellant company and in this behalf an agreement dated 1.5.1997 was signed between the parties. Disputes and differences arose between the parties under the said agreement dated 1.5.1997 and the same were referred to an arbitrator. A copy of the arbitration award dated 6.8.2000 is annexed as Annexure-P/10 to this appeal. In the award the arbitrator has rejected the plea of the claimant-respondent that the signature on Ex.D-8 dated 21.10.1997 were only in lieu of a receipt. The case of the appellant was that the document Ex.D-8 was a joint statement of account. The arbitrator held that the signatures on Ex. D-8, joint statement of account, were made by the parties. However, he held that the signature on behalf of the claimant-respondent was made under a mistake and hence the same was not binding. Accordingly, the arbitrator re-examined each head of account and

GRASIM INDUSTRIES LTD. Vs. AGARWAL STEEL

ultimately held the appellant liable to pay to the respondent a sum of Rs. 49.90 lakhs alongwith interest. Objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter for short 'the Act') were filed by the respondent before the IXth Addl. District Judge, Jabalpur. By his order dated 25.6.2001, the learned Addl. District Judge held that the appellant was entitled to receive a sum of Rs. 62,000/- alongwith interest @ 18%. The said order of the learned Addl. District Judge was put in challenge before the High Court under Section 37 of the Act.

3. We are not going into the details of the impugned judgment except to note that in para 24 of the said judgment it has been stated that the arbitrator did not accept the claimant-respondent's plea that the signatures on Ex.D-8 were only in lieu of receipt. However, the arbitrator addressed himself to the facet whether the admission was erroneous or mistaken or it was conclusive proof of the matter.

4. In our opinion, when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted. In particular, businessmen, being careful people (since their money is involved) would have ordinarily read and understood a document before signing it. Hence the presumption would be even stronger in their case. There is no allegation of force or fraud in this case. Hence it is difficult to accept the contention of the respondent while admitting that the document Ex.D-8 bears his signatures that it was signed under some mistake. We cannot agree with the view of the High Court on this question. On this ground alone, we allow this appeal, set aside the impugned judgment of the High Court and remand the matter to the High Court for expeditious disposal in accordance with law.

5. All questions of law and fact, except the one decided by us hereinabove shall remain open for the parties to be urged before the High Court. We make it clear that we are making our observation that there was no mistake in the document Ex. D-8, which the parties have signed.

6. Interim order of this Court dated 23.9.2004, as modified on 9.1.2006, shall continue to remain in operation till final disposal of the matter by the High Court.

Appeal allowed. No order as to the costs.

CIVIL APPEAL NOS. 7477/2004 AND 1733/2005

In terms of our order in Civil Appeal No. 5994/2004, these appeals also stand disposed of.

Appeal allowed.

SUDHEERSINGH TOMAR Vs. JIWAJI UNIVERSITY

I.L.R. [2009] M. P., 3254

WRIT APPEAL*Before Mr. A.K. Patnaik, Chief Justice & Mr. Justice S. Samvatsar*

31 July, 2009*

SUDHEER SINGH TOMAR

... Appellant

Vs.

JIWAJI UNIVERSITY & anr.

... Respondents

Jiwaaji University, Ordinance 38, Clause (9) & (10) - Permission to appear in examination - Appellant not permitted to appear in the fourth semester examination of M.Sc. (Computer Science) as he didn't get aggregate 36% marks in theory and laboratory courses in second semester examination - Held - Court interpreted first and second proviso of Clauses (9) & (10) and held that unless the appellant clears the second semester examination by obtaining 36% in aggregate in both theory and laboratory courses separately, he cannot be permitted to appear in the fourth semester examination. (Para 7)

जीवाजी विश्वविद्यालय, अध्यादेश 38, खण्ड (9) व (10) - परीक्षा में बैठने की अनुमति - अपीलार्थी को एम.एससी. (कम्प्यूटर विज्ञान) के चतुर्थ सेमेस्टर की परीक्षा में बैठने की अनुमति नहीं दी गई क्योंकि उसने द्वितीय सेमेस्टर की परीक्षा में सैद्धांतिक और प्रयोगशाला पाठ्यक्रमों में कुल 36 प्रतिशत अंक प्राप्त नहीं किये - अभिनिर्धारित - न्यायालय ने खण्ड (9) व (10) के प्रथम और द्वितीय परन्तुक का निर्वचन किया और अभिनिर्धारित किया कि जब तक अपीलार्थी सैद्धांतिक और प्रयोगशाला दोनों पाठ्यक्रमों में पृथक-पृथक रूप से कुल 36 प्रतिशत अंक प्राप्त करके द्वितीय सेमेस्टर परीक्षा उत्तीर्ण नहीं करता तब तक उसे चतुर्थ सेमेस्टर की परीक्षा में बैठने की अनुमति नहीं दी जा सकती।

Cases referred :

2002(3) MPLJ 242, 2009(2) MPLJ 261, (2006) 12 SCC 44.

*M.P.S. Raghuvanshi, for the appellant.**Tapan Trivedi, for the respondents.***ORDER**

The Order of the Court was delivered by A.K. PATNAIK, C. J. :- This appeal under section 2(1) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 is against the order dated 06th July, 2009 passed by the learned Single Judge in Writ Petition No.2670 of 2009, under Article 226 of the Constitution.

2. The facts in brief are that the appellant is a student of M.Sc., Computer Science at S.M.S. Government Model Science College, Gwalior. In the second semester of the course, he secured less than 36% in the aggregate in both theory and practical courses separately as well as less than 26% in the subject of Data

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Base Management Systems. He was, however, promoted to the third semester and he took the examination of the concerned second semester in the subject of Data Base Management Systems and secured 26% marks in the second semester. After completing the third semester examination, he was not allowed to sit in the fourth semester examination by the Jiwaji University, Gwalior keeping in view the provisions of clause (9) and (10) of the Ordinance 38 made under the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (hereinafter referred to as the Adhiniyam, 1973). Aggrieved by the action of the respondent / University, the appellant filed W.P.No.2670 of 2009 and the learned single Judge by the impugned order has dismissed the writ petition after holding that the clauses 9 and 10 of the Ordinance 38 made under the Adhiniyam, 1973 did not permit appearance of the petitioner in the fourth semester examination.

3. We have heard Mr. M.P.S.Raghuvanshi, learned counsel for the appellant and Mr. Tapan Trivedi, learned counsel for the respondent/ university and we find that the learned single Judge has rightly taken a view that the appellant could not be permitted to appear in the fourth semester examination.

4. Clause (9) and (10) of the Ordinance 38 made under the Adhiniyam, 1973 are quoted below:

The minimum pass marks will be 36 % in aggregate in both theory and laboratory courses separately, provided the candidate obtains at least 26 % in each course of the University examination.

Provided further that a candidate passing separately in all the papers but not securing the aggregate shall be promoted to next semester and shall appear in one paper of his/her choice as an ex-student along with the examination of next semester to make up the aggregate.

A candidate failing in any of one course paper laboratory work of first semester examination shall be allowed to continue in the second semester. In second semester, he/she will be allowed to appear in that course of first semester (in which he/she failed in first semester) as an ex-student along with the examination of second semester. For each additional attempt, the University shall charge additional examination fee as certified.

Provided further that candidate failing in any one course of the second semester, shall be promoted to third semester, subject to the condition that he/she has passed all the courses of first semester.

Provisions of this clause shall be applicable to third and fourth semester also. The candidate will be allowed to appear as an ex-student in the whole examination of that semester in which he/she

SUDHEERSINGH TOMAR Vs. JIWAJI UNIVERSITY

failed. Such candidate if passed in that examination will be entitled for admission as regular student in the next semester, if any”

5. From a perusal of the provisions of the Ordinance 38 of the Adhiniyam, 1973 quoted above, it is very clear that the minimum pass marks are 36% in aggregate in both theory and laboratory courses separately, provided the candidate obtains at least 26% in each course of the University examination. The first proviso further states that a candidate passing separately in all the papers but not securing the aggregate shall be promoted to next semester and shall appear in one paper of his/her choice as an ex-student along with the examination of next semester to make up the aggregate. The second proviso further states that candidate failing in any one course of the second semester, shall be promoted to third semester, subject to the condition that he/she has passed all the courses of first semester and the provisions of this clause shall be applicable to third and fourth semester also.

6. It appears that as per second proviso, the appellant has cleared the course in Data Base Management Systems after he was promoted to the third semester and, therefore, he can be taken to have obtained 26% or above in the course of Data Management Systems in the second semester. But, admittedly, he got less than 36% in aggregate in both theory and laboratory courses in the second semester and therefore, he is also required to make up the aggregate by appearing in one of the papers of his choice as ex-student in accordance with the first proviso to the Ordinance 38 and until he secures the aggregate 36% by appearing in one of the papers of his choice as an ex-student of the second semester, he cannot be said to have secured the minimum pass marks of 36% in aggregate in the second semester. In such circumstances, the appellant cannot be allowed to sit in the fourth semester examination.

7. We therefore agree with the view taken by the learned single Judge that unless the appellant clears the second semester examination by obtaining 36% in aggregate in both theory and laboratory courses separately, he cannot be permitted appear in the fourth semester examination. Hence, we are not inclined to admit this appeal and we accordingly dismiss the same.

Appeal dismissed.

JINDAL STRIPS LTD. Vs. M.P. STATE ELECTRICITY BOARD

I.L.R. [2009] M. P., 3257

WRIT APPEAL*Before Mr. Justice Dipak Misra & Mr. Justice R.K. Gupta*

3 August, 2009*

JINDAL STRIPS LTD.

... Appellant

Vs.

M.P. STATE ELECTRICITY BOARD

... Respondent

Constitution, Article 226 - *Writ petition challenging notification of Board amending and modifying agreement and withdrawing the condition of paying interest on security deposit - Any change resulting in non-payment or reduction of interest will have to be justified by cogent reasons and materials having a bearing on financial position - Sufficient justification given by Board regarding increased financial deficit - Board is justified in issuing the notification - Appeal dismissed.* (Paras 14 & 15)

संविधान, अनुच्छेद 226 - करार को संशोधित और उपांतरित करने वाली और सुरक्षा निधि पर ब्याज अदा करने की शर्त को वापस लेने वाली मण्डल की अधिसूचना को चुनौती देते हुए रिट याचिका - कोई परिवर्तन जिसका परिणाम ब्याज का असंदाय या कमी है, को वित्तीय स्थिति से सम्बन्धित प्रत्यायक हेतु और सामग्री से न्यायोचित ठहराना होगा - मण्डल द्वारा बढ़े हुए वित्तीय घाटे के सम्बन्ध में पर्याप्त न्यायोचित्य दिया गया - मण्डल का अधिसूचना जारी करना न्यायानुमत - अपील खारिज।

Cases referred :

1993 Supp (4) SCC 136, C.A. Nos. 1026/2006, 1027/2006, 1028/2006, 1029/2006, 1030/2006, 1031/2006, 1032/2006, 1033/2006, 1034/2006 and 3223/2006.

Kishore Shrivastava with Prem Francis and Alok Aradhe with Avinash Zargar, for the appellants.

M.L. Jaiswal with Manoj Kushwaha, for the respondent.

J U D G M E N T

The Judgment of the Court was delivered by **R.K. GUPTA, J.** :- As the factual backdrop and the question of law involved are common in all these writ appeals, they were heard analogously and are being decided by this common order.

2. The present writ appeals are preferred by the appellants challenging the orders dated 30.04.1997 passed by the learned Single Judge in W.P. Nos. 4700//1996, 2318/1996, 4723/1996 and 2866/1996 by which the writ petitions filed by the petitioners have been dismissed.

3. The brief facts are that all the writ petitioners had challenged the notification dated 24.01.96 issued by the M.P. State Electricity Board (for short, the Board)

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was published in the gazette of M.P. dated 10.5.96. They also challenged the consequent action taken by the Board. The aforesaid notification was challenged on the ground that the same had the effect of amending and modifying the agreement under which electricity was being supplied to them. It was submitted by them that without hearing the appellants, the Board could not have withdrawn the condition of paying the interest to them. The Board had agreed to pay interest on the security deposit. Subsequently by way of notification dated 24.1.96 the clause relating to payment of interest in the agreement was deleted.

4. The learned Single Judge dismissed the petitions holding that there was material on record justifying the issue of the said notification in view of the financial position of the Board. The Learned Single Judge relied upon the judgment passed in case of *Ferro Alloys Corpn. Ltd. Vs. A.P. State Electricity Board and another* 1993 Supp (4) SCC 136. In paragraphs 16 and 24 of the judgment passed by the learned Single Judge, the following conclusion has been recorded.

“16. Shri Sapre and Shri Shrivastava, learned counsel placing reliance on para 135 of the judgment contended that whenever the electricity boards have framed a provision for payment of interest after adjusting its finances at a stated rate, they cannot be allowed to delete such a clause. They contend that the provision for interest, as the Supreme Court observed, has been made by the various boards having regard to the overall budgetary and financial position, further, keeping in view the quantum and mode of security deposit and billing and recovery practice, the Board therefore, cannot withhold payment of interest on the basis of the said judgment. The argument loses sight of the further observations made by the Supreme Court. The Supreme Court has observed that:- “however, if there is any change in the circumstances affecting the budgetary and financial position, the Board can examine the case and decide the future course of action. But any change resulting in non-payment or reduction of interest will have to be justified by cogent reasons and materials having a bearing on the financial position of each Board and facts and circumstances of each case.” The Supreme Court did not touch the matter of Haryana Electricity Board which had dispensed with payment of interest, as the matter was pending in the High Court. From the observations of the Supreme Court, it is clear that the changed circumstances, which affect the budgetary and financial position, may permit the Board to change the course of action, but the Board has to justify the withdrawal of the condition by cogent reasons. In the return filed by the Board it is clearly shown that the Board is required to take loan from various financial institutions and it is

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required to pay interest. Various courts, including the Supreme Court have considered the manner of billing and practice of payment regarding consumption. It cannot be doubted that after the consumer exploits energy for one full month, the Board takes the reading of the same. This process takes about seven days. When the bill is issued to the consumer at least seven days time is to be given to the consumer for making the payment. If the consumer does not make the payment within the period aforesaid, the Board is obliged to issue a dis-connection notice again granting seven to fifteen days time, till by that time the consumer goes on exploiting the energy. The Board virtually recovers the amount of the energy charges after the energy has already been consumed. If the Board for the purposes of maintaining its liquidity and making the funds available makes a provision of the deposit, it cannot be said to be illegal. The Courts in the country have held that the Board is entitled to ask for the security deposit. The question still would be whether the Board is liable to pay the interest or is entitled to withdraw from the condition which it has already entered into regarding payment of interest. So far as the first question is concerned, the Supreme Court in the matter of *Ferro Alloys Ltd.* (supra) has held that there is no liability on the electricity Board either under the statute or in law or equity to pay interest. Regarding the second question, the Supreme Court has observed that if the change results in non-payment or reduction of interest then the Board has to justify its action by cogent reasons and material having a bearing on the financial position of the Board. In the cases in hands, the return of the Board clearly shows the reasons which in the opinion of this Court are cogent and have material bearing on the issue that because of the losses the Board was forced to withdraw from the condition of payment of interest. If the Board either under the statute or common law or equity is not liable to pay interest on the security deposit and is also in a position to justify its action then this Court would not examine the correctness of the details of the budgets, etc. given by the Board.

24. The Court does not sit as a Court of appeal, but merely reviews the manner in which the decision was made and the material which was produced for coming to the conclusion. In the cases in hand, it is clear that the Board had sufficient reasons to withdraw from the earlier conditions. The Court does not have the expertise to correct the administrative decisions. If the Court is substituting its own decision without the necessary expertise, it may be fallible."

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5. In para 24, the following conclusion has been arrived at:-

"The Court does not sit as a Court of appeal, but merely reviews the manner in which the decision was made and the material which was produced for coming to the conclusion. In the cases in hand, it is clear that the Board had sufficient reasons to withdraw from the earlier conditions. The Court does not have the expertise to correct the administrative decisions. If the Court is substituting its own decision without the necessary expertise, it may be fallible."

6. Being aggrieved by the order passed by the learned Single Judge, the respective parties filed LPA's challenging the order passed by the learned Single Judge.

7. The Division Bench is LPA No. 202/97 (old) and the new number of which is W.P. No. 841/08 set aside the judgment passed by the learned Single Judge. Para 17 of the judgment passed by the Division Bench reads as under:-

"17. Mr. Jaiswal, learned senior counsel endeavored hard to impress upon us that when the contract is statutory the Board has the authority to statutorily modify the terms and condition. On a careful and purposeful reading of the provision and what their Lordships have said in the case of *M/s. Hyderabad Vanaspathi* (supra) we are of the considered view that the said provisions deal with the supply of electricity and the framing of uniform tariff and making of rehabilitation. On the contrary, the law laid down in the case of *Bihar State Electricity Board* (supra) would apply on all fours to the present case. That was what exactly said in paragraph 158 of *Ferro Alloys* case. We would like to clarify the position that the Board may refuse to incorporate any condition for grant of interest while demanding security deposit and no consumer can compel the board or challenge the said clause as arbitrary only on this facet or spectrum but once the Board has made provision for grant of interest, keeping in view its financial position and taking objective view of the matter as has been held by their Lordships, the same cannot be withdrawn. As the present notification has withdrawn the said benefit, we are impelled to hold that such action by the Board is not correct and we have no hesitation in stating that the Board was bound to pay interest as per the agreement as well as on the basis of the general terms and conditions of the agreement to the present appellant and cannot deny the same on the basis of the notification dated 24.1.96."

8. Before the Supreme Court, various Civil Appeals were registered and the numbers of which are 1026/2006, 1027/2006, 1028/2006, 1031/2006; 1029/2006,

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1030/2006, 1032/2006, 1033/2006, 1034/2006 and 3223/2006. The Supreme Court expressed the view in para 7 and 8 of its judgment which reads as under:-

"7. Since the fate of these appeals primarily depends upon the view expressed by this Court in *Ferro Alloys case* (supra) at paragraph 158, this paragraph needs to be noticed. The same reads as under:

"In view of the above finding, upholding the clause relating to non-payment of interest, for example, Rajasthan and Orissa, what is to happen to such of those cases where interest is provided like Andhra Pradesh, Uttar Pradesh and Bihar? In all those cases wherever the Electricity Boards have framed a provision for payment of interest after adjusting its finances at a stated rate they cannot be allowed to delete such a clause. The provision for interest has been made by the various Boards having regard to the overall budgetary and financial position and further, keeping in view the quantum and mode of security deposit and billing and recovery practice. Nor again, could the Board withhold payment of interest on the basis of this judgment. However, if there is any change in the circumstances affecting the budgetary and financial position, the Board can examine the case and decide the future course of action. But any change resulting in non-payment or reduction of interest will have to be justified by cogent reasons and materials having a bearing on the financial position of each Board and facts and circumstances of each case."

(Underlined for emphasis)

8. Indisputably a bare reading of paragraph 158 quoted above shows that it is permissible for the Board to take a decision relating to the desirability for payment of interest on security deposits or otherwise."

At the end, the Supreme Court remanded the case to this Court for fresh consideration of the matter in the light of what has been stated in para 158 of *Ferro Alloys Case* (supra) so far as it relates to power of the Board to delete provision relating to payment of interest on security deposit on the factual scenario.

9. On the basis of the same, the matter on remand has come for hearing before us.

10. Counsel for the respective parties submitted that an agreement was entered into on 1.1.95 for payment of interest on the security deposit and the impugned notification was issued on 24.1.96. On this basis, it is submitted by them that the changed circumstances would be relevant during the period from 1.1.95 to 24.1.96

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i.e. on the date when the impugned notification was issued for non deposit of interest on the security deposit. Accordingly, it is submitted that any circumstance subsequent to the notification dated 24.1.96 would not be relevant in the case so that the Board is justified in issuing the notification.

11. To substantiate the submission, the return filed in W.P. No. 2866/96 (*Century Textiles and Industries Ltd. "Maihar Cement" Vs. M.P. Electricity Board and Others*) was referred to. We have taken into account additional pleadings submitted by the Board wherein the Board has stated that it was undergoing serious financial difficulties. There had been unprecedented revenue deficit of Rs.745 Crores in the budget of 1996-97 and the aforesaid loss was likely to be further widened on account of payment of wage revision to the employees to Rs.800 Crores. They also took us further to show that on 31.3.95, the Board has stated that it had borrowed the money from different institutions to the tune of Rs.3753.66 Crores. The cash credit was availed for working capital as on 31.3.95 to the extent of Rs.18.34 Crores. The interest liability on the borrowed amount for the financial year 1995-96 was Rs.650.91 Crores. It is stated that the notification since was issued on 24.1.96, therefore, an attempt made by the Board to justify the notification dated 24.1.96 would not be relevant.

12. The Board referred to the return filed in W.P. No. 4723/96 and referred to the document, Annexure R/1 in the said case and an attempt was made to show that on the date when the notification was issued i.e. 24.1.96, the Board was suffering with deficit which subsequently has also been proved and the assessment of the Board was deficit amount in subsequent years is sufficient to show that on the date when the decision was taken for issuing the notification dated 24.1.96, the Board's was justified.

13. Before we advert to the rival submissions as aforesaid, it would be appropriate for us to refer herein below, para 158 of *Ferro Alloys case* (supra) which reads as under:-

"158. "In view of the above finding, upholding the clause relating to non-payment of interest, for example, Rajasthan and Orissa, what is to happen to such of those cases where interest is provided like Andhra Pradesh, Uttar Pradesh and Bihar? In all those cases wherever the Electricity Boards have framed a provision for payment of interest after adjusting its finances at a stated rate they cannot be allowed to delete such a clause. The provision for interest has been made by the various Boards having regard to the overall budgetary and financial position and further, keeping in view the quantum and mode of security deposit and billing and recovery practice. Nor again, could the Board withhold payment of interest on the basis of this judgment. However, if there is any

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change in the circumstances affecting the budgetary and financial position, the Board can examine the case and decide the future course of action. But any change resulting in non-payment or reduction of interest will have to be justified by cogent reasons and materials having a bearing on the financial position of each Board and facts and circumstances of each case."

14. The Apex Court while remanding the case has also directed the High Court to decide the appeals by a fresh consideration in the light of what has been stated in para 158 of the judgment in *Ferro Alloys case*. Para 158 of the said judgment has already been reproduced in the earlier part of the judgment. As it is evident from the same, any change resulting in non payment or reduction of interest will have to be justified by cogent reasons and materials having a bearing on the financial position of each Board and facts and circumstances of each case.

15. Keeping in view the nature of remand by the Apex Court and also keeping in view para 158 of *Ferro Alloys case* (supra), the justification has to be given whether there had been cogent reasons and materials with respect to financial position of the Board placed before this Court for arriving at a conclusion that the impugned notification dated 24.1.96 is justified.

16. In this context, the discussion with regard to the cogent reasons and materials having a bearing on the financial position of the respondent Board was discussed by the learned Single Judge and we also thought it appropriate to refer para 16 and 24 of the judgment passed by the learned Single Judge in our earlier paragraphs.

17. It was the defence stand of the Board in all the writ petitions while filing the return that during the financial year 1995-96, the financial position of the Board was bad and in subsequent years, it has further deteriorated. The return in W.P. No. 4623/96 also reflects the same picture with regard to financial position of the Board. A comparative chart has also been given by the Board with regard to its financial position along with the return filed in W.P. No. 4723/96 and the same is reproduced as under:-

Particulars	91-92	92-93	93-94	94-95
<u>Income</u>				
Sale of Power	1530.43	2035.63	2433.85	2855.55
Revenue Subsidy	263.94	300.05	415.25	514.88
Other Income	68.98	82.70	120.11	127.15
Total (1)	1863.35	2498.38	2959.21	3497.51
<u>Expenses</u>				
Purchase of power	502.99	603.12	899.10	964.90

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Generation of power	330.87	432.73	536.53	694.42
Repair & Maint.	93.76	94.97	112.40	154.13
Employee Costs.	360.47	409.00	442.36	582.18
Admn. & Gen Exp.	23.73	35.15	41.55	49.89
Dep. & related debits	144.29	249.18	270.92	414.68
Intt. & Finance Charge	494.29	587.79	650.75	685.98
Sub Total (2)	1950.40	2491.94	2953.61	3545.38

Less expenses**Capitalised**

(I) Intt. & Finance charge	136.53	111.85	122.30	124.97
(ii) Other exp.	69.63	73.79	71.58	78.32
Sub Total(3)	206.16	185.64	193.88	203.29
<u>Sub Total(4) (2)-(3)</u>	1744.24	2306.39	2759.73	3342.09
<u>Other debts</u>	26.65	30.49	39.72	45.98
<u>Profit/Loss before tax</u>	92.46	161.59	159.76	109.44
<u>Provision for income tax</u>	0.00	0.00	0.00	0.00
<u>Profit/Loss after tax</u>	92.46	161.59	159.76	109.44
<u>Net prior period prior credits</u>	-8.49	-60.88	-1.52	22.96
<u>Net surplus</u>	83.97	101.01	118.24	132.40
<u>Net Fixed assets at the beginning of year</u>	2799.00	3366.82	3941.02	4413.13
<u>R.E. Subsidy accounted</u>	263.94	379.75	415.19	514.68
<u>R.E. Subsidy actually received</u>	263.94	380.05	223.73	213.82
<u>Rate of Return considering R.E. Subsidy actually received</u>	3.00%	3.00%	-1.86%	-3.82%

18. On a query made by us from the learned counsel for the appellants that whether any rejoinder was filed by the petitioners in the writ petition before hearing of the writ petition, a categorical statement was made that no rejoinder as such was filed. On the basis of the same, it is clear that the facts which were pleaded by the Board to justify their decision by issuing the notification on 24.1.96 were not controverted. As argued by learned counsel for the appellants that only the justification has to be seen prior to the date of impugned notification dated 24.1.96, we are not prepared to accept the submissions so argued. It is so because a prudent employer like Board has to take its decision particularly a decision which have the financial impact on the Board keeping in view the future prospects. A justification has been given that from 1991-92, the financial position of the Board was not very sound. With respect to financial position in subsequent years also there had been no improvement. On the contrary, the financial deficit has increased.

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Thus, on this basis and the facts pleaded by the Board before the writ court and according to us, sufficient justification was given by the Board to justify the issuance of notification dated 24.1.96. It is also submitted on behalf of the appellants that on the date when the agreement was entered into by the Board with the appellants i.e. 1.1.95, the Board was already suffering with the losses yet the Board has agreed to pay the interest. In this reference, we can only say that said submission may, on a first scene look attractive but it has no legs to stand upon. As is evincible from the material on record, there had been circumstances beyond the control of the Board which had the effect of increasing the deficiency and the same is adequately explained by the Board.

19. In view of the aforesaid, we do not find any justification to entertain the present appeals and accordingly we uphold the order passed by the learned Single Judge. The writ appeals stand dismissed. There shall be no order as to costs.

Appeal dismissed.

I.L.R. [2009] M. P., 3265

WRIT APPEAL

Before Mr. Justice Dipak Misra & Mr. Justice R.K. Gupta

22 September, 2009*

RAMAKANT CHOUDHARY

... Appellant

Vs.

DISTRICT & SESSIONS JUDGE, GUNA & anr.

... Respondents

A. Service Law - Constitution, Article 235 - Appointment & Selection - Whether the High Court has supervisory control on the appointment and selection of ministerial staff of the District Court when the District Judge is the Competent Authority to appoint - Held - Yes, High Court has control over the ministerial and official services of the subordinate courts on the basis of the language employed in Article 235 of the Constitution. (Para 17)

क. सेवा विधि - संविधान, अनुच्छेद 235 - नियुक्ति और चयन - क्या उच्च न्यायालय जिला न्यायालय के अनुसचिवीय कर्मचारियों की नियुक्ति और चयन पर पर्यवेक्षणीय नियंत्रण रखता है जबकि जिला न्यायाधीश नियुक्त करने के लिए सक्षम प्राधिकारी है - अभिनिर्धारित - हाँ, उच्च न्यायालय संविधान के अनुच्छेद 235 में प्रयोग की गई भाषा के आधार पर अधीनस्थ न्यायालयों की अनुसचिवीय और अधिकारिक सेवाओं पर नियंत्रण रखता है।

B. Service Law - Appointment & Selection - Whether the High Court can scrutinize the list of selected candidates furnished by the District Judge - Held - Yes, as per advertisement, computer operation was an essential condition apart from eligibility - But, according to the selection list, most of the candidates did not possess qualification in computer operation - No test

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was conducted in that regard by District Judge - Only one candidate produced a certificate from a registered institution in this regard - However, it was thought proper by the High Court not to select one candidate but to go for a re-advertisement in respect of the vacant post - Decision taken by High Court is correct - Stamp of approval given by learned Single Judge cannot be found fault with - Writ Appeal dismissed. (Paras 18 to 20)

खा. सेवा विधि - नियुक्ति और चयन - क्या उच्च न्यायालय जिला न्यायाधीश द्वारा प्रेषित चयनित अभ्यर्थियों की सूची की जाँच कर सकता है - अभिनिर्धारित - हाँ, विज्ञापन के अनुसार, अर्हता के अतिरिक्त कम्प्यूटर का संचालन एक आवश्यक शर्त थी - किन्तु चयन सूची के अनुसार अधिकांश अभ्यर्थी कम्प्यूटर संचालन की योग्यता नहीं रखते थे - जिला न्यायाधीश द्वारा उस सम्बन्ध में कोई परीक्षा नहीं ली गई - केवल एक अभ्यर्थी ने इस सम्बन्ध में पंजीकृत संस्थान का प्रमाण पत्र पेश किया - तथापि, उच्च न्यायालय ने एक अभ्यर्थी को चयनित न करके रिक्त पदों के सम्बन्ध में पुनः विज्ञापन जारी करना उचित समझा - उच्च न्यायालय द्वारा लिया गया निर्णय उचित - विद्वान एकल न्यायाधीश द्वारा उस पर अनुमोदन की मुहर लगाने में कोई त्रुटि नहीं की गयी - रिट अपील खारिज।

Cases referred :

(1992) 4 SCC 10, (2001) 6 SCC 380, 2004 AIR SCW 5768, (2006) 3 SCC 330, AIR 1972 SC 1028, 1978 MPLJ 136, 1978 MPLJ 784.

A.D. Deoras with R.K. Jaiswal, for the appellant.

V.S. Shrotri with Vikram Johri, for the respondents.

ORDER

The Order of the Court was delivered by **DIPAK MISRA, J.** :- Keeping in view the similitude of the factual matrix involved and the issues of law raised in these appeals, they were heard analogously and are disposed of by this composite order. Be it noted, as the facts are similar, the learned Single Judge adverted to the same in a common compartment and passed the main order in W.P.No.5131/2005(S) and accordingly we shall refer to the factual matrix in commonality except where specific reference is necessitous.

2. The appellants had submitted applications in the office of District and Sessions Judge, Guna seeking appointment pursuant to an advertisement issued vide Annexure-A/1 for the post of Process Writer (Assistant Grade-III). The recruitment was for filling up of seven posts. Out of the seven posts of Process Writers, one post was reserved for scheduled caste candidate, one post for scheduled tribe, one post for OBC category and four posts for general candidates. The petitioner in W.P.No.5131/05(S) submitted application for appointment to a post reserved for scheduled caste candidate, the petitioner in W.P.No.5133/05(S) sought appointment as a general category candidate and Anand Suryavanshi, the petitioner in W.P.No.5132/05(S), as OBC candidate. It was contended before the learned single Judge that all the petitioners had appeared in the written test and

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being found successful, they were called to appear in the interview held on 26.9.2004. Thereafter, the District and Sessions Judge, Guna instead of issuing appointment orders, despite the selection of the candidates, forwarded the selection proceeding and the select list for approval of the High Court in accordance with the administrative and executive instructions in that regard.

3. When the matter came to the High Court, certain formalities were sought to be complied with but eventually, the petitioners were not appointed.

4. The main thrust of submission before the learned Single Judge was that the District and Sessions Judge was the competent authority and, therefore, he was legally bound to issue appointment order after due process of selection and there was no requirement whatsoever in law to seek approval of the High Court and the High Court had no authority in law to withhold the appointment. In this backdrop, a prayer was made to command the District & Sessions Judge, Guna to issue letters of appointment in their favour strictly on the basis of the merit list.

5. Be it noted, the further contention that was advanced was that as per Annexure-A/1, seven vacancies were notified and, therefore, the ground could not have been taken that the roster point has not been properly determined and followed.

6. The aforesaid stand and stance of the writ petitioners was resisted on the ground that the High Court is empowered under Article 235 of the Constitution to issue guidelines for the control and functioning of the subordinate courts and that would include the selection process and the appointment. It was urged that when the High Court scrutinized the selection process, it found that the reservation policy and the requirement of the statutory provision as per the Anusuchit Janjati Aur Anya Pichhada Varg Ke Liye Arakshan Adhiniyam, 1994 had not been followed, and as far as the petitioner, Sunil Sharma, is concerned, his case was not recommended for the selection and, therefore, he could not claim any relief. It was the further stand that only one post out of seven posts reserved for scheduled tribe was available and no post was available in the OBC and scheduled caste category and, therefore, the other two candidates could not have sought appointment as vacancies in respect of the said categories were not found to be in existence and accordingly, it was not approved. The learned single Judge adverted to the first plank of submission with regard to the jurisdiction of the High Court and referred to Article 235 and the decision rendered in *R.M. Gurjar and another vs. High Court of Gujarat and others*, (1992) 4 SCC 10 and came to hold that the action of the High Court is within the ambit and sweep of Article 235 of the Constitution of India and hence, non approval and non-issuance of appointment letter cannot be found fault with. As far as merit is concerned, the learned Single Judge opined that so far as Sunil Sharma is concerned, he belongs to general category and there being 4 vacancies in the general category and for three posts,

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the names of Sumit Dwivedi, Ajay Kumar Dave and Jagdish Sharma were recommended and one post was filled up by an employee from Gwalior in the category of Assistant Grade III and hence, 4th posts was not available. In this backdrop, the learned Single Judge opined that Sunil Sharma could not have been appointed on the fourth post. As far as appointment in OBC and scheduled caste categories is concerned the learned Single Judge accepted the stand of the respondents that there was erroneous calculation of the 100 point roster and, in fact, no vacancy in the SC and OBC category was available and merely because the advertisement stated about the availability of vacancy, that does not necessarily mean that the respondents are estopped from re-examining the matter when there is violation of the statutory provisions. The learned Single Judge further held that mere empanellment does not confer any enforceable right. To arrive at the said conclusion, he relied on the decisions rendered in *All India SC and ST Employees Association and another vs. A. Arthur Jean and others*, 2001 (6) SCC 380, *Punjab State Electricity Board and others vs. Malkiat Singh*, 2004 AIR SCW 5768 and *State of U.P. and others vs. Rajkumar Sharma and others*, 2006 (3) SCC 330 and repelled the submission of the learned counsel for the petitioners. After so holding the learned Single adverted to the qualification as regards computer education and came to hold that the candidates had not produced the proper certificates from the recognized computer institutions and accordingly, he accepted that the High Court was justified in opining that there was irregularity in the process of selection.

7. It was put forth that 100 point roster was not properly followed before issuing the advertisement and as the certificate with regard to fulfilling the qualification of computer education was not from an approved university or authority the selection was cancelled.

8. We have heard Mr.A.D.Deoras, learned senior counsel, alongwith Mr.R.K.Jaiswal, Advocate for the appellants, and Mr.V.S.Shroti, learned senior counsel, alongwith Mr.Vikram Johri, Advocate for the respondents.

9. Two questions that emanate for consideration in these appeals are whether the approval sought for by the District & Sessions Judge is unwarranted because the High Court has no jurisdiction or authority to interfere with the authority of appointment by the learned District Judge; and second, whether the rejection of the candidature of the appellants for want of efficiency/expertise in computer operation from a recognized institution was justified in the obtaining factual matrix.

10. To appreciate the first plank of the argument canvassed by the learned counsel for the parties, it is apposite to refer to Article 235 of the Constitution of India:-

"235. Control over subordinate courts.- The control over district courts and courts subordinate thereto including the

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posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

11. The submission of Mr. Deoras, learned counsel for the appellants, is that the power of the High Court is restricted and limited to the posting and promotion and other ancillary control of judicial officers which would include the District Judge also but by no stretch of imagination is the High Court allowed to interfere with the power of appointment of the employees by the District Judge for the simple reason that the district judiciary is required to have its own independence. It is urged by him that once the power does not flow from the provision the High Court cannot arrogate the power to itself and introduce the concept of approval which is not legally valid.

12. The submission of Mr. Shrotri, learned senior counsel for the respondents, is that the High Court has the power over the employees of the district courts and the said controversy has been put to rest by the Apex Court in the case of *R.M. Gurjar* (supra).

13. The language employed in Article 235 is in a broad spectrum. It vests the High Court with the power of control over the subordinate courts. The words used are "control over district courts and courts subordinate thereto". Thereafter, the words used are "including the posting and promotion" and other aspects of the judicial officers. In the case of *R.M. Gurjar* (supra), their Lordships referred to the Full Bench decision of the Gujarat High Court in paragraph 3 which is as follows:-

"3. The Full Bench of the High Court speaking through the Acting Chief Justice primarily dealt with question No.2 and came to the conclusion that the "control" under Article 235 of the Constitution of India extends to the ministerial officers and servant on the establishment of the subordinate courts also. The second question was, accordingly, answered against the petitioners. On the interpretation of Article 235 and the Rules the first question was also decided against the petitioners. This appeal by way of special leave is against the judgment of the Full Bench of the High Court."

14. Eventually, their Lordships referred to the anatomy of the rules and came

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to hold that the High Court was within its jurisdiction on the administrative side to enhance the punishment of the appellants therein in exercise of powers under Rule 23 of the Rules. In that context, their Lordships in paragraph 7 held as under:-

"7. On the interpretation placed by us on the Rules, the answer to the first question has to be in the affirmative. We are also of the opinion that the answer to the second question as rendered by the Full Bench of the High Court is unexceptionable and does not call for any interference. The appeal consequently fails and is dismissed but with no order as to cost."

[Emphasis supplied]

15. To get the complete picture, it would be apposite to refer to the decision rendered by the Gujarat High Court in *R.M. Gajjar vs. State of Gujarat*, AIR 1978 Gujarat 102. The Full Bench, after elaborately discussing the term "court", held as follows:-

"11. Therefore, all these statutory resources lead to an inevitable conclusion as to the legislative intention being clearly to use the term "court" compendiously in Art. 235 to cover not only those judicial officers specifically included in the later part i.e. members of the judicial service, but even other administrative functionaries or ministerial staff of the Court as well.

12. What appeals to us on sound canons of construction or on principle is borne out even by the decisions as to the meaning to be given to the term "Court" in Art. 235. In Bagchi's case, when the question arose in the converse context when the District Judge had contended that the control being over the Courts, it could not be exercised over Judges, the categorical answer was "the Court is used compendiously to denote not only the Court proper but also the Presiding Judge. The latter part of Art. 235 talks of the man who holds the office." It should be borne in mind that in 'Bagchi's case (AIR 1966 SC 447), the original Full Bench decision of Calcutta High Court in AIR 1961 Cal 1 had already approved in that decision the earlier decision in Mahomed Ghose v. State of A.P., AIR 1959 Andh. Pra. 497, holding that the word "Court" occurring in Art. 235 must be interpreted as including "not only the person presiding over that Court but also all the functionaries of that court and any matter pertaining thereto." Therefore, when the Supreme Court gave this interpretation of the later part of Art. 235 on the basis that the Presiding

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Judges were also included, it must be treated as a settled interpretation of the term "Court" as being compendiously in the widest sense by not being confined only to the Presiding Judge but also including other functionaries and ministerial staff. This is the view taken even by the Full Bench of the Punjab and Haryana High Court in Amar Singh vs. C.J. Punj. & Har. High Court, AIR 1976 Punj. & Har. 215, at page 220, that, "the control vested in the High Court squarely extends to the Presiding Officers and also to functionaries and ministerial staff attached to the District Courts and the Courts subordinate thereto." The Full Bench in a well considered judgment, with which we are in complete agreement, negated the very contention in the context of such clerical staff by holding that Art. 235 was not confined or limited only to the members of the subordinate judicial service of the State, as many other views would lead to the fault of redundancy and surplusage and would defeat the whole purpose of enactment of Art. 235. Both on principle and authority, we must, therefore, answer the second question by holding that the control vested in the High Courts under Art. 235 of the Constitution is exercisable not only over members of the judicial service of the State as defined under Art. 236(b) but even the ministerial officers and servants on the establishment of the subordinate Courts are also ultimately subject to such control."

16. In this regard, we may refer with profit to the decision in *State of Assam v. S.N. Sen*, AIR 1972 SC 1028 wherein their Lordships have opined that wide ambit of power conferred under Article 235 in the opening part is not to be curtailed down even by the last portion of the said Article except to the extent therein specified.

17. From the aforesaid enunciation of law, it is plain as day that the High Court has control over the ministerial and official services of the subordinate courts on the basis of the language employed in Article 235 of the Constitution.

18. Once it is held that it is well within the jurisdiction of the High Court to scrutinize the list of selected candidates furnished by the District Judge, the question that emerges is whether because of the empanellment of the names any legal right is created in favour of the appellants. The learned Single Judge referred to the decisions rendered in *A. Arthur Jean* (supra), *Malkiat Singh* (supra) and *Rajkumar Sharma* (supra) and rightly concluded that no right had accrued.

19. The controversy can be looked from another angle. The advertisement postulated that a candidate must have knowledge as regards computer operation.

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The submission of Mr. Deoras is that the High Court has interfered by stating that the candidates had not produced certificates from any recognized or registered institution in respect of efficiency in computer application. It is worth noting here that no test was conducted by the District and Sessions Judge as to whether the candidates had any efficiency or experience in computer operation. Certain certificates were produced from institutions that they had computer training. Some of the candidates had produced certificates from recognized institutions. Regard being had to the posts in question, a criteria was evolved by the High Court to have trained hands to have the requisite efficiency in computer operation. The said principle was uniformly adhered to. In this context, it is apposite to refer to the Full Bench decision rendered in *Omprakash vs. State of M.P.*, 1978 MPLJ 136 wherein it has been held as under:-

"Once the Public Service Commission is asked by the Government to make a selection it is entirely in the wisdom and discretion of the Commission what mode or method it would adopt. This is subject to statutory provisions, if any. Where minimum qualification, eligibility are prescribed by a statute or by the Government, the Public Service Commission cannot select a candidate who does not possess those qualifications. However, the Public Service Commission is free to screen the applicants, classify them in various categories according to their plus qualifications and/or experience and call for interview only those candidates who fall within those categories, eliminating others who do not satisfy those criteria. Such classification does not tantamount to any hostile discrimination. Practicability may also require such categorisation. For instance, if for three posts there are 3000 applicants, all eligible, the Commission cannot afford to spend months together in selecting three out of 3000."

20. The said principle was reiterated in *Jayant Kumar Chavan vs. Public Service Commission, M.P.*, 1978 MPLJ 784 wherein their Lordships have stated that the Public Service Commission is free in exercise of its duty of making selection and from the point of view of practicability it can lay down criteria for preliminary selection. We have referred to the aforesaid decision to show the concept of uniform applicability and the role played by the High Court. As is evincible from the advertisement, computer operation was an essential condition apart from eligibility. But according to the selection list, most of the candidates did not possess qualification in computer operation. No test was conducted in that regard. The District Judge had conducted written and typing test and interview. True it is, as is evincible from the record, one candidate had produced a certificate from a registered institution with regard to his knowledge and operation in computer.

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However, it was thought proper by the High Court not to select one candidate but to go for re-advertisement in respect of the vacant posts. In our considered opinion, the decision taken by the respondents is absolutely correct and the stamp of approval given by the learned Single Judge cannot be found fault with. Thus, we respectfully treat the order passed by the learned Single Judge to be absolutely flawless and accordingly, we concur with the same.

21. Consequently, the writ appeals, being sans merit, stand dismissed. There shall be no order as to costs.

Appeal dismissed.

I.L.R. [2009] M. P., 3273

WRIT PETITION

Before Mr. Justice Arun Mishra & Mrs. Justice Sushma Shrivastava

26-February, 2009*

WAKF MASJID DHUMAN KHAN, JABALPUR

... Petitioner

Vs.

CHIEF EXECUTIVE OFFICER & anr.

... Respondents

Wakf Act (43 of 1995), Section 54(4) - Removal of encroachment from Wakf property - Application u/s 54 filed before CEO for removal of encroachment raised by resp. No.2 - CEO has given a finding that resp. No.2 had not encroached upon the land belonging to Wakf and resp. No.2 is a tenant - Order challenged in W.P. - Held - Wakf has the remedy of filing the suit u/s 54(4), but in the instant case as the basic procedure for deciding such dispute has not been followed and finding has been recorded by the CEO contrary to the case set up by the resp. No.2 - Order set-aside with direction to decide the case afresh after recording the evidence of the parties - Petition allowed. (Paras 7 to 9)

वक्फ अधिनियम (1995 का 43), धारा 54(4) - वक्फ सम्पत्ति से अतिक्रमण का हटाया जाना - सी.ई.ओ. के समक्ष प्रत्यर्थी क्र. 2 द्वारा किये गये अतिक्रमण को हटाने के लिए धारा 54 के अन्तर्गत आवेदन पेश - सी.ई.ओ. ने निष्कर्ष दिया कि प्रत्यर्थी क्र. 2 ने वक्फ क्री भूमि पर अतिक्रमण नहीं किया है और प्रत्यर्थी क्र. 2 किरायेदार हैं - आदेश को रिट याचिका में चुनौती - अभिलिखित - वक्फ को धारा 54(4) के अन्तर्गत वाद पेश करने का उपचार है, किन्तु प्रस्तुत मामले में ऐसे विवाद का विनिश्चय करने की मौलिक प्रक्रिया का पालन नहीं किया गया है और सी. ई.ओ. द्वारा प्रत्यर्थी क्र. 2 द्वारा स्थापित मामले के प्रतिकूल निष्कर्ष अभिलिखित किये गये हैं - आदेश इस निर्देश के साथ अपास्त किया गया कि पक्षकारों का साक्ष्य अभिलिखित करने के बाद मामले का नये सिरे से विनिश्चय किया जाए - याचिका मंजूर।

Imtiyaz Hussain, for the petitioner.

S.A. Khan, for the respondent No.1.

A.K. Jain, for the respondent No.2.

O R D E R

The Order of the Court was delivered by ARUN MISHRA, J. :-The writ petition has been filed by the Wakf Masjid Dhuman Khan, Jabalpur aggrieved by order (P-1) dated 31.8.2006 passed by CEO, M.P. Wakf Board, Bhopal in case No. 25/2004.

2. Petitioner has filed an application under section 54 of Wakf Act, 1995 for removal of encroachment raised by respondent No. 2 Mohd. Umar Khan Koti. As per the case set up by the Wakf, land belonging to the Wakf comprising plot No. 701/1 had been encroached upon by Mohd. Umar Khan and construction of Garrage was made beside residential rooms.

3. In the reply filed on behalf of respondent No. 2 before the CEO, Wakf Board, Bhopal it was submitted that plot No. 701/1 was not occupied by him. To submit that he was residing or in occupation of Plot No. 701/1 was absolutely false. He was residing in House situated over plot No. 700/1 of which new Number was 450.

4. The CEO, Wakf Board vide order dated 7.9.2005 has ordered considering the disputes raised between the parties whether house which was constructed was situated over plot No. 700/01 or 701/1, could be decided after; recording evidence. The ordersheets till the passing of the impugned order, have been placed on record, which indicate that no evidence had been recorded by the CEO and the application has been rejected vide impugned order (P-1) dated 31.8.2006. The CEO has found that the non applicant had shown him to be tenant of plot No. 701/1 w.e.f. 1948, he had also filed the rent receipts with respect to house on plot No. 701/1 @ Rs 200/-per month. The CEO has given a finding that it has not been established by the Wakf that Mohd. Umar Khan had encroached upon the land belonging to it, it has been held that he is a tenant. Dissatisfied with the order, the writ petition has been preferred.

5. Shri Imtiyaz Hussain, learned counsel appearing for petitioner Wakf has submitted that once the case was fixed for evidence it was incumbent upon the CEO to record the evidence. The CEO has found that house was situated over plot No. 701/1 whereas case of respondent No. 2 before the CEO was that house was situated over plot No. 700/1. No notice was served for the date 25.8.2006, consequently rejection of the application by the CEO could not be said to be proper.

6. Shri A.K. Jain and Shri S.A. Khan; learned counsel appearing for respondents have supported the order. They have submitted that petitioner has efficacious remedy of filing a suit, as provided in section 54(4) of M.P. Wakf Act, 1995 before Wakf Tribunal with respect to right, title or interest they are claiming. Notice was served for the date which was fixed by the CEO. Consequently no case for interference in writ jurisdiction is made out.

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7. First we take up the question whether in view of the remedy provided under section 54(4) of M.P. Wakf Act, 1995 of filing suit before the Wakf Tribunal, writ petition can be entertained, Wakf has the remedy of filing the suit but in the instant case in our opinion as the basic procedure of deciding of such dispute has not been followed by the CEO and finding has been recorded by the CEO contrary to the case set up by the respondent No. 2. The finding has been recorded by the CEO that evidence has been adduced by respondent No. 2 Mohd. Umar Khan that he is in occupation over the plot No. 701/1 and had paid the rent @ Rs. 200 per month. The CEO has held that respondent No. 2 was in occupation of structure over plot No. 701/1, it was not even the case set up by respondent No. 2. The finding is perverse and is contrary to averments made in para-8 of the reply, he has made following averments :-

8. That in the application the address of the non-applicant showing his residence at 701/1 is absolutely false. The correct address is House No. 700/1 (Old Number) and New No. 450 which is the property of Mohd. Shareef and Mohd. Hameed Khan Koty.

9. No doubt about it plea has also been taken that in other Civil Suit it has been held that plot No. 701/1 does not belong to Wakf but that question has not been considered by the CEO, Wakf Board, Bhopal, which was required to be considered. Considering the dispute whether the structure raised by respondent No. 2 was situated over plot No. 701/1 or 700/1 could not have been decided without recording evidence and order sheets indicate that evidence has not been recorded by the CEO, Wakf Board Bhopal. Even if notice was served and petitioner was not present, it was incumbent upon the CEO to record the evidence of respondent No. 2 which was also not done and outrightly the order dated 31.8.2006 was passed. The CEO himself had ordered on 7.9.2005 that such a dispute require adducing the evidence by the parties. In view of the aforesaid we have no hesitation in setting aside the impugned order and direct the CEO to decide the case afresh after recording the evidence of the parties which may be adduced before him inter alia considering the effect of Civil Suit in which of plot No. 701/1 the Wakf has not been held to be owner of the property as submitted by respondent No. 2.

Resultantly, the writ petition is allowed to the aforesaid extent. The impugned order passed by the CEO is set aside. Parties are directed to appear before the CEO as prayed on 20.4.2009. No costs.

Petition allowed.

NIRANJAN SINGH Vs. STATE OF M.P.

I.L.R. [2009] M. P., 3276

WRIT PETITION*Before Mr. Justice Sanjay Yadav*

8 April, 2009*

NIRANJAN SINGH & ors.
Vs.

... Petitioners

STATE OF M.P. & ors.

... Respondents

Criminal Procedure Code, 1973 (2 of 1974), Section 133 - Conditional order of removal of nuisance - SDM issued a show cause notice on the basis of police report and letter of CMO for demolition of a house which was in dilapidated condition - Held - Formulation of an opinion by the SDM without the reference to expert/engineer is not proper - SDM, therefore, directed to seek an opinion from the engineer, not below the rank of SE, PWD and after an opinion is received shall forward a copy to the petitioners and give them an opportunity of hearing before passing a final order. (Para 12)

दण्ड-प्रक्रिया संहिता, 1973 (1974 का 2), धारा 133 - न्यूसेंस हटाने का सशर्त आदेश - उपखण्ड मजिस्ट्रेट ने पुलिस रिपोर्ट और मुख्य नगरपालिका अधिकारी के पत्र के आधार पर एक मकान, जो जीर्ण-शीर्ण दशा में था, के गिराने का कारण बताओ सूचनापत्र जारी किया - अभिनिर्धारित - उपखण्ड मजिस्ट्रेट द्वारा विशेषज्ञ/अभियंता के प्रति निर्देश के बिना कोई राय बनाना उचित नहीं - इसलिए उपखण्ड मजिस्ट्रेट को निदेशित किया गया कि अभियंता, जो अधीक्षण अभियंता, लोक निर्माण विभाग से नीचे की श्रेणी का न हो, से राय लें और राय प्राप्त हो जाने के बाद उसकी एक प्रतिलिपि याचियों को प्रेषित करें और अंतिम आदेश पारित करने के पूर्व उन्हें सुनवाई का अवसर प्रदान करें।

Cases referred :

1995 Supp (4) SCC 54.

Amalpushp Shroti, for the petitioner.*Harish Agnihotri, G.A.*, for the respondent Nos.1, 2 & 4.*A.G. Dhande with Dharmendra Soni*, for the respondent No.5.**ORDER**

SANJAY YADAV, J. :-Show cause notice dated 10-9-2007, purportedly issued under section 133 of the Code of Criminal Procedure, 1973, by the Sub Divisional Magistrate, Chhindwara, is being questioned in the present writ petition filed under Article 226/227 of the Constitution of India.

2. The initiation of a proceedings under section 133 of the Code emanates on the basis of a complaint lodged by the respondent No. 5 on 11-6-2007 at Police Station Kotwali, Chhindwara, The complaint was that, a kuchcha house belonging to him and situated along the side of road (House No. 24, 25 & 26, Lalbagh College Road, Chhindwara) being in dilapidated condition and is dangerous to the

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life and property in the surroundings. The istgasa was taken cognizance of, and the police registered a case and after allegedly conducting the enquiry placed the matter before the Sub Divisional Magistrate; whereof after registering the case notices were issued to the concern persons including the petitioner who submitted their objections dated 27-7-2007 (Annexure P/3). Wherein, the contention in nutshell was that, the house in question was not in dilapidated condition and it was only because the suit pertaining to the title of the house in question was pending in the Court of competent jurisdiction between petitioner and the respondent No. 5 and it was with a view to frustrate the proceeding that recourse to section 133 of the Code was resorted to. The Sub Divisional Magistrate after considering the reply by the petitioner objector and after taking into consideration the report by police and the letter dated 16-9-2005 by the Chief Municipal Officer, formulated a prima-facie opinion, and issued the impugned show cause notice which is being challenged in the writ petition.

3. Petitioner challenges the show cause notice on the following grounds :-

- (i) The exercise of powers under section 133 for removal of house is arbitrary and violates Article 14 of the Constitution.
- (ii) The house in question being a pucca house can in no term be treated as in a dilapidated condition as would cause any nuisance.
- (iii) The intention of a proceeding under section 133 being at the instance of respondent No. 5 against whom a civil suit regarding the house in question having been filed, is an abuse of process of law and the petitioner cannot be deprived of the property without due process of law.
- (iv) The Sub Divisional Magistrate erred in relying upon the report of Police and the Chief Municipal Officer and without forming its independent opinion by getting the house examined through an engineer.

4. The respondent on their turn supports the action. While respondents No. 1 to 4 contends that, the impugned notice only reflects a prima-facie opinion formulated by the Sub Divisional Magistrate on the basis of report of police, the Chief Municipal Officer and the reply furnished by the petitioner and a final decision is yet to be taken and therefore the challenge, it is urged is premature and liable to be dismissed.

5. The respondent No. 5 while raising an objection as to maintainability of the petition on the ground that, the impugned show cause notice was subject to a challenge in a Criminal Revision No. 186/07 before the District and Sessions Judge, Chhindwara, and was dismissed by order dated 12-9-2007. This fact, it is urged,

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has been deliberately concealed by the petitioner and a stay was obtained. The respondent No.5 further contends that in respect of the property in question, a civil suit has been preferred by the petitioner; wherein, the interim injunction was declined and therefore there exist no bar in proceeding under section 133 when the occasion so arise. It is further contended that the house being an old kuchcha house, is in a dilapidated condition and deserves to pull down to save surrounding life and property. It has also been averred in reply that the petitioners were never in occupation of the house in question and it was only when their application under section 39 Rule 1 & 2 of C. P. C. was rejected on 4-1-2006, that they forcefully occupied the house by breaking the lock; the report wherefor has been lodged with the police on 22-2-2006. It is on these grounds, it is urged that, the action taken by the Sub Divisional Magistrate is just and proper.

6. The respondent No.6 in its reply while relying upon the note sheets regarding reasons therein for issuing the letter informing the Sub Divisional Magistrate that, the house in question is in dilapidated condition, joins other respondents seeking dismissal of the petition.

7. Considered the rival submissions and perused the pleadings.

8. True it is that, the petitioner while filing the petition did not disclose the fact that against the impugned order dated 10-9-2007, he filed a criminal Revision before District & Sessions Judge, Chhindwara, forming subject matter of Criminal Revision No. 186 of 2007 and the same was dismissed on 12-9-2007 and the present writ petition was filed on 8-10-2007; it was therefore incumbent upon the petitioner to have disclosed the fact regarding the dismissal of Criminal Revision. Instead, the petitioner has attempted to explain and justify the non-disclosure through its reply to an application for vacating the stay in following terms :

“ In reply to the aforesaid, the petitioners humbly submitted that they signed the documents for purposes of seeking stay of the order, dated 10-9-2007 (Annexure-P-4) thereafter their counsel informed them that stay would be granted only after the final order is passed by the SDM; that the petitioners did not know about either the pendency of the Criminal Revision or the aforesaid order, dated 12-9-2007 (Annexure-R-5/6) whereby the criminal revision was dismissed; that it was only after the counsel in the instant case enquired about the same that the petitioners came to know that the criminal revision had been filed and dismissed; in these circumstances, the same was not brought to the notice of the counsel in the instant case and in turn to the notice of this Hon'ble Court.”

9. Though the petitioner is apologetic for non-disclosure of the fact of dismissal of criminal revision being a bonafide mistake. The explanation seems to be an

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afterthought. The petitioners who are so vigilant about their right that they filed a suit and raised detail objection before the Sub Divisional Magistrate cannot be said to be ignorant about the fact of filing of Criminal Revision through a counsel and its final outcome. However since petitioners have tendered an unconditional apology and keeping in mind the fact that the order in Criminal Revision was not on merit, but was dismissed, because it was against an interim order/show cause notice, the present petition is not dismissed on the ground of concealment of fact. The preliminary objection raised by the respondent No. 5 is therefore overruled.

10. Section 133 of the Code makes a provision regarding order for removal of nuisance.

“133. Conditional order for removal of nuisance.-(1) Where a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-

- (a) That any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or
 - (b) that the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or
 - (c) that for construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or
 - (d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or
 - (e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or
 - (f) that any dangerous animal should be destroyed, confined or otherwise disposed of,
- such Magistrate may make a conditional order requiring the

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person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order –

- (i) to remove such obstruction or nuisance; or
- (ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trader or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or
- (iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or
- (iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or
- (v) to fence such tank, well or excavation; or
- (vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation. - A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes."

11. Thus, if a Sub Divisional Magistrate considers that any building, tent or structure, or any tree is in such a condition that it is likely to fall, and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure or removal is necessary, to remove, repairs or support such building. Thus before arriving at a conclusion a judicial discretion is to be exercised by the Sub Divisional Magistrate.

12. In *Vasant Manga Nikumba and others v. Baburao Bhikanna Naidu (deceased)*. By LRS. and others : 1995 Supp (4) SCC 54 their lordships were pleased to observe in paragraph 4 and 5 :-

"4. A reading of Section 133 would clearly indicate that the Executive Magistrate has been empowered, on receiving a report

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of the police officer or other information and on taking such evidence as he thinks fit that any building, tent or structure is in such a condition that, due to failure to remove, disrepair, or without support it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by and that in consequence he is empowered to specify the time to remove, repair or provide support to such building, tent or structure or tree. Two options are open to the Executive Magistrate on considering whether structure, building etc. is in such a dilapidated condition which requires to be demolished immediately which brooks no delay to avert danger to the life and property of the neighbourhood or passers-by unless they could be suitably repaired or supported so as to avert danger to the public or have it removed, etc. The condition precedent to exercise the power under Section 133 is the imminent danger to the property and consequential nuisance to the public. The removal of the building is so urgently required as it is likely to fall and cause injury to persons living or carrying on business in the neighbourhood or passers-by. The nuisance is the concomitant act resulting in danger to the life or property due to likely collapse etc. The dangerous condition of the building is in *prasenti* but not in future. The section is limited to injuries likely to be caused to the passers-by or persons living or carrying on business in the neighbourhood. Each case has to be considered in the light of the facts and circumstances obtained in each case.

5. In *T.K.S.M. Kalyanasundaram v. Kalyani Ammal*, the Madras High Court held that the alleged nuisance would have been in existence for a long period. The circumstance and the evidence in that case did not prove that an urgency existed warranting the taking of action under Section 133. No action can be taken under this section where the obstruction or nuisance has been in existence for a long period and the only remedy open to the aggrieved party was to move the civil court. It was also held that Section 133 is attracted only in cases of emergency and immediate danger to the health or physical comfort of the community. Accordingly on the facts in that case, it was held that there was no immediate danger or emergency for the removal of the structure offending in that case. It is also settled law that recourse to Section 133 could not be a substitute for the civil proceedings and the parties should have recourse to the civil remedy available and should not be encourage (sic encouraged) to taking recourse to the provisions of Section 133 of the Code."

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13. In the case at hand, it is observed that, the Sub Divisional Magistrate has proceeded to form an opinion without examining any engineer, nor any opinion has been taken from the experts to ascertain the structural condition of the house in question. The opinion seems to have been formulated on the basis of the police report and the letter of Chief Municipal Officer, which in turn nowhere discloses any reference to the opinion of the experts/engineer about the actual condition of the house. In view of this, the formulation of an opinion by the Sub Divisional Magistrate is not proper. The Sub Divisional Magistrate, is therefore directed, to seek an opinion from the engineer, not below the rank of Superintending Engineer, Public Works Department, and after an opinion is received shall forward a copy to the petitioners and give them an opportunity of hearing before passing any final order. Let the said exercise be done within a period of three months from the date of communication of this order.

14. The petition is allowed to the extent above. No costs.

Petition allowed.

I.L.R. [2009] M. P., 3282

WRIT PETITION

Before Mr. A.K. Patnaik, Chief Justice & Mr. Justice P.K. Jaiswal

15 July, 2009*.

DEVMATA EDUCATIONAL & WELFARE
ASSOCIATION SAMITI, BIRSINGHPUR PALI
Vs.

... Petitioner

STATE OF M.P. & anr.

... Respondents

Board of Secondary Education (Madhya Pradesh) Regulation, 1965, Regulation 128 & 129, Board of Secondary Education (Enrolment) Rules, 1994, Rules 3, 5, 6 & 8 - Examination - 31 students of class X not permitted to appear in examination for the reason their applications for enrolment were submitted in the Board after prescribed date - Held - Object of the Rules and Regulations is to ensure that regular students in fact were admitted in the school in class IX and intended to take the class X examinations of the Board after two years of the study in class IX and class X - Hence, if these conditions are satisfied but the applications for enrolment are sent beyond the time prescribed, such applications, if rejected, would lead to injustice and hardship to such students - Petition allowed. (Para 13)

माध्यमिक शिक्षा मण्डल (मध्य प्रदेश) विनियम, 1965, विनियम 128 व 129, माध्यमिक शिक्षा मण्डल (नामांकन) नियम, 1994, नियम 3, 5, 6 व 8 - परीक्षा - कक्षा 10 के 31 परीक्षार्थियों को परीक्षा में बैठने की अनुज्ञा इस कारण से नहीं दी गई कि उनके नामांकन के आवेदन मण्डल में विहित तारीख के बाद प्रस्तुत किये गये - अभिनिर्धारित - नियम और विनियम

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का उद्देश्य यह सुनिश्चित करना है कि नियमित छात्र वास्तव में विद्यालय में कक्षा 9 में भर्ती किये गये और कक्षा 9 व कक्षा 10 में अध्ययन के दो वर्ष बाद मण्डल की कक्षा 10 की परीक्षा में बैठना आशयित था – इसलिए, यदि इन शर्तों का समाधान हो जाता है लेकिन नामांकन के आवेदन विहित समय के परे भेजे जाते हैं, तो ऐसे आवेदन, यदि नामजूर कर दिये गये, तो ऐसे छात्रों के साथ अन्याय होगा और उन्हें कठिनाई होगी – याचिका मंजूर।

Cases referred :

AIR 1989 SC 341, AIR 2007 SC 458, AIR 1917 PC 142, (2003) 2 SCC 111, (1997) 9 SCC 132.

Indira Nair with Sharad Punj, for the petitioner.

Naman Nagrath, for the respondent No.2.

ORDER

The Order of the Court was delivered by **A.K. PATNAIK, C. J.** :—These two writ petitions relate to enrolment of the 31 students of St. Joseph School (English Medium) at Birsinghpur Pali, District Umaria (for short 'the School') for Class X Examination of the Madhya Pradesh Board of Secondary Education (for short 'the Board') and to their entitlement to appear in Class X Examinations of the Board in March, 2009. While W.P. No.14783/2008 has been filed by Devmata Educational & Welfare Association Samiti which runs the school, W.P. No. 12/2009 has been filed by father of a student of the school who wanted to take the Class X Examinations in March, 2009 conducted by the Board.

2. The relevant facts briefly are that the Board granted permission to the school for the academic session 2007-08 to start Class IX. The School which already had students in Class I to Class VIII admitted 31 students in class IX in July, 2007 but did not send the list of the 31 students admitted in the Class IX to the Board by 31st August, 2007. The School however applied for enrolment of the 31 students on 17.3.2008 to the Board. The School again sent the list of 31 students admitted in Class IX on 7.8.2008. The School also deposited the enrolment fees with the Board. The Board however vide its communication dated 12.9.2008 sought certain queries for enrolment of the 31 students. The School then paid the examination fees of the 31 students for appearing in Class X Examination for registering the students for the examination but were not given the forms by the Board. Aggrieved, the School filed W.P. No. 12027/2008 before this Court for appropriate reliefs and a learned Single Judge of this Court disposed of the writ petition by order dated 20.11.2008 with the direction that the school will appear before the Chairman of the Board alongwith a representation containing the details of its claim and necessary documents and the Chairman of the Board will consider the representation in the light of the Regulations of the Board and pass appropriate orders relating to issuance of the examination forms to the students studying in the school for appearing in Class X examination in the academic session 2008-09.

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Pursuant to the directions in the order dated 20.11.2008 of the learned Single Judge, the school submitted a representation but the Chairman of the Board rejected the representation by order dated 29.11.2008. Aggrieved, the petitioners have filed these writ petitions for quashing the order dated 29.11.2008 and for a direction to the Board to issue regular examination forms to the 31 students and to permit the students to appear in the examination scheduled for March, 2009.

3. On 29.1.2009, the Court after hearing learned counsel for the petitioners and the learned counsel for the Board passed an interim order directing that without prejudice to the rights and contentions of the parties in the writ petitions, on the Principal of the School submitting a fresh set of applications for enrolment within a week to the Secretary of the Board, the students will be allowed to fill up the forms for the examinations and to appear in the examinations scheduled for February-March, 2009 but the results of the examinations of the students will not be published until further orders. This interim order was passed by the Court after making a prima-facie assessment of the case of the petitioners in the following words:

“On a reading of the 1994 Rules and the 1965 Regulations together, it prima-facie appears to us that the Secretary may, in exceptional circumstances, entertain the application for enrolment even later than 1st October of the year in which he was studying class 9. The students who have studied two years now as regular students in the concerned school, will suffer immensely if they are not permitted to take the examinations scheduled for February and March, 2009 for lapse on the part of the Head of the school, if any, in not sending the applications for enrolment to the Board before 1st of October, 2007 when the students were studying in class 9.”

Pursuant to the interim order, the 31 students of the school have been permitted to take the examinations scheduled for February-March, 2009 but the results of the 31 students have not been published and we are now to decide the writ petitions on merits.

4. Mrs. Indira Nair, learned senior counsel appearing for the petitioner in W.P. No. 14783/2008 and Mr. Vivek Rusia, learned counsel appearing for the petitioner in W.P. No. 12/2009 submitted that the Board has taken a stand in the reply that despite getting permission from the Board for Class IX, the school applied to C.B.S.E. for recognition and waited for its inspection team instead of completing the mandatory formalities of the Board for enrolment of the students of Class IX. They submitted that the school actually sought recognition for C.B.S.E. not from the academic year 2007-08 but from 2008-09 and subsequent years. They submitted that the head of the school was not aware that the list of

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9th Class students is required to be sent soon after the admissions to IX Class in July, 2007. They submitted that the head of the school however submitted the application for enrolment of the 31 students with the Board on 17.3.2008 and also paid the fees for such enrolment and for the lapses, if any, on the part of the head of the school the 31 students should not suffer. Finally, they relied on Regulation 129 of the Board of Secondary Education (Madhya Pradesh) Regulations, 1965 (for short 'the Regulations') which provides that the Secretary of the Board may in exceptional circumstances, entertain an application for enrolment even later than 1st October in the academic year in which the student first joins a recognised institution and submitted that this is a case of exceptional circumstances wherein the 31 students should have been enrolled by the Secretary of the Board even if there was a delay on the part of the head of the school to send the list of students for enrolment.

5. Mr. Naman Nagrath, learned counsel appearing for the Board, relying on the reply filed by the Board as well as the impugned order, submitted that under Regulation 128 of the Regulations, enrolment of all students who were supposed to appear in the Board Examinations is compulsory and similarly Rule 6 of the Board of Secondary Education (Enrolment) Rules, 1994 (for short 'the Enrolment Rules') provides that enrolment shall be compulsory for students taking admission in Class IX. He further submitted that under Rule 5 of the Enrolment Rules, the last date of submission of the admission list of the students is 31st August, 2007 but the school made the application for enrolment of the 31 students on 17.3.2008 after six months of the last date and hence no action was taken by the Board on that application for enrolment. He submitted that the Regulations provide that only those students studying in the institution were eligible for filling the forms whose names were sent to the Board alongwith the admission list and since the school did not send any list of the students of Class X for the academic session 2007-08, they were not entitled to appear in the examinations and therefore they were not issued the admission cards. He submitted that the Regulations further provide that an institution recognised by the Board cannot admit students for examinations recognised by any other Board or course but in the present case the school has undertaken two parallel recognition proceedings, one with the Board and the other with the C.B.S.E. and the fact that C.B.S.E. granted recognition to the school was not intimated to the Board and consequently the Regulations have been violated. He cited *Vidya Dhar Pande vs. Vidyut Grih Siksha Samiti and others*, AIR 1989 SC 341, in which the Supreme Court has held that the Regulations framed under Section 28(2)(d) of the Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 have statutory force and submitted that since there has been breach of statutory regulations by the school in not forwarding the list of students admitted in Class IX within the time stipulated in the Regulations, the Board has decided not to permit the 31 students admitted in Class IX of the school to take

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the examinations. He also cited the decision of the Supreme Court in *Minor Sunil Oraon Tr. Guardian and others vs. C.B.S.E. and others*, AIR 2007 SC 458 for the proposition that where there has been infraction of rules, though the ultimate victims are innocent students that cannot be a ground to grant relief to the students.

6. Regulations 128, 129 of the Regulations and Rules 3, 5, 6 and 8 of the Enrolment Rules on which the learned counsel for the parties placed reliance are extracted hereinbelow:

Regulations

128 Enrolment is compulsory for every regular as well as Private candidate, who desires to appear for various examinations of the Board of Secondary Education, Madhya Pradesh. The fee for enrolment shall be Rupees four for each candidate and shall be paid once only.

129 (a) The application for enrolment together with enrolment fee shall be submitted by the regular student of a recognised institution through the head of the institution concerned so as to reach the Secretary by the first October in the academic year in which he first joins a recognised institution. The Heads of institution shall scrutinise the forms of students applying for enrolment and certify that they have examined the certificate of the examination qualifying them for admission to the Board's course concerned.

Provided that, the Secretary may in exceptional circumstances, entertain an application for enrolment even later than 1st October.

(b) Regular students seeking admission to an institution recognised by the Board after having been admitted as member of another Board incorporated by law for the time being in force, and having appeared for public examination of that Board, will not be enrolled unless their applications for enrolment are accompanied by a Migration Certificate from the Previous Board.

(c) In the case of private candidate, enrolment fee of Rupees four shall be paid together with the examination fee.

Enrolment Rules

3. It shall be compulsory for every student who takes admission in the institute recognised by the Board or sits in the examination, whether regular or private, to get enrolled in the Board

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5. Every recognised Institute shall submit the application form and fees received from the students admitted in their school to Secretary or its authorised officer. Last date of receiving application forms shall be 31st August.

6. Enrolment shall be compulsory only for student taking admission in Class-9.

8. No student shall be eligible to appear in the Board Examination or to take admission in its course unless his enrolment is not done in the Board.

7. It is not disputed that the school was permitted by the Board to start Class IX from the session 2007-08. Thus, the school was recognised by the Board. It is also stated in para 10 of the impugned order that the school made an application on 17.3.2008 to get the 31 students admitted in Class IX of the school enrolled with the Board and deposited the enrolment fee. The stand of the Board in para 10 of the impugned order dated 29.11.2008 of the Chairman of the Board however, is that since the application for enrolment of the 31 students admitted in Class IX of the school was made after six months from the last date of enrolment, no action was taken on that application. After considering the Regulations and the Enrolment Rules on which great reliance was placed by the Board as well as the decisions of the Courts, we are of the considered opinion that the 31 students could not be refused enrolment and an opportunity to appear in the examinations only on the ground that the applications for enrolment of the 31 students were submitted to the Board beyond the stipulated date.

8. Regulation 128 of the Regulations quoted above only provides that enrolment is compulsory for every regular as well as private candidate, who desires to appear for various examinations of the Board of Secondary Education, Madhya Pradesh. Similarly, Rule 3 of the Enrolment Rules quoted above provides that it shall be compulsory for every student who takes admission in the institute recognised by the Board or sits in the examination, whether regular or private. Rule 5 of the Enrolment Rules states that every recognised institute shall submit the application forms and fees received from the students admitted in the school to the Secretary or the authorised officer of the Board and the last date of receiving application forms shall be 31st August. Rule 5 of the Enrolment Rules does not say that if the applications for enrolment and fees received from the students admitted in the school are not sent to the Secretary or the authorised officer of the Board by 31st August, the applications for enrolment shall not be entertained by the Board under any circumstances. Rule 6 of the Enrolment Rules provides that enrolment shall be compulsory only for students taking admission in Class IX and Rule 8 of the Enrolment Rules further provides that no student shall be eligible to appear in the Board Examination or to take admission in its course unless his enrolment is not

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done in the Board. The Enrolment Rules do not contain any provision that if the institution does not send the list of students admitted in Class IX by 31st August of the year in which the students are admitted, the application of the school for enrolment will not be entertained.

9. On the other hand, Regulation 129(a) of the Regulations quoted above provides that the application for enrolment together with enrolment fee shall be submitted by the regular student through the head of the institution concerned so as to reach the Secretary of the Board by the first October in the academic year in which he first joins a recognised institution and the head of the institution shall scrutinise all the forms of students who have applied for enrolment and certify that they have examined the certificate of the examination qualifying them for admission to the Board's course concerned and the proviso to Regulation 129(a) further states that the Secretary may in exceptional circumstances; entertain an application for enrolment even later than 1st October. There is therefore a clear provision in Regulation 129 that the Secretary of the Board may entertain the application for enrolment even after October of the year in which the student joined the course. Hence where the Head of the Institution submits an application for enrolment of the students admitted in the school after 31st August or after October of the year in which the students are admitted the consequence is not that the applications cannot under any circumstances be entertained by the Board. In other words, the time limit of 31st August or October for submitting application for enrolment as provided in the Enrolment Rules and the Regulations respectively is not mandatory but only directory. The Head of the Institution has a public duty under Rule 5 of the Enrolment Rules and under Regulation 129(a) of the Regulations to submit the list of students admitted by 31st August or October of the year in which students join the school to the Board. He does not act as a private individual but as a public functionary while sending the application for enrolment of the students to the Board and the students who were actually admitted in the school and who have no control over such head of the institution in which they are studying cannot suffer for laches on the part of the head of the institution to send the application for enrolment within the stipulated time.

10. As has been held by the Privy Council in *Montreal Street Railway Company vs. Normandin*, AIR 1917 PC 142 at p. 144:

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

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11. Similarly, in *Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and others*, (2003) 2 SCC 111, S.B. Sinha, J. writing the judgment for G.B. Pattanaik, C.J. and K.G. Balakrishnan, J. as he then was, and for himself has observed in para 42 at p. 125 of the SCC:

“We are not oblivious of the law that when a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory but it is equally well settled that when consequence for inaction on the part of the statutory authorities within such specified time is expressly provided, it must be held to be imperative.”

12. The law on the point has been also summed up by K. Ramaswamy, J. in *Mohan Singh and others vs. International Airport Authority of India and others*, (1997) 9 SCC 132 in para 17 at page 144 in the following words:

“General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory. The scope and language of the statute and consideration of policy at times may, however, create exception showing that the legislature did not intend a remedy (generality) to be **exclusive**. Words are the skin of the language. The language is the medium of expressing the intention and the object that **particular** provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word ‘shall’ is not always decisive. Regard must be had to the context, subject-matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration. As stated earlier, the question as to whether the statute is mandatory or directory depends upon the intent of the legislature and not always upon the language in which the intent is couched. The meaning and intention of the legislature would govern design and purpose the Act seeks to achieve.”

13. As we have seen, the statutory provisions in the Regulations as well as in the Enrolment Rules do not provide that application for enrolment filed beyond the time stipulated in the statutory provisions will not be entertained at all by the Board. We will therefore have to consider the object of the Regulations and the Enrolment Rules and the consequences of rejecting the application for enrolment of students of an institution recognized by the Board where the applications are

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submitted to the Board beyond the time prescribed in the Rules and the Regulations for deciding whether the time limit mentioned in the Regulations and the Enrolment Rules were mandatory. The object of the Enrolment Rules and the Regulations is to ensure that regular students in fact were admitted in the school in Class IX and intended to take the Class X Examinations of the Board after two years of the study in Class IX and Class X. Hence, if these conditions are satisfied but the applications for enrolment are sent beyond the time prescribed in the provisions, the applications for enrolment, if rejected, would lead to injustice and hardship to the students who have actually been admitted to Class IX of the recognised school. The stand taken by the Board that the application of the 31 students admitted in Class IX could not be considered by the Board because the application was sent beyond the time prescribed in the Enrolment Rules is thus not tenable.

14. We may now deal with the stand of the Board that the school was actually interested in getting C.B.S.E. recognition and therefore dilly-dallied over the enrolment of 31 students admitted to Class IX with the Board and only after the CBSE granted recognition to the school for the period 1.4.2008 to 31.12.2010 and not for the academic year 2007-2008 in the communication dated 19.2.2008 of the CBSE to the school that the school applied for enrolment of the 31 students with the Board on 17.3.2008. We fail to see how this could be ground for the Board to refuse enrolment of the 31 students of the school for the 10th Class Examination scheduled for March, 2009 and to refuse permission to the students to take the examinations. Admittedly, the school was permitted to admit students in Class IX by the Board in the academic year 2007-08 and accordingly 31 students were admitted in Class IX of the School in July, 2007 so that they can take the Class X Examination in March, 2009. Regulation 129(b) of the Regulations quoted above provides that regular students seeking admission to an institution recognized by the Board after having been admitted as member of another Board incorporated by law for the time being in force, and having appeared for public examination of that Board, will not be enrolled unless the application for enrolment will be accompanied by Migration Certificate from the previous Board. Thus, regular students who are enrolled under another Board cannot seek enrolment with the Board but no provision has been brought to our notice which stipulates that regular students of an institution which is recognized by the Board will not be enrolled by the Board if the institution is also taking steps for getting recognition from another Board. In our considered opinion, once the Class IX of the school had been recognized by the Board by granting permission for the academic session 2007-08, students who were admitted to Class IX of the school recognized by the Board in the academic session 2007-2008 and who completed studies in Class IX and Class X in the school could not be refused enrolment for Class X Examination by the Board scheduled for March, 2009 on the ground that the school was simultaneously seeking recognition from the C.B.S.E.

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15. For the aforesaid reasons, we allow the writ petitions and quash the impugned order dated 29.11.2008 of the Chairman of the Board and direct the Board to forthwith publish the results of the students of the school who have taken the Class X Examinations of the Board pursuant to the interim order passed by this Court on 29.1.2009. No costs.

Petition allowed.

I.L.R. [2009] M. P., 3291

WRIT PETITION

Before Mr. Justice R.S. Jha

4 August, 2009*

J.P. TOBACCO PRODUCTS & ors.

... Petitioners

Vs.

KRISHI UPAJ MANDI & ors.

... Respondents

A. Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Sections 2(1)(mmm) & 19 - Tobacco is used for the purpose of preparing Bidi, which is distinct, separate and different marketable commodity - Process of utilization of tobacco for preparation of Bidi amounts to manufacture and falls outside the purview of S. 19 and can not be subject to levy of market fee - Petition allowed. (Paras 12 to 17)

क. कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धाराएँ 2(1)(एमएमएम) व 19 - तम्बाकू बीड़ी बनाने के प्रयोजन के लिए प्रयुक्त की जाती है, जो सुभिन्न, पृथक् और भिन्न मण्डी पदार्थ है - बीड़ी बनाने के लिए तम्बाकू के उपयोग की प्रक्रिया विनिर्माण की कोटि में आती है और धारा 19 के क्षेत्र से बाहर आती है और मण्डी फीस के उद्ग्रहण के अध्यक्षीन नहीं हो सकती है - याचिका मंजूर।

B. Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Sections 2(1)(mmm) & 6 - Petitioner is neither selling, purchasing nor processing tobacco and has not subjected the tobacco to any of the process mentioned in the definition clause u/s 2(1)(mmm) which is a notified agricultural produce within the market area - Therefore, is also outside the purview of S. 6 of the Act. (Para 18)

ख. कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धाराएँ 2(1)(एमएमएम) व 6 - याची न तो तम्बाकू विक्रय, क्रय कर रहा है और न उसका विनिर्माण कर रहा है और तम्बाकू को धारा 2(1)(एमएमएम) के अन्तर्गत परिभाषा खण्ड की उल्लिखित किसी प्रक्रिया के अध्यक्षीन नहीं रखा है जो मण्डी क्षेत्र के अन्दर अधिसूचित कृषि उपज हो - इसलिए अधिनियम की धारा 6 के क्षेत्र से भी बाहर है।

Cases referred :

JT 2002(1) SC 294, (2006) 12 SCC 468, (2008) 8 SCC 305, 1960(11) STC 698, (1990) 23 VKN 359.

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H.S. Shrivastava with Abhijeet Shrivastava, for the petitioners.

K.N. Agrawal, for the respondents.

O R D E R

R. S.JHA, J. -The petitioner has filed this petition challenging notices cumulatively marked as Annexure P/1 dated 13.6.2002 and 18.6.2002: bringing the petitioner within the purview of Krishi Upaj Mandi Adhiniyam, 1972 issued by the Krishi Upaj Mandi Samiti Damoh and Hatta demanding market fees from the petitioner, on the ground that the petitioner is not liable to pay the same being a manufacturer of Bidi and therefore outside the provisions of M.P. Krishi Upaj Mandi Adhiniyam, 1972 (hereinafter referred to the "Act").

2. The facts in brief leading to filing of the present petition are that the petitioners no. 1 and 2 are a registered Company and the petitioner no. 3 is a registered partnership firm which is undertaking the activity of manufacturing bidi in the name and style of Telephone Bidi. They were served with notices Annexure P/1 dated 13.6.2002 and 18.6.2002 to the effect that tobacco being a notified agricultural produce fell within the purview of the Adhiniyam on account of the Constitution Bench judgment of the Supreme Court rendered in the case of *I.T.C. Limited Vs. Agricultural Produce Market Committee and others* JT 2002(1) SC 294 and therefore the petitioners were liable to pay market fees as they were dealing with an agricultural produce and were processing tobacco to make bidi.

3. The petitioners filed a reply to the aforesaid notices issued to them specifically contending that the petitioner was importing processed tobacco from Gujrat and were neither purchasing, selling nor processing the same within the Mandi area but were only using it as a raw material for manufacturing bidi and therefore they were not liable to Mandi fees. The petitioners also submitted a reply to the effect that the judgment of the Constitution Bench of the Supreme Court in the case of *I.T.C. Limited* (supra) would not have the effect of creating any liability upon the petitioner.

4. The respondent/Mandi again issued a notice to the petitioners on 22.6.2002 demanding market fees and threatening coercive steps towards recovery. Being aggrieved by the same, the petitioners have filed the present petition.

5. It is submitted by the learned counsel for the petitioners that the petitioners purchase processed tobacco from Gujrat and utilize the same for manufacturing of bidi within the market area. It is stated that though, admittedly, tobacco is a notified agricultural produce, as the petitioner is not undertaking the activity of selling, purchasing or processing any notified agricultural produce within the market area, he is not liable to pay any market fees under the provisions of section 19 of the Act. It is further submitted that the use of tobacco as a raw material for preparing bidi amounts to manufacture and not processing of tobacco and on that account the petitioner does not fall within the purview of section 19 of the

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Act. For this purpose the petitioner has relied upon the decisions rendered in the cases of *Orient Paper and Industries Ltd. Vs. State of M.P. and others* (2006) 12 SCC 468, *Kesarwani Zarda Bhandar Vs. State of Uttar Pradesh and others* (2008) 8 SCC 305, *Anwarkhan Mehboob Co. Vs. The State of Bombay (Now Maharashtra)* 1960 (11) STC 698 and *Kher Stone Crusher, Jabalpur Vs. General Manager, DIG, Jabalpur and another* (1990) 23 VKN 359 full bench decision of this court.

6. Per contra the learned counsel for the respondents submits that the petitioner is purchasing and bringing into the market area a notified agricultural produce i.e. tobacco, and thereafter the petitioner is simply wrapping it in Tendu Patta and selling the same as bidi. It is stated that the aforesaid practice amounts to processing and not manufacture and therefore, the petitioner who is processing tobacco, a notified agricultural produce, is liable to pay market fees under the provisions of the Act. For the aforesaid purpose, the petitioner has relied upon the judgment of the Supreme Court in the case of *R.T.C. Limited* (supra) and the judgment of this court dated 8.8.2008 passed in W.P. No. 1348/2005 *M/s Tapa Traders, Gwalior Vs. Krishi Upaj Mandi Samiti. Gwalior and another*.

7. I have heard the learned counsel for the parties at length.

8. The issue that arises for decision in the petition is as to whether the process undertaken by the petitioner for preparing bidi from tobacco amounts to manufacture and whether the petitioner is liable to pay market fee in accordance with the provisions of the Act.

9. In the instant case, admittedly, the petitioner is importing processed tobacco from Gujrat and is preparing bidi from the same and the fact that the petitioner is infact brining tobacco within the market area, which is a notified agricultural produce, is not disputed or denied. It is also an admitted fact that bidi is not a notified agricultural produce under the provisions of the Act. It is also an admitted fact that the petitioner is neither selling nor purchasing tobacco within the market area. It therefore, to be seen whether the effect of preparing bidi from the tobacco amounts to processing so as to make the petitioner liable to pay market fees.

10. The provisions of section 19 of the Act which is the charging section provides that the market committee can levy market fee on the sale of a notified agricultural produce within market area and on the notified agricultural produce when it is used for processing. Section 6 (b) provides that no person shall use any place in the market area for marketing of the notified agricultural produce or operate in the market area as a market functionary except in accordance with the Act or rules. It further provides that this section shall not apply to the sale or purchase of such agricultural produce brought for personal use or brought by head loads sold or purchased by a petty trader and purchased by an authorised

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fair price shop dealer from the Food Corporation of India, the Madhya Pradesh State Commodities Trading Corporation or any other agency or institution authorised by the State Government for distribution of essential commodities and to transfer of such agricultural produce to a cooperative society for the purpose of securing an advance therefrom.

Section 2(1)(mmm) defines "processing":

"Processing" means powdering, crushing, decorating, husking, parboiling, polishing, ginning, pressing, curing or any other treatment to which an agricultural produce or its produce is subjected to before final consumption.

11. From a perusal of the aforesaid provisions of law, it is clear that a person who is either buying or selling or processing a notified agricultural produce within the market area is liable to pay market fee and that powdering, crushing, decorating, husking, parboiling, polishing, ginning, pressing, curing or any other treatment to which an agricultural produce or its produce is subjected to before final consumption amount to processing.

12. In the instant case, admittedly, the petitioner does not undertake any of the activities mentioned in the definition clause 2 (1) (mmm) as he does not subject the processed tobacco to any of them. The petitioner simply uses it as a filling for preparing bidi which he thereafter exports for sale outside the market area.

13. The Supreme Court in the case of *Orient Paper* (supra) has considered the provisions of the Act specifically section 2 (1) (mmm) and section 19 and in that case held that manufacture of paper from bamboo amounts to manufacture, and therefore, no market fee can be levied on such process. The Supreme Court after considering several judgments on the issue has laid down the test of distinguishing manufacture from processing by stating that when a new distinct and different good or marketable commodity emerges after the process to which a raw material is subjected then the process amounts to manufacture in the following terms in paragraph 19 to 22.

"19. To put it differently, the test to determine whether a particular activity amounts to "manufacture" or not is: Do new and different goods emerge having distinctive name, use and character? The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether it be the result of one process or several processes "manufacture" takes place and liability to duty is attracted. Etymologically the word "manufacture" properly construed would doubtless cover the transformation. It is the transformation of a matter into something else and that something else is a question of degree, whether that something

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else is a different commercial commodity having its distinct character, use and name and commercially known as such from that point of view is a question depending upon the facts and circumstances of the case. (See *Empire Industries Ltd. v. Union of India*6.)

20. These aspects were highlighted in *Kores India Ltd. v. CCE*7.

21. The stand of learned counsel for the respondents that the levy is under two circumstances i.e. (i) on the buying and selling of notified agricultural produce when brought within the State into the market area (ii) on the notified agriculture produce when brought from within the State or from outside the State into the market areas. The case at hand, it is submitted, relates to the second category.

22. Had it been only that the goods notified brought into the market area are to be covered by the second category then the stand of the respondents would have been acceptable. But the further condition that it must be "used for processing" shows that the emphasis is on end-user. In this case that makes the difference. Therefore, the appellant is correct in its stand that levy on the notified agriculture produce being brought within market area where the end-user is manufacture does not attract levy of market fee."

14. In the case of *Kesarwani* (supra), the Supreme Court has held that preparing Zafrani Zarda from tobacco amounts to manufacture and Jafrani Zarda cannot be said to be processed tobacco in the following terms in paragraphs 17 and 18:

"17. The distinction between "manufactured" and "processed" may not in all situations depend upon the nature of the statute involved. It must pass the requisite test, namely, as to whether it is a completely new item. Raw material of a manufactured product has to be distinguished from the manufactured product. The distinction between "processing" and "manufacturing" is well known. When a new thing comes into being, the steps which are taken for manufacture may be relevant but may not be decisive. (See *CCE v. Vinayaga Body Building Industries Ltd.*8)

18. Zafrani zarda being a "manufactured tobacco" would not answer the description of processed tobacco. It is used by a class of consumers. It is used for a specific purpose. Tobacco as a processed form is used for many purposes, by many persons and in many ways. Tobacco in raw form or in any other processed form is not commercially known as zarda. The common parlance

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test may have to be applied for the purpose of finding out as to whether the product in question is manufactured goods or not.”

15. From a perusal of the aforesaid judgments it is clear that in cases where process results in bringing into existence a different and distinct commercial commodity, it amounts to manufacture and that raw material used for manufacture has to be distinguished from manufactured product.

16. In the instant case, tobacco is used for the purpose of preparing bidi which is a distinct, separate and different marketable commodity which is commercially recognized as such and is totally different from tobacco in the sense that a person wanting to purchase tobacco would not under any impression purchase bidi instead or vice-versa.

17. In view of the aforesaid, I am of the considered opinion that the process of utilization of the tobacco by the petitioner for preparing bidi amounts to manufacture and as has been held by the Supreme Court in the case of *Orient Paper* (Supra) falls outside the purview of section 19 and cannot be subjected to levy of market fee.

18. As stated in the previous paragraph, the petitioner is neither selling, purchasing nor processing tobacco and has not subjected the tobacco to any of the process mentioned in the definition clause under section 2 (1) (mmm) which is a notified agricultural produce within the market area and therefore, is also outside the purview of section 6 of the Act also.

19. In view of the aforesaid facts and circumstances, the petition filed by the petitioner deserves to be and is hereby allowed. The impugned notices issued by the respondents/ Mandi, cumulatively marked as Annexure P/1 dated 13.3.2002/ 18.6.02 and the subsequent notices dated 22.6.2002 are hereby quashed.

In the facts and circumstances, there shall be no order as to costs.

Petition allowed.

I.L.R. [2009] M. P., 3296

WRIT PETITION

Before Mr. Justice Abhay M. Naik & Mr. Justice A.P. Shrivastava

7 August, 2009*

PARWATI BAI

... Petitioner

Vs.

KRIPARAM & ors.

... Respondents

Civil Procedure Code (5 of 1908), Section 151 - Consolidation of suits
- Trial Court ordered for consolidation of two suits one at stage of evidence
whereas other at primary stage - Held - Application for consolidation not

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filed promptly after order of High Court - Grounds in the suits are different and cannot be said that the judgments in both shall have to be conflicting with each other - Due to order of consolidation, evidence already recorded in one suit will be washed out and there shall be a de novo trial of suit for no infirmity, legal or procedural - Trial Court failed to exercise the discretion judicially - Order set-aside - Petition allowed. (Paras 16, 17 & 19)

सिविल प्रक्रिया संहिता (1908 का 5), धारा 151 - वादों का समेकन - विचारण न्यायालय ने दो वादों जिनमें एक साक्ष्य के प्रक्रम पर था जबकि दूसरा प्राथमिक प्रक्रम पर, के समेकन का आदेश दिया - अभिनिर्धारित - उच्च न्यायालय के आदेश के बाद समेकन का आवेदन तत्परता से पेश नहीं किया गया - वादों में आधार भिन्न-भिन्न और यह नहीं कहा जा सकता कि दोनों में पारित निर्णय एक-दूसरे के परस्पर विरोधी होंगे - समेकन के आदेश के कारण एक वाद में पहले से अभिलिखित साक्ष्य व्यर्थ हो जायेगी और किसी विधिक या प्रक्रियात्मक अशक्तता के बिना वाद का नए सिरे से विचारण करना होगा - विचारण न्यायालय न्यायिकतः विवेकाधिकार का प्रयोग करने में असफल - आदेश अपास्त - याचिका मंजूर।

Cases referred :

AIR 1984 SC 38, AIR 1962 SC 527, 1975 JIJ 432.

N.K. Gupta, for the petitioner.

S.N. Seth, for the respondent Nos.2 & 3.

ORDER

The Order of the Court was delivered by **ABHAY M. NAIK, J.** :- Briefly stated facts relevant for the purposes of this writ petition are that the suit property earlier belonged to one Ramnath. Ramnath had a son, namely, Rameshwar Dayal and a daughter Parwati Bai. Rameshwar Dayal had three sons and two daughters. Kriparam is one of his children. According to Parwati Bai, after the death of Ramnath name of Rameshwar Dayal alone was entered in the revenue record in respect of the entire property left by Ramnath. After the death of Rameshwar Dayal, Kriparam sold 1/3rd share vide registered sale deed dated 10-09-03 to Raju Singh Bhadoriya (respondent No.2).

2. In the back drop of the aforesaid events, Parwati Bai instituted a suit bearing No.6-A/04 (new No.63-A/08) with an allegation that she had half share in the property and Kriparam could not have sold 1/3rd. This apart, it was stated that there being no partition, Kriparam was not competent to execute registered sale deed in favour of Raju Singh Bhadoriya. Accordingly, a suit for declaration and perpetual injunction was instituted against various defendants including Raju Singh Bhadoriya (respondent No.2), who is the main contesting party.

3. Subsequently, another civil suit bearing No.9-A/04 (new No.62-A/08) was instituted by Kriparam with certain allegations. He also sought relief that registered sale deed dated 10-09-03 may be quashed/cancelled or declared illegal and ineffective.

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4. Parwati Bai submitted an application under Section 10 of CPC in Civil Suit No.9-A/04 (instituted by Kriparam) that in view of her suit (Civil Suit No.6-A/04) being earlier one, proceedings of the subsequent suit may be stayed. This application was rejected and the same was challenged in writ petition No.2228/04. This Court vide order dated 05-10-05 stayed the proceedings of Civil Suit No.9-A/04 and gave opportunity to the parties to the litigation to move an appropriate application before the District Judge concerned for seeking consolidation of both the suits.

5. It is important to note that pursuant to the aforesaid order of this Court, no application for consolidation was submitted by any of the parties till March, 2009.

6. It is stated at bar that in Civil Suit No.6-A/04 (new No.63-A/08) evidence of Parwati Bai as well as of defendants No. 1 to 5 has been recorded. Statement of Raju Singh Bhadoriya (defendant No.6) has also been recorded. However, four witnesses of Raju Singh Bhadoriya are yet to be examined.

7. As regards Civil Suit No.9-A/04, it is admitted that proper court fee has not been paid despite direction of the trial Court and written statement from defendants is still awaited.

8. An application under Section 151 of CPC with a prayer for consolidation of both the suits was filed on 06-04-09 by respondents No.2 and 3 ~~herein~~ which has been allowed by the impugned order dated 21-04-09 by the Court of learned Sixth Additional District Judge, Bhind (Fast Track), which has been assailed on behalf of Parwati Bai in the present writ petition.

9. Shri N.K. Gupta, learned counsel for the petitioner contended that direction of this Court was issued on 05-10-05 to move an application for consolidation by any of the parties. Pursuant thereto no such application was filed with promptness within reasonable time. It is only after closure of plaintiff's evidence as well as of defendants No. 1 to 5, such an application is moved which cannot be allowed looking to the status of the earlier suit.

10. Shri Seth, learned counsel for the contesting respondents countered it with a say that the application has been allowed pursuant to this Court's direction and there being no jurisdictional error, the petition is liable to dismissal in view of the law laid down by the Apex Court in the case of *Mohd. Yunus V. Mohd. Mustaqim and Others*, AIR 1984 SC 38.

11. Considered the submissions and perused the record.

12. Consolidation of suits is not specifically provided in Code of Civil Procedure as applicable to the State of Madhya Pradesh. It seems that it is only State of Uttar Pradesh, which has made a specific provision for consolidation of cases by inserting Order 4-A in Code of Civil Procedure by way of amendment (U. P. Act of 57 of 1976) which runs as follows:

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1. Consolidation of suits and proceedings:- When two of more suits or proceedings are pending in the same court, and the court is of opinion that it is expedient in the interest of justice, it may by order direct their joint trial, whereupon all such suits and proceedings may be decided upon the evidence in all or any such suits or proceedings [U.P. Act 57 of 1976, Section 5 (01-01-1977)].

13. Code of Civil Procedure as it applies to the State of Madhya Pradesh contains no specific provision for consolidation of suits. It may be achieved by invoking Section 151 of CPC. Code of Civil Procedure is not exhaustive for the simple reason that legislature is not capable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing a procedure for them. Supreme Court of India in the case of *Manohar Lal Chopra V. Rai Bahadur Rao Raja Seth Hiralal*, 1962 SC 527 has observed:

The Code of Civil Procedure is undoubtedly not exhaustive: it does not lay down rules for guidance in respect of all situations nor does it seek to provide rules for decision of all conceivable cases which may arise. The civil Courts are authorized to pass such orders as may be necessary for the ends of justice, or to prevent abuse of the process of Court, but where an express provision is made to meet a particular situation the Code must be observed and departure therefrom is not permissible.

14. As regards scope of Section 151 CPC, it has been observed in the aforesaid case:

Section 151 C.P.C. itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the court, it is a power inherent in the Court by virtue of its duty to do Justice between the parties before it.

15: In view of the aforesaid, by no stretch of imagination it can be doubted that consolidation of suits in appropriate cases may be ordered by invoking Section 151 of CPC. Court has undoubtedly such a power where the circumstance so required to exercise inherent power to act *ex-debito Justitios* and to do real and substantial justice for the administration, for which alone, it exists. Thus, Section 151 CPC does not confer any power but only indicates that there is power inherent

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in the Court to make such orders as may be necessary for achieving the ends of justice as well as to prevent an abuse of the process of the Court.

16. Consolidation of suits though not specifically provided in Code of Civil Procedure, may be directed in order to avoid firstly; conflicting judgments and secondly; to save, valuable time, energy and money by clubbing the cases involving common question together. In Civil Suit No.63-A/08 instituted by Parwati Bai, it is alleged that she had half share in the property and accordingly Kriparam could not have sold 1/3rd share. If she succeeds the sale deed executed by Kriparam may not be valid to the extent of her share. Civil Suit No.62-A/08 is instituted by Kriparam, challenging the registered sale deed executed by himself. Thus, the grounds of attack contained in Civil Suit No.63-A/08 and Civil Suit No. 62-A/08 to common sale deed dated 10-09-03 are altogether different and it cannot be said that the judgments in both the suits shall have to be conflicting with each other. Judgment in both the suits decided in any manner, whatsoever, may co-exist without giving rise to any kind of conflict. This apart, it may be seen that in the Civil Suit instituted by Parwati Bai (Civil Suit No.63-A/08) evidence of plaintiff as well as that of defendants No. 1 to 5 is closed. Statement of contesting defendant Raju Singh Bhadoriya (respondent No.2) is also recorded. Four witnesses of defendant No.6 are yet to be examined as per learned counsel for respondents No.2 and 3. Thus, Civil Suit No.63-A/08 has undergone much progress and substantially near decision. On the other hand, in Civil Suit No.62-A/08 instituted by Kriparam, proper court fee is yet to be paid and written statements of defendants are awaited. Thus, Civil Suit No.62-A/08 is virtually at primary stage. This being so, the very purpose of consolidation cannot be achieved in view of divergent status of two suits.

17. In the case of consolidation of suits, common evidence is recorded which serves the purpose in the cases consolidated. In Civil Suit No. 63-A/08 evidence has been already recorded substantially prior to order of consolidation which cannot be utilized in Civil Suit No.62-A/08 except with the express consent of the parties concerned. It has been admitted by the learned counsel for the parties that no such consent was given by the plaintiff of both the suits. It is undisputed position of law as held by the Apex Court in the case of *Mitthulal and another V. State of M.P.*, 1975 J.L.J. 432 that each case must be decided on the evidence recorded in it and evidence recorded in another case cannot be taken into account in arriving at a decision of another case. In view of the aforesaid legal position, the evidence recorded in Parwati Bai's suit prior to order of consolidation cannot be legally looked into in the suit instituted by Kriparam and evidence shall have to be freshly recorded even in the case of Parwati Bai in view of the order of consolidation. Thus, impugned order shall have an effect of reopening of Parwati Bai's case for no justifiable reason. On the other hand, Parwati Bai, who has already produced her evidence would be dragged in the suit

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instituted by Kriparam, although no relief has been sought against her in that suit. An application for consolidation even in pursuance of this Court's order ought to have been submitted promptly within reasonable time. Respondents No.2 and 3 despite direction of this Court on 05-10-05 to move an application for consolidation observed silence for more than three years and five months and, therefore, they will be deemed to have acquiesced their right to have consolidation in the light of this Court's order dated 05-10-05. Moreover, this Court vide the said order did not direct for consolidation but had merely observed that it shall be open to any of the parties to file an appropriate application for seeking consolidation which shall be considered in accordance with law. Thus, the learned trial Judge while passing the order of consolidation has failed to exercise jurisdiction in judicious manner. He ought to have considered the stages of the suits and the purpose which could be achieved by ordering consolidation. Learned counsel for the respondents No.2 and 3, Shri Seth submitted that since proceedings of subsequent suit were stayed by this Court, respondent No.2 was unable to move an application for consolidation within reasonable time. This submission is totally incorrect and highly misconceived because this Court in the order dated 05-10-05 itself has observed that stay of one of the suits passed by this Court shall not come in way for consideration of application for consolidation. Thus, silence of the respondent No.2 in the matter of submission of application for consolidation did amount to acquiescence on his part and he could not have insisted for consolidation due to substantial progress of earlier suit which was well within his knowledge.

18. Shri Seth, learned counsel appearing for the respondents No.2 and 3 contended that there is no jurisdictional error in the impugned order and petition is liable to dismissal in view of the law laid down in the case of *Mohd. Yunus V. Mohd. Mustaqim and Others*, AIR 1984 SC 38. It is observed in the case of *Mohd. Yunus* (supra):

The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited to seeing that an inferior Court or Tribunal functions within the limits of its authority and not to correct an error apparent on the face of record much less an error of law.

19. In the case of *Mohd. Yunus* (supra) it was found that there was no failure on the part of the subordinate Judge to exercise jurisdiction nor was the procedure adopted by him not in consonance with the procedure established by law. Contrary to this, it is found in the present case that due to the order of consolidation, evidence recorded already in the suit instituted by Parwati Bai (Civil Suit No.63-A/08) will be washed out and there would be a denovo trial of the suit for no infirmity, legal or procedural. It is true that the order of consolidation could have been made by exercise of discretionary power by the trial Court. However, it is observed that discretion ought to have been exercised in judicious manner. Learned trial Judge

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has failed to exercise the discretion judiciously on account of ignoring nature of the suits and the relief prayed therein. It has equally erred in not taking into consideration unlikelihood of conflicting judgments. Apart from this, the stages of the suits were also ignored. This being so, learned trial Judge, failed to take into consideration that the purpose of consolidation could not have been achieved in view of more than 90% progress of the trial of Parwati Bai's suit.

20. In the totality of the facts and circumstances of the case, the impugned order is not sustainable in law and the same is hereby set aside, however without order as to costs.

Petition allowed.

I.L.R. [2009] M. P., 3302

WRIT PETITION.

Before Mr. Justice S.K. Gangele

20 August, 2009*

LALITA TOMAR

Vs.

STATE OF M.P. & ors.

... Petitioner

... Respondents

Service Law - Constitution, Articles 16(2) & (3), Circular dated 10.07.2007 of the State Government - Equality of employment - Appointment of Aaganwadi Worker for Aaganwadi Centre, Devpur - As per State Government's policy with regard to eligibility criteria for appointment that the applicant must be resident of the same village and ward - Candidature of petitioner has been rejected only on the ground that she is not a resident of village Devpur - Held - State Government's policy suffers from constitutional infirmity and is against the provision of Article 16(2) of the Constitution - In fact petitioner is a resident of village Gurichchha which is part and parcel of Gram Panchayat, Devpur - Hence, exclusion of petitioner for consideration to the post of Aaganwadi Worker for Aaganwadi Centre, Devpur is arbitrary and illegal. (Para 10)

सेवा विधि - संविधान, अनुच्छेद 16(2) व (3), राज्य सरकार का परिपत्र तारीख 10.07.2007 - रोजगार की समता - आंगनवाड़ी केन्द्र, देवपुर के लिए आंगनवाड़ी कार्यकर्ता की नियुक्ति - नियुक्ति की पात्रता के सम्बन्ध में राज्य सरकार की पॉलिसी के अनुसार आवेदक उसी ग्राम या वार्ड का निवासी होना चाहिए - याची की अम्यर्थिता केवल इस आधार पर अस्वीकार की गई कि वह ग्राम देवपुर की निवासी नहीं है - अभिनिर्धारित - राज्य सरकार की पॉलिसी संवैधानिक अशक्तता से ग्रस्त और संविधान के अनुच्छेद 16(2) के उपबन्ध के विरुद्ध है - वास्तव में याची ग्राम गुरिच्छा की निवासी है जो ग्राम पंचायत देवपुर का अभिन्न अंग है - इसलिए, आंगनवाड़ी केन्द्र, देवपुर के आंगनवाड़ी कार्यकर्ता के पद हेतु विचार करने के लिए याची का अपवर्जन मनमाना और अवैध है।

LALITA TOMAR Vs. STATE OF M.P.**Cases referred :**

2002 SCC (L&S) 935, 2003(4) MPLJ 106, AIR 2007 SC 3166, W.A No.421/2007.

S.K. Sharma, for the petitioner.

Ami Prabal, Dy.A.G., for the respondent/State.

ORDER

S.K. GANGELE, J. :- This petition is filed by the petitioner for challenging order Annexure P/1 dated 14/3/2008 and also non-selection of the petitioner on the post of Aaganwadi worker. The petitioner alongwith other persons applied for the post of Aaganwadi worker for Aaganwadi Center Devpur in Gram Panchayat Gurichchha. Copy of the application has been filed as Annexure P/2. Along with petitioner other persons have also applied for the post. The District Level Committee in its meeting dated 16.8.2007 rejected the application of the petitioner on the ground that she is resident of village Gurichchha, because as per policy of appointment of Aaganwadi Worker, candidate must be a resident of same village or ward. The committee decided to appoint one Ku. Asha as Aaganwadi worker. Subsequently, it was found that Ku. Asha was under age hence she could not be appointed as Aaganwadi Worker. Thereafter, petitioner filed an appeal before the Collector mentioning that she is entitled to be appointed as Aaganwadi Worker. The Collector vide order dated 14.3.2008, Annexure P/1 rejected the appeal of the petitioner on the ground that petitioner does not fulfill the requisite criteria for appointment as Aaganwadi Worker because she is not a resident of village Devpur.

2. The learned counsel for the petitioner has submitted that the decision of the Collector and the District Committee that the petitioner is not entitled to be appointed as Aaganwadi Worker because she is not the resident of village Devpur is arbitrary, illegal and violative of Article 16 of the Constitution of India. In support of this contention, the learned counsel relied upon judgment of the Honble Supreme Court in the case of *Kailash Chand Sharma Vs. State of Rajasthan and others* (2002 S.C.C. (L&S) 935) and judgment of learned Single Judge of this Court in the case of *Savitri Singh Vs. State of Madhya Pradesh and others* reported in 2003 (4) M.P.L.J 106.

3. Contrary to this learned Dy. Advocate General has submitted that petitioner is not a resident of village Devpur and as per policy of the State Government, which was prevailing at that time candidate of Aaganwadi Worker must be a resident of same village. Hence, the candidature of the petitioner has rightly been rejected. In support of her contention learned Dy. Advocate General relied upon judgment of Division of this Court passed in Writ Appeal No.421/2007 *Smt. Sadhana Vs. State of M.P. & others*.

4. From the facts of the case, it is clear that candidature of the petitioner has not been considered on the ground that she is not a resident of village Devpur. It

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has been mentioned by the District Committee in the proceeding dated 16.8.2007 that the petitioner is a resident of village Gurichcha and village Gurichcha is a part of Gram Panchayat Devpur. The appointment of Aaganwadi Worker in question was for Aaganwadi Center Devpur. The Women and Child Development Department issued a policy with regard to appointment of Aaganwadi Worker, copy of the policy has been filed as Annexure P/3 dated 27.5.2006. In the aforesaid policy the eligibility criteria for appointment has also been mentioned. One of the eligibility criteria is the name of the woman must be recorded in the voter list of the same village and ward. Subsequently the department issued another policy/circular dated 10.7.2007 for appointment with regard to Aaganwadi Worker. Copy of the same has been filed along with the rejoinder. In the aforesaid policy, it has been mentioned with regard to eligibility criteria for appointment that the applicant must be resident of same village and ward. The aforesaid criteria has been considered by the learned Single Judge of this Court in the case of *Savitri Singh Vs. State of Madhya Pradesh and others* reported in 2003 (4) M.P.L.J. 106. The learned Single Judge has held as under :

After hearing the learned counsel for both the sides, this Court is of the opinion that the view taken by the Commissioner, Rewa on the basis of the circular of the State Government is illegal. Recently in *Kailash Chand Sharma vs. State of Rajasthan*, AIR 2002 SC 2877 it has been held by the Supreme Court that residence within a District or rural areas of that District could not be a valid basis for classification for the purpose of public employment. The argument in favour of such reservation which has the overtones of parochialism is liable to be rejected on the plain terms of Article 16 (2) and in the light of Article 16 (3). An argument of this nature flies in the face of the peremptory language of Article 16(2) and runs counter to our constitutional ethos founded on unity and integrity of the nation. Residence by itself - be it within a State, region District or lesser area within a District - cannot be a ground to accord preferential treatment or reservation save as provided in Article 16(3). It is not possible to compartmentalize the State into Districts with a view to offer employment to the residents of that District on a preferential basis.

In view of the above legal position, the circular dated 27.5.1996 on which reliance has been placed by the Commissioner, suffers from constitutional infirmity. The instructions contained in this circular that a person of the same village should be appointed as Aanganwadi Worker is legally not sustainable. It is against the provision, in Article 16 (2) of the Constitution of India. The petitioner could not be discriminated on the ground that she is

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resident of village Bharhut and not of village Dadari. As far as public employment is concerned, the classification on the basis of residence in a region or locality or village is constitutionally impermissible.

5. From the judgment of the learned Single Judge of this Court, it is clear that a person could not be denied appointment on the post of Aaganwadi worker on the ground that she is a resident of another village of same Gram Panchayat. In arising out of the aforesaid finding the learned Single of this Court relied on the judgment of the Hon'ble Supreme Court *Kailash Chand Sharma*, 2002 SCC (L&S) 935 (supra), whereby the Hon'ble Supreme Court has held as under with regard to classification of residence on the basis of geography wise:

(13) Before proceeding further we should steer clear of a misconception that surfaced in the course of arguments advanced on behalf of the state and some of the parties. Based on the decisions which countenanced geographical classification for certain weighty reasons such as socio-economic backwardness of the area for the purpose of admissions to professional colleges, it has been suggested that residence within a district or rural areas of that district could be a valid basis for classification for the purpose of public employment as well. We have no doubt that such a sweeping argument which has the overtones of parochialism is liable to be rejected on the plain terms of Article 16(2) and in the light of Article 16(3). An argument of this nature flies in the face of the peremptory language of Article 16 (2) and runs counter to our constitutional ethos founded on unity and integrity of the nation. Attempts to prefer candidates of a local area in the state were nipped in the bud by this Court since long past. We would like to reiterate that residence by itself -be it be within a state, region, district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalize the state into districts with a view to offer employment to the residents of that district on a preferential basis. At this juncture it is appropriate to undertake a brief analysis of Article 16.

(14) Article 16 which under clause (1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state reinforces that guarantee by prohibiting under clause (2) discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. Be it noted that in the allied Article - Article 15, the

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word 'residence' is omitted from the opening clause prohibiting discrimination on specified grounds. Clauses (3) and (4) of Article 16 dilutes the rigour of clause (2) by (i) conferring an enabling power on the Parliament to make a law prescribing the residential requirement within the state in regard to a class or classes of employment or appointment to an office under the state and (ii) by enabling the state to make a provision for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the state. The newly introduced clauses (4-A) and (4-B), apart from clause (5) of Article 16 are the other provisions by which the embargo laid down in Article 16 (2) in somewhat absolute terms is lifted to meet certain specific situations with a view to promote the overall objective underlying the Article. Here, we should make note of two things: firstly, discrimination only on the ground of residence (or place of birth) in so far as public employment is concerned is prohibited; secondly, Parliament is empowered to make the law prescribing residential requirement within a state or union territory, as the case may be, in relation to a class or classes of employment. That means, in the absence of parliamentary law, even the prescription of requirement as to residence within the state is a taboo. Coming to the first aspect, it must be noticed that the prohibitory mandate under Article 16(2) is not attracted if the alleged discrimination is on grounds not merely related to residence, but the factum of residence is only taken into account in addition to other relevant factors. This, in effect, is the import of the expression 'only'.

(15) Let us now turn our attention to some of the decided cases. As far back as in 1969 a constitution bench of this Court in *A.V.S Narasimha Rao v. State of A.P.* declared that the law enacted by the Parliament in pursuance of clause (3) of Article 16, making a special provision for domicile within the Telengana region of the state of Andhra Pradesh for the purpose of public employment within that region and the rules made thereunder as ultra vires the Constitution. Pursuant to the enabling power conferred under section 3 of the Public Employment (Requirement as to Residence) Act, rules were made making a person ineligible for appointment to a post within the Telengana area under the state government of A. P. or to a post under a local authority in the said area unless he has been continuously residing within the said area for a period of not less than 15 years immediately

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preceding the prescribed date. The government issued an order relieving all 'non-domicile' persons appointed on or after 1.11.1956 to certain categories of posts reserved for domiciles of Telengana under the A. P. Public Employment (Requirement as to Residence) Rules. Such incumbent of post was to be employed in the Andhra region by creating a supernumerary post, if necessary. This legislative and executive action was struck down by this Court. After referring to Article 16, the Court observed:

"The intention here is to make every office or employment open and available to every citizen, and inter alia to make offices or employment in one part of India open to citizens in all other parts of India. The third clause then makes an exception.

The legislative power to create residential qualification for employment is thus exclusively conferred on Parliament. Parliament can make any law, which prescribes any requirement as to residence within the state or union territory prior to employment or appointment to an office in that state or union territory. Two questions arise here, firstly, whether Parliament, while prescribing the requirement, may prescribe the requirement of residence in a particular part of the state and, secondly, whether Parliament can delegate this function by making a declaration and leaving the details to be filled in by the rule making power of the central and state governments."

The argument that a sweeping power was given to the Parliament to make any law as regards residential requirement, was repelled thus:

"By the first clause equality of opportunity in employment or appointment to an office is guaranteed. By the second clause, there can be no discrimination, among other things, on the ground of residence. Realising, however, that sometimes local sentiments may have to be respected or sometimes an inroad from more advanced states into less developed states may have to be prevented, and a residential qualification may, therefore, have to be prescribed, the exception in clause (3) was made. Even so, that clause spoke of residence within the state. The claim of Mr. Setalvad that Parliament can make a provision regarding residence in any particular part of a state would render the general prohibition lose all its meaning. The words 'any requirement' cannot be read to warrant something which could have been said more specifically. These words bear upon the kind of residence or its duration rather than its location within the state. We accept the

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argument of Mr. Gupta that the Constitution, as it stands, speaks of a whole state as the venue for residential qualification and it is impossible to think that the constituent assembly was thinking of residence in districts, taluqas, cities, towns or villages. The fact that this clause is an exception and came as an amendment must dictate that a narrow construction upon the exception should be placed as indeed the debates in the constituent assembly also seem to indicate."

Thus, this Court was not inclined to place too wide an interpretation on Article 16(3), keeping broadly, in view the constitutional philosophy.

(16) In *Pradeep Jain v. Union of India* though the Court was concerned with the question whether residential requirement or institutional preference in admissions to technical and medical colleges can be constitutionally permissible in the light of Article 15 (1) and 15 (4), Bhagwati, J, speaking for the Court expressed his prima facie opinion thus as regards residential requirement in the field of public employment:

"We may point out at this stage that though Article 15(2) bars discrimination on grounds, not only of religion, race, caste or sex but also on place of birth, Article 16 (2) goes further and provides that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in state employment. So far as employment under the state or any local or other authority is concerned, no citizen can be given preference nor can any discrimination be practised against him on the ground only of residence. It would thus appear that residential requirement would be unconstitutional as a condition of eligibility for employment or appointment to an office under the state But, Article 16(3) provides an exception to this rule by laying down that Parliament may make a law "prescribing, in regard to a class or classes of employment or appointment to an office under the government of, or any local or other authority in, a state or union territory, any requirement as to residence within that state or union territory prior to such employment or appointment." Parliament alone is given the right to enact an exception to the ban on discrimination based on residence and that too only with respect to positions within the employment of a state government. But even so, without any parliamentary enactment permitting them to do so many of the state governments have been pursuing policies of localism since long and these policies are now quite widespread. Parliament has in fact exercised little control over these policies formulated by the states. The only action, which Parliament has taken under Art. 16(3)

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giving it the right to set a residence requirement has been the enactment of the Public Employment (requirement as to Residence) Act, 1957.

There is therefore, at present no parliamentary enactment permitting preferential policies based on residence requirement except in the case of Andhra Pradesh, Manipur, Tripura and Himachal Pradesh where the central government has been given the right to issue directions setting residence requirements in the subordinate services. Yet, in the face of Art. 16(2) some of the states are adopting some of the said policies prescribing reservation or preference based on domicile or residence requirement for employment or appointment to an office under the government of a state or any local or other authority or public sector corporation or any other corporation which is an instrumentality or agency of the state. Prima facie this would seem to be constitutionally impermissible though we do not wish to express any definite opinion upon it, since it does not directly arise for consideration in these writ petitions and civil appeal."

However, in so far as admissions to educational institutions such as medical colleges are concerned, it was pointed out that Article 16(2) has no application and residential requirement cannot per se be condemned as unconstitutional. It was observed that the only provision of the Constitution on the touchstone of which such residence requirement can be tested is Article 14. On a conspectus of earlier decisions of this Court, the learned judge summarised the position thus in so far as admissions to professional education colleges are concerned: -

"It will be noticed from the above discussion that though intra-state discrimination between persons resident in different districts or regions of a state has by and large been frowned upon by the Court and struck down as invalid as in *Minor P. Rajendran's case* (AIR 1968 SC 1012) (supra) and *Perukaruppan's case* (AIR 1971 SC 2303) (supra), the Court has in *D. N. Chanchala's case* and other similar cases upheld institutional reservation effected through university wise distribution of seats for admission to medical colleges. The Court has also by its decisions in *D.P. Joshi's case* (AIR 1955 SC 334) and *N. Vasundhara's case* (AIR 1971 SC 1439) (supra) sustained the constitutional validity of reservation based on residence requirement within a state for the purpose of admission to medical colleges. These decisions which all relate to admission to MBBS course are binding upon us and it is therefore not possible for us to hold, in the face of these decisions that residence requirement in a state for admission to MBBS

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course is irrational and irrelevant and cannot be introduced as a condition for admission without violating the mandate of equality of opportunity contained in Art. 14. We must proceed on the basis that at least so far as admission to MBBS course is concerned, residence requirement in a state can be introduced as a condition for admission to the MBBS course."

Bhagwati, J. underscored the need for evolving a policy of ensuring admissions to the MBBS course on all India basis "based as it is on the postulate that India is one nation and every citizen of India is entitled to have equal opportunity for education and advancement." But, it was observed that the realization of such ideal may not be realistically possible in the present circumstances. It was then concluded:

"We are therefore of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalize opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or pre-medical examination of the same university or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the state."

It is not necessary for us to refer in extenso to various other decisions of this Court dealing with the scope of Article 15(1) and 15 (4) vis a vis reservations based on residence within a university or other local area for the purpose of admissions to professional colleges. A summary of those decisions has been given by Bhagwati, J. in the passage extracted (supra). The requirement of residence and education within the university area for allocation of seats in medical colleges affiliated to that university was upheld on special considerations noticed in that judgment.

(17) We may, however, advert to one recent decision wherein the view taken in Rajendran's case (supra) was reiterated. In *Govind A. Mane v. State of Maharashtra*, it was laid down.

"Since it is not disputed by the respondents that for the purpose of admission to B. Ed course, seats were distributed districtwise without indicating any material to show the nexus between such distribution and the object sought to be achieved, it would be violative of Article 14 of the Constitution."

The lack of material to establish nexus between the geographical classification and the object sought to be achieved thereby was thus held to be violative of Article 14.

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(18) The question which fell for consideration of this Court whether the action of the state in *State of U.P. v. Pradip Tandon* was in reserving certain percentage of seats available in medical colleges in favour of candidates from rural areas, hill areas and Uttarakhand was justified? The reservation was sought to be justified from the stand point of Article 15(4). Repelling the contention, Ray, C.J., speaking for a three-judge bench observed that: "the Constitution does not enable the state to bring socially and educationally backward areas within the protection of Article 15(4)". It was pointed out that the accent in Article 15(4) is on classes of citizens:.

"The expression "classes of citizens" indicates a homogeneous section of the people who are grouped together because of certain likenesses and common traits and who are identifiable by some common attributes. The homogeneity of the class of citizens is social and educational backwardness. Neither caste nor religion nor place of birth will be the uniform element of common attributes to make them a class of citizens."

Eschewing the test of poverty as the determining factor of social backwardness, this Court made the following pertinent observations:

"A division between the population of our country on the ground of poverty that the people in the urban areas are not poor and that the people in the rural areas are poor is neither supported by facts nor by a division between the urban people on the one hand and the rural people on the other that the rural people are socially and educationally backward class.

Some people in the rural areas may be educationally backward; some may be socially backward, there may be few who are both socially and educationally backward, but it cannot be said that all citizens residing in rural areas are socially and educationally backward.

Eighty per cent of the population in the state of Uttar Pradesh in rural areas cannot be said to be a homogeneous class by itself. They are not of the same kind. Their occupation is different. Their standards are different. Their lives are different. Population cannot be a class by itself. Rural element does not make it a class. To suggest that the rural areas are socially and educationally backward is to have reservation for the majority of the state."

It was further observed :

"The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward

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classes of citizens. This reservation appears to be made for majority population of the state. Eighty per cent of the population of the state cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas."

It was then observed that "the present case of classification of rural areas is not one of under-classification. This is a case of discrimination in favour of the majority of rural population to the prejudice of the students drawn from the general category".

(19) However, the learned judges took the view that the hill and Uttarakhand areas in U.P. State are 'instances' of socially and educationally backward classes of citizens and that those living in the hill and Uttarakhand areas can be considered to be socially and educationally backward classes of citizens. The social, economic and educational factors justifying such conclusion were set out succinctly by the learned judges. Ultimately the reservation in favour of candidates from rural areas was declared unconstitutional while upholding reservation for the candidates from hill and Uttarakhand areas. The principle laid down in the above decisions, though in the context of interpretation of Article 15(4) is an answer to the contention of the state that bonus marks are provided for uplifting the rural educated persons so as to utilize their services for the upliftment of the fellow rural people through the spread of education. Prohibition of discrimination on the basis of place of residence in the context of public employment is an additional factor which makes it well nigh impossible to accept the above plea.

(20) Before examining the further pleas in support of the impugned action taken by the state it would be apposite to refer to the decision in State of Maharashtra v. Raj Kumar, on which reliance has been placed by the High Court and reference has been made in the course of arguments before us. In that case a rule was made by the state of Maharashtra that a candidate in order to be treated as a rural candidate must have passed SSC examination which is held from a village or a town having only 'C' type municipality. The object of the rule, as pointed out by this Court, was to appoint candidates having full knowledge of rural life and its problems so that they would be more suitable for working as officers in rural areas. The rule was struck down on the ground that there was no nexus between classification made and the object sought to be achieved because "as the rule stands

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any person who may not have lived in a village at all can appear for SSC examination from a village and yet become eligible for selection". The rule was held to be violative of Articles 14 and 16. Another point discussed by the Court was about the propriety of giving bonus marks for the rural candidates and the Court held thus:

"The rules also provide that viva-voce board would put relevant questions to judge the suitability of candidate for working in rural areas and to test whether or not they have sufficient knowledge of rural problems, and this no doubt amounts to a sufficient safeguard to ascertain the ability of the candidate regarding his knowledge about the affairs of the village. In such a situation there was absolutely no occasion for making an express provision for giving weightage which would virtually convert merit into demerit and demerit into merit and would be per se violative of Article 14 of the Constitution as being an impermissible classification. The rule of weightage as applied in this case is manifestly unreasonable and wholly arbitrary and cannot be sustained."

(21) This decision is not a direct authority for the proposition that a citizen cannot be preferred for employment under the state on the ground that he or she hails from rural area. However, what has been laid down in regard to the first point assumes some relevance in the cases on hand. The criterion for identifying a rural candidate was held to be irrelevant as it had no nexus with the object sought to be achieved. In the present case, the position is much worse as the impugned circular does not spell out any criteria or indicia to determine whether an applicant is a rural candidate.

(22) Realising the difficulty in sustaining the impugned circular of the government merely on the basis of classification between persons residing in rural areas and towns, Mr. Rajeev Dhawan, learned senior counsel as well as the learned counsel appearing for the state, sought to draw support from the plea taken by the state in the counter affidavit filed in SLP (C) No. 10780/2001 that the award of bonus marks to the residents of rural areas is a measure of affirmative action or, compensatory discrimination to help the disadvantaged sections, namely, the rural people. It is trite to say that India lives in villages and inhabited predominantly by poorer sections of people. The people in the rural areas suffer many handicaps especially in the sphere of education. These

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factors, according to the learned counsel justify the state action to throw up better employment opportunities to the rural citizens and such act of levelling, it is contended, is nothing but an instance of protective discrimination. According to the learned counsel, the state, in the instant case, has resorted to least offensive and least obtrusive method of protecting the interests of the rural citizens instead of going in for wholesale reservation and it does not in any way violate the mandate of Art. 14. or Art. 16. The learned counsel reminds us that giving relaxations and concessions to disadvantaged people are an integral part of the equality clause enshrined in Article 14.

(23) This plea proceeds on the supposition that the proportion of employment of rural residents is much less than that of the residents in the towns: in other words, the major chunk of appointments in state services are going to those born in and brought up in towns. The other assumption underlying this argument is that the educated people in the rural areas are economically weaker than those living in towns. None of these assumptions are based upon any data or concrete material. We must say that the argument built up on this plea falls more in the realm of platitudes rather than affording a solid basis for the classification. In *Nidamarti Mahesh Kumar v. State of Maharashtra*, when regionwise classification for admissions to medical colleges was sought to be defended on the ground that Vidharbha and Marathwada regions are backward as compared to Pune and Bombay regions, this Court declined to accept such contention. It was observed :

“In the first place there is no material to show that the entire region within the Jurisdiction of the university in Vidharbha is backward or that the entire region within the jurisdiction of Pune University is advanced. There are quite possibilities even in the region within the jurisdiction of Pune University predominantly rural areas which are backward and equally there ‘may be in the region within the jurisdiction of the university in Vidharbha, areas which are not backward. We do not think it is possible to categorise the regions within the jurisdiction of the various universities as backward or advanced as if they were exclusive categories and in any event there is no material placed before us which would persuade us to reach that conclusion.”

(28) Here too, in the absence of any material, we cannot take it for granted that the premise on which the argument is sought to

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be built up is correct. Similarly, when the reservations of certain percentage of seats in medical colleges in favour of candidates from rural areas was sought to be justified on economic considerations, a three judge bench of this Court speaking through Ray, C.J., in *State of U.P. v. Pradip Tandon* emphatically rejected the plea. We quote:

“..... A division between the population of our country on the ground of poverty that the people in the urban areas are not poor and that the people in the rural areas are poor is neither supported by facts nor by a division between the urban people on the one hand and the rural people on the other that the rural people are socially and educationally backward class.

Some people in the rural areas may be educationally backward; some may be socially backward, there may be few who are both socially and educationally backward, but it cannot be said that all citizens residing in rural areas are socially and educationally backward.

The following observations may also be noticed :

“The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for majority population of the state. Eighty per cent of the population of the state cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas The incident of birth in rural areas is made the basic qualification. No reservation can be made on the basis of place of birth as that would offend Art. 15”.

(25) **THOUGH** the Court was primarily dealing with an argument based on Article 15(4) and the import of the expression “socially and educationally backward classes of citizens” occurring in that sub-Article, the observations quoted above are quite relevant in testing the plea raised on behalf of the state to save the classification. In the face of what has been laid down in *Pradip Tandon's case*, the State cannot possibly invoke Article 16(4).

(26) Our attention has however been drawn to the - following observations in *Nidamarti's case* (supra) in reiteration of what was said in *Pradeep Jain's case* (supra):

“It is therefore, clear that where the region from which the students of a university are largely drawn is backward either from the point of view of opportunities for medical education or availability of competent and adequate medical services, it would be

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constitutionally permissible, without violating the mandate of the equality clause, to provide a high percentage of reservation or preference for students coming from that region, because without reservation or preference students from such backward region will hardly be able to compete with those from advanced regions since they would have no adequate opportunity for development so as to be in a position to compete with others. By reason of their socially or economically disadvantaged position they would not have been able to secure education in good schools and they would consequently be at a disadvantage compared to students belonging to the affluent or well-to-do families who have had best of school education. There can, therefore, legitimately be reservation or preference in their favour so far as admissions are concerned in case of a medical college which is set up or intended to cater to the needs of a region which is backward or whose alumni are largely drawn from such backward region."

(27) These observations, in our view, cannot be legitimately pressed into service for the purpose of justifying reservation or weightage in favour of rural candidates on the ground of nativity/residence for purposes of public employment. The difference in approach in relation to Articles 15 and 16 was indicated by Bhagwati, J. in *Pradeep Jain's case* and we have quoted the relevant passage extensively. It was made clear in *Pradeep Jain's case* that in the matter of admissions to professional colleges the considerations were different. As far as public employment is concerned, the classification on the basis of residence in a region or locality was broadly held to be constitutionally impermissible. Moreover, the preferential treatment of rural candidates in the instant case is not on the ground that they hail from the backward region. All or most of the villages in the district or the state cannot be presumed to be backward educationally or economically. Such a claim was not accepted in *Pradip Tandon's case* by a three judge bench, lived in *Nidamarti's case*, it was held that in absence of material, certain regions cannot be dubbed as backward.

(28) The justifiability of the plea stemming from the premise that uplifting the rural people is an affirmative action to improve their lot can be tested from the concrete situation which confront us in the present cases. We are here concerned with the selections to the posts of teachers of primary schools, the minimum qualification being SSC coupled with basic training course in teaching. Can the court proceed on the assumption that the candidates residing in

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the town areas with their education in the schools or colleges located in the towns or its peripheral areas stand on a higher pedestal than the candidates who had studied in the rural area schools or colleges? Is the latter comparatively a disadvantaged and economically weaker segment when compared to the former? We do not think so. The aspirants for the teachers jobs in primary schools - be they from rural area or town area do not generally belong to affluent class. Apparently they come from lower middle class or poor background. By and large, in the pursuit of education, they suffer and share the same handicaps as their fellow citizens in rural areas. It cannot be said that the applicants from non-rural areas have access to best of the schools and colleges which the well to do class may have. Further, without any data, it is not possible to presume that the schools and colleges located in the towns- small or big and their peripheral areas are much better qualitatively, that is to say, from the point of view of teaching standards or infrastructure facilities so as to give an edge to the town candidates over the rural candidates.

(29) We are, therefore, of the view that the first plea raised by the state which is also found in the counter-affidavit filed before the High Court (as seen from the judgment in *Deepak Kumar Suthar's case*) is untenable.

6. From the above judgment of the Hon'ble Supreme Court, it is clear that the Hon'ble Supreme Court has struck down the concept of preference in employment on the basis of geography.

7. The learned Dy. Advocate General relied on the judgment of the Division Bench of this Court passed in Writ Appeal No.421/2007 (s) *Smt. Sadhana Vs. State of M.P. & others*. As per learned Dy. Advocate General, the Division Bench of this Court affirmed the policy of the department for appointment of Aaganwadi Worker to the effect that the Aaganwadi worker must be a resident of same village. The Division Bench of this Court has held as under:

The facts briefly are that the appellant was appointed as Aaganwadi Worker by order dated 1.12.2006. Respondent No.3 filed appeal before the Collector saying that she is a Scheduled Caste person and was placed at serial no. 1 by the Pariyojna Adhikari yet the appellant was appointed as Aaganwadi Worker for Datia area. The Collector issued notice to the appellant and held that in the voter list the name of one Hemlata was mentioned who was the first wife of Har Narayan and Har Narayan after divorce from Hemlata got married to the appellant and taking

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advantage of the mention of the name of Hemlata in the voter list as wife of Har Narayan, the appellant has been appointed as Aaganwadi Worker. After recording aforesaid finding the Collector set aside the appointment of the appellant and directed an enquiry into the matter. Aggrieved, the appellant filed Writ Petition No. 2606/2007 (S) but by the impugned order dated 22.6.2007, learned Single Judge did not find any merit in the writ petition and disposed of the writ petition with a direction that the concerned authority may take a decision with regard to appointment of Aaganwadi Worker within period of thirty days from the date of receipt of the order.

Mr. Raghuvanshi learned counsel for appellant submitted that under Article 16 (2) of the Constitution, appointment in a post on the basis of place of resident has been prohibited as discriminatory. He cited a decision of the Supreme Court in the case of *Kailash Chand Sharma etc. Vs. State of Rajasthan and others* AIR 2002 Supreme Court 2877 in which it has been held that residence by itself - be it be within a State, region. District or lesser area within a District - cannot be a ground to accord preferential treatment or reservation save as provided in Article 16 (3). He submitted that the appointment of the appellant as Aaganwadi Worker could not be set aside by the Collector on the ground that her name did not find place in the voter list.

We have considered the aforesaid submissions and we find that, in the Policy for appointment of Aaganwadi Workers contained in order dated 27.5.2006 of Government of M.P. Women & Child Welfare Department, one of the conditions for appointment of Aaganwadi Worker was that the name of woman candidate should find place in the voter list of village. Yet another condition in the order dated 27.5.2006 of the Government of M.P., for appointment of Aaganwadi Worker is that the woman candidate should be a resident of the Village or Ward for which she is being considered as Aaganwadi Worker.

The appointment of the appellant has been set aside by the Collector not because she was not a resident of Village or Ward but because her name did not find place in the voter list. Hence, the contention of Mr. Raghuvanshi that place of residence cannot be the basis for appointment as Aaganwadi Worker because of the bar under Article 16 (2) of the Constitution does not arise for decision in this case. Since inclusion in the voter list was the

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requirement for appointment as Aaganwadi Worker in policy of the Government of M.P., we do not find any infirmity in the order passed by the Collector in setting aside the appointment of the appellant as Aaganwadi Worker. Mr. Raghuvanshi further submitted that the appellant has made an application for inclusion of her name in the voter list. In the enquiry ordered by the Collector, this aspect may be considered by the concerned authority.

8. It is clear from the judgment of the Division of this Court that the name of the appellant was not find place in the voter list. It has clearly been observed by the Division Bench that the appointment of the appellant has been set aside by the Collector not because she was not resident of village or ward but because her name did not find place in the voter list. In this view of the matter, the Division Bench did not consider the argument of the learned counsel with regard to eligibility criteria of resident for appointment of Aaganwadi worker in view of Article 16 (2) of the Constitution of India. Hence, the judgment of the Division Bench of this Court could not be held to be a precedent for deciding the point with regard to the criteria for the purpose of appointment of Aaganwadi Worker that, a candidate must be a resident of the same village or ward.

9. The Hon'ble Supreme in the case of *Sumtibai & Ors. Vs. Paras Finance Co. Regd. Partnership Firm* (AIR 2007 S.C. 3166) Court has held as under with regard to binding nature of precedent:

10. As observed by this Court in *State of Orissa vs. Sudhansu Sekhar Misra* (AIR 1968 SC 647 vide para 13):-

"A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in *Quinn v. Leathern*, 1901 AC 495:

Now before discussing the case of *Allen v. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny; that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is

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necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.”

11. In *Ambica Quarry Works vs. State of Gujarat* - and others (1987) 1 SCC 213 (vide para 18) this ‘Court observed:- AIR 1987 SC 1073, Para 18

“The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

12 In *Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd.* (2003) 2 SCC 111 (vide para -59), this Court observed:- 2002 AIR SCW 4939, Para 59

“It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”

13. As held in *Bharat Petroleum Corporation Ltd. and another vs. N.R. Vairamani and another* (AIR 2004 SC 4778), a decision cannot be relied on without disclosing the factual situation. In the same Judgment this Court also observed:- 2004 AIR SCW 5457, Paras 10, 11 and 12

“Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid’s theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In *London Graving Dock co. Ltd. vs. Horton* (1951 AC 737 at p. 761), Lord Mac Dermot observed:

“The matter cannot, of course, be settled merely by treating the ipissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

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In *Home Office vs. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said. Lord Atkin's speech..... is not to be treated as if it was a statute definition it will require qualification in new circumstances. Megarry, J. in (1971) 1 WLR 1062 observed:

"One must not, of course, construe even a reserved judgment of Russell L. J. as if it were an Act of Parliament. And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become *locus classicus*:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.

10. In my opinion, the point of eligibility criteria in appointment of Aaganwadi Worker has already been decided by the learned Single Judge of this Court in the case of *Savitri Singh* (supra) and the judgment of the learned Single Judge is based on the judgment of the Hon'ble Supreme Court in the *Kailash Chand Sharma* (supra). The candidature of the petitioner has been rejected only on the ground that she is not a resident of Village Devpur. However, it is a fact, that she is a resident of village Gurichchha which is part and parcel of Gram Panchayat Gurichchha. Hence, exclusion of petitioner from consideration to the post of Aaganwadi Worker on the ground that she is not resident of village Devpur is arbitrary and illegal.

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11. Consequently, the petition of the petitioner is allowed. The impugned order Annexure P/1 passed by the Collector and the proceedings dated 16.8.2007 of District Level Committee are hereby quashed.

12. The matter is remanded back to the District Level Committee to consider the case of the petitioner and other eligible candidates afresh on the basis of Observations made by this Court in the writ petition within a period of 30 days from the date of receipt of certified copy of this order. It is further clarified that this Court has not observed anything about the merits of the candidates.

No order as to cost.

Petition allowed.

I.L.R. [2009] M. P., 3322

WRIT PETITION

Before Mr. Justice Viney Mittal

26 August, 2009*

MAGANLAL JAIN

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, M.P. 1987 (1 of 1988), Section 3(2), Land Revenue Code, M.P. 1959, Section 44 - Order passed by Tahsildar exercising powers u/s 3(2) of Adhiniyam for recovering as arrears of Land Revenue is appealable u/s 44 of the Code.

"No doubt, there is no provision of appeal / revision, envisaged under the Lok Dhan Adhiniyam, and as such, action taken / order passed, and issuance of an RRC by Officer / Authority u/s 3(1) of the Lok Dhan Adhiniyam, is neither appealable nor revisable. As a matter of fact, Section 3(5) of the Adhiniyam provides a finality to the RRC issued under 3(1) and makes it beyond a challenge. However, it cannot be suggested at all, that proceedings taken by the Collector or his subordinate Revenue Officer, under the provisions of Revenue Code are also protected and immune from an appeal / revision. As a matter of fact, once an RRC is received by the Collector / any other Revenue Officer, then entire procedure envisaged under Sections 146/147 of Revenue Code, and other provisions of Code, is attracted and required to be followed. If a person is aggrieved against any action taken by the said Authority, acting under the Revenue Code, then any such action or any such order passed, can be challenged by an aggrieved person, under Sections 44/50 of the Code, by way of appeal/revision etc." (Para 21)

लोक धन (शोध्य राशियों की वसूली) अधिनियम, म.प्र. 1987 (1988 का 1), धारा 3(2), भू राजस्व संहिता, म.प्र. 1959, धारा 44 - तहसीलदार द्वारा अधिनियम की

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धारा 3(2) के अन्तर्गत शक्तियों का प्रयोग करते हुए भू राजस्व के बकाया के तौर पर वसूली के लिए पारित आदेश संहिता की धारा 44 के अन्तर्गत अपील योग्य है।

Cases referred :

2002(5) MPLJ 462, W.P. No.5990/2001 decided on 29.01.2002.

A.K. Sethi with Rahul Sethi, for the petitioner.

Vivek Phadke, G.A., for the respondent Nos. 1 & 4 to 6.

P.M. Bhargat, for the respondent No.2.

A.S. Garg with Brajesh Garg, for the respondent No.3.

J U D G M E N T

VINEY MITTAL, J. :-Relevant facts.

On August 24, 2000, Branch Manager, Dena Bank, respondent No.2, issued two Revenue Recovery Certificates (RRCs), under the provisions of Madhya Pradesh Lok Dhan (Shodhya Rashion Ki Vasuli) Adhiniyam, 1987 (herein after referred to as the Lok Dhan Adhiniyam), and were referred to Tahsildar, Ratlam, under the provisions of Madhya Pradesh Land Revenue Code, 1959, (herein after referred to as the Revenue Code), for effecting recovery of dues outstanding against one Sunita and Ashok Kumar Jain. Whereas, it was indicated that against Sunita an amount of Rs.91,955/- was outstanding, Ashok Kumar Jain was shown to be a debtor to the extent of Rs.2,49,703/-. A demand notice was issued by the Tahsildar, Ratlam, to the aforesaid two persons for the amounts mentioned against them, respectively. However, Ashok Kumar Jain expired on May 7, 2001. Even after the death of Ashok Kumar Jain, proceedings for recovery against him and Sunita were continued before the Tahsildar. In the said proceedings, House No.17, Porwalon Ka Vaas, Ratlam (herein after referred to as the house in question), being jointly owned by Ashok Kumar Jain and present petitioner, Maganlal Jain, (father of Ashok Jain), was ordered to be attached on September 28, 2001. The said house was ultimately auctioned on January 30, 2002. Respondent No.3, Shakuntala Devi participated in the auction proceedings, and was declared as the highest bidder for an amount of Rs.3,08,000/-. The sale in question was confirmed by the Tahsildar vide order dated June 13, 2002 in favour of respondent No.3. An order of confirmation passed by the Tahsildar has been appended as Annexure P/1 with the petition.

2. An appeal was filed against the order dated June 30, 2002, passed by the Tahsildar before the Sub Divisional Officer (Revenue), respondent No.5. On October 22, 2002, the aforesaid Appellate Authority granted an interim order in favour of the appellants. Against the interim order granted by the Appellate Authority, a revision petition was preferred by Shakuntala Devi, auction purchaser, before the Additional Collector. The aforesaid revision petition filed by Shakuntala Devi was allowed by the Additional Collector on September 27, 2003, holding that the appeal, filed by the aforesaid appellants, before the Sub Divisional Officer,

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against the order of the Tahsildar, was not maintainable in law. Consequently, the interim protection granted by the Appellate Authority on October 22, 2002, was vacated. A copy of the order dated September 27, 2003, passed by Additional Collector, respondent No.4, has been appended as Annexure P/3, with the petition.

3. Petitioner, Maganlal Jain, preferred a writ petition, being W.P. No.9490/2003, before this Court. The order passed by the Additional Collector Annexure P/3 was challenged. An interim protection was granted to the writ petitioner by this Court on September 18, 2003, on deposit of Rs.50,000/-. The aforesaid amount was duly deposited by the writ petitioner on November 28, 2003. Ultimately, writ petition filed by the writ petitioner was allowed by this Court on August 4, 2005. The order dated September 27, 2003, Annexure P/3, passed by the Additional Collector was set aside. A liberty was granted to all the parties, to raise all the pleas, including maintainability of the appeal, in the proceedings before the Sub Divisional Officer itself. The order passed by this Court in Writ Petition No.9490/2003 has been appended as Annexure P/4-A with the petition.

4. Thereafter, proceedings in the appeal re-commenced before the Sub Divisional Officer. An objection was taken by respondent No.3 with regard to the maintainability of the appeal against the order passed by the Tahsildar on June 13, 2002 (Annexure P/1). The aforesaid objection raised by respondent No.3 has been upheld by the Sub-Divisional Officer, and the appeal filed by the appellants has been dismissed on July 12, 2006. A copy of the order passed by the Sub Divisional Officer, Ratlam, rejecting the appeal filed by the appellants, has been appended as Annexure P/5 with the petition.

5. The petitioner preferred an appeal before the Additional Commissioner. Even, the said appeal has been dismissed in limine by the Additional Commissioner vide order dated October 9, 2006 (Annexure P/6). Thus, it is with a challenge to the aforesaid orders, Annexures P/1, P/5 and P/6, that the petitioner has approached this Court through the present petition.

6. It has been maintained by the petitioner that the Sub Divisional Officer has wrongly rejected the appeal filed by the appellant, through order Annexure P/5, as not maintainable, inasmuch as, the order dated June 13, 2002, Annexure P/1, passed by the Tahsildar, Ratlam, was in exercise of the powers under the provisions of the Revenue Code, and therefore, the appeal was clearly maintainable under Section 44 of the Code.

7. On merits of the controversy, the order Annexure P/1 passed by the Tahsildar on June 13, 2002, confirming the sale in favour of respondent No.3 has also been assailed. It has been maintained that Ashok Kumar Jain had died on May 7, 2001, and therefore, all the proceedings, thereafter, having been continued without bringing on record, his legal representatives, all the said proceedings were null

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and void, and as such, attachment order dated September 28, 2001, of the house in question, and the auction proceedings dated January 30, 2002, with regard to the said house, are also liable to be set aside, being against a dead person.

8. The claim made by the petitioner has been contested by respondent No.3. A detailed reply has been filed. It has been maintained that auction proceedings had rightly been conducted by the Tahsildar with regard to the RRCs issued by respondent No.2-Bank, and therefore, respondent No.3, being the highest bidder in the said auction proceedings, a valid title has passed to her, on confirmation of the sale by the Tahsildar on June 13, 2002. It has also been maintained that the appeal against the order of the Tahsildar, before the Sub Divisional Officer, was not maintainable in law, under the provisions of Lok Dhan Adhiniyam, and as such, the said appeal has also been rightly dismissed. Respondent No.3 has also maintained that, as a matter of fact, the said appeal had been filed by Sunita, and was also shown to have been filed in the name of Ashok Kumar Jain, who was a dead person, at the time of filing of the appeal, and therefore, the said appeal was not duly constituted, and has rightly been dismissed.

9. I have heard Shri A.K. Sethi, learned senior counsel for the petitioner and Shri A.S. Garg, learned senior counsel appearing for respondent No.3, who is the real contesting respondent. Although Shri Vivek Phadke, learned Government Counsel appearing for official respondents and Shri P.M. Bhargat, learned counsel appearing for respondent No-2-Bank, have also addressed arguments, but, in essence, the contest remains between petitioner and respondent No.3.

10. Shri A.K. Sethi, learned senior counsel for the petitioner has referred to the provisions of Lok Dhan Adhiniyam and has brought my pointed attention to Section 3 of the said Adhiniyam, to contend that although RRCs were issued by the Authorities mentioned in the said provisions for effecting the recovery against the defaulter, but under Section 3 (2) of the said Adhiniyam, the Collector or his subordinate officers, to whom the recovery certificates were so forwarded, were to initiate proceedings under the provisions of Revenue Code, and therefore, since proceedings under the Revenue Code, for recovery, after receiving the certificates by the Revenue Officer, were to be conducted under the provisions of the Revenue Code only, therefore, in terms of Section 44 of the Code, an appeal was duly maintainable against any order passed by the Tahsildar / Collector, as the case may be. Shri Sethi has also pointed out that, as a matter of fact, a demand notice had been issued against Sunita and Ashok Kumar Jain by the Tahsildar, respondent No. 1, under the provisions of Section 147 of the Revenue Code and all the proceedings thereafter had, in fact, continued under the Revenue Code itself. Additionally, it has been argued that an appeal had been filed by the appellants, challenging the order dated June 13, 2002, Annexure P/1, which had

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been passed by the Tahsildar in the absence of the legal representatives of Ashok Kumar Jain, without issuing any notice. It has also been argued by the learned senior counsel that the appeal had been filed, immediately on acquiring the knowledge of the order dated June 13, 2002, passed by the Tahsildar, and as such, could not be treated to be barred by limitation.

11. It has also been argued by the learned senior counsel that since the proceedings before the Tahsildar were continued against Ashok Kumar Jain and the name of Ashok Kumar Jain continued to be reflected in the cause title of the order, therefore, through an inadvertence, while the appeal had been filed by Sunita, one the debtors, Ashok Kumar Jain, who was dead, had wrongly been shown as party appellant.

12. On the other hand, Shri A.S. Garg, learned senior counsel for respondent No.3 has refuted all the aforesaid contentions. It has been maintained by the learned senior counsel that an appeal against an order passed by the Tahsildar, such as an order Annexure P/1, under the Lok Dhan Adhiniyam, could not be held to be maintainable, as such, the said appeal has rightly been rejected by the Appellate Authority, vide order Annexure P/5. In support of the aforesaid contention, Shri Garg has relied upon a judgment of this Court reported as 2002 (5) MPLJ 462, *Rewa Sidhi Gramin Bank Vs. Ramniwas Agrawal and others*. A further reliance has been placed upon an unreported judgment of this Court in the case of *Rewa Sidhi Gram Bank Vs. State of MP and others* in Writ Petition No.5990/2001, decided on January 29, 2002, which judgment was also relied upon later on in *Rewa Sidhi Gramin Bank's case* [2002 (5) MPLJ 462].

13. On merits of the controversy, Shri Garg has also submitted, by maintaining, that the appeal filed against the order of the Tahsildar was barred by limitation, and in any case, had been filed on behalf of a dead person, and therefore, was mis-constituted.

14. I have duly considered the rival contentions raised on behalf of the contesting parties by their learned senior counsel. I have also perused the record of the case as well as gone through the various relevant provisions of law.

15. At the out set, it would be relevant to extract Section 3 of the Madhya Pradesh Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987, as follows: -

"3. Recovery of certain dues as arrears of land revenue (1)

Where any person is a party.-

(A) to any agreement relating to a loan, advance or grant given to him or relating to payment of price of goods sold to him on credit or relating to hire-purchase of goods sold to him by the State Government or a Corporation by way of financial assistance; or

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(B) to any agreement relating to loan advance or grant given to him or relating to payment of price of goods sold to him on credit or relating to hire-purchase of goods sold to him by a banking company or a Government Company under a State sponsored scheme or as the case may be, under a socially desirable scheme; or

(C) to any agreement relating to a guarantee given by the State Government or a Corporation in respect of a loan raised by an industrial concern or

(D) to any agreement providing that any money payable thereunder to the State Government shall be recoverable as arrears of land revenue and such person:-

(i) makes any default in repayment of the loan or advance or any instalment thereof; or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof makes any default in the refund of such grant or portion or any instalment thereof; or

(iii) otherwise,

fails to comply with the terms of the agreement then:-

(a) in the case of the State Government such Officer as the State Government may be notification authorize in this behalf;

(b) in the case of a Corporation or a Government Company, the Managing Director thereof by whatever name called; and

(c) in the case of banking company, the local agent thereof by whatever name called.

may send a certificate in such form as may be prescribed, and consistent with the provisions of sub-section (2) of Section 4, to the Collector of the district in which such person normally resides or carries on business or owns property, or to such other subordinate officer of the Collector, as the State Government or the Collector may, by an order, specify in this behalf, mentioning the sum due from such person and requesting that such sum together with the cost of proceedings and interest on the sum due at the rate specified in the agreement, up to the date of recovery, be recovered as if it were an arrear of land revenue:

Provided that a certificate issued under this sub-section may be

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withdrawn by the authority issuing such certificate at any time:

Provided further that the cost of proceedings shall always be calculated at the rate of three per cent, of the principal sum to be recovered.

(2) The Collector or his subordinate officer specified under sub-section (1) on receiving the certificate shall take steps to recover the amount stated therein as arrear of land revenue under the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959).

(3) No suit for the recovery of any such due as aforesaid shall lie in a civil court against any person in respect of whom a certificate for recovery of such sum has been issued under sub-section (1):

Provided that in computing the period of limitation for institution of suit for the recovery of any such sum, the period during which the recovery is barred under this section shall be excluded.

(4) In the case of any agreement referred to in sub-section (1) between any person referred to in that sub-section and the State Government or a Corporation, no arbitration proceedings shall lie at the instance of either party either for recovery of any sum claimed to be due under the said sub-section or for disputing the correctness of such claim:

Provided that whenever proceedings are taken against any person for the recovery of such sum he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed and person against whom such proceedings were taken may make a reference under arbitration agreement or otherwise enforce an arbitration in respect of amount so paid.

(5) Save as otherwise expressly provided in the first proviso to sub-section (1) and the proviso to sub-section (4), every certificate issued under sub-section (1) shall be final and shall not be called in question in any original suit, application (including any application under the Arbitration Act, 1940) or in any reference to arbitration and no injunction shall be granted by any court or other authority in respect of any action taken or intended to be taken in pursuance of any power conferred by or under this Act.

(6) Any amount recovered under this Act shall, notwithstanding anything contained in any other law for the time being in force, be applied in the following manner, namely: -

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(a) firstly, towards the cost of proceedings to be shared between the State Government and the authority issuing the certificate under sub-section (1), in such manner as may be prescribed;

(b) secondly, towards interest to be paid to the authority;

(c) thirdly, towards the principal amount due to be paid to the authority; and

(d) the balance, if any, as far as possible in accordance with the provisions of section 151 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959)"

(Underlining supplied)

16. It would also be relevant to extract provisions of Sections 146 and 147 of M.P. Land Revenue Code, as follows:

"S.146. Notice of demand - A Tahsildar or Naib Tahsildar may cause a notice of demand to be served on any defaulter before the issue of any process under section 147 for the recovery of an arrear.

S.147. Process for recovery of arrears -An arrear of land revenue, payable to Government or Gram Sabha may be recovered by a Tahsildar by any one or more of the following processes: -

(a) by attachment and sale of moveable property;

(b) by attachment and sale of the holding on which arrear is due and where such holding consist of more than one survey number or plot number by sale of one or more of such survey numbers, or plot numbers as may be considered necessary to recover the arrears:

Provided that no holding shall be sold for the recovery of any dues of a co-operative society without first exhausting the procedure prescribed in section 154-A

(bb) by attachment of holding on which arrear is due and letting the same under section 154-A;

(bbb) by attachment of any other holding belonging to the defaulter which is used for the purposes of agriculture and letting the same under section 154-A

(c) by attachment and sale of any other immovable property belonging to the defaulter:

Provided that the process specified in clauses (a) and (c) shall not permit the attachment and sale of the following, namely: -

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- (i) the necessary wearing apparel, cooking vessels, beds, and bedding of the defaulter, his wife and children, and such personal ornaments, as, in accordance with the religious usage, cannot be parted with by any woman;
- (ii) tools of artisans and, if the defaulter is an agriculturist, his implements of husbandry, except an implement driven by mechanical power and such cattle and seed as may, in the opinion of the Tahsildar, be necessary to enable him to earn his livelihood, as such;
- (iii) articles set aside exclusively for the use of religious endowments;
- (iv) house and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for the enjoyment) belonging to an agriculturist and occupied by him:

Provided further that the process specified in clause (b) shall not permit attachment and sale of holding where the defaulter holds,-

- (i) six hectares or less than six hectares of land in the Scheduled Area; or
- (ii) four hectares or less than four hectares of land in other areas.

Explanation.-For the purpose of this proviso, "Scheduled Area" means any area declared to be Scheduled Area within the State of Madhya Pradesh under paragraph 6 of the Fifth Schedule to the Constitution of India"

27. First question which arises for consideration before this Court is as to whether the order passed by the Tahsildar on June 13, 2002, (Annexure P/1), has to be treated as an order passed under provisions of Lok Dhan Adhiniyam or has to be treated as an order passed under the provisions of Section 147 of the Revenue Code.

18. Perusal of Section 3(1) of the Lok Dhan Adhiniyam would indicate that Officers mentioned therein, in case of a default committed by any of the persons described in the said provision, may send a certificate in such form, as may be prescribed, to the Collector of the District in which such person normally resides, mentioning the sum due from such person, and requesting that such sum together with cost of proceedings and interest etc. may be recovered, as if it were an arrear of land revenue. Thus, aforesaid provision envisages an issuance of an RRC by the Competent Authority under Section 3 (1) of the Lok Dhan Adhiniyam.

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19. Thereafter, under Section 3 (2) of the Lok Dhan Adhiniyam, the Officer receiving an RRC i.e. Collector or his subordinate Officer, shall initiate proceedings to recover amount therein, as arrears of land revenue under the Madhya Pradesh Land Revenue Code, 1959.

20. It is, thus, apparent that, whereas an order passed under Section 3 (1) of the Lok Dhan Adhiniyam, issuing an RRC and forwarding the same to the Competent Authority, has to be treated as an order passed under Section 3 (1) of the Lok Dhan Adhiniyam, but any further proceedings taken by the Revenue Officer, in terms of Section 3 (2) of the Lok Dhan Adhiniyam, are to be treated as the proceedings under the Revenue Code and not under the provisions of Lok Dhan Adhiniyam.

21. No doubt, there is no provision of appeal / revision, envisaged under the Lok Dhan Adhiniyam, and as such, action taken / order passed, and issuance of an RRC by Officer / Authority under Section 3 (1) of the Lok Dhan Adhiniyam, is neither appeal-able nor revisable. As a matter of fact, Section 3 (5) of the Adhiniyam provides a finality to the RRC issued under 3 (1) and makes it beyond a challenge. However, it cannot be suggested at all, that proceedings taken by the Collector or his subordinate Revenue Officer, under the provisions of Revenue Code are also protected and immune from an appeal / revision. As a matter of fact, once an RRC is received by the Collector / any other Revenue Officer, then entire procedure envisaged under Sections 146 / 147 of the Revenue Code, and other provisions of Code, is attracted and required to be followed. If a person is aggrieved against any action taken by the said Authority, acting under the Revenue Code, then any such action or any such order passed, can be challenged by an aggrieved person, under Sections 44/50 of the Code, by way of appeal / revision etc.

22. At this stage, the authorities relied upon by the learned senior counsel for respondent No.3 may also be noticed. In the case of Rewa Sidhi Gramin Bank, Writ Petition No-5990/2001, after noticing the provisions of Lok Dhan Adhiniyam, this Court observed, as follows: -

"From the aforesaid provisions, if they are read in proper perspective, there remains no trace of doubt that the M.P. Land Revenue Code bars a revision and Rule 5 only lays down the procedure. When substantial provision does not confer any right to the party aggrieved to prefer a revision or appeal. I am of the considered view the order passed in revision is without jurisdiction, and accordingly the same is quashed. However, it is observed that it is open to respondent No.2 to assail the aforesaid order before the appropriate forum, if so advised."

23. The law laid down by the aforesaid judgment was followed by this Court

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again in 2002 (5) MPLJ 462. Following observations made by the Court may be noticed.

“6. Sub-Section (5) of Section 3 of the M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam 1987, provides that every certificate issued under sub-section (1) shall be final and shall not be called in question in any original suit, application (including any application under the Arbitration Act, 1940) or in any reference to arbitration and no injunction shall be granted by any Court or other authority in respect of any action taken or intended to be taken in pursuance of any power conferred by or under this Act.

7. The Act is special Act and no right of appeal or revision has been conferred in the M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam 1987, the order passed by recovery officer is final. Petitioner has placed reliance on decision of this Court in W.P. NO.5990/2001 decided by brother Justice Dipak Mishra on 29.01.2002, in which it has been opined that no appeal / revision lies against order passed by the recovery officer in the M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 under the M.P. Land Revenue Code. I am in respectful agreement with the view expressed.”

24. It is apparent from the perusal of the aforesaid observations made by this Court that only question, which was considered by this Court was as to whether any order passed by Competent Authority under provisions of Lok Dhan Adhiniyam; and issuance of an RRC, could be subjected to an appeal / revision. In the light of the provisions of Lok Dhan Adhiniyam, more specifically relying upon Section 3 (5) thereof, it was held by this Court that an order passed by an Authority, under Section 3 (1) of the Lok Dhan Adhiniyam of issuance of RRCs, was final and was not questionable in any proceedings. However, question as to whether when an RRC had been issued, and thereafter further proceedings had been initiated by the Collector / Revenue Authority, in terms of Section 3 (2) of the Lok Dhan, Adhiniyam, whether in that case also, an appeal/revision were barred, was not even a subject matter of adjudication before the Court in the said cases/judgments.

25. Provisions of Section 3 of the Lok Dhan Adhiniyam have been extracted above. Section 3 of the Adhiniyam is divided into various parts. Initial portion of Section 3 (1) describes a person against whom proceedings can be initiated. Later portion of Section 3 (1) specifies the Authorities, who are Competent Authorities to issue an RRC / order for recovery, and for issuing a request in this regard to the Collector / Revenue Officer, where the defaulter resides. However, Section 3 (2) specifically provides that the request forwarded by the Competent Authority, mentioned in Section 3 (1) would be dealt with by the Collector or his subordinate

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Officer, under provisions of Revenue Code. Thus, it is clear that the provisions of Section 3 (2) of the Lok Dhan Adhiniyam itself envisage that the proceedings by the Collector / Revenue Officer, to whom RRC is issued, are, to be conducted under the provisions of the Revenue Code only. Thus, even if there is a specific bar under Section 3 (5) for raising a challenge to an RRC issued under Section 3 (1), the appeal/revision against the order passed/action taken by the Collector/ Revenue Officer, under the provisions of the Revenue Code, to whom an RRC has been forwarded, cannot be held to be barred, in any manner, inasmuch, those proceedings are obviously to be governed by the provisions of the Revenue Code, as per provisions of Section 3 (2) of the Lok Dhan Adhiniyam.

26. Once, it is so held that under Chapter-V of the Revenue Code, appeals / revisions are maintainable against various orders passed by the officers under the Code, it has to be held that after an RRC is received by the Collector / Revenue Officer, and further proceedings are taken for recovery of the amount in question, as arrears of land revenue under the provisions of the Revenue Code, then in that situation, any action taken by the Collector / Revenue Officer and any order passed therein, would be subject matter of appeals / revisions, as per provisions of the Code itself. In these circumstances, it is apparent that order dated July 12, 2006, Annexure P/5, holding that the appeal filed against the order dated June 13, 2002, Annexure P/1, is not maintainable, is illegal, erroneous, and is liable to be set aside.

27. The appeal filed against the order of the Tahsildar has also been rejected on two more grounds. It has been held that the appeal was barred by limitation. It has further been held that the appeal was shown to have been filed by Ashok Kumar Jain, who was a dead person, at the time of filing of appeal.

28. Although the appeal has been held to be barred by limitation as well as not properly filed, while passing order Annexure P/5, but since the said appeal has also been dismissed as not maintainable, and the view taken by this Court is that the appeal, indeed was maintainable before the Sub Divisional Officer, therefore, it would not be appropriate to express any view on the rest of the issues, including the merits of the controversy.

29. In view of the aforesaid discussion, the present petition is allowed. The order dated July 12, 2006, Annexure P/5, passed by the Sub Divisional Officer, respondent No.5, as well as order dated October 9, 2006, Annexure P/6, passed by the Additional Commissioner, dismissing the appeals filed by the petitioner, are hereby set aside. The appeal, Annexure P/4, filed by the appellants against order dated June 13, 2002, Annexure P/1, passed by the Tahsildar is restored to its original number, and shall be decided afresh by the Sub Divisional Officer, in accordance with law.

30. In the aforesaid proceedings before the Sub Divisional Officer, it would be open to all the concerned parties, to take up all pleas, on facts as well as on law,

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which are available to them, in accordance with law. However, aforesaid liberty would not be construed to mean that the issue of maintainability of appeal against the order of Tahsildar can be raised by any of the parties.

31. The parties through their learned counsel are directed to appear before the Sub Divisional Officer, respondent No.5, on September 15, 2009.

32. Since interim protection has been continued in favour of the petitioner, all through the proceedings, it would be appropriate to order that during the pendency of the proceedings before the Sub Divisional Officer, the interim protection granted by this Court shall continue to operate.

C.C. as per rules.

Petition allowed.

I.L.R. [2009] M. P., 3334

WRIT PETITION

Before Mr. Justice R.S. Jha

27 August, 2009*

M.P. HOUSING BOARD, HOSHANGABAD

Vs.

STATE OF M.P. & ors.

Petitioner

Respondents

Land Acquisition Act (1 of 1894), Section 50(2) - Housing Board has assailed the legal validity of the award on the ground that it was not given a notice or opportunity of hearing as required by the provisions of S. 50(2). - Therefore, award stands vitiated - Held - Housing Board itself moved an application for being impleaded as party and was permitted to participate in the proceeding for determining compensation - Award was passed after hearing Board - Board had knowledge of pendency of acquisition proceeding and has not suffered any prejudice on account of failure to give notice - Provision of S. 50(2) or the law laid down by the Apex Court in Gyan Devi's case [(1995) 2 SCC 326] not violated - Petition dismissed. (Paras 11 to 14)

भूमि अर्जन अधिनियम (1894 का 1), धारा 50(2) - गृह निर्माण मण्डल ने अधिनिर्णय की विधिक विधिमान्यता को इस आधार चुनौती दी कि उसे धारा 50(2) के उपबंधों द्वारा अपेक्षित सूचनापत्र एवं सुनवाई का अवसर नहीं दिया गया - इसलिए अधिनिर्णय दूषित हो गया - अभिनिर्धारित - गृह निर्माण मण्डल ने स्वमेव पक्षकार बनाये जाने हेतु आवेदन पेश किया और प्रतिकर के अवधारण की कार्यवाही में भाग लेने के लिए उसे अनुज्ञात किया गया - मण्डल को सुनने के बाद अधिनिर्णय पारित किया गया - मण्डल को अर्जन कार्यवाही लम्बित होने का ज्ञान था और उसे सूचनापत्र देने में असफलता के कारण कोई पूर्वाग्रह नहीं हुआ - धारा 50(2) के उपबंध या उच्चतम न्यायालय द्वारा ज्ञान देवी के मामले [(1995) 2 SCC 326] में निर्धारित विधि का उल्लंघन नहीं - याचिका खारिज।

M.P. HOUSING BOARD, HOSHANGABAD Vs. STATE OF M.P.**Cases referred :**

(1995) 2 SCC 326, AIR 2001 SC 992, (2003) 7 SCC 693, AIR 1986 SC 1164.

R.K. Samaiya, for the petitioner.

Samdarshi Tiwari, G.A., for the respondent Nos.1 to 4.

D.K. Dixit, for the respondent Nos.5 & 6.

Praveen Chaturvedi, for the respondent Nos. 10 & 11.

ORDER

R.S. JHA, J. :- The petitioner has filed this petition being aggrieved by the award passed by the Land Acquisition Officer, Itarsi, dated 2-7-2002 awarding compensation to the tune of Rs.86,89,516/- under the provisions of the Land Acquisition Act 1984 (hereinafter referred to as the 'Act') to the persons whose lands have been acquired. The petitioner has assailed the legal validity of the award only on the ground that the petitioner was not given a notice or opportunity of hearing as required by the provisions of Section 50(2) of the Act and has submitted that in the absence thereof the impugned award stands vitiated.

2. The brief facts leading to the filing of the present petition are that the petitioner had proposed to set up a Housing Society in Itarsi and for that purpose requested for acquisition of 9.126 hectares of land situated in village Itarsi. Notification under Section 4 dated 15-5-94 and declaration under section 6 dated 4-6-94 of the Act were published in the official gazette on 3-6-94 and 17-6-94 respectively and possession of the land was taken over by the petitioner on 24-9-94. The petitioner was directed to deposit Rs.12 lacs as a tentative amount towards payment of compensation to the persons whose lands were acquired and an award of Rs.16,99,714/- was passed by the authority on 25-5-96 but the said award was not finalized. The matter was kept pending by the authorities and eventually on account of lapse of the statutory period as prescribed by Section 11-A of the Act a proposal to issue a fresh notification for acquisition of land was made by the authorities on 18-3-97. At this stage some of the persons whose lands were sought to be acquired, filed a petition before this Court which was registered as W.P.No. 541/97 assailing the act of the respondent-authorities to re-initiate the acquisition proceedings and the said petition was disposed of by order dated 9-5-2000 directing the authorities to initiate fresh proceedings and complete the same within the stipulated period of time prescribed. Pursuant to the directions issued by this Court a fresh notification under Section 4 of the Act was issued by the authorities on 9-6-2000 and ultimately an award to the tune of Rs. 86,89, 516/- has been passed by the authorities on 2-7-2002 being aggrieved by which the petitioner has filed the present petition.

3. It is submitted by the learned counsel for the petitioner that the land was sought to be acquired for the Housing Society on the request of the petitioner and

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proceedings for determining the compensation were not in fact completed by the authorities within the stipulated period of time, as a result of which things got delayed and land, which was at the relevant time, was to be acquired for a sum of Rs.17 lacs is now being acquired at a cost of Rs.87 lacs which has greatly prejudiced the petitioner. It is further submitted that the petitioner was in fact required to be given a notice before determining the compensation under the provisions of sub-section (2) of Section 50 of the Act as has been held by the Constitution Bench of the Supreme Court in the case of *U.P. Awas Evam Vikas Parishad v. Gyan Devi & others*, (1995) 2 SCG 326. It is further submitted that the opportunity to participate in the proceedings has to be real as mere fact of the knowledge would not exclude the requirement of giving notice to the petitioner or the company for whom the land is being acquired as has been held by the Supreme Court in the cases of *Agra Development Authority v. Special Land Acquisition Officer and others*, AIR 2001 SC 992 and *Kanak (Smt.) and another v. U.P. Awas Evam Vikas Parishad*, (2003) 7 SCG 693.

4. Shri Samdarshi Tiwari, learned Government Advocate, appearing for the respondents/State submits that the petitioner had full knowledge about the proceedings undertaken for acquisition as the same was taken up on the request of the petitioner itself. It is submitted that a perusal of the notification under Section 4 dated 9-6-2000 (Annexure P-4) also indicates that the prescribed authority notified under the notification was the Executive Engineer of the petitioner-Board. It is also stated that the petitioner participated in the proceedings. It is submitted that in such circumstances, the contention of the petitioner is factually misplaced and misconceived and as such deserves to be rejected. It is further submitted that in view of the judgment of Supreme Court passed in the case of *Santosh Kumar and others v. Central Warehousing Corporation and another*, AIR 1986 SC 1164 the petitioner is prohibited from challenging the award and, therefore, the petition be dismissed.

5. Shri D.K.Dixit, learned counsel appearing for the respondents No. 5 and 6 and Shri Praveen Chaturvedi, learned counsel appearing for the respondents No. 10 and 11 reiterated the submissions made by the learned Govt. Advocate and further submitted that the judgments relied upon by the petitioner have no applicability in the present case as the petitioner had full knowledge about the proceedings and it had participated in the same.

6. The only issue argued and pressed by the learned counsel for the petitioner is the non-compliance of the provisions of Section 50(2) of the Act. To appreciate the submissions it is apposite to appreciate the law relating to the field.

7. In the case of *Gyan Devi* (supra) the issue as to the scope of participation of a local authority or the company in land acquisition proceedings was considered and the following order was passed by the Supreme Court :-

“47. Leave granted.

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48. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.

49. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending on the date on which the matter of determination of compensation will be taken up.

50. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

51. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

52. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

53. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

54. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

55. In the appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the local authority should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

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56. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.

57. The matters which stand finally concluded will, however, not be reopened.

58. We, therefore, allow the applications submitted by the Board for being impleaded as a respondent in the appeals filed by the landowners in this Court and direct that the Board be also impleaded as a respondent in the appeals filed by the landowners in the High Court. The judgment of the Allahabad High Court dated 21-12-1990 in First Appeals Nos. 584, 585 and 642 of 1985 and the judgment of the said High Court dated 18-4-1991 in first Appeals Nos. 586, 587 and 641 of 1985 as well as the order dated 18-4-1991 are set aside and the said appeals are disposed of accordingly. There shall be no order as to costs."

8. In the case of *Smt. Kanak* (supra), the issue as to whether in spite of knowledge, notice was necessary, was discussed by the Supreme Court and it was held as follows :-

"32. It is not in doubt or dispute that no formal notice was served upon the respondent. A notice to a person, for whom benefit the land is acquired or who is responsible for payment of compensation amount, was mooted before the courts of law on the construction of Section 50 of the Land Acquisition Act. It was held that sub-section (2) of Section 50 must be construed as conferring a right of notice on the local authority at the stage of determination of the amount of compensation before the Collector as well as the Reference Court. It is not in dispute that the respondent was not represented even before the Collector. In the aforementioned situation, this Court in *Gyan Devi [U.P. Awas Evam Vikas Parishad v. Gyan Devi & others]*, (1995) 2 SCC 326] held : (SCC p. 337, para9)

"In other words the right conferred under Section 50(2) of the L.A. Act carries with it the right to be given adequate notice by the Collector as well as the Reference Court before whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority under Section 50(2) of the L.A. Act, can, therefore, be regarded as an integral part of the said right and the failure

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to given such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the Reference Court and has not suffered any prejudice on account of failure to give such notice.

33. It is not correct to contend that by reason of non-service of notice the respondent was not prejudiced. The exception carried out by this Court in the matter of service of notice to the local authority is not only confined to its knowledge about the pendency of the acquisition proceedings before the Collector or the Reference Court but also any prejudice on account thereof. The said two conditions are to be read conjointly and not disjunctively."

From a perusal of the cited judgments of the Supreme Court it is clear that the same view was taken up by the Supreme Court in the case of *Agra Development Authority* (supra) in paragraphs 5 and 6 in the following terms :-

"5. It was also urged that the Special Land Acquisition Officer had played a fraud on fixing the rate of compensation. The only basis for this submission was that the agreement, on which reliance was placed to fix the compensation contained two different prices at different places. We find no substance in this submission. The agreement is a registered document. The price relied on is the price shown in the records. There is also, on the agreement, the endorsement of the Sub Registrar showing what the correct price was. All this makes it clear that the price relied upon is the correct price in the agreement.

5A. It is next urged that the appellants were not given any opportunity to adduce evidence in the proceedings before the Collector for fixation of the cost of acquisition. It was fairly admitted that the appellants were aware of the proceedings. However, no notice had been issued to them and they had not been given any opportunity to adduce evidence for purposes of determining the amount of compensation.

6. To this submission no adequate answer could be given by the respondents. All that was submitted was that the appellants were aware of the proceedings and had held meetings with the Government and the Collector. In our view this is not sufficient. What is required by Section 50 of the Land Acquisition Act is that the body for whom the property is being acquired is given an opportunity to appear and adduce evidence for the purposes of determining the amount of compensation. Nothing could be shown

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to us that this had been done. On this point the matter requires to be sent back to the Special Land Acquisition Officer for refixing compensation payable.”

9. From a perusal of the aforesaid, it is clear that Section 50(2) has been interpreted by the Supreme Court and it has been held that the local authority or the company on whose behalf land is sought to be required is required to be necessarily heard at the time of determination of compensation and for that purpose notice to the local authority or the company has to be issued. It has also been held that in a case where there is knowledge of pendency of the acquisition proceedings but no notice has been issued, the authority is required to be given a notice and heard while determining compensation.

10. In the instant case the notification under Section 4 of the Act was issued on 9-6-2000. From a perusal of the original record relating to acquisition proceedings which has been produced before this Court, it is clear that thereafter a draft award was initially prepared on 19-2-2001 and forwarded to the Collector but several objections in respect to the award were raised before the Collector and, therefore the Collector remitted the matter back to the Land Acquisition Officer on 4-1-2002 for fresh determination of compensation. It is also clear that on 25-2-2002 the petitioner filed an application requesting the Land Acquisition Officer to implead the petitioner as a party on which the S.D.O. of the petitioner was permitted to participate in the proceedings who appeared before the Land Acquisition Officer on the next date of hearing i.e. 21-5-2002 and also participated in the spot inspection proceedings and thereafter final arguments were heard by the Land Acquisition Officer on 1-6-2002 on which date the representative of the petitioner again participated and submitted his arguments.

11. From the documents that form part of the original record, it is also clear that the petitioner-Board subsequent to issuance of the notification under Section 4 had published a letter on 19-11-2000 informing all the concerned that compensation in respect to the land acquired for the petitioner would be paid on the rates of land as prevalent on the date of notification along with interest and solatium in terms of Section 23 of the Act. Taking into consideration the submissions of the petitioner and the arguments extended before the Land Acquisition Officer a draft award was prepared by the Land Acquisition Officer on 11-6-2002 and sent to the Collector for final publication of award which was ultimately done on 2-7-2002 and compensation to the tune of Rs.86,89,516/- has been awarded.

12. From the aforesaid facts which have been pointed out from the original record it is clear that the officer of the petitioner was notified as a prescribed authority for raising objections in the notification published under Section 4 of the Act. The petitioner-Board themselves moved an application on 25-2-2002 for being made a party in the land acquisition proceedings and thereafter participated in the

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proceedings held on 21-5-2002 and 1-6-2002. The petitioner was permitted to submit and raise all arguments before the authority on the said dates. That the petitioner-Board had itself by the letter dated 19-11-2000 informed all the concerned that the compensation for the land acquired for establishing a housing colony would be paid at the rates prevalent on the date of issuance of notification under Section 4 along with 12% interest and solatium.

13. In view of the aforesaid undisputed facts, it is clear that the present case is not one where the petitioner had either no knowledge or was in any manner prejudiced by the proceedings taken up for determination of compensation. On the contrary, the petitioner-Board itself moved an application for being impleaded as a party and was permitted to participate in the proceedings for determining compensation and that the award was ultimately passed only after hearing the petitioner. In the circumstances, I do not find any violation of the provisions of Section 50(2) of the Act or the law laid down by the Supreme Court in the case of *Gyan Devi* (supra).

14. It is pertinent to note that pursuant to the initial acquisition proceedings possession of the land had already been taken over by the petitioner on 20-4-94 and houses have already been constructed thereon and allotted to individuals. From the facts narrated above it is also clear that the petitioner did not, at any point of time, ever challenge the initial notification under Section 4 or notification under Section 6 of the Act issued on 9-5-2000 and in such circumstances any challenge to the same by the petitioner on whose behest proceedings were taken up, at this belated stage, cannot be entertained.

15. In view of the above facts and circumstances of the case the petition filed by the petitioner being meritless is accordingly dismissed. Any interim order granted earlier in the present petition stands vacated. In the peculiar facts and circumstances of the case there shall be no order as to costs.

Petition dismissed.

I.L.R. [2009] M. P., 3341

WRIT PETITION

Before Mr. Justice S.C. Sharma

9 September, 2009*.

EMERALD INDUSTRIES LTD.

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

Constitution, Article 226 - Territorial jurisdiction of High Court of M.P. - Petitioner having registered office at Gwalior was transporting Ballast to State of Uttar Pradesh wherein transit fee is being levied - Respondents

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raising an objection of territorial jurisdiction of High Court - Held - As the transit fee is being levied at Itawa and Jhansi falling within the territory of State of Uttar Pradesh - High Court of M.P. does not have jurisdiction to entertain writ petition under Article 226. (Para 13)

संविधान, अनुच्छेद 226 - म.प्र. उच्च न्यायालय की क्षेत्रीय अधिकारिता - याची जिसका पंजीकृत कार्यालय ग्वालियर में था, रोड़ी पत्थर उत्तर प्रदेश राज्य को ले जा रहा था जिसमें अभिवहन फीस उद्गृहीत की जा रही है - प्रत्यर्थियों ने उच्च न्यायालय की क्षेत्रीय अधिकारिता की आपत्ति उठायी - अभिनिर्धारित - चूंकि अभिवहन फीस उत्तर प्रदेश राज्य के राज्यक्षेत्र के अंदर आने वाले इटावा और झाँसी में उद्गृहीत की जा रही है - म.प्र. उच्च न्यायालय को अनुच्छेद 226 के अन्तर्गत रिट याचिका ग्रहण करने की अधिकारिता नहीं है।

Cases referred :

AIR 1997 SC 1228, 2007(III) MPJR 195, 1987 J LJ 341, (2007) 5 SCC 591, AIR 2007 SC 1812, (2006) 6 SCC 207.

Nandita Dubey, for the petitioner.

Vishal Mishra, G.A., for the respondent Nos.1 & 2.

S.B. Mishra with A.K. Nirankari, for the respondent Nos. 3 & 4.

Sanjay Singh, for the respondent No.5.

ORDER

S.C. SHARMA, J. :- Regard being had to the similitude of the controversy involved in W.P No.2841/2008, W.P No.2842/2008 and W.P No.2957/2008, they were heard analogously together and disposed of by this singular order. For the sake of convenience, the facts in Writ Petition No.2841/2008 are exposted herein.

2. Petitioner before this Court has filed the present writ petition being aggrieved by the action of the State of U.P in recovering transit fee on transit of crushed stone (Ballast).

3. The petitioner has stated before this Court that the petitioner is a Company registered under the Companies Act and engaged in the business of mining block stone (Ballast) and its supply to Railways and other private parties. The petitioner has further stated that a lease was granted in favour of one Smt. Prashila Bhansali by the respondent No.2 Collector, Gwalior and a No Objection Certificate was also granted by the Forest Department wherein it has been categorically reflected that the land in question is a revenue land, situated at a distance of 10 Kms from the forest area and a no objection certificate was issued certifying that the land is not a forest land keeping in the judgment delivered by the Hon'ble Apex Court in the; case of *T.N. Godaverman Thirumalkapad Vs. Union of India* AIR 97 (SC) 1228. The petitioner has also stated that he is regularly paying the transit fee. It has further been stated by the petitioner that the petitioner Company is regularly depositing the transit fee under the provisions of Madhya Pradesh Minor

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Minerals Rules 1996, however, the moment it is transporting the ballast to the State of U.P, the State of U.P is illegally charging the transit fee. The contention of the petitioner is that the transit fee is being charged from the petitioner by virtue of notification dated 14th June 2004 issued by the State Government and the same is payable only in respect of forest produce. In the present case the levy of transit fee by the State Government of U.P is in question. The contention of the petitioner is that as no forest produce is being transported, no transit fee can be charged by the State of U.P in the facts and circumstances of the case.

4. A reply has been filed by the State of U.P and it has been stated before this Court that this court does not have jurisdiction to entertain the present writ petition as the transit fee is being charged on the basis of a notification dated 14th June 2004, issued by the State Government of U.P by which U.P transit and Timber and Timber Forest produce Rules 1978 have been amended. Besides this various other grounds have also been raised in the return filed by the respondent State of U.P. In the present case, the State of U.P has challenged the jurisdiction of this Court to entertain the present writ petition and, therefore, the same has to be answered first.

5. Learned counsel appearing on behalf of the petitioner has argued before this Court that the petitioner company is having its registered Office at Gwalior and the mineral is being extracted in the State of M.P by virtue of a lease granted by the Collector Gwalior and therefore, this court does have the jurisdiction to entertain the present writ petition. She has also argued before this Court that the no objection certificate issued by the Divisional Forest Officer itself establishes that the land from which the mineral is being extracted is not a forest land and by no stretch of imagination such transit fee under the UP Timber and Timber Forest Produce (First amendment) Rules 2004 can be levied upon the petitioner. Learned counsel for the petitioner has relied upon a judgment delivered by this Court in the case of *M/s Cadbury India Ltd. Malanpur District Bhind and Others Vs. State of M.P and Another* reported in 2007 (III) MPJR 195 wherein a vehicle was checked within the territorial jurisdiction of Indore Bench when the material was being brought to Malanpur and in those circumstances, this Court has held that the cause of action would also arise in a place not only where the order is passed but also at a place where the consequence of the order has the effect on the person concerned.

6. Learned counsel for the petitioner has also relied upon a judgment delivered by Full Bench of this Court in the case of *K.P. Govil Vs. Jawaharlal Nehru Krishi Vishwavidyalay, Jabalpur and another* reported in 1987 JLJ 341, where it was held that the cause of action would arise at a place where the order is made and also at a place where its consequences fall on the person concerned.

7. Learned counsel for the petitioner has also relied upon a judgment delivered

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by the Hon'ble Apex Court in the matter of *Bikash Bhushan Ghosh and Others Vs. Novartis India Ltd.* And another reported in 2007 (5) SCC 591. In the aforesaid case termination order of an employee was in question and the employee was transferred from Farukhabad (U.P) and the termination order was served in Calcutta and in such circumstances the Hon'ble Apex Court has held that the State of West Bengal had jurisdiction to make a reference of the matter for adjudicating the industrial dispute. Learned senior counsel appearing on behalf of the State of U.P has relied upon a judgment delivered by the Hon'ble Apex Court in the case of *Alchemist Limited and Another Vs. State Bank of Sikkim and Others* reported in AIR 2007 SC 1812, wherein Hon'ble Apex Court has held that the person to whom a writ is issued must be amenable to its jurisdiction either by residence or location within those territories. He has also relied upon a judgment delivered by the Hon'ble Apex Court in the matter of *Om Prakash Shrivastava Vs. Union of India and another* reported in 2006 (6) SCC 207 where in it has been held that the writ petitioner has to establish that a legal right claimed by him prima facie has been infringed or is threatened to be infringed by respondent within the territorial limits of the High Court's jurisdiction. In the present case, the transit fee is being levied upon the petitioner as per the statutory provision under the U.P Transit and Timber and Timber Forest Produce (First Amendment) Rules 2004, which empowers the State of U.P for levying transit fee in respect of forest produce and the transit fee is being levied upon the petitioner within the State of U.P. It is not a case where transit fee is being levied upon the petitioner by the State of M.P and, therefore, the cases relied upon by the learned counsel for the petitioner are distinguishable.

8. The judgment relied upon by the learned counsel for the petitioner in the case of *M/s Cadbury India Ltd. Malanpur District Bhind and Others Vs. State of M.P and Another* reported in 2007 (III) MPJR 195 has held as under:-

"7. While considering the question with regard to territorial jurisdiction of this Bench, a Full Bench in the case of *K.P. Govil (Supra)* has taken note of the provisions of Article 226 of the Constitution, the import of the word, "cause of action" and it has been held that the cause of action would also arise in a place not only where the order is passed but also at a place where the consequence of the order has effect on the person concerned. In the present case, the material was being transported from Mumbai and it was coming to Malanpur. Orders have been passed by the authorities of the respondents addressing M/s Cadbury India Limited, Malanpur, District Bhind to pay the amount of Rs. 13.00 lacs and the amount of Rs. 13.00 lacs is also deposited by M/s Cadbury India Limited, Malanpur. The consequences of the

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orders passed has resulted in adverse effect on the establishment of the Company's unit situated at Malanpur and they have been penalized from the same. Keeping in view the principle laid down in the case of K.P. Govil (supra), it is to be held that party of cause of action arose within the territorial jurisdiction of this Bench and this Bench has jurisdiction to hear the matter. Accordingly, the preliminary objection raised is overruled.

9. From a perusal of the aforesaid judgment it is evident that the factory of Cadbury is situated at Malanpur (Gwalior) and the vehicle was checked under the jurisdiction of Indore Bench, however, the territorial jurisdiction of different Benches was involved. In those circumstances, this Court has held that the matter was within the jurisdiction of Gwalior Bench.

10. In the matter of K.P. Govil (supra) decided by a Full Bench of this Court in paragraph 10 it was held as under:-

"10. The next question that crops up for decision is whether the cause of action wholly or in part arose at a place within the specified revenue district, so as to give jurisdiction to this Bench of the High Court to entertain the petition. Article 226 (2) of the Constitution provides that, "The power conferred by Cl.(1) to issue directions, orders or writs to any Government, Authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government, or authority or the residence of such person is not within those territories." In Nasiruddin (supra), it has been seen that the Supreme Court held "the expression 'cause of action' in an application under article 226 would be as the expression understood". In Gurdit Singh (supra), H.M. Beg observed in his dissenting judgment that:-

"The expression 'cause of action' has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or of the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle or material facts which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit".

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In *W.W. Joshi (supra)*, the Bombay High Court considered the maintainability of three petitions filed by the persons who were in service of the former State of Madhya Pradesh and whose services were terminated by the then Government of Madhya Pradesh, in the light of the provisions of Section 88 (b) of the State Re-organisation Act, 1956, which read as follows:-

"(a).....

"(b). If there be two or more successor States and the cause of action arose wholly within the territories of one of them, be a liability of that successor State".

After explaining the meaning of the terms 'cause of action', it was held that:

".....the fact that the order for termination of services was made would form part of a cause of action, and it would arise at the place the order is made.....That fact by itself alone cannot afford to him a ground to claim relief at the hands of this Court. He must further prove that the consequence of that order fell on him i.e. as a consequence of that order he, in fact, was removed from services. In our opinion, therefore, for a claim of this kind the cause of action would arise at a place where the order of termination of service was made and also at a place where its consequences fell on the servant. If this cause action has in its entirety arisen within the former territories of the State of Madhya Pradesh which now form part of the States of Bombay then the liability referred to in S.88 of the Act of the former State of Madhya Pradesh would fall on the 'present State of Bombay under Cl. (b) thereof."

"The decision was followed in *Damomal (supra)* though in a different context and under a different provision of law. The principle deducible is that in cases of orders impugned, the cause of action would arise at a place where the order is made and also at a place where its consequences fall on the person concerned. This principle appears to be sound, but the question remains, whether in the present case, the consequences of the impugned order (Annexure P/2) could be said to have fallen on the petitioner at Gwalior or at any other place within the specified revenue districts, because it was admittedly made at Jabalpur, which is a place beyond the jurisdiction of this Bench. We are of the view that it is possible

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to say that the consequences flowing from the impugned order fell on the petitioner at Gwalior, where he is posted. The reason is that the impugned order was an order of fresh appointment served on the petitioner at Indore, where he was in service of Krishi Vigyan Kendra Trainer Training Centre, run by the Kasturba Gandhi National Memorial Trust and not by the University. The order was to be effective from the date he took over charge of the post at Gwalior. In other words, in order to succeed in his petition, it would not only be of appointment in his favour was made by the University, but also that he made the order effective by joining the post at Gwalior. If he fails to prove that the appointment order has taken effect and that he has become an employee of the University, he would not be entitled to any relief against the University. That being the position, the fact that the order of appointment was made and the further fact that the appointment was accepted by joining the post would form part of a cause of action and it would arise at the place the order is made, as also at the place the order is implemented by joining the post. We accordingly hold that a part of cause of action having arisen at Gwalior, this Bench has jurisdiction to entertain the petition.. "

The aforesaid case also relates to the territorial jurisdiction of different Bench of the M.P. High Court and it was a case of an employee who at some point of time was posted at Gwalior. The petitioner therein was an Assistant Professor in the Jawaharlal Nehru Krishi Vishvidyalaya and in those circumstances it was held that the cause of action shall arise at a place from where the order is made and also at a place where the consequence fell on the person concerned. Similarly various other judgments relied by the learned counsel for the petitioner also relates to service matters and, therefore, distinguishable on facts.

11. *Bikash Bhushan Ghosh* (supra) also relates to a service matter where the order of termination was served to the employee at Calcutta. In those circumstances, the Hon'ble Apex Court has held that the State of West Bengal has jurisdiction to make a reference to the Industrial Tribunal.

12. The Hon'ble Apex Court in the case of *Om Prakash Shrivastava* (supra) while deciding a issue relating to the jurisdiction of a High Court has held as under:-

"7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial

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limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has *prima facie* either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.

8. Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. (See *ONGC Vs. Utpal Kumar Basu*)

9. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (See *Bloom Dekor Ltd. Vs. Subhash Himatal Desai*)

10. In a generic and wide sence (as in Section 20 of the Civil Procedure Code, 1908) "cause of action" means every fact, which it is necessary to establish to support a right to obtain a judgment. (See *Sadanandan Bhadrar Vs. Madhavan Sunil Kumar*)

11. It is settled law that "cause of action" consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. (See *South East Asia Shipping Co. Ltd Vs. Nav Bharat Enterprises (P) Ltd*)

12. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sence "cause of

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action' means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wide sence, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Complendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". (See Rajasthan High Court Advocates' Assn. Vs. Union of India).

13. *The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and, no more. In a wide and more comprehensive sence, it has been used to denote the whole bundle of material fact, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See Gurdit Singh Vs. Munsha Singh).*

14. *The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal: a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see Black's Law Dictionary). In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed the plaintiff must prove in order to obtain judgment. In words and Phrases (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia Vs. State of Maharashtra).*

15. *In Halsbury's Laws of England (4th Edn.) it has been stated as follows:*

"Cause of action" has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every

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fact which is material to be proved entitled right to traverse. 'Cause of action' has also been taken to emanate that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."

18. In the instant case the High Court has not dealt with the question as to whether it had jurisdiction to deal with the writ petition. It only observed that the Delhi High Court may have jurisdiction, but the issues relating to conditions of prisoners in the State of U.P. can be more effectively dealt with by the Allahabad High Court. As noted supra, there were two grievances by the appellant. But only one of them i.e. the alleged lack of medical facilities has been referred to by the High Court. It was open to the Delhi High Court to say that no part of the cause of action arose within the territorial jurisdiction of the Delhi High Court. The High Court in the impugned order does not say so. On the contrary, it says that jurisdiction may be there, but the Allahabad High Court can deal with the matter more effectively. That is certainly not a correct way to deal with the writ petition. Accordingly, we set aside the impugned order of the High Court and remit the matter to it for fresh hearing on merits. A prayer has been made for release of the appellant on parole for the reason indicated in the application. We are not inclined to pass any order on the said application. The same is rejected."

The aforesaid judgment delivered by the Hon'ble Apex Court makes it clear that this Court does not have jurisdiction to decide the action of the State of U.P. as transit fee is being levied by the State of U.P. and the petitioner for challenging the same certainly has a remedy before the Allahabad High Court as Allahabad High Court is having territorial jurisdiction in respect of State of U.P.

13. Learned counsel appearing for the respondents has relied upon a judgment delivered in the case of *Alchemist Limited* (supra) wherein the Hon'ble Apex Court has held as under:--

"12. Before entering into the controversy in the present appeal, let the legal position be examined.

Article 226 of the Constitution as it originally enacted had two fold limitations on the jurisdictions of High Courts with regard to their territorial jurisdiction. Firstly, the power could be exercised by the High Court throughout the territories in relation to which it exercise jurisdiction', i.e. the writs issued

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by the Court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be "within those territories," which clearly implied that they must be amenable to its jurisdiction either by residence or location within those territories."

Once again, it is clear from the aforesaid judgment delivered by the Hon'ble Apex Court that the power conferred under Article 226 of the Constitution has to be exercised by the High Court throughout the territories in relation to which it exercises its jurisdiction and therefore, in the present case as the Allahabad High Court has the territorial jurisdiction over the matter as the transit fee is being levied at Itawa and Jhansi falling within the territory of the State of U.P. Keeping in view the aforesaid, this Court is of the considered opinion that the present writ petitions are not maintainable before this court for want of territorial jurisdiction and the petitioners can ventilate their grievance by preferring writ petitions before the Allahabad High Court.

14. Resultantly, all the writ petitions stands disposed of with the aforesaid.

No order as to costs.

Petition disposed of.

I.L.R. [2009] M. P., 3351

WRIT PETITION

Before Mr. Justice Arun Mishra & Mrs. Justice Sushma Shrivastava

11 September, 2009*

ARCHDIOCESE OF BHOPAL REGD. SOCIETY

... Petitioner

Vs..

HASAN KABIR & ors.

... Respondents

A. Civil Procedure Code (5 of 1908) [As amended w.e.f. 01.02.1977], Order 11 Rules 14 & 21 - Production of documents - Non-compliance of the order passed under Order 11 Rule 14 with respect to production of documents - Suit dismissed under Order 11 Rule 21 - Held - Legislature in its wisdom has not included in Rule 21 of Order 11 such a penal consequence due to non-compliance of order passed under Order 11 Rule 14 - Suit cannot be dismissed u/s Order 11 Rule 21 - It can be dismissed due to non-compliance of order of interrogatories, discovery or inspection as envisaged under Order 11 Rule 21. (Paras 8 to 15)

क. सिविल प्रक्रिया संहिता (1908 का 5) {01.02.1977 से-यथा संशोधित}, आदेश 11 नियम 14 व 21 - दस्तावेजों का पेश किया जाना - दस्तावेजों के पेश किये जाने के सम्बन्ध में आदेश 11 नियम 14 के अन्तर्गत पारित आदेश का अननुपालन - आदेश 11 नियम

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21 के अन्तर्गत वाद खारिज – अभिनिर्धारित – विधायिका ने अपनी बुद्धिमानी से आदेश 11 नियम 14 के अन्तर्गत पारित आदेश के अननुपालन के कारण आदेश 11 के नियम 21 में ऐसा दण्डात्मक परिणाम सम्मिलित नहीं किया है – आदेश 11 नियम 21 के अन्तर्गत वाद खारिज नहीं किया जा सकता है – यह परिप्रश्नों, प्रकटीकरण या निरीक्षण के आदेश के अननुपालन के कारण खारिज किया जा सकता है जैसा कि आदेश 11 नियम 21 में परिकल्पित है।

B. Civil Procedure Code (5 of 1908) [As amended w.e.f. 01.02.1977], Order 11 Rules 1 to 11, 12, 15 to 18 and Order 11 Rule 21 - Non-compliance with order for discovery - Non-compliance of order to answer interrogatories, or for discovery or inspection of documents by plaintiff - In this situation, only on an application and that too after giving notice to the parties and giving them reasonable opportunity of being heard - Court can dismiss the suit, exercising power under Order 11 Rule 21. (Para 8)

खा. सिविल प्रक्रिया संहिता (1908 का 5) [01.02.1977 से यथा संशोधित], आदेश 11 नियम 1 से 11, 12, 15 से 18 एवं आदेश 11 नियम 21 – प्रकटीकरण के आदेश का अननुपालन – वादी द्वारा परिप्रश्नों का उत्तर देने या दस्तावेजों के प्रकटीकरण या निरीक्षण के आदेश का अननुपालन – इस स्थिति में केवल आवेदन पर और प्रक्षारों को सूचना देकर तथा उन्हें सुने जाने का युक्तियुक्त अवसर देकर – न्यायालय आदेश 11 नियम 21 के अन्तर्गत शक्ति का प्रयोग करते हुए वाद खारिज कर सकता है।

Cases referred :

2000(2) MPLJ 229, AIR 1936 Nag 130, AIR 1989 Mad 314, ILR (1891) 18 Cal 420, AIR 1971 Bom 87, AIR 1962 AP 249, AIR 1947 All 343, AIR 1943 Pat 69, AIR 1925 Bom 386, ILR (1970) AP 1203, AIR 1994 All 151, AIR 1922 All 235, AIR 1929 All 83, AIR 1924 Mad 582, AIR 1957 Raj 367, AIR 1966 Tri 16.

Shashank Verma, for the petitioner.

Rekha Yadav, for the respondent No.1.

ORDER

The Order of the Court was delivered by **ARUN MISHRA, J.** :—Writ petition has been filed calling in question the legality of the appellate order allowing the appeal setting aside the dismissal of the suit by the trial Court under the provisions of Order 11 Rule 21 CPC due to non-compliance of an order dated 14.1.2005 passed under Order 11 Rule 14(1) of CPC.

2. Defendant had filed an application for directing plaintiff to file original documents of which photo copies were submitted along with the plaint. The trial Court has ordered on 14.1.05 that plaintiff to produce in Court all the documents which may be in his possession in original within three days of passing of the order. The trial Court directed hearing of the application under Order 7 Rule 11 CPC on the next date. The trial Court vide Order dated 31.1.05 considered the effect of non-compliance of order dated 14.1.05 of not filing the original documents

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within three days. The plaintiff has failed to file the documents till 31.1.05, consequently the suit was ordered to be dismissed under Order 11 Rule 21 of CPC. Application under Order 7 Rule 11 CPC was not considered in view of dismissal of the suit under the aforesaid provision. Aggrieved by the order, civil misc. appeal was preferred. The appeal has been allowed by 2nd Addl. District Judge vide order dated 5.12.05. The appellate Court has held that trial Court has passed the order under Order 11 Rule 14 CPC for production of documents, in case of non-compliance of order, suit cannot be dismissed under the provision of Order 11 Rule 21 CPC. It has also been observed by the appellate Court that the power under order 11 Rule 21 CPC has to be exercised sparingly. The order of dismissal of the suit has been set aside, appeal has been allowed. Dissatisfied thereby, the writ petition has been preferred.

3. Shri Shashank Verma, learned counsel appearing for the petitioner has submitted that suit was rightly dismissed by the trial Court under Order 11 Rule 21 of CPC. He has relied upon decision of this Court in *Indore Development Authority, Indore vs. Satyapal Anand and another* 2000 (2) MPLJ 229 in which reliance has been placed on a decision of Nagpur High Court in *Premraj Bheoraj Agarwal vs. Nathumal Rupchand Marwadi* AIR 1936 Nagpur 130. Shri Verma has also placed reliance upon a decision of Apex Court in *M/s Babbar Sewing Machine Co. vs. Tirlok Nath Mahajan* AIR 1978 SC 1436.

4. Ms. Rekha Yadav, learned counsel appearing for respondent no. 1 has supported the order.

5. The main question for consideration is whether due to non-compliance of the order passed under Order 11 Rule 14 CPC with respect to production of documents, suit can be dismissed under the provision of Order 11 Rule 21 CPC.

6. Order 11 Rule 14 CPC is quoted below :-

"Production of documents- It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right, and the Court may deal with such documents, when produced, in such manner as shall appear just."

7. Order 11 Rule 21 CPC is quoted below :-

"Non-compliance with order for discovery- (1) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed

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in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, (and an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.)

(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action."

8. A bare reading of Rule 21 of Order 11 CPC makes it clear that the provision entails non-compliance of the order to answer interrogatories. Interrogatories are dealt with under Rule 1 to Rule 11 of Order 11. Rule 12 of Order 11 CPC deals with application for discovery of documents. Inspection of the documents which is referred to in Rule 21 is again dealt with in Rule 15 to 18 of Order 11 CPC. The Order 11 Rule 1 CPC enables party to a suit to make discovery by interrogatories by leave of Court. Rule 2 of Order 11 CPC provides that particular interrogatories to be submitted to the Court, and factors to be taken into consideration. Order 11 Rule 11 provides that when any person omits to answer or answer insufficiently the Court may on application, direct to answer or further answer. The Court orders discovery of document under Rule 12 of Order 11 CPC. The Rule 18 of Order 11 CPC provides that where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit. In case plaintiff fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, be liable to have his suit dismissed for want of prosecution. In case of defendant not complying with the provision, his defence can be struck off and he may be placed in the same position as if he had not defended. It is further required that party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and by way of amendment which has been inserted with effect from 1.2.1977 the order may be made under Order 11 Rule 21 CPC after notice to the parties and after giving them reasonable opportunity of being heard. The sine qua non for exercising the power under Rule 21 is failure to answer the interrogatories, order of discovery or inspection of documents. Non-compliance of Rule 14 which is with respect to production of documents is not covered under Rule 21 CPC. Legislature has thought it appropriate in case of plaintiff if he fails to comply with the order relating to interrogatories, discovery or inspection of documents a suit be dismissed or in case of defendant his defence may be struck off. Legislature in its wisdom has not included in Rule 21 of

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Order 11 CPC such a penal consequence due to non-compliance of order passed under Order 11 Rule 14 CPC. Moreover in the instant case, it is not in dispute that no application was filed for dismissal of suit under Order 11 Rule 21 CPC which is condition precedent for exercise of the power under the aforesaid provision, thus, even assuming for a moment that aforesaid provision was applicable, it was not open for the trial Court to have passed the order dismissing the suit. An order under Order 11 Rule 21 CPC can be passed only on an application and that too after giving notice to the parties and giving them reasonable opportunity of being heard. It is also provided in sub-rule (2) of Rule 21 of Order 11 that once suit is dismissed under sub-rule (1) of Rule 21 of Order 11 CPC, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action. This dire consequence is not provided with respect to non-compliance of Order 11 Rule 14 CPC, but it is the consequence of non-compliance of order of interrogatories, interrogatories are dealt with in Rule 1 to Rule 11 of Order 11 CPC. Rule 12 deals with discovery and Rule 15 to 18 deals with inspection of documents. The non-compliance as to aforesaid is covered within the ken of penal provisions contained in Rule 21 of Order 11 CPC.

9. In *Premraj Bheoraj Agarwal vs. Nathumal Rupchand Marwadi* (supra) there was an application moved for inspection of documents which was allowed by the Court. Court has directed production of account bills which was not produced, in that context observation has been made that Order 11 Rule 21 CPC provides the penalty for non-compliance of such a direction. Order 11 Rule 14 CPC has also been referred. When the documents are in power of the Court, it was held that the Court would have no jurisdiction to proceed under Order 11 Rule 21 CPC. If it could not have proceeded under that rule, it could not have proceeded under the general provision of Section 25 of Provincial Insolvency Act. Thus, dismissal of the suit was set aside. The decision has to be seen in the context that Court has ordered inspection of documents and consequent production, inspection is dealt with under Rule 15 to 18 of Order 11 CPC.

10. In *Chinnappan vs. Ramachandran* AIR 1989 Madras 314 it was laid down that failure to produce the documents directed to be produced by an order of Court passed under Order 11 Rule 14 CPC does not enable the Court to exercise its powers under Order 11 Rule 21 CPC. Such an application is misconceived and not maintainable.

11. In *Prem Sukh Chunder and others vs. Indronath Banerjee* ILR (1891) 18 Cal 420, *Shankar Deoba Patil and another vs. Ganpatilal Shiodayal Chamedia* AIR 1971 Bombay 87, *Koduri Krishnarao vs. State of Andhra, now Andhra Pradesh represented by Secy. to the Govt. (Public Works Dept.)* Hyderabad AIR 1962 Andhra Pradesh 249, *Chander Bhan Singh vs. Lallu Singh and another* AIR 1947 Allahabad 343, *Ram Kishun Lal and others vs. Abu Abdullah Syed Hussain Imam* AIR 1943 Patna 69 and in *Devakaran*

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Bholaram and others vs. Sangidas Jesiram and others AIR 1925 Born 386, it has been laid down that in the absence of an order under Rules 11, 12 or 18 and the disobedience thereof by the party against whom the order is made, the Court cannot act under Rule 21 Order 11 CPC.

12. An order for production of documents under Rule 14 of Order 11 CPC is not one of the orders mentioned in Rule 21 of Order 11 CPC. A disobedience of an order for production under Rule 14 of Order 11 CPC would not empower the Court to take action under Rule 21 of Order 11 CPC has been laid down in *G. Kishan Rao vs. B. Narayan Reddy* ILR (1970) Andh Pra 1203, *M/s Gur Prasad Shyam Babu and others vs. State Bank of India and another* AIR 1994 Allahabad 151, *Lyampur Sugar Mills & Co. and another vs. R.C.G. Sahai Cotton Mills & Co.* AIR 1922 Allahabad 235, *(Sahu) Munna Lal vs. Tara and another* AIR 1929 Allahabad 83, *Subbayar vs. M.L.M. Ramanathan Chettiar* 1924 Madras 582, *Amarsingh vs. Chaturbhuj and others* AIR 1957 Rajasthan 367 and in *Shri Baba Shiva Sambhu and another vs. Raj Mohan Deb Nath and others* AIR 1966 Tripura 16.

13. The Apex Court in *M/s Babbar Sewing Machine Co. vs. Tirlo Nath Mahajan* (supra) has considered the provision of Order 11 Rule 21 CPC and it has been observed that power for dismissal of a suit or striking out of the defence under Order 11 Rule 21 CPC should be exercised only where the defaulting party fails to attend the hearing or is guilty of prolonged or inordinate and inexcusable delay which may cause substantial or serious prejudice to the opposite party. There was joint application under Rule 14 and Rule 18 of Order 11 CPC for production and inspection of documents. In the instant case, there was no application or order under Order 11 Rule 18 CPC. Thus, decision of Apex Court is in the context of Order 11 Rule 18 CPC.

14. A single Bench decision of this Court in *Indore Development Authority, Indore vs. Satyapal Anand and another* (supra) has been relied upon in which learned single Judge of this Court has opined that suit can be dismissed under Order 11 Rule 21 CPC in case there is failure to comply with the order passed under Order 11 Rule 14 CPC. We are unable to agree with the view taken in *Indore Development Authority, Indore vs. Satyapal Anand and another* (supra) in view of clear language of the rule and number of decisions of the various High Courts on this aspect. We hold that law has not been correctly laid down in the aforesaid decision.

15. In view of above, we hold that due to non-compliance of provision under Order 11 Rule 14 of CPC suit cannot be dismissed under Order 11 Rule 21 CPC. It can be dismissed only in the exigencies such as due to non-compliance of orders of interrogatories, discovery or inspection as envisaged under Order 11 Rule 21 CPC.

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16. Resultantly, we dismiss the writ petition and leave the parties to bear their own costs as incurred of the petition.

Petition dismissed.

I.L.R. [2009] M. P., 3357

WRIT PETITION

Before Mr. Justice K.K. Lahoti & Mr. Justice P.K. Jaiswal

16 September, 2009*

AMI ART CREATIONS & OFFSET PRINTERS

... Petitioner

Vs.

BOARD OF SECONDARY EDUCATION & anr.

... Respondents

Constitution, Article 226 - Contracts - Power of judicial review -
Petitioner was the lowest bidder and his tender form not accepted but fresh tender issued with some modifications and for only for a class of printers - Held:- When the power of judicial review is invoked in the matters relating to tender or award of contract, certain special features have to be considered - A contract is a commercial transaction and evaluating tenders and awarding contract are essentially commercial functions - In such cases the principles of equity and natural justice stay at distance - If the decision relating to cancellation of earlier bid is bona fide and is in public interest, Courts will not exercise the power of judicial review and interfere even if it is accepted for the sake of argument that there is a procedural lacuna. (Para 21)

संविधान, अनुच्छेद 226 - संविदाएँ - न्यायिक पुनर्विलोकन की शक्ति - याची निम्नतम बोली लगाने वाला था और उसका निविदा फॉर्म स्वीकार नहीं किया गया बल्कि कुछ उपांतरणों सहित और केवल मुद्रकों के एक वर्ग के लिए नयी निविदा जारी की गई - अभिनिर्धारित - जब निविदा या संविदा के दिये जाने से सम्बन्धित मामलों में न्यायिक पुनर्विलोकन की शक्ति का अवलंब लिया जाता है तब कुछ विशिष्ट विशेषताओं पर भी विचार करना होगा - कोई संविदा एक वाणिज्यिक संव्यवहार है और निविदा का मूल्यांकन करना और संविदा का दिया जाना आवश्यक वाणिज्यिक कार्य हैं - ऐसे मामलों में साम्य और नैसर्गिक न्याय के सिद्धांत कुछ दूरी पर रुक जाते हैं - यदि पूर्ववर्ती बोली के रद्दकरण से सम्बन्धित विनिश्चय सद्भाविक और लोक हित में हो तो न्यायालय न्यायिक पुनर्विलोकन की शक्ति का प्रयोग नहीं करेंगे और हस्तक्षेप नहीं करेंगे यद्यपि यदि तर्क के लिए इसे स्वीकार कर लिया जाए कि कोई प्रक्रियात्मक कमी है।

Cases referred :

(1996) 4 SCC 208, (2000) 5 SCC 287, (2004) 4 SCC 19, 2009 AIR SCW 4623, (2007) 10 SCC 33.

Mrigendra Singh, for the petitioner.

T.S. Ruprah with Harmeet Ruprah, for the respondents.

AMIART CREATIONS & OFFSET PRINTERS V. BOARD OF SECY. EDU.**ORDER**

The Order of the Court was delivered by P.K. JAISWAL, J. :-In these two writ petitions under Article 226/227 of the Constitution of India, the petitioners are praying for issuance of writ of certiorari to quash the notice inviting tender dated 7/7/2009 (Annexure-P/1) and also prayed for a writ of mandamus directing the respondents to issue work order to them in pursuance to the notice inviting tender dated 11/6/2009 (Annexure-P/2). Both these writ petitions can be dealt with by a common judgment since one and the same issue requires to be decided.

2. For the sake of convenience the brief history for disposal of these writ petitions are taken from W.P. No.7574/2009.

3. A notice inviting tender dated 11/6/2009 was issued by respondent No.2 for printing of answer books in (i) reel papers and (ii) sheet papers.

4. The petitioner purchased the tender form on 22/6/2009 and submitted his tender on 3/7/2009 for reel printing 24 pages and sheet printing 24, 32 and 40 pages respectively. As per terms of Notice Inviting Tender (for short 'NIT'), the technical bid was opened on 3/7/2009. The petitioner qualified in the said technical bid. Thereafter commercial bid was opened on 9/7/2009 wherein the petitioner was found to be the lowest bidder (L1) for reel printing 24 pages and sheet printing 24, 32 and 40 pages respectively. In spite of the petitioner being lowest, no work order was issued to him. Later on it came to the knowledge of the petitioner that the respondents instead of awarding the contract to the petitioner decided to issue fresh NIT with certain modifications/amendments of the earlier NIT and invited offer by issuing NIT on 7/7/2009. The said NIT dated 7/7/2009 was restricted only to the "Security Printers" as against the "General Printers" in the earlier NIT. Further conditions were also stipulated in the second NIT to purchase and transport the papers with a further rider of enhancement of security deposit of Rs. 5 lacs and an additional condition in the tender form that person submitting tender should have carried out the said work in the last financial year for a value of Rs. five crores whereas in tender dated 11/6/2009 there was no such condition. The petitioners made a representation to the respondents challenging the incorporation of the above conditions on the ground that such conditions are arbitrary, mala fide and violative of fundamental rights. Thereafter the petitioner filed the present writ petition challenging the said action of the respondents on the ground that the above conditions have been incorporated in NIT dated 7/7/2009 only to extend illegal favouritism to the blue eyed person i.e. special class of person engaged in the printing business at the cost of depriving the rights of the petitioner without cancelling the earlier tender process dated 3/7/2009. It is also contended that the impugned NIT dated 7/7/2009 is illegal, arbitrary and smacks mala fide as subsequent condition has been incorporated in the NIT in order to practice favouritism to certain class of person and just to oust the petitioner to

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submit his offer and participate in the tender proceedings. In pursuance to the first NIT dated 11/6/2009, the petitioner submitted his offer which was lowest but no work order has been issued in his favour and without cancelling earlier tender process, the second NIT issued on 7/7/2009 is contrary to clause 8(a) of M.P. Financial Code. It is also contended that because of these conditions, the other intended bidders were excluded.

5. The respondents filed their return, inter-alia, denying the allegations made by the petitioner and submitted that since long back they had been purchasing the papers from the Govt. Press or from the open market by inviting tender. The papers were then used for printing answer books and thereafter they were transported to various Divisional Offices of the respondents. Earlier the entire process was divided into three parts (a) to purchase papers (b) to get it printed and (c) to transport it to the Divisional Offices. The said process was earlier followed and the NIT was issued on 11/6/2009 for printing of examination copies/answer sheets. After inviting NIT on 11/6/2009, they received letter from the Controller of Government Printing Press and Stationery of M.P., by which Govt. Printing Press refused to supply papers to the respondents. Looking to the urgency of the need, shortage of time and the huge number of printing of answering books, (1.40 crores), the respondents invited a fresh NIT for supply of printed answer books including the transportation to various district places in the entire State.

6. The NIT dated 7/7/2009 was published in National newspapers 'Hindustan Times' and also two daily newspapers and the 'Rojgar Nirman Journal' (Annexure-R/2) which were widely published and circulated and as many as nine intended bidders purchased NIT form. In the meantime, in presence of the representatives of the petitioners on 9/7/2009 the earlier bid was cancelled. The said decision was recorded in the proceedings (Annexure-R/3), thereafter the petitioners appended their signatures in the proceedings dated 9/7/2009 by which earlier bid was cancelled. Fresh NIT dated 7/7/2009 will curtail the expenses and making of correspondence will be with only one person instead of three agencies and supply of answer books will be made to the lowest possible unit i.e. district in the entire State. It is also contended that previously, the respondents used to purchase papers and give it for printing purposes to the printers. As per NIT dated 11/6/2009 2% excess papers were also to be supplied to the bidder and there was every chance of printing answer books in excess from waste papers and then it could have been easily misused. In order to maintain confidentiality and secrecy in the sacred process of conducting the examination, the condition of security printers were added. In the printing of security papers, there cannot be any possibility of printing excess answer books and of being misused. The incorporation of the condition of the security printers is meant for maintaining confidentiality, security and sacredness of the examination and it has not been incorporated to help any particular bidder or a person of choice of the Board.

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7. It is also contended that a large number of answer books of about 1.40 crores are to be printed. The total cost would run to more than four crores of rupees. The time period is limited because urgency of conducting examination including supply of the answer books at the various district levels, therefore, condition of yearly turn over of Rs. Five crores was imposed so that the answer books could be supplied in time and only those bidders who have experience of doing the said work can only submit their offer for the said work. It is lastly contended that the total cost of the work is approximately 4-5 crores and looking to the risk involved the amount of security deposit has been enhanced to Rs. five lacs. The conditions imposed in NIT dated 7/7/2009 are most reasonable and have been incorporated with the object of finishing this colossal task in time.

8. In respect of wide circulation and publication of NIT dated 7/7/2009 it is contended that NIT was published in National and local newspapers. Total nine tender forms were sold by the respondents. Out of which four persons were found eligible under the conditions of fresh NIT dated 7/7/2009. On 9/7/2009 when the decision of cancellation of earlier offer was taken, the same was informed to all the bidders including the petitioner and petitioner had appended his signature and acknowledged the same. The earnest money of all the bidders were returned to them vide letter dated 13/7/2009. As the petitioners did not submit any bid in response to second NIT dated 7/7/2009, therefore, they have no right to challenge the second NIT.

9. It is submitted by learned counsel for the petitioner that the process for cancelling the earlier offer and inviting the second NIT, incorporating various conditions to exclude the petitioner and other similarly situated persons is mala fide, arbitrary and violative of Article 14 of the Constitution of India. It is submitted that the entire process for inviting second NIT may be cancelled and the respondents be directed to consider the earlier offer dated 3/7/2009 of the petitioner.

10. Shri T.S. Ruprah, learned senior counsel, appearing on behalf of the respondents, refuted the aforesaid allegations made by the petitioner and would submit that the conditions imposed by the respondents are reasonable. He would further submit that the award of a contract, whether it is by a private party or by a public body or by a State, is essentially a commercial transaction. It can choose, its own method to arrive at a decision and it is free to impose any condition for bona fide reasons and even when some defect was found in the decision, the same cannot be challenged. The Court should act with great caution and should intervene it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, then the court should interfere. With the above submissions he prayed for dismissal of the writ petitions.

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11 We have heard learned counsel for the parties and perused the original record of the case.

12. The law relating to award of contract by the State and Public Corporations was reviewed by the Apex Court in the case of *Air India Ltd V. Cochin International Airport Ltd*, (2000)2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

13. In the present case, first NIT was issued on 11/6/2009. The committee of the respondents authorities in presence of the petitioner and other representatives of the intended bidders intimated them the decision of cancellation of their offer and after stipulating certain conditions, second NIT was issued on 7/7/2009. This decision was conveyed to the petitioner and other intended bidders on 9/7/2009. In view of these conditions in NIT dated 7/7/2009 it is obvious that a person who had made the lowest offer in the tender did not acquire any right to have the offer concluded in his favour until the authorities had passed an order to that effect. It is not in dispute that the earlier offer was neither finalised nor final acceptance of a bid had been passed by the competent authority of the respondents, the petitioner whose offer was lowest, acquired no vested right to have the tender concluded in his favour and the tender could always be cancelled which has been done in the present case. What are the rights of an auction bidder has been considered in several decisions of the Apex Court. However, we will refer to only one decision viz *Laxmikant V. Satyawar*, (1996) 4 SCC 208. Para-4 of the said decision is relevant which reads as under:

“From a bare reference to the aforesaid conditions, it is apparent and explicit that even if the public auction had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation letter had been issued to him. The conditions of the auction clearly conceived and contemplated that the acceptance of the highest bid by the Board of Trustees was a must and the Trust reserved the right to itself to reject the highest or any bid. This Court has examined the right of the highest

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bidder at public auctions in *Trilochan Mishra V. Bhim Orissa, State of Orissa V. Harinarayan Jaiswal, Union of India V. Bhim Sen Walaiti Ram and State of U.P. V. Vijay Bahadur Singh*. It has been repeatedly pointed out that State or the authority which can be held to be State within the meaning of Article 12 of the Constitution is not bound to accept the highest tender or bid. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different conditions under which such auction has been held. In the present case no right had accrued to the respondent either on the basis of the statutory provision under Rule 4(3) or under the conditions of the sale which had been notified before the public auction was held."

This being the settled legal preposition, the petitioner acquired no right to claim that the contract in pursuance to notice inviting tender dated 11 /6/2009 be concluded in its favour.

14. In the case of *Monarch Infrastructure (P) Ltd. V. Commissioner, Ulhasnagar Municipal Corporation*, (2000) 5 SCC 287, it was held by the Apex Court that the terms and conditions in the tender are prescribed by the Government bearing in mind the nature of contract and in such matters the authority calling for the tender is the best judge to prescribe the terms and conditions of the tender. It is not for the courts to say whether the conditions prescribed in the tender under consideration were better than the ones prescribed in the earlier tender invitations.

15. In the present case, the respondents had invited open tender with prescribed eligibility criteria in general terms and conditions under tender documents providing therein that the tenders are invited from firms having a turn over of Rs. five crores for the last year. The total cost of the contract is more than four crores. The respondents introduced the criteria of Rs. Five crores to enable the firm with real competence having financial stability and capacity to participate in the tender, particularly in view of the past experience. As a matter of policy the respondents took a conscious decision to deal with one firm having financial capacity to take up such a big work which is a relevant consideration while awarding such a big contract. Moreover, it was for the authority to set the terms of the tender. The Courts would not interfere with the terms of the tender notice unless it was shown to be either arbitrary or discriminatory or actuated by malice. While exercising the power of judicial review of the terms of the tender notice the Court cannot say that the terms of the earlier tender notice would serve the purpose sought to be achieved better than the terms of tender notice under consideration and order change in them, unless it is of the opinion that the terms were either arbitrary or discriminatory or actuated by malice. The provision of the terms inviting tenders

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from firms having a turnover of more than five crores has not been shown to be either arbitrary or discriminatory or actuated by malice.

16. The Apex Court in the case of *Directorate of Education and others V. Educomp Datamatics Ltd.*, (2004) 4 SCC 19, held that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. The Courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. Considering the law laid down by the Apex Court in the case of *Directorate of Education and others* (supra), we are of the considered view that the conditions of past experience of work of Rs. Five crores in the last financial year is just and proper and it cannot be said that the said condition is arbitrary or discriminatory or actuated by malice or the same has been incorporated just to exclude the petitioner or other similarly situated persons.

17. In the case of *Puravankara Projects Ltd. V. Hotel Venus International and others*, (2007) 10 SCC 33, wherein it was held by the Apex Court that tender terms are contractual and it is the privilege of the Government which invites its tenders and courts do not have jurisdiction to judge as to how the tender terms should be framed.

18. In the case of *Meerut Development Authority V. Association of Management Studies and another*, 2009 AIR SCW 4623, the Apex Court considered the rights of the tenderer participating in tender process and held in para-17 which reads as under :

“17. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above-stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as

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a matter of right to insist the Authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations."

19. Here in the present case earlier NIT dated 11/6/2009 was cancelled by the respondents on the ground that the State Government had refused to supply the papers for printing of answer sheets and the entire basis for floating tender was lost and, therefore, the authority cancelled the first NIT for printing of the answer sheets and invited fresh NIT for supply of answer script for paper, printing and transportation to destination by imposing conditions that offer will be restricted only to "security printers" as against the "general printers" because in security printers there cannot be any possibility of printing answer books in excess and of being misused. Nor there will be any chance of pilferage of the answer books from the site of the printers and in order to maintain confidentiality and secrecy in the sacred process of conducting the examination, the said condition of security printers were added which cannot be said to be malicious and misuse of its statutory powers.

20. In the case in hand, the explanation submitted by the respondents is that only genuine and capable persons will participate in the process and for this purpose the condition so imposed in NIT dated 7/7/2009 appears to be just and reasonable. It cannot be said that the conditions by which the respondents restricted only to the "Security Printers" as against the "General Printers", enhanced the earnest money to Rs. Five lacs and the criteria of turnover of five crores in the last financial year are just to exclude the petitioners as we have said earlier that the volume of the work is more than four crores and for this purpose if such a condition is imposed, it cannot be said to be arbitrary or erroneous or the same has been imposed with a mala fide intention to exclude the petitioner and other similarly situated bidders.

21. On examining the facts and circumstances of the present case, we are of the view that none of the criteria has been satisfied justifying Court's interference in grant of contract in favour of the petitioners. When the power of judicial review is invoked in the matters relating to tender or award of contract, certain special features have to be considered. A contract is a commercial transaction and evaluating tenders and awarding contract are essentially commercial functions. In such cases the principles of equity and natural justice stay at distance. If the decision relating to cancellation of earlier bid is bona fide and is in public interest, Courts will not exercise the power of judicial review and interfere even if it is accepted for the sake of argument that there is a procedural lacuna.

22. In such circumstances, no such public interest was involved which may warrant interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India while undertaking judicial review of

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administrative decisions relating to award of contract. We are, therefore, clearly of the opinion that the respondents have not committed any legal error in stipulating the additional condition in NIT dated 7/7/2009 neither they committed any error in rejecting all the offers including the offer of the petitioner, received in pursuance to NIT dated 11/6/2009 and returning the earnest money to the petitioner and other intended bidders vide letter dated 13/7/2009 nor we can hold that the process adopted or decision made by the respondents is so arbitrary or irrational that no responsible authority acting reasonably or in accordance with the relevant law could not have taken such a decision.

23. Both the writ petitions have no merit and are, accordingly dismissed, but without any order as to costs. The respondents are at liberty to proceed further in awarding the contract on the basis of the offer received in pursuance to NIT dated 7/7/2009.

24. In the result, both these writ petitions are dismissed.

Petition dismissed.

I.L.R. [2009] M. P., 3365

WRIT PETITION

Before Mr. Justice K.K. Lahoti

6 October, 2009*

**ADARSH THOK FAL SABJI VIKRETA VYAPARI
SANGH & anr.**

... Petitioners

Vs.

STATE OF M.P. & ors.

... Respondents

A. Municipal Corporation Act, M.P. (23 of 1956), Sections 293 & 299 - Petitioner was granted the permission to construct commercial cum residential complex - After completion of more than 50% work, permission was cancelled - Held - S. 299 provides that the Commissioner may, before any work has been commenced in pursuance to any permission u/s 293, revoke such permission and may give fresh permission in lieu thereof on conditions - Petitioner had already commenced work and it was in progress - Commissioner at that stage was having no powers to cancel the permission granted earlier - The recourse was only to refer the matter to State Government u/s 299-A to cancel or revise the permission for construction. (Para 6)

क. नगर पालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएँ 293 व 299 - याची को वाणिज्यिक सह नैवासिक कॉम्प्लेक्स का निर्माण करने की अनुज्ञा प्रदान की गयी - 50 प्रतिशत से अधिक कार्य पूर्ण हो जाने के बाद अनुज्ञा रद्द की गयी - अभिनिर्धारित - धारा 299 उपबंधित करती है कि कमिश्नर, धारा 293 के अन्तर्गत किसी अनुज्ञा के अनुसरण में कोई कार्य प्रारम्भ होने के पूर्व, ऐसी अनुज्ञा प्रतिसंहत कर सकेगा और उसके बदले में शर्तों पर नयी अनुज्ञा दे सकेगा

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— याची पहिले से कार्य प्रारम्भ कर चुका था और वह प्रगति पर था — कमिश्नर को उस प्रक्रम पर पूर्व में दी गई अनुज्ञा रद्द करने की कोई शक्ति नहीं थी — निर्माण के लिए प्रदान की गयी अनुज्ञा को रद्द या पुनरीक्षित करने के लिए केवल धारा 299-ए के अन्तर्गत राज्य सरकार को मामला संदर्भित करने का आश्रय लेना था।

B. Municipal Corporation Act, M.P. (23 of 1956), Sections 293, 299 & 299-A - Natural Justice - Petitioner was granted the permission to construct commercial cum residential complex - After completion of more than 50% work, permission was cancelled without notice - Held - It is settled laws that any action having any civil consequence, should be taken by following the principles of natural justice but in the case the permission accorded to the petitioner was cancelled without issuance of any show cause notice or extending an opportunity of hearing - Order not sustainable under the law. (Para 5)

ख. नगर पालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएँ 293, 299 व 299-ए — नैसर्गिक न्याय — याची को वाणिज्यिक सह नैवासिक कॉम्प्लेक्स का निर्माण करने की अनुज्ञा प्रदान की गयी — 50 प्रतिशत से अधिक कार्य पूर्ण हो जाने के बाद बिना किसी सूचना के अनुज्ञा रद्द की गयी — अभिनिर्धारित — यह स्थापित विधि है कि सिविल परिणाम रखने वाली कोई कार्यवाही नैसर्गिक न्याय के सिद्धांतों का पालन कर की जानी चाहिए किन्तु मामले में याची को प्रदान की गयी अनुज्ञा बिना कोई कारण बताओ सूचनापत्र जारी किये या सुनवाई का अवसर दिये रद्द कर दी गयी — आदेश विधि के अन्तर्गत कायम रखने योग्य नहीं।

C. Municipal Corporation Act, M.P. (23 of 1956), Sections 299 & 299-A Proviso - Opportunity of hearing - S. 299 of the Act does not provide any proviso like S. 299-A but guidance can be taken from S. 299-A which specifically provide that the State Government shall not pass any order unless the aggrieved party has been given an opportunity of hearing. (Para 7)

ख. नगर पालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएँ 299 व 299-ए परन्तुक — सुनवाई का अवसर — अधिनियम की धारा 299 धारा 299-ए के समान किसी परन्तुक का उपबंध नहीं करती है किन्तु धारा 299-ए से मार्गदर्शन लिया जा सकता है जो विनिर्दिष्टतः उपबंधित करती है कि राज्य सरकार तब तक कोई आदेश पारित नहीं करेगी जब तक व्यथित पक्षकार को सुनवाई का अवसर न दे दिया गया हो।

Alok Aradhe with Sankalp Kochar, for the petitioners.

J.L. Iyer, for the respondent Nos. 1 & 6.

R.K. Samaiya, for the respondent No.3.

Hitendra Singh, respondent Nos. 4 & 5.

Mukesh Agrawal, for the intervenor Krishi Upaj Mandi, Katni.

ORDER

K.K. LAHOTI, J. :- This petition is directed against an order dated 5.1.2008 Annexure P-19 issued by the Commissioner, Municipal Corporation, Katni by which the Commissioner cancelled the permission granted to the petitioner dated

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27.10.2006 on the ground that the aforesaid permission was obtained by the petitioner by concealing certain facts. This order has been assailed by the petitioner on following grounds :-

i) That before issuance of order Annexure P-19, no show cause notice or opportunity of hearing was extended to the petitioner and the principles of natural justice were violated by respondents No. 4 and 5.

ii) That the permission to construct a market was accorded by respondent No.4 on 27.10.2006 and in compliance of the aforesaid permission, the petitioners had commenced the construction. At the time of issuance of order Annexure P-19, 50% of the work was already completed.

iii) The Commissioner was having power to modify or revoke such permission under section 299 of the M.P. Municipal Corporation Act, 1956 [hereinafter referred to 'Act'] though such powers could have been exercised before commencement of the work but after commencement of the work as per the sanction, the Commissioner was not having any powers in this regard to either modify or revoke permission granted to the petitioner.

iv) That the grounds on which the order Annexure P-19 was issued was based on non-existing ground. In absence of any opportunity of hearing to the petitioners, the petitioners were deprived to raise all these contentions before the respondents.

v) That the permission once accorded and the construction was commenced then only the State Government under section 299A of the Act was having powers to cancel or revise the permission for construction of the building but in this case no such powers were exercised by the State Government. The action of the respondents No. 4 and 5 by issuing order Annexure P-19 is not only illegal but also without jurisdiction which may be quashed.

2. Sarvashri R.K. Samaiya and Mukesh Agrawal supported the order passed by the respondents and submitted that the petitioners were failed to comply with the directions issued by the Division Bench in Letters Patent Appeal and in such circumstances the Krishi Upaj Mandi had rightly sought cancellation of the sanction from respondents No. 4 and 5 and they have rightly cancelled the permission in which there is no fault.

3. Before proceedings further it will be pertinent to mention here that the construction in question has been raised beyond the boundaries of Krishi Upaj Mandi but within the limits of Municipal Corporation, Katni. Earlier a writ petition

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was filed by the petitioners who were allotted platforms, challenging the action of the local administration who initiated a drive to remove the aforesaid platforms as it was creating hurdle in the traffic. The writ petition bearing Nos. W.P.1866/99, W.P.1366/99, W.P.1757/99 and W.P.1991/99 were heard by the learned Single Judge of this Court and vide order dated 18.8.2000 all the writ petitions were dismissed. Thereafter four Letters Patent Appeals were filed before the Division Bench bearing No. LPA No.357/00, LPA No.295/00, LPA No.296/00 and LPA No. 299/00. all the aforesaid Letters Patent Appeals were heard and decided vide order dated 24.11.04. The Division Bench in the aforesaid LPAs issued following directions :-

a. The members of the association, namely, Whole Sale Vegetables Sellers which are, 118 in number and have shops at Bilaiya Ki Talaiya, platforms in the Krishi Upaj Mandi Samiti will file applications showing their respective area by 31.12.2004.

b. The said members shall also file separate applications for grant of licence for carrying on business within the area of Krishi Upaj Mandi Samiti.

c. The necessary premium of 25% of the cost be deposited of the shops likely to be constructed by Krishi Upaj Mandi Samiti at the time of submission of application. The aforesaid sum shall be indicated to the President of whole Sale Vegetables Sellers Association who shall be legally bound to accept and indicate the same giving appraisal report to the Municipal Council as well as to the competent authority of vegetables Krishi Upaj Mandi Samiti.

d. The aforesaid 25% sum shall be given on agreed terms by three instalments, one at the time of submission of the application and the second by 15th of Feb 2005 and the third by 15th of March, 2005. The requisite shops on the basis of the applications and the first instalments received shall be constructed by end of April, 2005.

e. After completion of the construction of shops intimation shall be given to the President as well as to the Municipal Corporation.

f. All the members of the aforesaid association shall shift to the shops by end of May, 2005 and operate from the shops, from the constructed places as per applications. The members of the aforesaid association after being allotted the shops by Krishi Upaj Mandi Samiti as per norms of the Mandi Board and also pay the balance monthly instalments after expiry of six months from the date of occupation of the shops.

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g. If the members who are occupying the places and are to shift to the Krishi Upaj Mandi Samiti, after the shops are constructed, and are available, do not shift by 31st of May, 2005, it is open to the Municipal Corporation to take such coercive steps to recover possession.

h. If the applications are not submitted by any members of the aforesaid association, the right to occupy the present premises would stand extinguished and the Corporation shall be at liberty to take appropriate steps after expiry of the period stipulated above.

i. It is agreed that if any of the petitioners applies for getting converted his whole sale business to retail one, he would be allowed to stay at the present place and if at any time it is found that he is indulged in whole sale business, at the place in question, he shall be positively evicted and further also shall be liable for contempt of this Court."

It appears that there were non-compliance of certain directions issued by the Division Bench which were seriously contested by the parties, in separate matter.

4. Thereafter the petitioners moved to the Municipal Corporation for grant of permission for construction of a commercial cum residential complex within the limits of Municipal Corporation, Katni but beyond the premises of Krishi Upaj Mandi. The aforesaid permission was accorded by the respondent No.4 on 27.10.2006 Annexure P-18 [para 69 of the paper book] for the construction as prayed by the petitioners. On getting knowledge of such construction, vide Annexure R-1 the Managing Director, M.P. State Krishi Vipdan Board wrote a letter to the Collector, Katni for taking action in the matter. The Collector, Katni vide Annexure R-2 dated 29.12.2007 directed the Commissioner, Municipal Corporation, Katni to cancel the permission.

In these facts the order Annexure P-19 was issued. It is not disputed before this Court that at the time of cancellation of permission vide Annexure P-19, petitioners commenced their construction and after commencement of the construction, the Krishi Upaj Mandi initiated action for the cancellation of the permission.

5. In this case the contention of the petitioner is mainly on the ground that before passing of order Annexure P-19, no show cause notice was extended or opportunity of hearing is concerned, there is no dispute in this regard. It is not the case of the respondents that before cancellation of permission, any show cause notice was issued or opportunity of hearing was extended to the petitioner. It is settled laws that any action having any civil consequence should be taken by following the principles of natural justice but in the case the permission accorded

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to the petitioner was cancelled without issuance of any show cause notice or extending an opportunity of hearing. So on this ground alone order Annexure P-19 is not sustainable under the law.

6. The second contention of the petitioner is that under section 299 of the Act, the Commissioner was having no jurisdiction to cancel the permission, after commencement of the work in pursuance to permission Annexure P-18 is concerned, the relevant provision may be looked into. For ready reference section 299 and 299A are re-produced :-

299. Power of Commissioner to direct modification of a sanctioned plan of a building before its completion - The Commissioner may before any work has been commenced in pursuance of any permission granted by it under [section 293] revoke such permission and may give fresh permission in lieu thereof on such conditions, in accordance with this Act and the rules, and byelaws made thereunder, with reference to the matters mentioned in the said section as it thinks proper, and may direct that the work shall not be proceeded with unless and until all questions connected with the respective location of the building and any street have been decided to its satisfaction.

299-A. Power of State Government to cancel or revise permission for construction of a building:- [If it is found that any permission for construction of a building has been given in violation of any provision of this Act or Rules or bye-laws made thereunder or in the opinion of the State Government it is necessary in the Public interest that the permission granted by the Municipal Corporation deserves to be cancelled or revised] the State Government shall have power to cancel or revise such permission and on such cancellation or revision, as the case may be, any construction contrary to the order regarding cancellation or revision shall be deemed to be without permission and shall be dealt within accordance with the provisions of this Act and the rules made thereunder:

Provided that no such order shall be passed unless the aggrieved party has been given an opportunity of being heard."

Section 299 gives powers to the Commissioner to direct modification of the sanctioned plan of building before its completion. This section provides that the Commissioner may, before any work has been commenced in pursuance to any permission under Section 293, revoke such permission and may give fresh permission in lieu thereof on conditions. In this case it is not in dispute that at the time of initiating action as per Annexure P-19, petitioner had already commenced

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work and it was in progress. In such circumstances the power vested to the Commissioner under section 299 could not have been invoked. The Commissioner at that stage was having no powers to cancel the permission granted earlier. The recourse under the Act was only to refer the matter to the State Government under section 299-A of the Act to cancel or revise the permission for construction of a building granted by the Corporation.

7. Section 299 of the Act does not provide any proviso like 299-A but guide can be taken from section 299-A which specifically provide that the State Government shall not pass any order unless the aggrieved party has been given an opportunity of hearing. Admittedly, in this case no opportunity was granted to the petitioner in this regard while passing order Annexure P-19.

8. In view of the aforesaid, the impugned order is not sustainable under the law and is hereby quashed.

9. At this stage, learned counsel appearing for Krishi Upaj Mandi and Municipal Corporation submitted that they may be permitted to initiate action against the petitioners in accordance with law by approaching the State Government under section 299-A of the Act or any other provision. The prayer is misconceived, no such permission is required from this Court. The Corporation and the Krishi Upaj Mandi are always free to take action against the petitioners if permissible under the law.

With the aforesaid observations, this petition is allowed. The impugned order Annexure P-19 is quashed. Considering the facts of the case, there shall be no order as to costs.

Petition allowed.

I.L.R. [2009] M. P., 3371

WRIT PETITION

Before Mr. Justice K.K. Lahoti & Mr. Justice P.K. Jaiswal

14 October, 2009*

BITS & BYTES (M/S)

... Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

A. Constitution, Article 226 - Contract - Judicial Review - Held -
Contract between the parties is a contract in the realm of private law - It is not a statutory contract - It is governed by the provisions of the Contract Act - Any dispute relating to breach of contract cannot be agitated in a writ petition.

(Para 11)

क. संविधान, अनुच्छेद 226 - संविदा - न्यायिक पुनर्विलोकन - अभिनिर्धारित

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— पक्षकारों के मध्य संविदा निजी विधि के क्षेत्र में संविदा है — यह कानूनी संविदा नहीं है — यह संविदा विधि के उपबंधों से शासित होती है — संविदा भंग से सम्बन्धित कोई विवाद रिट याचिका में नहीं उठाया जा सकता।

B. Constitution, Article 226 - Contract - Breach of contract - Damages - Judicial Review - Held - Remedy available for a party complaining of breach of contract lies for seeking damages - He would be entitled to the relief of specific performance, if the contract was capable of being specifically enforced in law - The remedy for a breach of contract being purely in the realm of contract are dealt with by civil courts. (Para 20)

ख. संविधान, अनुच्छेद 226 — संविदा — संविदा भंग — नुकसानी — न्यायिक पुनर्विलोकन — अभिनिर्धारित — संविदा भंग की शिकायत करने वाले किसी पक्षकार को उपलब्ध उपचार नुकसानी की माँग करने तक विस्तृत है — वह विनिर्दिष्ट पालन के अनुतोष का हकदार होगा, यदि संविदा विधि में विनिर्दिष्टतः प्रवर्तित किये जाने के योग्य थी — संविदा भंग के लिए अनुतोष शुद्ध रूप से संविदा के क्षेत्र में होने से सिविल न्यायालय द्वारा कार्यवाही की जाती है।

C. Constitution, Article 226:- Petitioner firm was awarded contract for the job of making data entries relating to the implementation of Government scheme - Contract cancelled - Action challenged in W.P. - Held - Work of petitioner was unsatisfactory and in spite of notice there was no improvement - As per terms & conditions of the contract, he had failed to complete the work within a period of one year - Prior to termination of contract notice was duly issued to the petitioner - In such circumstances, the order of cancellation of contract was neither arbitrary nor unreasonable nor mala fide - Petition dismissed. (Paras 21 & 22)

ग. संविधान, अनुच्छेद 226 — याची फर्म से सरकारी स्कीम के क्रियान्वयन सम्बन्धी डाटा एण्ट्री करने के कार्य के लिए संविदा की गई — संविदा रद्द की गयी — कृत्य को रिट याचिका में चुनौती — अभिनिर्धारित — याची का कार्य असंतोषप्रद था सूचनापत्र के बावजूद उसमें कोई सुधार नहीं हुआ था — संविदा के निबन्धन और शर्तों के अनुसार वह एक वर्ष की कालावधि के भीतर कार्य पूर्ण करने में असफल रहा — संविदा के पर्यवसान के पूर्व याची को सम्यक् रूप से सूचनापत्र जारी किया गया — इन परिस्थितियों में संविदा के रद्दकरण का आदेश न तो मनमाना था न ही अयुक्तियुक्त और न ही असदभावपूर्ण था — याचिका खारिज।

Cases referred :

(1996) 6 SCC 22, (2003) 1 SCC 726, AIR 2006 SC 116, (2004) 3 SCC 553, (2007) 14 SCC 517, (2008) 12 SCC 500.

K.C. Ghildiyal, for the petitioner.

Vivek Agrawal, G.A., for the respondent Nos. 1 & 2.

Vandana Shrotri, for the respondent No.3.

BITS & BYTES (M/S) Vs. STATE OF M.P.**ORDER**

The Order of the Court was delivered by P.K. JAISWAL, J. :- Challenge in these writ petitions filed under Articles 226 and 227 of the Constitution of India, the order dated 18.3.2009 passed by respondent No.3, whereby learned authority prematurely terminated the contract of the petitioners in all the three writ petitions w.e.f. 31.3.2009. In this batch of writ petitions, common questions arise for decision and, therefore, they were heard analogously and are being decided by this common order.

2. For the sake of convenience the brief facts necessary for disposal of the three writ petitions are taken from W.P. No.4781/2009.

3. The petitioner is claiming the following relief in clause 7 of the writ petition which reads as under :-

- i. A writ, order or direction in the nature of certiorari thereby quashing the order dated 18/03/2009 (Annexure P/6) issued by respondent No.3.
- ii. A writ order or direction in the nature of mandamus thereby directing the respondents to allow petitioner firm to continue as per terms of the contract agreement dated 15.9.2009 and make payment of the entire period of contract to the petitioner firm, including payment for the months of June, July and August, 2008.
- iii. Any other appropriate writ, order or direction which the Hon'ble Court may deem just and proper in the nature and circumstances of the case.

4. The facts briefly stated are that the petitioner firm was awarded contract for the job of making data entries relating to the implementation of the Madhya Pradesh Employment Guarantee Scheme and display them on the website. Earlier in the year 2006, the respondent No.3 had issued Notice Inviting Tender for the said job. The petitioner being the lowest in the said bid was awarded the contract of data entry for a period of one year commencing from 3.6.2006 to 2.6.2007. During the said period the work of the petitioner was found satisfactory and, therefore, on completion of the period of contract the work was extended for a further period of one year commencing from 3.6.2007 to 2.6.2008 vide letter dated 8.6.2007 (Annexure P/1). After completion of the contract, a fresh NIT on 20th March, 2008 was issued by the respondent No.3 for the entire district Mandla which consists of nine blocks. The bids were to be submitted separately in respect of each block. During the intervening period, the petitioner was asked to continue the work till finalization of the fresh contract. The petitioner being the lowest bidder his tender in respect of all the five blocks was accepted by respondent No.3 vide order dated 2.9.2008 and contract agreement to this effect was executed

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vide Annexure P/3 on 15.9.2008 for a period of one year commencing from 5.9.2008 to 4.9.2009. As per terms of the contract, the work of MIS data entries for their recording in the computer were to be made available to the petitioner firm by the concerned Janpad Panchayat. The work of the petitioner was not satisfactory and for which complaints were being made by different Janpad Panchayats/Gram Panchayats and therefore notice was given to the petitioner on 17.9.2008 (Annexure R-3/1).

5. Clause 3.5, 3.6 and 3.7 of contract agreement dated 15.9.2008 (Annexure P-3) is relevant which reads as under:-

3.5 एजेन्सी के किसी भी स्टाफ की अनुपस्थिति संसाधनों की कमी लापरवाही अज्ञानता या एजेन्सी द्वारा जनित अन्य किसी भी कारणों से कार्य पूर्ण होने में अधिकतम 15 दिवसों का विलम्ब होता है तो एजेन्सी की स्वीकृत दर में आनुपातिक कटौती की जावेगी ।

3.6 कार्य पूर्ण होने में 15 दिवस से अधिक विलम्ब होने पर प्रतिभूति राशि राजसात करते हुए एजेन्सी का कार्यदिश एवं अनुबंध निरस्त कर दिया जावेगा ।

3.7 प्राकृतिक आपदा अथवा पारिस्थिकीय कारणों से समय सीमा में कार्य पूर्ण न होने की स्थिति में बिन्दु क्रमांक 3.5 एवं 3.6 को शिथिल किया जा सकता है ।

As per clause 3.5, 3.6 and 3.7 of the contract agreement, time was essence of the contract. The petitioner had to complete the work of MIS data entry within a period of one year from the date of agreement. As per clause 3.5, maximum extension of 15 days is permissible, subject to the fine. As per clause 3.6, if the work is completed for a period of more than 15 days, from the date of expiry of original period, the security amount will be forfeited and the contract will be terminated. The authorities also received complaints from Janpad Panchayat, Narayanganj, Janpad Panchayat Mohgaon and Janpanchayat Bijadandi wherein it has been stated that the work of the petitioner was very slow and he had not shown sufficient interest in making the data. After receiving complaints from different Janpad Panchayats, the respondent No.3 terminated the contracted vide impugned order dated 18.3.2009 and also pointed out that up to February, 2009 the petitioner has completed only 1/3rd of the total work awarded to him. The work of the petitioner was not found satisfactory and in spite of notice there was no improvement and, therefore, the work was restricted till 31.3.2009. By the said order all the three contracts were terminated by respondent No.3. It is this action which is impugned in all the three writ petitions.

6. Shri K.C.Ghildiyal, learned counsel for the petitioner drew our attention to the terms and conditions of the contract agreement dated 15.9.2008 and had submitted that the termination order has been passed without affording any

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opportunity of hearing to the petitioner firm nor any show cause notice was issued prior to passing of the impugned order. It is also submitted that prior to termination of contract no physical verification was made and conclusion of the department that the petitioner firm had not shown sufficient interest in making entries of data is incorrect and contrary to the facts of the case. It is submitted that the petitioner firm can make entry of only those details in the computer which are supplied to it by the concerned Janpad Panchayats. It is further submitted that on 18.3.2009 the Janpad Panchayats were asked to supply the details of the entry made in the computer by the contractors to enable them to release the payment to the contractors and on the other hand on the same day by the impugned order the work was terminated on the ground that the work of the petitioner firm was not found satisfactory, the respondent No.3 acted contrary to the terms and conditions of the contract which has caused financial loss to the petitioner. It is lastly submitted that after cancellation of the contract, they met with the Collector of District Mandla and pointed out these facts but in spite of assurance given by the Collector, till nothing has been done by him and, therefore, the said action has been challenged in the present writ petition.

7. Smt. Vandana Shrotri, learned counsel appearing for respondent No.3 raised a preliminary objection regarding maintainability of the writ petition on the ground that clause 4.2 of the contract agreement provides that in case any dispute arises between the parties, the aggrieved party shall file an application or raise a dispute before the Collector of concerned district and decision of the competent authority shall be binding on the authorities. She submits that as per clause 4.2 of the agreement, the petitioner firm was required to make an application to the Collector against the impugned order dated 18.3.2009. The petitioner without making such an application has filed the present writ petition which is not maintainable. She further submits that in view of the alternative remedy available under the terms of the contract, the present writ petitions are not maintainable. On merit, she submits that the petitioner firm was awarded contract of MIS data entry in the year 2006 for a period of one year whose work during that period was found satisfactory and therefore as per terms of the contract, the period was extended for a further period of one year and thereafter fresh tenders were invited for the period 2008-09. The petitioner being the lowest, his tender was accepted for a period of one year but his work was not found satisfactory and in spite of notice there was no improvement in the work and therefore the contract was terminated. It is also submitted that the work of the petitioner was not up to the mark and even after issuance of notice, the petitioner did not make any improvement in performing the work and number of complaints were being made against him, therefore the respondent No.3 authority had no option but to cancel the contract. It is lastly submitted that during the pendency of this writ petition, the original period of the contract had expired on 4.9.2009 and therefore the present writ

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petition has become infructuous. By the action of respondent No.3; if the petitioner has suffered any loss, he can file a civil suit before the Civil Court for compensation which can be decided by the said Court. The authority is ready to release the payment of the work done by the petitioner and for that Shri K.K. Shrivastava, Additional Chief Executive Officer, Jila Panchayat, Mandla has no objection in releasing the above payment to the petitioner but the said payment can be released only after quantifying the work done by the petitioner.

8. The petitioner in its rejoinder denied the issuance of letter dated 17.9.2008 and submitted that no such letter was received by the petitioner. In respect of letter Annexure R-3/2, it is submitted that these are the internal correspondences between the respective Janpad Panchayat and Gram Panchayat and copies of these letters have not been issued to the petitioner nor on the basis of these letters any notice was issued to the petitioner. Considering these facts, this Court directed the Additional Chief Executive Officer to remain present along with the original record and original letter dated 17.9.2008 issued to all the contractors and point out when this letter was issued to the petitioner. Shri K.K. Shrivastava, Additional Chief Executive Officer was present along with the original record and Dispatch Register and pointed out that the letter has been issued to the Contractor vide letter No.2425. He further pointed out that on 6.1.2009 also reminder was issued to the contractor for completion of the work of MIS data entry with a request to complete the work expeditiously. This letter was received by the petitioner on 9.1.2009 as is evident from the Dispatch Register.

9. Considering these facts, the contention of learned counsel for the petitioner that the letter dated 17.9.2008 was not received by him is incorrect and contrary to the record of the case.

10. We have heard learned counsel for the parties and perused the original record of the case.

11. The contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act. Any dispute relating to breach of contract cannot be agitated in a writ petition. After expiry of the period of the contract, this Court cannot decide in this writ proceedings, whether due to the termination of the contract the petitioner has suffered any loss. The said question also cannot be agitated in or adjudicated upon in a writ petition nor there was any prayer for awarding compensation by way of damages which could be granted by this Court in a proceeding under Article 226 of the Constitution of India. That is a matter to be raised before the Collector as per clause 4.2 of the contract agreement or for the Civil Court, as the case may be. The prayer in the writ petition, viz, to issue a writ of certiorari to quash the impugned order dated 18/3/2009 when the term of the period is also expired cannot be made in favour of the petitioner.

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12. Clause 4.2 of the contract agreement reads as under:-

4.2 इसी प्रकार एजेन्सी एवं जिला पंचायत मण्डला के मध्य वाद होने पर निराकरण हेतु कलेक्टर मण्डला को आवेदन किया जा सकेगा । इस स्थिति में निराकरणकर्ता अधिकारी कलेक्टर मण्डला होंगे ।

13. The contract in question contains a clause providing, inter-alia, for settlement of dispute by reference to the Collector, Mandla (clause 4.2). When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of this Court under Article 226. The existence of any remedy, in this case, provided in the contract itself, is a ground, for this Court to decline to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

14. The Apex Court in the case of *State of U.P. V. Bridge & Roof Co. (India) Ltd.*, (1996) 6 SCC 22; has held that Article 226 was not meant to supplant the existing remedies at law but only to supplement them in certain well recognized situations and held that the prayer for issuance of a writ of mandamus was wholly misconceived since the respondent had not invoked any remedy available to him under the terms & conditions of the contract.

15. The scope of interference in judicial review of award of contract is limited only to cases where the decision is vitiated either by arbitrariness/irrationality or either by malafide/favouritism.

16. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to award of contracts, certain special features should be borne in mind. A contract is commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest or to decide contractual disputes. The contractor with a grievance can always seek damages in a civil court.

17. Learned counsel for the petitioner drew our attention to the decision of the Apex Court in the case of *Beg Raj Singh vs. State of U.P. and others*, (2003) 1 SCC 726 and submitted that original period of the contract for MIS data entry was up to 4th September, 2009 but the respondent No.3 contrary to the terms and conditions prematurely terminated the contract on 18.3.2009. He immediately filed a writ petition on 4.5.2009 and during the pendency of the writ petition the original period had expired and, therefore, the period of contract be extended for a further

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period of six months. In the case of *Beg Raj Singh* (supra) lessee was granted mining lease for a period of one year and before expiry of the term of the lease, the lessee sought renewal for another period of two years which was granted by the Collector vide order dated 20.12.2000 but in the meanwhile the State Government had taken a decision to hold an auction of the sand mining lease which was challenged by the lessee by filing a writ petition before the Allahabad High Court. The Allahabad High Court opined that the order of the Collector granting two years' extension of mining rights to the lessee was justified and the State Government was not justified in interfering and setting aside the order of the Collector but it denied the relief to the lessee on the ground that auction would subserve public interest by fetching higher royalty to the State Government and further, because the period of three years calculated from the date of the original grant had in any case come to an end and therefore no relief could be allowed to the lessee. The Apex Court set aside the said judgment by holding that the delay in final decision cannot in any manner be attributed to the lessee. No auction has taken place. No third-party interest has been created. The sand mine has remained unoperated for the period for which the period of operation falls short of three years. The operation had to be stopped because of the order of the State Government intervening which order has been found unsustainable in accordance with stipulations contained in the Mining lease consistently with the Government order issued by the State of Uttar Pradesh. Merely because a little higher revenue can be earned by the State Government that cannot be a ground for not enforcing the obligation of the State Government which it has incurred in accordance with its own policy decision and directed that the lessee shall be allowed to operate the mine for a full period of three years subject to adjustment for the period for which he has already operated. The decision of the Apex Court in the case of *Beg Raj Singh* (supra) will not be applicable in the present facts and circumstances of the case and on the basis of the said decision, period of contract cannot be extended. In the present case, the work of the petitioner was found unsatisfactory and, therefore, his contract was terminated whereas in the case of *Beg Raj Singh* (supra) after expiry of the original period of one year, the quarry was further renewed for a period of two years by the granting authority which was upheld by the Allahabad High Court and therefore the Apex Court directed that the lessee shall be allowed to operate the mine for a full period of three years. In the case of *Beg Raj Singh* (supra) the mining lease was granted under the terms and conditions of Mines and Minerals (Regulation and Development) Act, 1957 and the rules made thereunder and a statutory lease deed was executed by the sanctioning authority whereas in the present case, the contract between the parties is a contract in the realm of private law. It is not a statutory contract and, therefore, after the expiry of the original period no extension can be granted to the petitioner.

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18. The next submission of learned counsel for the petitioner was that in the case of *M/s Subhash Projects and Marketing Ltd. v. West Bengal Power Development Corporation Ltd. and others*, AIR 2006 SC 116 the Apex Court awarded one crore to L&T out of the payment to be made to M/s Subhash Projects and Marketing Ltd. for the loss of profit suffered by L&T in not awarding the contract to him and therefore the petitioner be also directed to award compensation by way of damages in a proceeding under Article 226 of the Constitution of India. In the case of *M/s Subhash Projects and Marketing Ltd.* (supra) the power Corporation invited tenders for work of water intake and plant water system for units of Thermal Power Project. The Tender Evaluation Committee after evaluating the tender documents came to the conclusion that L&T with its reduced offer, was the lowest tenderer and it was recommended that the contract be awarded to L&T. At this stage, M/s Subhash Projects and Marketing Ltd. handed over a letter to the Minister of State for Power in the Union Government, in person complaining that the placing of order with L&T as the lowest tenderer, was not justified and due to pressure of the Union Minister of State for Power, the contract was awarded to M/s Subhash Projects and Marketing Ltd. The said action was challenged in the High Court in which it was found that the award of contract to M/s Subhash Projects and Marketing Ltd. was at the undue pressure of the Union Minister of State for Power, and that though contract itself was not liable to be interfered with. M/s Subhash Projects and Marketing Ltd. which had secured the contract by dubious means, was liable to be compelled to disgorge at least a portion of the profits that it would have earned from working the contract. The same was assessed as Rs.1 crore which was found would be less than 10 per cent of the profits that M/s Subhash Projects and Marketing Ltd. would have earned and directed its payment to L&T. The Apex Court affirmed the said finding and held that in case M/s Subhash Projects and Marketing Ltd. does not pay the amount of Rs.1 crore with interest as ordered to L&T by way of draft or deposit the same in the Court within four weeks as originally undertaken by it, the amount of Rs.1 crore will carry interest at the rate of 10 percent per annum from the date of the judgment of the Division Bench of the High Court till the date of its recovery. The facts in the present case are entirely different and, therefore the decision of Apex Court cited by learned counsel for the petitioner in the case of *M/s Subhash Projects and Marketing Ltd.* (supra) will not be applicable and on that basis the petitioner is not entitled for any compensation from respondent No.3.

19. Lastly, learned counsel for the petitioner drew our attention to the decision of Apex Court in the case of *ABL International Ltd. and another vs. Export Credit Guarantee Corporation of India Ltd. and others*, (2004) 3 SCC 553 wherein the Apex Court, held that a writ involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article

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226 of the Constitution, but there is no absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

20. Recently the Apex Court in the case of *Jagdish Mandal vs State of Orissa and others* (2007) 14 SCC 517 has held that when the power of judicial review is invoked in matters relating to award of contracts, certain special features should be borne in mind. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Similar view has been taken by the Apex Court in the case of *Kisan Sahkari Chini Mills Limited and others vs. Vardan Linkers and others* (2008) 12 SCC 500 wherein it has been held that ordinarily, the remedy available for a party complaining of breach of contract lies for seeking damages. He would be entitled to the relief of specific performance, if the contract was capable of being specifically enforced in law. The remedy for a breach of contract being purely in the realm of contract are dealt with by civil courts. The public law remedy, by way of a writ petition under Article 226 of the Constitution, is not available to seek damages for breach of contract or specific performance of contract. However, where the contractual dispute has a public law element, the power of judicial review under Article 226 may be invoked. Para 23 is relevant which reads thus :

"23. If the dispute was considered as purely one relating to existence of an agreement, that is, whether there was a concluded contract and whether the cancellation and consequential non-supply amounted to breach of such contract, the first respondent ought to have approached the Civil Court for damages. On the other hand, when a writ petition was filed in regard to the said contractual dispute, the issue was whether the Secretary (Sugar), had acted arbitrarily or unreasonably, in staying the operation of the allotment letter dated 26-3-2004 or subsequently cancelling the allotment letter. In a civil suit, the emphasis is on the contractual right. In a writ petition, the focus shifts to the exercise of power by the authority, that is, whether the order of cancellation dated 24-4-2004 passed by

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the Secretary (Sugar), was arbitrary or unreasonable. The issue whether there was a concluded contract and breach thereof becomes secondary. In exercising writ jurisdiction, if the High Court found that the exercise of power in passing an order of cancellation was not arbitrary and unreasonable, it should normally desist from giving any finding on disputed or complicated questions of fact as to whether there was a contract, and relegate the petitioner to the remedy of a civil suit. Even in cases where the High Court finds that there is a valid contract, if the impugned administrative action by which the contract is cancelled, is not unreasonable or arbitrary, it should still refuse to interfere with the same, leaving the aggrieved party to work out his remedies in a Civil Court. In other words, when there is a contractual dispute with a public law element, and a party chooses the public law remedy by way of a writ petition instead of a private law remedy of a suit, he will not get a full fledged adjudication of his contractual rights, but only a judicial review of the administrative action. The question whether there was a contract and whether there was a breach may, however, be examined incidentally while considering the reasonableness of the administrative action. But where the question whether there was a contract, is seriously disputed, the High Court cannot assume that there was a valid contract and on that basis, examine the validity of the administrative action.

21. In the present case, the question that arose for consideration was whether the order dated 18.3.2009 passed by respondent No.3 cancelling the contract was arbitrary or irrational or violative of any administrative law or principles. As stated herein above in the preceding paragraphs, the work of the petitioner was not found satisfactory and in spite of notice dated 17.9.2008 there was no improvement in the work and as per terms and conditions of the contract he was to complete the work within a period of one year from the date of contract agreement which he had failed to do and the question agitated by the petitioner is seriously disputed as we found that prior to termination of contract, notice was duly issued to the petitioner and in such circumstances we find that the order of respondent No.3 is neither arbitrary nor unreasonable nor authorities with a malafide intention cancelled the contract.

22. Accordingly, the writ petition filed by the petitioner for issuance of writ of certiorari to quash the termination order are wholly misconceived.

23. For the reasons mentioned herein above, the writ petitions filed by the petitioners have no merit and are accordingly dismissed but without any order as to costs. It shall be open to the petitioners, if it is so chosen by them, to raise a

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dispute before the Collector as per clause 4.2 of the contract agreement dated 15.9.2008 or to approach the civil court according to law, as the case may be.

24. With the aforesaid, all the three writ petitions are dismissed. No order as to costs.

Petition dismissed.

I.L.R. [2009] M. P., 3382

WRIT PETITION

Before Mr. Justice Shantanu Kemkar

21 October, 2009*

SUSHMA YADAV (SMT.)

Petitioner

Vs.

STATE BANK OF INDORE & anr.

Respondents

A. Service Law - Compassionate appointment - *Petitioner's application for compassionate appointment rejected - Held - Compassionate appointment is an exception and is not a right of an employee - Petitioner for the first time approached before High Court after 6 years of submitting application - Petitioner's case has been rightly considered twice by the Competent Authority and a finding has been arrived at that the petitioner is not living in penury and her financial condition is not such making her entitle for compassionate appointment - No case is made out to make interference in the decision taken by Competent Authority - Petition dismissed. (Para 14)*

क. सेवा विधि - अनुकम्पा नियुक्ति - याची का अनुकम्पा नियुक्ति का आवेदन नामंजूर - अभिनिर्धारित - अनुकम्पा नियुक्ति एक अपवाद है किसी कर्मचारी का अधिकार नहीं - याची आवेदन पेश करने के 6 वर्ष बाद सर्वप्रथम उच्च न्यायालय की शरण में आया - सक्षम प्राधिकारी द्वारा याची के मामले पर दो बार उचित रूप से विचार किया गया और यह निष्कर्ष दिया कि याची अमाव में नहीं रह रही है और उसकी वित्तीय स्थिति ऐसी नहीं है जो उसे अनुकम्पा नियुक्ति का हकदार बनाती हो - सक्षम प्राधिकारी द्वारा लिये गये निर्णय में हस्तक्षेप करने का कोई मामला नहीं बनता - याचिका खारिज।

B. Service Law - Compassionate appointment - Powers of High Court to interfere with the decision of the Competent Authority - *Petitioner's application for compassionate appointment rejected - Held - Courts should not normally interfere with the decision of Competent Authority - Competent Authority twice in the year 2004 & 2006 taking into consideration that petitioner was getting family pension and also entitled for terminal benefits of her husband and she inherited a double storied house - It was found that she was financially well placed and is not living in penury - Decision of Competent Authority needs no interference by High Court. (Paras 11 to 13)*

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ख. सेवा विधि - अनुकम्पा नियुक्ति - उच्च न्यायालय की सक्षम प्राधिकारी के निर्णय में हस्तक्षेप करने की शक्तियाँ - याची का अनुकम्पा नियुक्ति का आवेदन नामंजूर - अभिनिर्धारित - न्यायालयों को सामान्यतः सक्षम प्राधिकारी के विनिश्चय में हस्तक्षेप नहीं करना चाहिए - सक्षम प्राधिकारी ने दो बार वर्ष 2004 व 2006 में यह विचार में लेते हुए कि याची परिवार पेंशन प्राप्त कर रही है और उसके पति के सेवांत लाभों की भी हकदार है और उसे दो मंजिला मकान भी दाय में प्राप्त हुआ है - यह पाया कि उसकी स्थिति वित्तीय रूप से सुस्थापित है और वह अभाव में नहीं रह रही है - उच्च न्यायालय द्वारा सक्षम प्राधिकारी के विनिश्चय में हस्तक्षेप की कोई आवश्यकता नहीं।

Cases referred :

(2007) 9 SEC 571, (2008) 8 SCC 475.

Anand Singh, for the petitioner.

B.L. Pavecha with *Yogesh Mittal*, for the respondent No.1.

None, for the respondent No.2.

ORDER

SHANTANU KEMKAR, J. :- By this petition filed under Article 226/227 of the Constitution of India, the petitioner is seeking directions to the first respondent State Bank of Indore to appoint her on the post of Peon on compassionate grounds.

2. Briefly stated the petitioner's husband Late Dinesh Kumar Yadav was working on the post of Peon at Mhow Branch of the first respondent Bank. On account of serious charges of commission of fraud and misappropriation of funds, he was placed under suspension by the first respondent Bank vide order dated 08.08.1997 (Annexure P-1). However, before any action could be taken against him, he died on 27.08.1997 due to commission of suicide.

3. On account of his death in harness the petitioner (wife) submitted an application dated 14.10.1997 (Annexure P-2) before the first respondent seeking her compassionate appointment. Since no decision was taken on the said application she filed a Writ Petition No.326/2003 before this Court alleging inaction on the part of the respondents in not deciding her application. The said writ petition was disposed of by this Court vide order dated 06.05.2004 directing the respondents to consider her case in accordance with the Circular dated 17.02.1999 as also the circulars for such appointments issued from time to time. In compliance of the said order the petitioner's case was considered and she was informed vide letter dated 28.05.2004 (Annexure P-4) that her request for compassionate appointment has been examined and the same has been declined by the competent authority. Feeling aggrieved the petitioner filed a writ petition No.1694/2004 (s) before this Court which was decided vide order dated 25.02.2005 with a direction to the first respondent to pass a reasoned order on the petitioner's application for compassionate appointment after giving opportunity of personal hearing to her.

4. In compliance of the order dated 25.02.2005 passed by this Court in W.P.

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No.1694/2004 (s) the petitioner's case was considered once again and she was informed vide letter dated 04.04.2006 (Annexure P-9) that her application for compassionate appointment has been rejected by the competent authority. Aggrieved the petitioner has filed this writ petition.

5. The case of the petitioner is that her case ought to have been considered in the light of the Circular dated 17.02.1999 (Annexure P-10) as was ordered by this Court in W.P.No.326/2003. It has been alleged by the petitioner that in identical circumstances, one Sandeep Khatri and one Smt. Ramvati W/o Late Asharam Yadav were granted compassionate appointment, whereas the petitioner has been deprived from such appointment.

6. The first respondent has filed reply and has stated that on account of alleged acts of fraud and embezzlements aggregating to Rs.8,96,840/- the petitioner's husband was placed under suspension. However, before disciplinary enquiry could have been initiated against him he committed suicide on 27.08.1997. On lodging the F.I.R. the other two delinquent employees who were also involved with the petitioner in the incident were charge-sheeted and were held guilty by the competent criminal Court for the offences under Sections 409, 420, 467, 468 and 120-B of the Indian Penal Code. It has also been stated that after holding departmental enquiry the said two employees have been dismissed from service as they were found guilty of the misconduct.

7. It is further the case of the first respondent that on the death of petitioner's husband on 27.08.1997 she submitted an application for compassionate appointment on 14.10.1997. Thereafter, she remained silent for a long period of almost 6 years and had filed a writ petition before this Court for the first time on 09.10.2003 seeking compassionate appointment. In the circumstances, according to the first respondent having regard to the delay and laches on the part of the petitioner it is clear that she was not living in penury and was having sufficient means of livelihood for survival of herself and the family of the deceased employee.

8. It is also the case of the first respondent that the petitioner's case was duly considered firstly vide decision dated 21.05.2004 of which mere communication letter dated 28.05.2004 was filed by the petitioner in the earlier Writ Petition No.1694/2004 (s) and thereafter vide decision dated 29.03.2006 (Annexure R-1) of which also mere communication letter dated 04.04.2006 (Annexure P-9) has been filed by her in this petition. Thus, it is the case of the first respondent that twice the petitioner's case has been considered by the competent authority of the first respondent and reasoned orders have been passed declining her prayer. It has been stated that the committee constituted for the purpose for considering such cases did not find her case to be a fit case for grant of compassionate appointment. By way of additional affidavit the first respondent has stated that the allegation that on identical facts one Sandeep Khatri and one Smt. Ramvati

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Wd/o Late Asharam Yadav were granted compassionate appointment is totally incorrect. According to the said additional affidavit Smt. Ramvati Yadav was granted compassionate appointment taking into consideration that she was young widow with five minor children living in the state of utter penury condition after the death of her husband Asharam Yadav. It was also taken into consideration that she had deposited the entire amount of loss amounting to Rs.32,500/- caused to the Bank by her late husband out of the terminal benefits payable to him and in the circumstances her application was allowed. In the case of Sandeep Khatri, it has been stated that he was granted compassionate appointment within 5 months from the death of his father who died in a road accident, noticing that there was no earning member in the family which was facing financial hardship. The appointment was made on a condition of deduction of 25% of salary for a period of 10 years towards the loss caused to the Bank by his father. It has been further clarified that the said condition on reconsideration pursuant to the order passed by this Court in W.P.No.1246/97 was waived. Thus, the stand of the first respondent is that there is no parity between the two cases on which petitioner has placed reliance. It has been stated that the petitioner was and is getting adequate family pension and she is also owning a residential house in Mhow and as such she has rightly been denied the compassionate appointment in view of the circulars for the same.

9: Heard learned counsel for the parties and perused the annexures filed by them.

10: There is no dispute to the fact that the petitioner's husband was suspended on account of alleged act of fraud and embezzlement of the funds of the first respondent Bank. It is also not in dispute that the other two employees have been convicted for offences under Sections 409, 420, 467, 468 and 120-B of the Indian Penal Code. It is also not in dispute that the said two delinquent employees who were involved in the incident along with the petitioner's husband were charge-sheeted by the first respondent Bank and a disciplinary enquiry was conducted in which they were found guilty of the charges and as such they have been dismissed from service. It is also not in dispute that after submitting the application for compassionate appointment on 08.08.1997, the petitioner for the first time approached this Court against the alleged inaction on 09.10.2003 i.e. about 6 years after the death of her husband and filing of the application for compassionate appointment.

11: On going through the documents, I find that the petitioner's case for grant of compassionate appointment was considered by the competent authority of the respondents for the first time in the year 2004 and her application was rejected taking into consideration that she was getting Rs.2611/- towards family pension to maintain herself and her two minor children. It was also taken into consideration that she was entitled for terminal benefits of her late husband aggregating to

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Rs.1,87,781/- out of which Rs.65,000/- was retained in-terms of deposit and the rest of the amount was paid to her. It was also noticed that she had inherited a double storied house situated at Dongargaon, Mhow. Thus, taking into consideration the financial status of the petitioner it was found that she is financially well placed and is not living in penury. In the circumstances, her case for compassionate appointment was not recommended and the prayer was declined. Once again after giving opportunity of personal hearing to her, her case was reconsidered by the competent authority and again it has been rejected vide decision dated 29.03.2006 (Annexure R-1) holding that even though the family pension has been reduced to Rs.1,700/- per month but having regard to the lapse of time it was not deemed fit to review the decision dated 21.05.2004 which was already taken by the competent authority declining the petitioner's prayer for compassionate appointment.

12. Having gone through the impugned decision Annexure R-1 the Circular dated 09.05.1997 (Annexure R-2) and the Circular dated 17.02.1999 (Annexure R-4), I find that the competent authority of the first respondent committed no error in rejecting the petitioner's claim. The Circulars in regard to making appointment on compassionate basis and the factors enumerated in the said circulars for determining the eligibility for compassionate appointment and the financial condition have also been correctly applied. The well reasoned decision of the competent authority of the first respondent that the family of the deceased employee is not in penury and is not without any means of livelihood needs no interference by this Court in a petition under Article 226/227 of the Constitution of India.

13. It has now been well settled that the Courts should not normally interfere with the decision of the competent authority in regard to the fact as to whether the deceased employee left his family in penury and without any means of livelihood. It has been held by the Supreme Court that it is the job of the specially constituted authorities since they are better equipped to decide the facts of the case and their objective finding arrived on appreciation of full facts should not be interfered into by the Courts. [See *State Bank of India and others Vs. Jaspal Kaur* (2007) 9 SCC 571].

14. Having regard to the aforesaid legal position, the fact that after submission of the application for compassionate appointment on 14.10.1997 the petitioner for the first time approached before this Court after 6 years in W.P.No.326/2003 alleging inaction on the part of the respondents and also the fact that the petitioner's case has been rightly considered twice by the competent authority of the first respondent and a finding has been arrived at that the petitioner is not living in penury and her financial condition is not such making her entitled for compassionate appointment, no case is made out to make interference in the said decision. In the case of *General Manager, State Bank of India and others Vs. Anju Jain*

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(2008) 8 SCC 475, it has been held by the Supreme Court that the compassionate appointment is an exception and is not a right of an employee.

15. Accordingly, the petition deserves to be and is hereby dismissed. No orders as to the costs.

Petition dismissed.

I.L.R. [2009] M. P., 3387

APPELLATE CIVIL

Before Mr. Justice Abhay M. Naik.

16 March, 2009*

SAMBHUDAYAL

... Appellant

Vs.

NEW INDIA INSURANCE COMPANY LTD. & ors.

... Respondents

Motor Vehicles Act (59 of 1988), Sections 14(2)(a) & 149 - Death due to accident by tanker - Driver was not authorized to drive heavy transport vehicle - Insured committed breach of promise by handing over tanker to person having no valid license - Insurance Company rightly exonerated from liability. (Paras 9 & 10)

मोटर यान अधिनियम (1988 का 59); धाराएँ 14(2)(ए) व 149 - टैंकर द्वारा दुर्घटना के कारण मृत्यु - चालक भारी परिवहन वाहन चलाने के लिए अधिकृत नहीं था - बीमाकृत ने ऐसे व्यक्ति को जिसके पास वैध लाइसेंस नहीं था, को टैंकर सुपुर्द करके वचन भंग किया - बीमा कम्पनी दायित्व से उचित रूप से उन्मुक्त।

Case referred :

(1987) 2 SCC 654.

R.L. Shukla, for the appellant.

Surabhi Nigam, for the respondent No.1.

None, for the respondent Nos.2 to 4.

ORDER

ABHAY M. NAIK, J. :- Short facts involved herein are that the offending tanker driven by respondent No.2 and owned by the present appellant was being taken reverse at 8:00 AM on 9.3.1998 when the deceased Sona aged about 1½ years was hit by it. She died on the spot. Tanker was insured with respondent No.1/Company. A claim petition was submitted which vide impugned award dated 8.3.1999 passed in Claim Case No.57/98 by the I Addl. M.A.C.T., Sagar was allowed to the tune of Rs.52,000/- with interest @ 12% per annum. Payment was to be made within 30 days and in case of failure interest was made payable @ 15% per annum. However, the Insurance Company was exonerated on the ground that the respondent No.2 was not having a valid driving licence at the time of occurrence of the accident.

*M.A. No.1209/1999 (Jabalpur)

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2. Learned counsel for the appellant submitted that respondent No.2 was having a valid driving licence when he was employed by the appellant. In the light of this it is contended that the exoneration of the Insurance Company is not sustainable in law, since, the appellant had taken requisite care to engage respondent No.2 who was at that time having a valid driving licence.

3. Ms. Surabhi Nigam, learned counsel for respondent contended that the tanker was a heavy transport vehicle and respondent No.3 was authorised to drive heavy transport vehicle w.e.f. 6.5.1998. The accident having taken place on earlier date, respondent No.2 cannot be said to have a valid driving licence prior to 16.5.98.

4. Considered the submissions and perused the record.

5. Contention of the appellant is that he took due care while engaging Sahdeo Singh that he was having a driving licence.

6. Reliance has been placed on the decision of Supreme Court of India in the case of *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and others* (1987) 2 SCC 654 to contend that due care having been taken while engaging Shahdeo Singh as driver, Insurance Company cannot be immuned from the liability. In *Skandia's case* (supra) the insured had permitted only the driver who was admittedly a licensed driver. It was the drivers negligence in leaving the vehicle with its engine running with the ignition key in the ignition lock which gave the cleaner of the vehicle a chance to drive the vehicle which resulted into the accident. The insured did not give permission to the cleaner to drive the vehicle. Therefore, it was held that the insured was not guilty of breach of promise that the vehicle will be driven by licensed driver.

7. Normally, this contention could have been accepted had there been no involvement of Tanker in transportation of goods of dangerous/hazardous nature. Clause (a) of sub-section (2) of Section 14 of the Motor Vehicles Act, 1988 runs as under :-

(a) in the case of a licence to drive a transport vehicle, be effective for a period three years :

[Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and].

8. In the present case, it is true that while engaging respondent No.2, the insured (i.e. the appellant) was made aware that the former was having a valid driving licence. According to the version of the insured himself, he was apprised of Ex./D-3 as a driving licence of respondent No.2. Insured at that time was required to do every thing within his power to ensure that the vehicle is being

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handed over to a person having valid driving licence as per category of vehicle. It is quite apparent from Ex./D-3 that firstly, it was an authority/licence for driving LMV (light motor vehicle) from 27.2.1987 to 26.6.1992. It is shown to have renewed from 27.1.1993 to 26.1.1998. At the bottom, it is shown to have renewed from 27.1.1998 to 26.1.2003. The digit '3' appears to have been written over digit '1'. This over-writing is quite apparent by naked eyes. Due care on the part of appellant would mean that he ought to have been careful for accepting any such over-written document after due verification. It is nowhere stated by him that he got this document (Ex./D-3) verified duly before its acceptance. In any case, these all endorsements are meant for light motor vehicle whereas an additional endorsement is contained in Ex./D-3 to the effect that respondent No.2 was authorised to drive HTV (heavy transport vehicle) from 16.5.1998. It was made valid upto 15.5.2009. In view of this, the respondent No.2 was not authorised/licensed to drive a heavy transport vehicle before 16.5.1998. I may successfully quote paragraph-14 from the decision of *Skandia's case* (supra) :-

“Section 96(2)(b)(ii) extends immunity to the Insurance Company if a breach is committed of the condition excluding driving by any named person or persons or by any person who is not fully licensed; or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. The expression 'breach' is of great significance. The dictionary meaning of 'breach' is 'infringement or violation of a promise or obligation'. It is therefore abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression 'breach' carries within itself induces an inference that the violation or infringement on the part of the promisor must be a wilful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is 'guilty' of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the Insurance Company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and

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successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise.”

9. Accident took place on 9.3.1998 when the respondent No.2 was not authorised to drive heavy transport vehicle even as per Ex./D-3. Tanker, being a heavy transport vehicle, it cannot be said that respondent No.2 was having a valid driving licence to drive a tanker carrying petrol. Other endorsements on Ex./D-3, even if, they are taken on their face value, at the most conferred a right on respondent No.2 to drive merely a light motor vehicle and not a heavy transport vehicle like a tanker with dangerous/hazardous matter. Thus, the insured has clearly committed a breach within the meaning of *Skandia's* decision by handing over the Tanker (heavy transport vehicle) carrying petrol to Shahdeo Singh who was neither having a valid driving licence for heavy transport vehicle on the date of accident nor was having a valid driving licence as per clause (a) of sub-section (2) of Section 14 of the Motor Vehicles Act, 1988. This being so, it cannot be said that learned M.A.C.T. has committed any wrong in holding that the offending vehicle was not being driven at the relevant time by respondent No.2 under a valid driving licence.

10. In the result, the Insurance Company is found to have been rightly exonerated from liability. There being no force in the appeal, the same is hereby dismissed, however, without costs.

Appeal dismissed.

I.L.R. [2009] M. P., 3390

APPELLATE CIVIL

Before Mr. Justice U.C. Maheshwari

17 August, 2009*

RAM VISHAL @ VISHALI KACHHWAHA
Vs.

... Appellant

DWARKA PRASAD JAISWAL

... Respondent

A. Civil Procedure Code (5 of 1908), Section 100 - *Concurrent findings of fact whether can be interfered in second appeal - Held - No - It is settled proposition of law that the concurrent findings on the question of relationship between the parties as landlord and tenant being finding of fact could not be interfered at the stage of second appeal u/s 100 CPC.* (Para 6)

क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 - क्या द्वितीय अपील में तथ्य के समवर्ती निष्कर्षों में हस्तक्षेप किया जा सकता है - अभिनिर्धारित - नहीं - यह विधि की स्थापित प्रतिपादना है कि पक्षकारों के मध्य भूस्वामी और किरायेदार के सम्बन्ध के प्रश्न पर समवर्ती निष्कर्ष

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तथ्य के निष्कर्ष होने से सि.प्र.सं. की धारा 100 के अन्तर्गत द्वितीय अपील के प्रक्रम पर उनमें हस्तक्षेप नहीं किया जा सकता।

B. Evidence Act (1 of 1872), Section 116 - *Estoppel of tenant* - It is settled proposition of the law that once the rent is paid by the tenant to a person who acquired the right over the property then subsequent to it, the tenant has no right to deny the title or landlordship of the person to whom he paid the rent. (Para 7)

खा. साक्ष्य अधिनियम (1872 का 1), धारा 116 - किरायेदार का विबन्ध - यह विधि की स्थापित प्रतिपादना है कि जब एक बार किरायेदार द्वारा किसी व्यक्ति को किराया अदा किया जाता है जिसने सम्पत्ति पर अधिकार अर्जित किया है तब उसके पश्चात् किरायेदार को उस व्यक्ति के, जिसे उसने किराया अदा किया, स्वत्व या मूस्वामित्व से इन्कार करने का कोई अधिकार नहीं है।

Cases referred :

2000(1) MPLJ 44, 2004(4) MPLJ 192, 1996 JLJ 247, 2006(2) MPLJ 484, 2000(II) MPWN 142, (2000) 4 SCC 380, 1992(I) MPWN 77, 1992(I) MPWN 174, 1995 JLJ 583, (1995) 6 SCC 580.

A.K. Jain, for the appellant.

M.L. Jaiswal with *Manoj Kushwaha*, for the respondent.

ORDER

U.C. MAHESHWARI, J. :- The appellant/defendant, being aggrieved by the judgment and decree dated 31.10.06 passed by II Addl. District Judge (Fast Track) Katni in Civil Regular Appeal No.41-A/06, affirming the judgment and decree dated 17.7.06 passed by II Civil Judge Class-II, Katni in Civil Original Suit No.12-A/2000, decreeing the suit of the respondent for eviction against him, has filed this appeal.

2. The facts giving rise to this appeal in short are that the respondent herein filed the suit for eviction against the appellant/defendant with respect of tenanted premises the part of House No.278 described in the plaint and the annexed map, situated in Subhash Ward, Katni. As per averments of the plaint, such suit was filed on the grounds available under section 12(1)(a), 12(1)(c), 12(1)(e) and 12(1)(h) of the M.P. Accommodation Control Act (hereinafter referred to as 'the Act'), the arrears of rent, disclaimer of title, bonafide genuine requirement of the disputed accommodation for residence of respondent's family, and also on the ground that same being in dilapidated condition is required bonafidely for the purpose of substantial addition and alteration which could not be carried out without vacating the premises otherwise it may cause an unhappy incident. As per other averments of the plaint, the appellant is tenant of the respondent in the aforesaid residential premises @ of Rs.200/- per month.

3. In the written statement of the appellant, the relationship of landlord and tenant with respondent is denied. It is stated that the appellant was inducted as

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tenant in such premises by the earlier landlord Shri Ramavtar Jaiswal and not by the respondent. Subsequent to death of said Ramavtar, he neither attorn his tenancy nor paid any rent to the respondent for the accommodation by deeming him to be his landlord. The aforesaid grounds of eviction are also disputed and denied. In such premises, prayer for dismissal of the suit was made. It is noted that the aforesaid ground of eviction under section 12(1)(c) regarding disclaimer of title was not taken at the initial stage of the suit but after filing the written statement, by way of amendment, such ground was taken by the respondent in his plaint. It also appears from the pleadings of the parties that in pendency of the suit, some of the accommodation had got vacated by the respondent for which, by way of amendment, appellant pleaded in his written statement the availability of alternative accommodation with the respondent for his alleged need. While other hand, the appellant has also put forth the pleadings regarding explanation of such alleged alternative accommodation stating that despite such accommodation his need is still in existence.

4. After casting the issues and recording the evidence, on appreciation of the same, the trial court by holding the relationship of the landlord and tenant between the respondent and the appellant decreed the suit for eviction on all the aforesaid grounds. Being dissatisfied, the appellant filed an appeal under section 96 of the CPC. After extending the opportunity of hearing, on consideration, by affirming the judgment and decree of the trial court, the appeal was dismissed, on which, the appellant has come forward to this court with this appeal.

5. Shri A.K.Jain, learned counsel of the appellant, by referring the pleadings, evidence and the exhibited documents on record, said that in the available circumstances, the respondent has failed to prove the relationship between the parties as landlord and tenant. As such, the appellant was inducted by the then landlord Ramavtar and appellant never attorn his tenancy in favour of the respondent at any point of time. Mere on the basis of a thumb impression on the rent receipts (Ex.P/2, P/3 and P/4), it could not be deemed that the tenancy has been attorned by the appellant in favour of the respondent. He further said that the respondent has claimed the right of landlord on the strength of some Will, as alleged, executed by Ramavtar in favour of the respondent Dwarka Prasad. The same has not been proved in accordance with the provisions of Section 68 of the Evidence Act by its attesting witnesses. In such premises, it could not be deemed that the tenancy was ever attorned by the appellant in favour of the respondent. In support of such contention, by placing his reliance on a reported cases in the matter of *Rajendra Kumar Mahawar Vs. Smt. Shakuntala Makhanlal Kesarwani*-2000(1) MPLJ-44 and in the matter of *Bajranglal Verma Vs. Gyaso Bai and others* 2004(4) MPLJ 192 he said that the approach of both the courts below holding relationship of the parties as landlord and tenant is not sustainable. It was also argued that in the lack of relationship of landlord and tenant the appellant

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was not bound to pay the rent to the respondent and was also having the right to challenge the derivative title of the respondent under the provision of Section 116 of the Evidence Act. So, the decree of eviction passed by the courts below on the grounds under Section 12(1)(a) and 12(1)(c) are not sustainable. It was also said that unless the title of the respondent over the disputed premises is proved by admissible document and the evidence, the decree of eviction under section 12(1)(e) of the Act could not be passed against him. So far the ground under Section 12(1)(h) is concerned, he said that the approach of both the courts below in this regard is apparently perverse as the same is not based on admissible evidence. In such premises, he prayed for admission of this appeal on the proposed substantial questions of law mentioned in the appeal memo.

6. Having heard the counsel at length, I have gone through the record and also the judgments of both the courts below. There is concurrent findings of both the courts holding the relationship between the appellant and the respondent as tenant and landlord and on perusing the deposition of the witnesses examined, the approach of both the courts below in this regard do not appear to be perverse as the same is based on appreciation of the evidence and also on admission of the appellant with respect of the rent receipts (Ex.P/2, P/3 and P/4) on which the appellant has admitted his thumb impression. Apart this, it is settled proposition of law that the concurrent findings on the question of relationship between the parties as landlord and tenant being finding of fact could not be interfered at the stage of second appeal under section 100 of the CPC as laid down by the Apex Court in the matter of *Kalyan Singh Vs. Ramswaroop and another*-1996 J.L.J-247 and also by this court in the matter of *Machala Bai Vs. Nanak Ram*-2006(2) MPLJ-484. In such premises, it is held that this appeal does not involve any substantial question of law on the question of relationship between the parties.

7. So far the case law cited by the appellant's counsel are concerned, this court has no dispute regarding the principle laid down in such cases but the same are not helping to the appellant in the present scenario because the appellant himself has admitted his thumb impression over the receipts of rent Ex.P/2, P/3 and P/4 in his deposition. As stated above such admission of the appellant is binding against him under section 58 of the Evidence Act. In such premises, the approach of both the courts below holding the relationship between the parties as landlord and tenant does not appear to be perverse or contrary to law. It is settled proposition of the law that once the rent is paid by the tenant to a person who acquired the right over the property then subsequent to it, the tenant has no right to deny the title or land-lordship of the person to whom he paid the rent. Such question was answered by this court in the matter of *Zehra Bai (Mst.) Vs. Jagmohan Arora*-2000(2) MPWN-142 which reads as under :-

“Perused.....It is not necessary for the landlord to produce the document of her title when defendant had admitted the relationship

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of landlord and tenant. Once rent is paid to land-lady, she shall be landlord within the definition of the land-lord under the M.P. Accommodation Control Act.....”

Hence, this appeal does not involve any substantial question of law in such background also.

8. In a suit for eviction between the landlord and the tenant, the title of the landlord does not require strict investigation as required in the title suit as laid down by the Apex Court in the matter of *Dr.Ranbir Singh* (supra), therefore, even in the absence of the examination of the attesting witnesses of the Will, the approach of the trial court, based on admission of the appellant, does not appear to be contrary to law or record.

9. So far the ground of section 12(1)(a) of the Act is concerned, it is apparent fact on record that the appellant even after receiving the demand notice from the respondent did not paid him the arrears of the rent and even after receiving the summons of the court did not deposit the same in accordance with the provisions of section 13 of the Act. In such premises, keeping in view the relationship between the parties as landlord and tenant the courts below have not committed any error in passing the decree on such ground as laid down by the Apex Court in the matter of *Jamnialal and others Vs. Radheshyam* (2000) 4 SCC 380 the impugned decree cannot be interfered at this stage.

10. So far the ground of section 12(1)(c) is concerned, in view of the concurrent findings of both the courts below holding that the appellant committed nuisance by denying the landlordship and title of the respondent with respect of the disputed premises. Although, such ground was taken at later stage by the respondent but in view of the law laid down by this court in the cases of *Bharosilal Vs. Kishorilal*-1992(1) MPWN-77, *Radheshyam Vs. Mansharam*-1992(1) MPWN 174 and in the matter of *Ramesh Chandra Vs. Rajesh Kumar and others*-1995 JIJ 583. Such approach of the trial court being finding of fact does not require any consideration under section 100 of the CPC at this stage by framing any substantial question of law.

11. So far the finding with respect of bonafide genuine requirement under section 12(1)(e) of the Act is concerned, the concurrent findings of both the courts on this question being based on appreciation of evidence does not give rise to any question of law which could be interfered under section 100 of the CPC as laid down by the Apex Court in the matter of *Dr.Ranbir Singh Vs. Asharfialal*- 1995(6) SCC 580.

12. So far the ground of section 12(1)(h) is concerned, the approach of both the courts below is based on appreciation of admissible evidence being finding of fact is not open to interfere under section 100 of the CPC.

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13. In view of the aforesaid discussion, I have not found any perversity in the impugned judgments giving rise to any question of law, muchless, the substantial question of law requiring any interference at this stage under section 100 of the CPC. Hence, the appeal being devoid of any merit, deserves to be and is hereby dismissed at the stage of motion hearing.

Appeal dismissed.

I.L.R. [2009] M. P., 3395

APPELLATE CIVIL

Before Mr. Justice Abhay M. Naik

9 October, 2009*

NAGARPALIKA PARISHAD, SHIVPURI

... Appellant

Vs.

MOHAN SINGH SISODIYA

... Respondent

A. Municipalities Act, M.P. (37 of 1961), Section 319 - Bar of suit in absence of notice - Civil suit filed against the Municipality for perpetual injunction - Held - Bar contained in S. 319 is not applicable in a suit for perpetual injunction by virtue of sub-section (3) of S. 319. (Para 14)

क. नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 319 - सूचनापत्र के अभाव में वाद का वर्जन - नगरपालिका के विरुद्ध शाश्वत व्यादेश के लिए वाद पेश - अभिनिर्धारित - धारा 319 में अन्तर्विष्ट वर्जन धारा 319 की उपधारा (3) के आधार पर शाश्वत व्यादेश के वाद में लागू नहीं होता है।

B. Civil Procedure Code (5 of 1908), Section 151 - Inherent powers - Plaintiff submitted application for temporary injunction that the defendant was collecting material on suit land with intend to construct municipal park - Application was dismissed by the trial Court on the defendant's representing that construction was being made on their own land - After recording evidence, trial Court found that park has been illegally and unauthorizedly constructed on suit land - A decree for injunction as well as for removal of construction granted against the defendant - First appeal dismissed - Second appeal filed - Held - In such a situation Court has ample power to restore the position as it existed on the date of suit because no one can be permitted to take undue advantage of the court proceedings by making wrong submissions - Appeal dismissed. (Para 17)

ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 151 - अन्तर्निहित शक्तियाँ - वादी ने अस्थायी व्यादेश का आवेदन यह कहते हुए पेश किया प्रतिवादी वादग्रस्त भूमि पर नगरपालिका पार्क के निर्माण के आशय से सामग्री एकत्र कर रहा है - विचारण न्यायालय द्वारा प्रतिवादी के इस निवेदन पर आवेदन खारिज कर दिया गया कि निर्माण उनकी स्वयं की भूमि पर

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किया जा रहा था – साक्ष्य अभिलिखित करने के बाद विचारण न्यायालय ने पाया कि वादग्रस्त भूमि पर अवैध और अनधिकृत रूप से पार्क का निर्माण किया गया है – प्रतिवादी के विरुद्ध व्यादेश के अतिरिक्त निर्माण हटाने की डिक्री प्रदान की गई – प्रथम अपील खारिज – द्वितीय अपील पेश – अभिनिर्धारित – ऐसी दशा में न्यायालय को उस स्थिति को प्रत्यावर्तित करने की व्यापक शक्ति है जैसी वाद पेश करने की तारीख को अस्तित्व में थी क्योंकि किसी को भी गलत निवेदन करके न्यायालयीन कार्यवाहियों का अनुचित लाभ लेने के लिए अनुज्ञात नहीं किया जा सकता है – अपील खारिज।

Cases referred :

AIR 2003 SC 643, S.A. No.237/2000 decided on 03.09.2009.

J.D. Suryavanshi with Kunal Suryavanshi, for the appellant.

Rahul Dandotiya, for the respondent.

J U D G M E N T

ABHAY M. NAIK, J. :- This appeal has been preferred by the defendant against a decree for injunction as well as removal of construction granted by the courts below, in concurrent manner.

2. Facts relevant for the purpose of the present appeal are that the plaintiff/respondent instituted a suit for perpetual injunction with allegations that he had purchased 2870 sq. ft. of land out of 14 biswa comprised in Survey No.115 Min II, situated at Village Shivpuri vide registered sale-deed dated 14/5/96 from one Darpan Kumar Agrawal through power of attorney Smt. Sumati Agrawal. Adjacent to it, there situates Survey No.114 which belongs to the Municipal Council, Shivpuri. Demarcation of the said land was being made by the defendants/appellants. On being asked, they informed the plaintiff that the demarcation was being made for construction of a park on Municipal land. Plaintiff opposed the processing of demarcation on the ground that the disputed piece of land belonged to him. Defendants/appellants threatened him that they will make construction for the Municipal Council on the said land. Accordingly, plaintiff was compelled to sue for permanent injunction to restrain defendants/appellants from making any construction on the area 2870 sq. ft. comprised in Survey No.115 Min II.

3. Defendants/appellants submitted their written statement denying thereby claim of the plaintiff. They, inter alia, stated that the plaintiff after making purchase in his favour had sold out 930 sq. ft. of land to Shri Shantilal Jain and 480 sq. ft. of land to Smt. Mithilesh Jain. Accordingly, it was stated in the written statement that the plaintiff ceased to be the owner of the entire land in area 2870 sq. ft. and the suit is therefore liable to dismissal. Moreover, the municipal park was being constructed on Survey No.114 which was Govt. land. This apart, it was pleaded that the suit of the plaintiff is not maintainable for want of notice under Section 319 of the M.P. Municipalities Act, 1961.

4. Learned trial judge after recording the evidence found that the plaintiff had already sold out two pieces of land in area 480 sq. ft. and 930 sq. ft. out of the suit

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land. Accordingly, it was held that the plaintiff continued to remain owner and occupant of merely 1460 sq. ft. of land. Defendants/appellants were further directed to remove construction of park made on 606.38 sq. ft. of Survey No.115.

5. It is not out of place to mention here that during pendency of the suit, the plaintiff submitted an application for amendment before the trial court with an averment that the defendants have forcibly occupied the suit land and have made construction on it. In view of the aforesaid, prayer for restoration of possession was also made which was accepted on 26/8/08. Judgment was rendered on 27/8/08 and the suit was decreed in favour of the plaintiff. It was found that the plaintiff was owner of 1460 sq. ft. of the suit land. Defendants No. 1 and 2 were directed to remove construction from 606.38 sq. ft. of the aforesaid.

6. Aggrieved by it, the defendants/appellants submitted Civil appeal No.32A/08 which having been dismissed by the lower appellate court, present appeal has been preferred which is admitted and heard on the following substantial questions of law:-

"1. In view of the suit being for 2870 sq. ft. land whether a decree for part of an area (i.e. 1460 sq. ft.) land could have been granted without specific demarcation or pleadings requisite for identification of such land ?

2. Whether the suit as filed is bad in law for want of notice under Section 319 of M.P. Municipalities Act, 1961 ?"

7. Shri J.D.Suryavanshi and Shri Rahul Dandotiya, learned counsel for the parties, made their exhaustive submissions which have been considered in the light of the material on record as well as the law governing the situation.

Substantial question of law No.1:-

8. It is contended by Shri Suryavanshi learned counsel for the appellant that the plaint is silent about the sale of part of suit land reducing it to the extent of merely 1460 sq. ft. Since two pieces of land in area 480 sq. ft. and 930 sq. ft. were sold out by the plaintiff in the year 1996, i.e. prior to the institution of the suit, purchasers ought to have been impleaded and the plaintiff has no right to seek relief in respect of the land so sold out by him. Moreover, it is not revealed in the plaint that which portion was retained by the plaintiff. Thus, according to the learned counsel, there is a dispute about identity and for want of particulars requisite under Order 7 Rule 3 C.P.C., the suit could not have been decreed. It is contended that for want of compliance of mandatory provisions contained in Order 7 Rule 3 C.P.C., the suit in the absence of such particulars ought to have been dismissed.

Further contention of Shri Suryavanshi is that no notice under Section 319 of the M.P. Municipalities Act, 1961 was issued by the plaintiff before filing of the suit. Thus, according to him, the suit is hit by the provisions contained in Section 319 (supra) and the courts below ought to have dismissed the suit due to non-compliance of mandatory provisions of law.

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9. As regards first contention, it is true that Order 7 Rule 3 C.P.C. requires the plaintiff to provide description in the plaint of the suit property sufficient to identify it, and, in case such property is identified by boundaries and particulars numbers in the record of settlement of survey, plaintiff shall specify such boundaries and particulars in the plaint. Plaintiff has clearly mentioned that 2870 sq. ft. of land comprised in Survey No. 115 Min II situated at village Shivpuri was purchased by him vide registered sale-deed dated 14/5/96. Thus, particulars requisite for identification of the land in dispute, were provided in the plaint as per requirement of Order 7 Rule 3 C.P.C. Defendants/appellants in the written-statement did not raise any dispute about the identity of the land in question. On the contrary, it has been specifically stated that out of the land purchased by the plaintiff, two pieces of land in area 930 sq. ft. and 480 sq. ft. were sold by the plaintiff to Shri Shantilal Jain and Smt. Mithilesh Jain, respectively. It is further expressly and specifically pleaded in paragraph 2 of the written statement that the purchasers namely, Shri Shantilal Jain and Smt. Mithilesh Jain have constructed their houses on the plots purchased by them and are residing therein. In this view of the matter, it cannot be said that the disputed land in area 1460 sq. ft. is not identifiable for any reason, whatsoever.

10. Supreme Court of India in the case of *Pratibha Singh Vs. Shanti Devi Prasad* (AIR 2003 SC 643) has observed:-

"When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the Court record caused by overlooking of provisions contained in O.7, R.3 and O.20, R.3 of the C.P.C. is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to S.152 or S.47 of the C.P.C. depending on the facts and circumstances of the each case -which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under S.152 of the C.P.C. by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of S.47, C.P.C. A decree of a competent Court should not as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke S.47 of the C.P.C."

11. It may further be seen that a commission was issued in the suit at later stage which was executed by the Revenue Inspector in the presence of the parties to the litigation which included Asstt. Revenue Inspector of the Municipal Council, Shivpuri. In the map prepared during the process of execution of

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commission (Ex.P/18) it has been clearly shown that the Municipal park has been constructed on the part of Survey No. 115. This is so revealed also in the Panchnama and report marked as Ex.P/16 and Ex.P/17, respectively. Thus, there remains no dispute with regard to identity of the piece of land in respect of which the suit has been decreed by the courts below in concurrent manner and the decree is not found to have suffered from any kind of infirmity. Accordingly, substantial question of law No.1 is answered against the appellant.

Substantial question of law No.2:-

12. As regards substantial question of law No.2, it is apposite to reproduce sub-section (1) of Section 319 of the Municipalities Act, 1961 which reads as follows:-

319. Bar of suit in absence of notice-(1) No suit shall be instituted against any Council or any Councillor, officer or servant thereof or any person acting under the direction of any such Council, Councillor, officer or servant for anything done or purporting to be done under this Act, until the expiration of two months next after a notice, in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of council delivered or left at its office, and, in the case of any such member, officer, servant or person as aforesaid, delivered to him or usual place of abode: and the plaint shall contain a statement that such notice has been so delivered or left.

(2) xxx xxx xxx

(3) xxx xxx xxx

13. Bar contained in this provision may be invoked if impugned action of the Municipal Council is proved to be in pursuance of any direction of the Municipal Council, Councillor, officer or servant. Stand of the defendants/appellants is that the park was constructed on Survey No.114 and not on Survey No.115. Thus, obviously there was no direction of the Council or Councillor to construct Municipal park on the part of Survey No.115. This being so, the bar contained in Section 319 of the M.P. Municipalities Act, 1961 cannot be invoked by the appellant.

14. This apart, it may further be seen that sub-section (3) of Section 319 of the said Act, 1961 clearly envisages that nothing in Section 319 shall be deemed to apply to any suit instituted under Section 54 of the Specific Relief Act, 1877. This Section was substituted in the Specific Relief Act, 1963 by section 38, which enables to seek perpetual injunction. Instant suit of the plaintiff being for permanent injunction, is saved by virtue of sub-section (3) (supra).

15. Though, no substantial question of law was formulated on the question of relief with regard to removal of construction, Shri Suryavanshi, learned counsel for the appellant submitted that the amendment though shown to have been attested by the learned trial judge in the order dated 26/8/08, it was in fact not incorporated

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in the plaint, therefore, relief regarding removal of construction is liable to be set aside.

Faced with the situation, Shri Rahul Dandotiya, learned counsel for the plaintiff/respondent after perusal of the record immediately submitted an application under Order 6 Rule 18 C.P.C., seeking leave to incorporate the amendment, which was allowed to be incorporated by the learned trial judge.

16. Learned trial judge in the order dated 26/6/08 had clearly observed that the Municipal Council, Shivpuri in its written statement had clearly mentioned that no construction of the park was made on Survey No.115. Construction of park on Survey No.115 is found by the trial court to have been made during pendency of the suit and this being a subsequent event, the amendment was allowed. In this view of the matter, there is no propriety in not allowing the incorporation of amendment at this stage, by invoking powers under Order 6 Rule 18 C.P.C. Accordingly, I.A.No.16167/09 is hereby allowed.

17. During pendency of the suit, the plaintiff submitted an application for temporary injunction under Order 39 Rule 1 and 2 C.P.C. (I.A.No.1) on 1/2/08 with an allegation that the defendant/appellant was collecting material on the suit land comprised in Survey No.115 with intent to construct municipal park. This application was dismissed on 1/3/08 by the trial court on the defendants representing that the construction was being made on Survey No.114 and not on Survey No.115. Ultimately, after recording evidence, learned trial judge found that the municipal park has been illegally and unauthorizedly constructed on 606.38 sq. ft. of the suit land comprised in Survey No.115. Plaintiff had taken requisite steps by submitting application for temporary injunction which was decided in the light of the specific averment of the defendant/appellant that no construction was being made on the suit land. Obviously, the defendant/appellant cannot be permitted to make a misstatement and derive undue benefit thereby. In such a situation, court has ample power to restore the position as it existed on the date of the suit because no one can be permitted to take undue advantage of the court proceedings by making wrong submissions.

18. Recently, this court in Second Appeal No.237/2000 [*Gyani Chandra Vs. Jagdish Prasad (dead) through his L.Rs. and others*] (unreported), decided on 3/9/09 has taken a view that the court even while dismissing the suit may exercise inherent power to restore position of the suit property which existed on the date of the suit. In view of this, no substantial question of law seems to have been formulated with regard to removal of the construction from the suit land.

19. Succinctly, the appeal is hereby dismissed for reasons stated herein above, however, without order as to costs.

Appeal dismissed.

BHASKARRAO Vs. STATE OF M.P.**I.L.R. [2009] M. P., 3401****APPELLATE CRIMINAL***Before Mr. Justice Arun Mishra & Mr. Justice I.S. Shrivastava***2 September, 2009*****BHASKAR RAO & ors.**

... Appellants

Vs.**STATE OF M.P.**

... Respondent

Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Section 3 - Murder - Appreciation of evidence - Election party was not allowed to go - When the S.H.O. along with other police personnels reached on the spot he was attacked by more than 200 persons as a result of which he died and 5 police personnels received injuries - Held - Where a Court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or more witnesses who give a consistent account of the incident - Those appellants, who were named by all witnesses, their conviction u/s 302 maintained and those appellants, who were named by only one witness, acquitted. (Paras 10 to 16)

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872, धारा 3 - हत्या - साक्ष्य का अधिमूल्यन - चुनाव दल को जाने नहीं दिया गया - जब एस.एच.ओ. अन्य पुलिस कर्मचारियों के साथ घटनास्थल पर पहुँचा तब उस पर 200 से अधिक व्यक्तियों द्वारा आक्रमण किया गया जिसके परिणामस्वरूप उसकी मृत्यु हो गयी और 5 पुलिस कर्मचारियों को क्षतियाँ आयीं - अभिनिर्धारित - जहाँ किसी न्यायालय को बड़ी संख्या में अपराधियों और बड़ी संख्या में पीड़ितों को अन्तर्ग्रस्त करने वाले किसी अपराध के किये जाने से सम्बन्धित साक्ष्य पर कार्यवाही करना हो, वहाँ यह परीक्षण अपनाया जायिक है कि दोषसिद्धि केवल तब कायम रखी जा सकती है यदि वह दो या अधिक साक्षियों द्वारा, जिन्होंने घटना का संगत लेखा दिया, समर्थित हो - वे अपीलार्थी, जिन्हें सभी साक्षियों द्वारा नामित किया गया, उनकी धारा 302 के अन्तर्गत दोषसिद्धि कायम रखी गयी और उन अपीलार्थियों को, जिन्हें केवल एक साक्षी द्वारा नामित किया गया, दोषमुक्त किया गया।

Cases referred :

AIR 1965 SC 202, (1997) 1 SCC 283, (2001) 8 SCC 690, AIR 2006 SC 831.

S.C. Dutt with Sidharth Datt, for the appellants.

S.K. Rai, for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by ARUN MISHRA, J. :-The judgment shall dispose of both the appeals, as these appeals have been preferred by the accused/ appellants calling in question the legality of conviction and sentence imposed upon them by Second Additional Sessions Judge, Burhanpur in Sessions Trial No.13/96 whereby, the appellants

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have been convicted under Section 147 of I.P.C. and sentenced to rigorous imprisonment for 1 year and fine of Rs.1000/- each in default, further rigorous imprisonment for 2 months. They also stand convicted for commission of offence U/s.302 read with Section 149 of I.P.C. and sentenced to imprisonment for life and fine of Rs.10,000/-each in default, further rigorous imprisonment for 2 years each. They have also been convicted U/S.307 read with Section 149 of I.P.C. and sentenced to 7 years rigorous imprisonment and fine of Rs.2000/- each and in default, further rigorous imprisonment for 4 months each. The substantive sentences were directed to run concurrently.

2. The prosecution case in short is that on 30th May, 1994, elections of Gram Panchayat were held at village Adgaon. ASI Shri T.K. Chouhan, PW-19 was posted on election duty with Zonal Officer Shri Vijay Koshla. After polling was over, counting of votes took place at about 7 p.m. and was completed by 10.30 p.m. in the night. Madhukar was declared elected defeating accused Devanand by margin of 16 votes. Devanand insisted the Zonal Officer Vijay Koshla for recount of the votes and upon recount, the result remained the same. Devanand did not accept the recounting and wanted the recounting to be done by himself and through his agents. The elected candidate Madhukar went away at about 11 p.m. Thereafter, Devanand and his supporters did not permit the election party to move out of the counting place and started raising slogans. Devanand caught hold of the ballot box and was not ready to permit its removal. His supporters gathered outside the polling booth and started raising slogans, near-about 200 to 250 people assembled there. Considering the situation, the Zonal Officer Vijay Koshla requested T.K. Chouhan PW-19 to call police reinforcement. The police reinforcement reached the place of counting at 1.00 O'clock in the night. Shri Kailash Pathrod, SHO of Police Station Shahpur reached the spot in order to rescue the election party along with three armed constables of SAF. On seeing the SHO arriving at the spot, Ramesh and others exhorted and started pelting stones upon them. Kailash Pathrod was surrounded by large number of persons and was done to death. Injuries were also caused to 6 police personnel. In self-defence, the firing was made by the police in which three rioters Gulab, Pandit and Bhimrao died. The autopsy was performed by Dr. M.P. Garg, PW-3, who submitted his report Ex.P/6. The injured were examined by Dr. K.M. Gupta PW-2. Dr. K.M. Gupta medically examined ASI T.K. Chouhan PW-19, Phoolchand Dwivedi, Bhagwan Singh, Constables of Police Station Shahpur, Vishnu Pandey and Rajaram of 1st Battalion, SAF and found injuries on their persons. Injury reports Ex.P/1 to Ex.P/5 were submitted by the doctor PW-2. The service revolver of Kailash Pathrod was snatched by accused Ramesh, Anil, Sunil and Gyaneshwar. The service revolver was seized from the well at the instance of accused Ramesh pursuant to information memo Ex.P/10. It was seized vide seizure memo Ex.P/11. Blood stained "dhoti" of accused Ramesh was also seized vide seizure memo Ex.P/12. After due investigation, the accused were charge-sheeted.

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3. The accused abjured the guilt and contended that they have been falsely implicated due to election dispute.
4. The prosecution has examined in all 20 witnesses. The trial Court has convicted the appellants 22 in numbers for commission of the aforesaid offence. Hence, the appeals have been preferred. During pendency of the appeal, accused/appellant Sanjay in Criminal Appeal No.2395/2000 has expired. His name has been ordered to be deleted.
5. Shri S.C. Datt, learned senior counsel appearing with Shri Sidharth Datt in Criminal Appeal No.2395/2000 and Shri T.K. Modh, learned counsel in Criminal Appeal No.2555/2000 have submitted that large number of persons have been implicated in this case. There were 200 to 300 persons who had assembled on the spot. Thus, it would not be safe to convict the accused persons on the basis of uncorroborated evidence of so-called eye witnesses, which suffers from material inconsistencies and some of the accused persons have been named only by one of the witness. Hence, in the absence of corroboration by other witnesses as to the presence and participation of the accused persons, it would not be safe to convict them for the alleged offences. It was also submitted by the learned counsel for the appellants that it could not be said that the object of the unlawful assembly was the same. Some of the members of the unlawful assembly had stopped the election party from moving away as they were demanding recounting of votes. The common object or intention of committing the murder of Kailash Pathrod, SHO, PS Shahpur could not be attributed to all the accused persons.
6. Shri S.K. Rai, learned Government Advocate has supported the judgment. He submitted that unlawful assembly was clearly formed on the spot and its common object was not only to restrain the election party and police personnel, but it was bent upon and shared common object of committing murder of Kailash Pathrod, SHO, who came as rescue party. There is no rule that the testimony of single reliable witness cannot be accepted or acted upon and if large number of persons were present there obviously, there is bound to be some difference as to the persons named by the different witnesses. Even otherwise, the version of truthful witnesses cannot be discarded applying the mechanical rule of insisting corroboration by more than one witness.
7. In the instant case, from the evidence on record it emerges that on the same day the election was held for which the counting was done at village Adgaon. The recounting was also done at the instance of accused Devanand. After recounting was over, the result remained unchanged. The declaration of result was not accepted by Devanand. He and his supporters did not permit the ballot box to be taken away by election party and the police personnel from the counting centre/booth. Some of the supporters entered the school building where the counting had taken place and slogan shouting was started. In the meantime, the

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winning candidate namely Madhukar had left the polling booth/counting center, is also not disputed. The Zonal Officer Vijay Koshla requisitioned for police reinforcement in the situation as the place was surrounded by large number of persons and some of them had also entered the prohibited zone. Slogans were being raised. Police reinforcement reached the spot with Kailash Pathrod; SHO of Police Station Shahpur along with five other constables at village Adgaon. In order to rescue the election party, when Kailash Pathrod was trying to enter the school building, he was surrounded by unlawful assembly. He was over powered and some heavy stones were infact thrown upon his head.

8. In the instant case, we find in all eight eye witnesses namely Basant PW-8; Sopan PW-9; Arun PW-10; Jankiram PW-11; Madhukar PW-12; Sanjay PW-15; Eknath PW-16; T.K. Chouhan PW-19. On consideration of the evidence adduced by the prosecution in this case, we found that R.G. Joshi PW-1 was the presiding officer of the polling booth No.123 at village Adgaon. He stated that after the recounting was done, Devanand and his supporters were not satisfied with the result and therefore, they started raising slogans etc. Police reinforcement was called upon. What was happening outside, he was not aware. Bhagwan PW-4 had reached with police rescue party at about 1.00 O'clock in the night. Vijay Kumar Koshla PW-5, the Zonal Officer had stated that recounting was done, but the result after the recounting was also not accepted by loosing candidate Devanand and his supporters who entered the counting place of the center. Surajpal Singh PW-6 has also supported the aforesaid fact and he too was inside the school where the counting was held. Prakash PW-7 has also supported the factum of recounting of votes by accused Devanand and the raising of slogans by his supporters and was not aware as to what was happening outside as he was inside school on election duty. Thus, it is apparent that after recounting was done, the unlawful assembly was formed. Effort was made to take the ballot box in his possession by Devanand and in the circumstances, the police reinforcement was called as situation was grim.

9. Basant PW-8 an eye witness of the incident has stated as soon as Shri Pathrod SHO came with reinforcement, he tried to persuade the unlawful assembly gathered there, but they did not listen and started beating him. The stones were thrown upon him by Ramesh; Anil, Sunil, Jagan, Badu, Bhimrao, Pandit, Gulab; Devidas and Chintamani. He also named Gyaneshwar, Manohar as persons who had thrown stones on the person of deceased Kailash Pathrod. Head injury was caused to the deceased. He cried that he was dying, other police personnel should save their lives. In cross-examination, this witness has denied the suggestion that there was any pelting of stones of by the two factions of winning and loosing party. He has clearly stated that stones were thrown on the police personnel when the reinforcement had reached. Sopan PW-9 has also stated that when police reinforcement came Anil, Ramesh, Sunil, Ramesh,

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Shyamrao, Chandrakant, Baliram, Sitaram, Dhairyasheel, Nana and Manohar were throwing stones on the police personnel. They did not listen to the understanding given by deceased Kailash Pathrod. Kailash Pathrod sustained head injury. While he fell down, he asked the police to fire and requested the other police personnel to save their lives. The winning candidate had left the place earlier after declaration of the result at about 11 p.m. Arun PW-10 has stated that when the reinforcement party came, Ramesh, Shyamrao, Anil, Sunil, Ramesh, Bhimrao, Vishwas, Ravindra Narayan, Baliram, Sitaram, Jairam and Dayaram had thrown the stones on Shri Pathrod due to which he sustained injuries and fell down. Police had fired in self-defence due to which Gulab, Pandit and Bhimrao had died and Chudaman sustained injury on his leg. He has also stated that there was no pelting of stones from both the sides. Stones were thrown only by the party of Devanand towards the school. Jankiram PW-11 has named Ramesh, Sunil, Anil, Bhaskar, Sanjay, Chintaman, Badu, Pandit, Bhimrao and Gulab as assailants who had thrown the stones upon Pathrod and caused injuries. Madhukar PW-12 has stated that when Mr. Kailash Pathrod came along with police force, stones were pelted upon him by Anil, Sunil, Ramesh, Ramesh Shyamrao, Baburao, Devidas, Kapur, Bajirao, Devidas, Ashok and one driver whose name he could not recollect. Chudaman, Gulab, Pandit and Bhimrao were also present, who had thrown stones on Pathrod due to which he died. Next eye witness is Keshav Prasad, who has stated that when the recounting was done, Devanand was still not satisfied and raised hue and cry. Sunil and Anil came inside the school and said that they wanted to count the ballot papers themselves and would not allow the ballot box to be taken away even if they had to kill somebody. 200-300 persons had assembled outside the counting center. Around 1.00 O'clock, Mr. Pathrod came with police reinforcement on being requisitioned. Ramesh Rao had exhorted others that Pathrod has arrived, he be not permitted to go back alive and thereafter, Ramesh Rao, Anil, Sunil, Baburao, Gyaneshwar and others started pelting stones. Pathrod sustained injuries then his service revolver was snatched by Ramesh, Anil, Sunil and Gyaneshwar. Thereafter, the police opened fire in self-defence. Sanjay PW-15 another eye witness to the incident has stated that after recounting, unlawful assembly had gathered and the stones were thrown on the police reinforcement. Ramesh, Sunil, Anil, Baliram, Ashok, Pandit, Jagan and Bhimrao had thrown stones upon the deceased Kailash Pathrod, SHO. Eknath PW-16 is another eye witness, who has stated that when Pathrod came with police reinforcement, stones were thrown upon him. The accused persons were present in the unlawful assembly. There was sufficient light on the spot. Thus, visibility was clear. T.K. Chouhan PW-19 was present along with the Zonal Officer V.K. Koshla. He reached village Vaporá on 30.5.94 at about 10 p.m. in the night when he was informed by head constable Ramyash Tiwari that at village Adgaon the loosing candidate along with his supporters were agitating and pelting stones by

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forming unlawful assembly. On being asked by the Zonal Officer, he had sent the requisition for sending the police reinforcement. The jeep, by which he reached the village Adgaon was badly damaged by the crowd which had gathered there. Ramesh, Sunil and others were exhorting the unlawful assembly to throw the stones at the instance of Devanand the loosing candidate. As soon as Kailash Pathrod alighted from the jeep, Ramesh exhorted that Pathrod should be killed. His son Sunil, Anil and his associates started throwing stones upon Shri Pathrod. Numerous injuries were sustained by Pathrod, who fell down on the ground. Bhimrao, Anil etc. had thrown stones on the deceased. Thereafter, in self-defence, the police opened fire. However, this fact that Bhimrao, Anil and Sunil had thrown stones on Pathrod has not been specifically mentioned in the FIR or in the police statement.

10. What emerges from the aforesaid evidence is that the name of the accused Ramesh has been taken by all the witnesses Basant PW-8, Sopan PW-9, Arun PW-10, Jankiram PW-11, Madhukar PW-12, Sanjay PW-15, Eknath PW-16, T.K. Chouhan PW-19. Similar is the case of accused Ramesh, Anil and Sunil. They have also been named by all the witnesses whereas, accused Devanand was the main person behind the incident, who had instigated the supporters to surround the school building and was the key person for inciting the crowd to gather there and not to permit the election party to move away along with the ballot box in spite of the fact that recounting has also been done at his request. His presence and instigation by him is established by over-whelming evidence on record and he was the chief architect of the incident which had taken place. With respect to accused Kapur, he has been named by Jankiram PW-11 and Madhukar PW-12. Balu @ Badu has been named by Basant PW-8 and Jankiram PW-11. Chudaman has been named by Madhukar PW-12 and T.K. Chouhan PW-19. Baliram has been named by Sopan PW-9, Madhukar PW-12, Keshav PW-14 and T.K. Chouhan PW-19. Devideen has been named by Basant PW-8 and Jankiram PW-11. Chintaman has been named by Basant PW-8, Jankiram PW-11 and T.K. Chouhan PW-19. Ashok has been named by Madhukar PW-12 and Sanjay PW-15. Jagannath has been named by Basant PW-8 and Sanjay PW-15.

11. Now, we are left with accused Bhaskar, who has been named by only witness Jankiram PW-11. Accused Bajirao has been named by Madhukar PW-12. Iqbal has been named by T.K. Chouhan PW-19. Vishwanath has been named by Arun PW-10 alone. Accused Ravindra has been named by Arun PW-10. Jairam has been named by only witness Arun PW-10. Accused Dhairyasheel has been named by Sopan PW-9. Subjective choosing of person is not ruled out as election had been held on the same day, some of the witnesses belong to winning candidate group. Thus, the question for consideration is whether it would be safe to base the conviction of those accused who have been named by single witness out of 8 witnesses examined by the prosecution.

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12. Shri Datt, learned senior counsel has placed reliance upon the decision of the Apex Court in *Masalti and others Vs. The State of U P.* AIR 1965 SC 202 in which the Apex Court has laid down that it is true that under the Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. But where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident.

The Apex Court has laid down thus:

"16. Mr. Sawhney also urged that the test applied by the High Court in convicting the appellants is mechanical. He argues that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That no doubt is true, but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical, but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think that any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case."

13. In *Binay Kumar Singh Vs. State of Bihar* (1997) 1 SCC 283, the Apex Court has considered the question that where the size of the unlawful assembly is quite large it would be prudent to insist on identification of accused by at least two reliable witnesses. The Apex Court has observed as under:

"31. We have noticed that Mritunjaya (A-23) and Parmanand Sharma (A-20) and Madan Mohan Sharma, son of Ambica (A-24)

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were identified by more than two eye witnesses as participants in the occurrence. Out of those witnesses the testimony of PW-10 and PW-32 was accepted by both courts. As for the remaining appellants both courts have accepted the testimony of at least three witnesses each as referring to each appellant. There is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as a member of the unlawful assembly. It is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. Even the testimony of one single witness, if wholly reliable, is sufficient to establish the identification of an accused as a member of an unlawful assembly. All the same, when the size of the unlawful assembly is quite large (as in this case) and many persons would have witnessed the incident, it would be a prudent exercise to insist on at least two reliable witnesses to vouchsafe the identification of an accused as a participant in the rioting. In *Masalti v. State of U.P.*, a Bench of four Judges of this Court has adopted such a formula. It is useful to extract it here:

"..... where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident."

14. The Apex Court in *Chandra Shekhar Bind and others Vs. State of Bihar*. (2001) 8 SCC 690 has also considered that where a large number of accused participated in the incident and several persons would have seen the incident, it would not be unreasonable or irrational to adopt the test that conviction could be sustained only if it is supported by at least two or more witnesses who give consistent account of the incident. The decision of *Masalti v. State of U.P.* was relied upon. The Apex Court has held thus:

"9. However, this is an incident in which a large number of accused had participated. The Constitution Bench of this Court has, in the case of *Masalti v. State of U.P.* held that under the Evidence Act, trustworthy evidence given by a single witness would be enough to convict the accused persons, whereas evidence given by half-a-dozen witnesses which is not trustworthy would not be enough to sustain the conviction. It was held that where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders,

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it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. It was held that in a sense, the test may be described as mechanical, but it cannot be treated as irrational or unreasonable. It was held that even though it is the quality of the evidence that matters and not the number of witnesses, still it is useful to adopt such a mechanical test”.

“10. This two-witness theory has also been adopted by this Court in the case of *Binay Kumar Singh v. State of Bihar*. It is held that there is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as a member of the unlawful assembly. It is held that it is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. It is held that even the testimony of one single witness, if wholly reliable, is sufficient to establish the identification of an accused as a member of an unlawful assembly. It is held that all the same, when the size of the unlawful assembly is quite large and many persons would have witnessed the incident, it would be a prudent exercise to insist on at least two reliable witnesses to vouchsafe the identification of an accused as a participant in the rioting.”

The Apex Court has cautioned in the aforesaid decision that even the testimony of a single witness can be accepted and the Court should insist for corroboration by at least two witnesses if quite large number of persons gathering on the spot, it would not be irrational to apply the aforesaid test.

15. In the instant case, it is apparent and is not disputed that 200 to 300 persons had gathered on the spot. It is also apparent that accused Devanand was the main instigator behind the incident and upon his instigation, accused Ramesh and others were not permitting the election party to move from the spot along with the existing police force. The police reinforcement had reached there and the aforesaid accused persons had over-powered Kailash Pathrod and stones were thrown upon him resulting into his death. Thereafter, firing was opened by the police.

16. Five police personnel also sustained injuries. Dr. K.M. Gupta PW-2 prepared the injury reports Ex.P/1 to P/5. Dr. M.P. Garg PW-3 had performed the autopsy and submitted his report Ex.P/6. It is apparent from Ex.P/6 that bones in the parietal region were badly crushed and there were several injuries suffered by the deceased due to throwing of stones on him. Kailash Pathrod was mercilessly

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beaten. It was obviously done to kill him. However, as laid down by the Apex Court in the aforesaid decisions in *Masalti Vs. State of U.P.* (supra), *Chandra Shekhar Bind & Ors. Vs. State of Bihar* (supra) and *Binay Kumar Singh Vs. State of Bihar* (supra) that as the size of the unlawful assembly was quite large and it is not unusual that many witnesses had witnessed the incident, we apply the test that at least two reliable witnesses to vouchsafe as to participating accused in the incident. It would not be unlawful or irrational to adopt the test laid down by the Apex Court in such circumstances that at least two or more witnesses should give consistent account of the incident and if it is accepted, then benefit of doubt must be given to other accused persons in case more than one witness has not stated about their presence/participation in the incident. Thus, accused Bhaskar, Bajirao, Iqbal, Ravindra, Jairam, Dhairyasheel and Vishwanath who are named by one witness only are given benefit of doubt. The conviction of rest of the accused persons does not require any interference in the appeals, as obviously, they were the members of unlawful assembly which had gathered there and shared the common object in interfering in the Government work as well as causing death of Kailash Pathrod, SHO. It was only after the stones were mercilessly thrown upon the deceased causing injuries on his head and causing injuries to other persons, the police had opened fire in which three members of the unlawful assembly had died.

17. Shri S.K. Rai, learned Government Advocate has relied upon the decision of the Apex Court in *Kailu alias Masih & Ors. Vs. The State of Madhya Pradesh*, AIR 2006 SC 831 wherein, it has been laid down that - "*it is not necessary that all eye witnesses should specifically refer to the distinct acts of each member of an unlawful assembly.*" The facts of instant case are different. It is not on the basis of distinct act of each member that we are giving the benefit of doubt, but rule of prudence envisaged in the aforesaid decisions. The case on facts is distinguishable.

18. Resultantly, we allow the appeal with respect to accused Bhaskar, Bajirao, Iqbal, Ravindra, Jairam, Dhairyasheel and Vishwanath. Their bail bonds stand discharged. The appeal of other convicted accused/appellants is dismissed. The convicted appellants are directed to surrender before the Court below forthwith for undergoing the remaining part of their sentence.

Appeal allowed.

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I.L.R. [2009] M. P., 3411

APPELLATE CRIMINAL

Before Mr. Justice A.K. Shrivastava & Mr. Justice S.S. Dwivedi

15 September, 2009*

BHIKHARI @ BHIKHAMSINGH

... Appellant

Vs.

STATE OF M.P.

... Respondent

A. Criminal Procedure Code, 1973 (2 of 1974), Section 174 - *Inquest - Non-mentioning of name of assailant - Not fatal for prosecution.* (Para 28)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 174 - मृत्यु समीक्षा - हमलावर का नाम उल्लिखित न करना - अभियोजन के लिए घातक नहीं।

B. Evidence Act (1 of 1872), Section 3 - *Witness - Oral & medical evidence - Contradiction - Version of eye witness should be believed in case there is contradiction in the statement of eye witness and medical evidence regarding injuries and weapons.* (Para 36)

ख. साक्ष्य अधिनियम (1872 का 1), धारा 3 - साक्षी - मौखिक और चिकित्सीय साक्ष्य - परस्पर विरोध - यदि क्षतियों और आयुधों के बारे में प्रत्यक्षदर्शी साक्षी के कथन और चिकित्सीय साक्ष्य में परस्पर विरोध हो तो प्रत्यक्षदर्शी साक्षी के ब्यान पर विश्वास किया जाना चाहिए।

Cases referred:

(2009) 1 SCC (Cri) 212, AIR 2002 SC 2374, 2002(1) CCrJ 310 (MP), 2003 CrLJ 1282, 1998(2) JIJ 313, 1991 JIJ 564, AIR 1993 SC 2644, (1998) 6 SCC 50.

R.K. Singh Kushwaha with Atul Gupta, for the appellants.

M.P.S. Bhadoriya, P.P., for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by S.S. DWIVEDI, J. :- The aforesaid appellants have preferred these three appeals under Section 374(2) of the Code of Criminal Procedure, aggrieved by the impugned judgment of conviction and sentence dated 8.3.1999 passed by Fifth Additional Sessions Judge, Bhind in Sessions Trial No.201/95, whereby all the five appellants have been found guilty for the offence punishable under Sections 148, 302 read with section 149 and section 307 read with section 149 of Indian Penal Code, and each of them have been sentenced to one year RI, imprisonment for life with a fine of Rs.5000/- and seven years RI with a fine of Rs.2000/-, respectively. In default of payment of fine, further ordered to suffer imprisonment for five years and two years respectively on each count. All the sentences are ordered to run concurrently.

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2. As the aforesaid three appeals have been preferred by the appellants/accused aggrieved by the same impugned judgment, hence, all these three appeals are being decided by this common judgment.

3. Briefly stated the facts of the case are, on 11.5.1995 at village Soi there was marriage of the daughter of Gandhiram (PW14); Barat came from village Airoli and stationed at the school building of the village concerned. In the night Barat came to the house of Gandhiram (PW14) with the band for having the dinner. At that time, Baratis complained to Gandhiram that the accused persons, whose houses are situated on the way to the house of witness Gandhiram, had abused the people of the Barat concerned. At that time, it is alleged that complainant Gandhiram (PW14), Mihilal (deceased) and injured witness Vidyaram, Brindavan and Virendra came to the house of the accused persons and asked as to why they had abused the Barat people. On hearing this complaint, all the accused persons namely Ravinder Singh, Visheshwar Singh, Sughar Singh, Vishwanath Singh, Ramavtar Singh and Bhikhari @ Bhikham Singh came there, they were armed with 12 bore gun and country made pistols and started abusing the complainant party and also fired on them. The accused Visheshwar Singh fired on deceased Mihilal, due to which Mihilal sustained injury on the head and he fell down. When witness Vidyaram tried to push the deceased Mihilal, at that time it is further alleged that accused Bhikhari @ Bhikham Singh had again fired by his gun, due to which witness Vidyaram also sustained injury on the right leg near the knee joint, then again accused Visheshwar Singh fired by his gun, due to which Virendra, second injured, sustained injury on his left thigh; thereafter, accused Ramavtar Singh fired by his country made pistol, due to which deceased Mihilal sustained injury on his neck; accused Ravinder Singh also fired by country made pistol, due to which Mihilal sustained pellet injury near the left eye; Virendra had also caused injury by means of country made pistol, due to which witness Virendra sustained pellet injury on his right leg; when complainant/injured virendra tried to save himself and accused Ravinder Singh tried to catch him then again accused Vishwanath fired by his country made pistol, due to which accused Ravinder Singh also sustained some pellet injury. After causing the aforesaid injuries, the accused persons ran away from the spot. Witnesses Gyansingh, Roshan Singh, Mahavir, Janved and Devendra Singh assembled there and took all the injured in a tractor to the District Hospital at Bhind. The information had been given to the Police Station Phoof from the District Hospital, Bhind with regard to the happening of the incident, then Station House Incharge R.K.Shakya, ASI of Police Station Phoof reached to the District Hospital, Bhind where the injured witness Vidyaram (PW1) lodged the First Information Report (Ex.P/1) as Dehati Nalishi report, on which basis a case had been registered and R.K.Shakya, ASI, started the investigation, issued memo for examination of the injured persons. As the condition of injured Mihilal found to be serious, hence after examination of the injuries the concerning doctor

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referred him for treatment to J.A.Hospital, Gwalior. When he was brought to Gwalior for treatment the examining doctor declared him dead. On information the police prepared the inquest panchnama and issued a memo for post-mortem examination. Dr.V.K.Dewan (PW11) performed the post-mortem and proved the report (Ex.P/3). The Police Officer R.K.Shakya, ASI, reached on the spot, prepared the spot map (Ex.P/11), also seized empty cartridges, blood stained earth from the spot, recorded the statements of the prosecution witnesses; thereafter arrested the accused persons; also seized the weapons used in the commission of the offence and after due investigation the charge sheet had been filed.

4. The charge sheet had been filed against six accused persons. All the six accused persons abjured the guilt and their defence is of false implication in this case. The accused persons had also examined five defence witnesses, namely, Sughar Singh (DW1), Prakash (DW2), Baburam (DW3), B.S.Bhatnagar (DW4) and Dr.Vinod Bajpai (DW5); who proved the injuries sustained to accused Ravinder Singh. The learned trial Court after due appreciation of the entire evidence on record by the impugned judgment held the aforesaid five appellants/accused guilty for the offence punishable under Sections 148, 302 read with Section 149 and section 307 read with section 149 of IPC and sentenced each of them as stated herein above, while sixth accused Sughar Singh had been only charged for the offence punishable under Sections 29 and 30 of the Arms Act, who had been acquitted by the trial Court itself. Aggrieved by the judgment of conviction and sentence passed by the trial Court, the aforesaid five appellants have preferred these three appeals.

5. Having heard the learned counsel for the appellants and Public Prosecutor for the State and perused the record.

6. It is submitted on behalf of the appellants that the prosecution has deliberately changed the place of incident as indicated in the FIR (Ex.P/1) and as shown in the spot map (Ex.P/11). Firstly, in the initial FIR (Ex.P/1) registered as Dehati Nalishi, the place of incident is shown to be in front of the house of the complainant Gandhiram, but when the Investigating Officer R.K.Shakya reached on the spot and found that the incident had taken place in front of the house of accused Bhikhari then he deliberately interpolated the FIR (Ex.P/1) and mentioned the place of incident as the place - in front of the house of accused Bhikhari @ Bhikham Singh and on this interpolation in the FIR no explanation has been given by R.K.Shakya, the Investigating Officer, and thus, the aforesaid interpolation made in the FIR by the Investigating Officer also creates doubt on the truthfulness of the entire prosecution story mentioned in the FIR (Ex.P/1). Similarly, it is also submitted by learned counsel for the appellants that the witness Devendra Singh (PW19) admitted in his statement that he himself went to the Police Station Phooof to inform the police about the incident and thereafter came to the hospital at Bhind. If the aforesaid statement of witness Devendra Singh (PW19) is believed then certainly the information which has been received by the Police Station Phooof

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in the night itself had been suppressed by the police concerned and Dehati Nalishi report (Ex.P/1) which had been registered at about 6 o'clock in the morning by R.K.Shakya, ASI, is not the FIR and, in such circumstances, if the prosecution had suppressed the initial information, which had been alleged to be given by Devendra Singh (PW19) in the night itself at Police Station Phooof then suppression of the original FIR by the police is also fatal for the prosecution. It is further submitted on behalf of the appellants that in the same incident one accused Ravinder Singh also sustained firearm injury, which has been proved as per the statement of Dr. Vinod Bajpai (DW5), who also proved the MLC report (Ex.D/9-c), wherein he proved that accused Ravinder Singh also sustained pellet injury near the right ear and on the face and proved the x-ray report (Ex.D/10) and prosecution has failed to explain about the firearm injury sustained to the accused Ravinder Singh. S/o Darshan Singh and on this point also if the prosecution has deliberately failed to explain the injury sustained to, accused Ravinder Singh then it would be presumed that the prosecution has suppressed the genesis of the incident, which is also fatal for the prosecution. It is further submitted on behalf of the appellants that there is no motive available to the accused persons for causing any injury to the complainant party in this incident. The place of incident is also changed and if on the basis of the spot map prepared by the Investigating Officer R.K.Shakya, which is Ex.P/11, it is proved that the incident took place in front of the house of accused Bhikhari @ Bhikham Singh then the defence version ought to be believed that the complainant party assembled in front of the house of the accused Bhikhari and started firing, due to which one of the accused Ravinder Singh sustained firearm injury and in that case also the complainant party appears to be aggressor in the incident and in such circumstances, none of the accused persons can be held guilty for causing any injury to the complainant party and learned trial Court has also deliberately ignored the aforesaid circumstances of the case and wrongly held the appellants guilty for the aforesaid offence. Hence, prayed for setting aside of the impugned judgment of conviction and sentence passed by the trial Court and also prayed for acquittal of the accused/appellants.

7. In reply, learned Public Prosecutor for the State Shri M.P.S.Bhadoriya, supported the impugned judgment and submits that the incident had taken place in the village when the Barat was coming to the house of complainant Gandhiram, at that time accused persons started abusing being annoyed with the noise of the band, which was being played in the Barat and started firing, due to which one Mihilal sustained firearm injury and died in this incident and other injured Vidyaram, Brindavan and Virendra also sustained firearm injuries and injured-prosecution witnesses specifically stated about the involvement of all the five accused persons in this incident. The identity of the accused persons is also not in dispute because all the accused persons were also invited in the aforesaid marriage function for dinner and, in such circumstances, nothing substantial came in the cross-

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examination of the injured prosecution witnesses that they had falsely implicated the accused persons in this incident. It is also submitted by the learned Public Prosecutor for the State that it is true that one accused Ravinder Singh also sustained firearm injury in this incident, for which an explanation has been given by the complainant Vidyaram in the FIR (Ex.P/1) itself that when the accused Ravinder Singh tried to catch the injured/complainant Virendra, at that time accused Vishwanath Singh fired by his country made pistol, due to which accused Ravinder Singh also sustained pellet injury. This explanation had been given at the first available opportunity at the time of lodging of the FIR (Ex.P/1) itself and if accidentally the accused Ravinder Singh sustained any firearm injury in the same incident caused by accused Vishwanath then certainly no adverse inference can be drawn against the prosecution for non-explanation of the injuries sustained to the accused Ravinder Singh in this incident and in such circumstances, the learned trial Court has rightly held all the five accused persons guilty for the offence punishable under Sections 148, 302 read with section 149 and 307 read with section 149 of IPC and no grounds are available for any interference in the impugned judgment passed by the trial Court; hence, prayed for dismissal of all the three appeals preferred by the appellants.

8. First of all, with regard to the death of Mihilal in this incident is concerned, this fact has not been controverted by the appellants/accused before this Court and further this fact has been proved by the prosecution on the basis of the statements of Vidyaram (PW-1), Brindavan (PW2), Virendra Singh (PW4) Gyan Singh (PW5), Shyam Sunder (PW10), Jaswant (PW12) and Devendra Singh (PW19). All these witnesses specifically stated that in this incident Mihilal sustained firearm injury on the face and on the head, due to which he died in this incident when the people were trying to take him to Gwalior for necessary treatment. The cause of death of Mihilal has been proved by the Autopsy Surgeon Dr.V.K.Deewan (PW11), who performed post-mortem examination of the dead body of deceased Mihilal and found entry wound caused by gun shot 0.5cm.x0.5cm. in size, on the right side of the forehead in 4cm.x9cm. Diameter area; second firearm injury on the face near the right eye having measurement of 2.5cm.x2 cm., and opined that due to the injuries found on the head and on the face, which resulted hemorrhage and shock, the deceased Mihilal died within 4 to 12 hours from the time of post-mortem examination. The death is also found to be homicidal in nature. He also extracted 12 pellets from the injuries sustained to the deceased in post-mortem examination, which after sealing them were handed over to the Police Constable for further examination in the laboratory and, also proved the post-mortem report (Ex.P/13).

9. Thus, on the basis of the aforesaid statements of prosecution witnesses, the prosecution has proved the fact that in this incident one Mihilal died due to firearm injuries sustained to him and his death is homicidal in nature.

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10. Now with regard to the involvement of the accused persons is concerned, prosecution firstly examined the injured eye witness Vidyaram (PW1), who had also lodged the FIR as Dehati Nalishi in the District Hospital at Bhind when he was admitted in the hospital for the necessary treatment. He specifically stated that in the village on the date of incident the marriage of the daughter of his uncle Gandhiram was being solemnized and the Barat came from village Airoli. Barat stationed in the school building. At about 10.00 p.m. Baratis with the band etc. came to have dinner in the house of Gandhiram. They complained that the accused persons had abused the Baratis because of heavy noise of the band concerned, at that time this witness Vidyaram together with other witnesses told Baratis that they would subside the matter and make the accused persons convinced and thereafter when Vidyaram himself with the other persons went to the house of accused Bhikhari to ask them as to why they had abused Barat people, at that time accused persons started abusing and firing. Accused Bhikhari @ Bhikham Singh and Visheshwar Singh were having guns with them, accused Ravinder Singh, Vishwanath Singh and Ramavtar Singh were having country made pistol with them. Accused Visheshwar Singh fired by his gun, due to which Mihilal sustained injury on his head, thereafter, accused Bhikhari @ Bhikham Singh also fired by his gun, due to which he himself sustained injury over the right leg near the knee joint. Thereafter, accused Visheshwar Singh again fired by his gun, due to which witness Virendra Singh sustained injury on the right leg then accused Ravinder Singh again fired by his country made pistol, due to which deceased Mihilal sustained injury, accused Vishwanath had also fired by his country made pistol, due to which witness Virendra Singh sustained injury on his left leg. It is true that there are some contradictions in the FIR (Ex. P/1) lodged by this witness Vidyaram and in his court statement. In the FIR (Ex. P/1) the incident is shown to be happened when the complainant party went to the house of accused Bhikhari @ Bhikham Singh whereas in the court statement Vidyaram (PW1) stated that when Barat's along with the band were coming to the house of Gandhiram to have dinner, at that time accused persons had firstly started abusing and thereafter started firing, due to which complainant party sustained firearm injuries and this appears to be the reason for the correction of the place of incident in the FIR (Ex. P/1), which was initially lodged in the District Hospital at Bhind by the complainant Vidyaram, wherein firstly the place of incident was shown to be in front of the house belonging to the complainant whereas subsequently it has been corrected as 'in front of the house of accused Bhikhari @ Bhikham Singh'. In detailed cross-examination in para 12, this witness Vidyaram specifically stated that there was sufficient light on the place of incident, therefore, identification of the accused at the time of incident is not found to be disputed specially when all the accused persons are the neighbours of the complainant party.

11. Similar is the statement of other injured witness Brindavan (PW2), who

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also stated the same facts that when the complainant tried to make the accused persons understand as to why they were abusing the Barat people, at that time accused persons started abusing and also started firing by their respective guns, due to which Mihilal sustained injuries on his head, Vidyaram (PW1) and he himself also sustained firearm injuries. In detailed cross-examination of this witness Brindavan, some minor omissions were brought in his previous statement and in the court statement, on which basis learned counsel for the appellants tried to convince us that his entire statement ought to be disbelieved but these minor omissions came in the cross-examination are the explanation, which is not expected to be given in the statement recorded under Section 161 Cr.P.C. by the Investigating Officer and thus, these minor omissions will not at all affect the veracity of the statement given by witness Brindavan (PW2) and Vidyaram (PW1), specially in the situation when both these witnesses are also injured in the same incident and sustained firearm injuries alleged to be caused by the accused persons and, in such circumstances, their presence on the spot also cannot be disputed.

12. Similarly, third injured witness Virendra Singh (PW4) also stated the same thing that all the accused persons started firing, due to which Mihilal sustained firearm injury on the head, Vidyaram and Brindavan also sustained firearm injuries and he himself sustained firearm injury alleged to be caused by the accused Vishwanath on the right leg. He had also denied the suggestion given by the defence in the cross-examination that the people in Barat were also firing by their respective gun, due to which the complainant party sustained firearm injuries, but only by this suggestion the whole prosecution story proved by the aforesaid injured witnesses cannot be disbelieved.

13. Gyan Singh (PW5), who is the eye witness of the incident is also the son of deceased Mihilal. He also stated the similar story that the accused persons had started firing, due to which his father Mihilal sustained injury on his head and Vidyaram, Brindavan and Virendra also sustained firearm injuries. After the incident, he had taken all the injured persons in a tractor to the District Hospital at Bhind for necessary treatment where his father Mihilal, when he was to be shifted to Gwalior, died on the way to Gwalior itself.

14. Roshan Singh (PW6) stated that he reached on the spot immediately after the incident and found Mihilal, Vidyaram, Brindavan and Virendra in injured condition, they had been taken to the hospital immediately in a tractor.

15. Medical witness Dr. Vinod Bajpai (PW7) posted at District Hospital Bhind examined firstly injured Mihilal, who subsequently died, and found multiple pellet injuries in the zygomatic area and also near the right eye and proved the MLC report of injured Mihilal, which is Ex.P/7. Similarly, this witness also examined second injured Brindavan S/o Ratiram and found multiple pellet injuries on the left thigh and proved MLC report Ex.P/8. Similarly he also examined third injured

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Virendra Singh S/o Gandhiram and found pellet injuries on the right leg and proved the report Ex.P/9. As according to this witness, the condition of Mihilal was found to be critical; therefore, he had been immediately referred for necessary treatment to the JA Hospital, Gwalior. Thus, the aforesaid medical witness also proved the injuries sustained to the witnesses Mihilal, Virendra Singh and Brindavan.

16. Prosecution witnesses Shyam Sunder (PW10) and Devendra Singh (PW19) are also the eye witness of the incident, who also stated that the accused persons started firing, due to which Mihilal, Vidyaram, Brindavan and Virendra sustained firearm injuries. Jaswant (PW12) is also the son of deceased Mihilal, who reached on the spot immediately after the incident and found his father in injured condition.

17. Dr. R.S.Swamkar (PW13) is the medical witness, who proved the x-ray report of injured Virendra Singh S/o Gandhiram and found radio opaque on x-ray examination near the right fibula bone and proved the x-ray report Ex.P/15. Similarly, on x-ray examination of Brindavan S/o Ratiram found radio opaque near the left thigh and proved the x-ray report Ex.P/17; on x-ray examination of Vidyaram S/o Balram also found radio opaque near the right knee joint and proved the x-ray report Ex.P/19.

18. Gandhiram (PW14) is also the eye witness of the incident but he turned hostile and not proved anything in favour of the prosecution. Devlal Dhanole (PW15) only proved the registration of the FIR at Police Station Phooof, which is Ex.P/22 and also proved the arrest memo of accused Ravinder Singh, which is Ex.P/23. Janved (PW16) only proved the fact that he saw the injured person lying on the spot but had not proved as to who had caused the aforesaid injury to the complainant and he has been declared hostile by the prosecution. Nathe Khan (PW17) is the Village Patwari, who prepared the spot map Ex.P/25. Umesh Singh (PW18) proved the seizure memo Ex.P/27 with regard to the clothes sent from JA Hospital, Gwalior belonging to the deceased Mihilal. Shrikuwri (PW20), Ramkaran (PW21) and Ramkishan (PW22) are also shown to be the eye witnesses of the incident but they had not supported the prosecution story and had been declared hostile by the prosecution. R.K.Shakya, ASI (PW24) is the Investigating Officer, who proved the investigating part of the incident.

19. Defence had also examined Sughar Singh (DW1), who is also one of the accused in this incident, to prove that he had never handed over his gun to accused Bhikhari @ Bhikham Singh but before the incident his gun had already been deposited at Police Station Phooof on 13.7.1995 itself, for which he had proved the receipt issued by the Police Station, which is Ex.D/1-c and, in such circumstances, this accused Sughar Singh had been acquitted by the trial Court itself from the charge under Sections 29 and 30 of the Arms Act.

20. Prakash (DW2) tried to prove the fact that accused Ramavtar was in his house at the time of incident, but this explanation has not been given by Ramavtar

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in his statement recorded under Section 313 Cr.P.C. Similarly, witness Baburam (DW3) was produced for to prove the point of alibi taken in respect of accused Vishwanath but as there is no specific defence of these accused Ramavtar and Visheshwar Singh in their statement recorded under Section 313 Cr.P.C. , therefore, the statements of these two defence witnesses Prakash (DW2) and Babu Ram (DW3) have been found to be after thought and rightly disbelieved by the trial Court.

21. B.S.Bhatnagar (DW4) proved the x-ray report of accused Ravinder Singh and Dr.Vinod Bajpai (DW5) proved the injuries sustained to accused Ravinder Singh S/o Darshan Singh, for which proved the MLC report (Ex.D/9-c).

22. Learned counsel for the appellants stressed upon the fact that as in the initial FIR lodged by witness Vidyaram place of incident is shown to be in front of the house of complainant but subsequently in the FIR this place has been corrected by the Investigating Officer R.K.Shakya as in front of the house of accused Bhikhari and this material alteration in the report Ex.P/1 appears to be substantial alteration, hence on this ground the whole prosecution story ought to be disbelieved.

23. We are not much impressed by the aforesaid submission made by learned counsel for the appellants. It is true that there is some overwriting in the FIR (Ex.P/1). Initially the place of incident is shown to be in front of the house of complainant but subsequently it is mentioned as in front of the house of accused Bhikhari, but on perusal of this FIR coupled with the spot map (Ex.P/11) prepared by the Investigating Officer the position becomes clear that the alleged incident had taken place on the way in front of the house of Bhikhari and this has got further support by the statements of the witnesses that the incident occurred because of the fact that when Barat came on the road with the band, due to the noise of the band the accused persons got annoyed and started firing on the people in the Barat and, in such circumstances, when the Investigating Officer found the place of incident in front of the house of accused Bhikhari @ Bhikham Singh then certainly it cannot be presumed that the Investigating Officer had deliberately changed the place of incident and, therefore, on the basis of correction in the FIR (Ex.P/1) with regard to the place of incident, the appellants/accused will not get any benefit and on this ground the whole prosecution story cannot be disbelieved specially when the third injured eye witness specifically stated with regard to the involvement of all the accused persons in this incident.

24. Learned counsel for the appellants also stressed upon the fact that due to some interpolation or correction in the FIR by the Investigating Officer, which has not been properly explained, the whole prosecution case ought to be thrown out and it appears that the FIR had been registered after considerable delay. In support of the aforesaid contention learned counsel for the appellants placed reliance on the decision of the Hon'ble Apex Court in *Ramesh Baburao Devaskar and others*

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vs. State of Maharashtra, reported in {(2009) 1 SCC (Cri) 212} and *Dinesh and others vs. State of Haryana*, reported in AIR 2002 SC 2374, wherein the Hon'ble Apex Court held that "if it is found that the FIR has been lodged after considerable delay and compliance of the provisions of Section 157 Cr.P.C. is also not proved then the prosecution story appears to be doubtful."

25. On consideration of the facts of the present case it is apparent that as per the statements of injured eye witnesses available in the present case three persons sustained firearm injuries in the incident and one Mihilal died due to firearm injury; the identity of the accused persons is also not disputed; in such circumstances, only on the basis of some correction in the place of incident in the FIR it is not found proved that the FIR had been lodged after considerable delay and in such circumstances, the aforesaid case law cited by learned counsel for the appellants is not applicable to the facts of the present case.

26. Learned counsel for the appellants also placed reliance on the Division Bench decision of this Court in case of *Nabab Khan alias Nawab and others vs. State of MP*, reported in [2002(1) C.Cr.J. 310 (M.P.)], wherein this Court held that "if there is material contradiction in the statements of eye witnesses and in the medical reports of the injured then the statements of the eye witnesses are not found to be reliable."

27. We are of the considered opinion that in the present case the statements of the injured eye witnesses have got full corroboration by the statement of medical evidence. Though it is true that in the requisition memo for medico legal examination the crime number has not been mentioned by the Investigating Officer but by itself the prosecution story is not found to be doubtful because of the fact that the FIR had been registered as Dehati Nalishi report, wherein the crime number has not been mentioned. The crime number can be mentioned only after registration of the FIR at police station whereas Dehati Nalishi report has been lodged at the District Hospital Bhind and, in such circumstances, non-mentioning of the crime number in the memo of requisition for the examination of the injured and the deceased is also not found to be fatal for the prosecution. Therefore, the facts of the aforesaid case law cited by learned counsel for the appellants are also different to the facts of the present case.

28. At this juncture, it is profitable to place reliance on the decision of the Hon'ble Apex Court in *Amar Singh v. Balwinder Singh and others*, 2003 Cri.L.J.1282; wherein the Hon'ble Apex Court while explaining the procedure regarding inquest report by the Investigating Officer, wherein if the name of the assailant has not been mentioned it is not found to be fatal for the prosecution, and held here as under :-

"The High Court has also held hat the details about the

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occurrence were not mentioned in the inquest report which showed that the investigating officer was not sure of the facts when the inquest report was prepared and this feature of the case carried weight in favour of the accused. We are unable to accept this reasoning of the High Court. The provision for holding of an inquest and preparing an inquest report is contained in Section 174, Cr.P.C. The Heading of the Section is "Police to enquire and report on suicide, etc." Sub-section (1) of this Section provides that when the officer in charge of a police station or some other police officer specially empowered by the State government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give information to the nearest Executive Magistrate and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death describing such wounds, fractures, bruises, and other marks of injury as may be found on the body and stating in what manner, or by what weapon or instrument (if any), such mark appear to have been inflicted. The requirement of the section is that the police officer shall record the apparent cause of death describing the wounds as may be found on the body and also the weapon or instrument by which they appear to have been inflicted and this has to be done in the presence of two or more respectable inhabitants of the neighbourhood. The Section does not contemplate that the manner in which the incident took place or the names of the accused should be mentioned in the inquest report. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely whether it is suicidal, homicidal, accidental or by some machinery, etc. The scope and purpose of Section 174, Cr.P.C. was explained by this Court in *Podda Narayana and others v. State of Andhra Pradesh*, AIR 1975 SC 1252 and it will be useful to reproduce the same.

"The proceedings under Section 174 have a very limited

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scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 74. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report.

It is therefore not necessary to enter all the details of the overt acts in the inquest report. Their omission is not sufficient to put the prosecution out of Court."

29. In view of the aforesaid decision of the Hon'ble Apex Court, we are of the considered opinion that non-mentioning of the crime number and the names of assailants in the inquest report or memo prepared for the medico legal examination of the injured by the Investigating Officer is not found to be fatal for the prosecution and only by this omission the whole prosecution case cannot be thrown out.

30. Learned counsel for the appellants further stressed upon the fact that in the statement of prosecution witness Devendra Singh (PW19) it has come that before coming to the District Hospital at Bhind this witness went to the Police Station at Phoof in the night itself, informed the police and thereafter he came to the District Hospital Bhind and if that being so, when this witness Devendra Singh (PW19) informed the Police Station at Phoof then certainly the FIR could be lodged by this witness Devendra Singh which would be first in time, had been suppressed by the prosecution and in such circumstances also the prosecution story as set forth by the prosecution appears to be doubtful, for this learned counsel for the appellants also placed reliance on the Division Bench decision of this Court in *Mantaram and others vs. State of MP*, reported in 1998 (2) J.L.J. 313, wherein it is held that "if one eye witness had an opportunity to reach at the police station and no FIR had been recorded at his instance, the FIR had been recorded when police came on the spot then certainly the prosecution story is found to be doubtful".

31. On evaluation of the statement of witness Devendra Singh (PW19) it is apparent that though he admitted that he reached at Phoof Police Station in the same night but he had not admitted the fact that he met there to the concerning Incharge of Police Station R.K. Shakya, ASI (PW24) or not. Devendra Singh (PW19) has also not stated that he had stated there at Police Station Phoof about the incident to any of the police officer and, in such circumstances, it is not on record that Devendra Singh had reported any FIR at Police Station Phoof in the

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night itself, which has been suppressed by the prosecution and in such circumstances, when lodging of the FIR by Devendra Singh in the night itself is not proved; no question arises with regard to suppression of the FIR by the prosecution and, in view of that, the aforesaid case law cited by learned counsel for the appellants is not applicable to the facts of the present case.

32. Learned counsel for the appellants also placed reliance on the Division Bench decision of this Court in *Neeraj vs. State of MP*, reported in 1991 J.L.J. 564, wherein the Division Bench of this Court had acquitted the accused persons on the ground that "if the case fully rests upon the circumstantial evidence and if the chain of circumstantial evidence is not complete then the accused cannot be found guilty on the basis of such incriminating circumstances."

33. We are of the considered opinion that the facts of the aforesaid case are also different to the facts of the present case. In the present case, statements of two injured eye witnesses are available and other eye witness is also found to be reliable; the identity of the accused persons is also not doubtful as they belong to the same village and are also neighbours of the complainant party and in such circumstances, also the facts of the aforesaid case are not applicable to the facts of the present case because the present case is not based upon the circumstantial evidence only.

34. Learned counsel for the appellants also placed reliance on the decision of the Hon'ble Apex Court in *State of Andhra Pradesh vs. Punati Ramulu and others*, reported in AIR 1993 SC 2644, wherein the Hon'ble Apex Court held that "police cannot refuse to record the FIR on the ground that the concerning police station has no territorial jurisdiction over the place of crime, whereas it is his bounden duty to record FIR of the cognizable offence."

35. On perusal of the facts of the aforesaid case, it is apparent that in the present case Devendra Singh (PW19) has nowhere stated that he had lodged FIR or stated about the incident to Police Station Phooof or to Investigating Officer R.K. Shakya, ASI (PW24) and; if that being so then no question arises for refusal to record the FIR alleged to be lodged by Devendra Singh (PW19) and, in such circumstances, the aforesaid case law cited by learned counsel for the appellants is also not applicable to the facts of the present case.

36. As discussed herein above, learned counsel for the appellants also stressed upon the fact that in the post-mortem report of deceased Mihilal it is not apparent that he sustained two firearm injuries but we are of the considered opinion that the eye witnesses specifically stated about causing of firearm injuries to Mihilal by two accused persons and thus the statements of eye witnesses ought to be believed. For this, reliance can be placed upon a decision of the Hon'ble Apex Court in *State of UP vs. Harban Sahai and others*, reported in {(1998) 6 SCC 50}, wherein the Hon'ble Apex Court while setting aside the order of acquittal

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passed by the High Court held here as under :-

"The High Court has thus knocked out an eyewitness on the strength of an uncanny opinion expressed by a medical witness. Overdependence on such opinion evidence, even if the witness is an expert in the field, to checkmate the direct testimony given by a eyewitness is not a safe modus adoptable in criminal cases. It has now become axiomatic that medical evidence can be used to repel the testimony of eyewitnesses only if it is so conclusive as to rule out even the possibility of the eyewitness's version to be true. A doctor who conducted post-mortem examination or examined an injured person is usually confronted with such questions regarding different possibilities or probabilities of causing those injuries or post-mortem features which he noticed in the medical report. But the answers given by the witness to such questions need not become the last word on such possibilities. After all he gives only his opinion regarding such questions. But to discard the testimony of an eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice. (Vide *Piara Singh v. State of Punjab*, (1977) 4 SCC 452; *Mage v. State of Haryana*, (1979) 4 SCC 349; *Ram Dev v. State of U.P.*, 1995 Supp (1) SCC 547."

37. In view of the aforesaid principle laid down by the Hon'ble Apex Court, we are of the considered opinion that if there might be some discrepancies in the statements of medical witness and that of eyewitnesses then also if the eye witness account is found to be believable then it should be relied upon.

38. Learned counsel for the appellants also stressed upon the fact that as per the statement of medical evidence Dr. Vinod Bajpai (DW5), it is proved that the accused Ravinder Singh S/o Darshan Singh also sustained some pellet injury on the right side of the face, for which concerning Dr. Vinod Bajpai (DW5) proved the MLC report Ex.D/10 and x-ray report Ex.D/11, and submits that the prosecution has failed to explain as to under what circumstances accused Ravinder Singh sustained aforesaid injury and, in view of that, it should be presumed that the prosecution has deliberately suppressed the genesis of the incident and on this ground also the whole prosecution story ought to be disbelieved.

39. We are not much impressed by the aforesaid submission made by learned counsel for the appellants. In the initial FIR, which had been lodged by the eye witness Vidyaram (PW1), he had clarified about the injury sustained to accused

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Ravinder Singh and stated that when accused Ravinder Singh tried to catch the complainant/injured Virendra Singh, at that time accused Vishwanath Singh had fired by his country made pistol, due to which accused Ravinder Singh sustained pellet injury in place of complainant Virendra Singh. This FIR had been lodged at about 6.00 o'clock in the morning at the District Hospital Bhind, wherein the complainant Vidyaram had clarified about the circumstances under which the accused Ravinder Singh sustained the aforesaid injury. This has got further support by the statement of Virendra Singh (PW4), wherein he clarified that when accused Ravinder Singh tried to catch him, at that time accused Vishwanath Singh had fired by his country made pistol, due to which accused Ravinder Singh sustained the pellet injury (para 10 of cross-examination). Similar is the explanation given by another witness Shyam Sunder (PW10) in cross-examination para 5, wherein he also clarified that when accused Ravinder Singh ran towards complainant Virendra Singh to catch him, at that time accused Vishwanath Singh fired by his pistol, due to which some pellets caused injury to accused Ravinder Singh also. Similar is the explanation in the statement of Jaswant (PW12) in para 4.

40. It is not the defence of the accused persons that the complainant party was also armed with any firearm and had also caused any injury to accused Ravinder Singh and, in such circumstances, we are of the considered opinion that the injury sustained to accused Ravinder Singh, which is proved by the statement of Dr. Vinod Bajpai (DW5) and had been properly explained by the prosecution witnesses, will not affect the truthfulness of the prosecution story as narrated by the eyewitnesses and the appellants will not get any benefit on the basis of the injuries sustained to the accused Ravinder Singh.

41. In view of the aforesaid discussion on the point, we are of the considered opinion that the prosecution has successfully proved the fact that these appellants/accused with the common object of causing firearm injuries to the complainant party, formed an unlawful assembly and caused firearm injuries to deceased Mihilal, due to which he died and also caused injuries with intent to cause death, to the other injured complainants Vidyaram, Brindavan and Virendra Singh and thereby committed an offence punishable under Sections 148, 302 read with Section 149 and section 307 read with section 149 of IPC and, thus, the learned trial Court has rightly held them guilty for the aforesaid offences and rightly sentenced them and no grounds are available for any interference in the impugned judgment of conviction and sentence passed by the learned trial Court.

42. Resultantly, Criminal Appeal No.163/99 preferred by appellant Bhikhari @ Bhikhamsingh, Criminal Appeal No.192/99 preferred by appellants Ravindersingh, Vishwanathsingh and Ramavtarsingh, and, Criminal Appeal No.219/99 preferred by appellant Visheshwar Singh are being devoid of any merit and substance hereby dismissed and the impugned judgment of conviction and sentence passed by trial Court is hereby affirmed.

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43. Appellant Bhikhari @ Bhikham Singh of Criminal Appeal No.163/99 and appellant Vishwanath Singh of Criminal Appeal No.192/99 are on bail, their bail bonds stand cancelled and they are directed to surrender themselves immediately before the trial Court and the trial Court will send them to jail for serving remaining part of the jail sentence awarded to them by this judgment, failing which the trial Court will take necessary steps for their arrest. Appellant Ravinder Singh of Criminal Appeal No.192/99 and appellant Visheshwar Singh of Criminal Appeal No.219/99 are already in jail, they will accordingly serve the remaining part of the jail sentence.

44. Appellant Ramavtar Singh of Criminal Appeal No.192/99 is reported to be released on probation by the Competent Authority. It is made clear that dismissal of appeal preferred by him will not affect his release on probation by the Competent Authority in any manner.

Appeal dismissed.

I.L.R. [2009] M. P., 3426

APPELLATE CRIMINAL

Before Mr. Justice Rakesh Saxena & Mr. Justice K.S. Chauhan

23 September, 2009*

PAVINDER AHLUWALIA

Vs.

STATE OF M.P. & anr.

... Appellant

... Respondents

A. Penal Code (45 of 1860), Section 376 - Rape - Prosecutrix alleged that she was thrown on the ground and rape was committed - No injury on the body of the prosecutrix found - No seminal stains or spermatozoa detected on her clothes or in slides prepared of her vaginal swab - No injury on her private part - Acquittal of appellant of offence u/s 376 by trial Court proper - Appeal by State dismissed. (Para 16)

क. दण्ड संहिता (1860 का 45), धारा 376 - बलात्संग - अभियोक्त्री ने अभिकथन किया कि उसे जमीन पर पटका गया और बलात्संग किया गया - अभियोक्त्री के शरीर पर कोई क्षति नहीं पायी गयी - उसके कपड़ों पर या उसके वेजाइनल स्वेब से तैयार की गयी स्लाइडों में कोई वीर्य सम्बन्धी धब्बा या शुक्राणु का पता नहीं लगा - उसके गुप्तांग पर कोई क्षति नहीं - विचारण न्यायालय द्वारा धारा 376 के अन्तर्गत अपराध से अपीलार्थी की दोषमुक्ति उचित - राज्य की अपील खारिज।

B. Evidence Act (1 of 1872), Section 64 - Objection as to admissibility of document - Certificates issued by army authorities were exhibited by trial Court as no objection with regard to their admissibility was raised by respondents - Question regarding admissibility of documents cannot be raised at appellate stage. (Paras 22 to 24)

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ख. साक्ष्य अधिनियम (1872 का 1), धारा 64 - दस्तावेज की ग्राह्यता सम्बन्धी आक्षेप - विचारण न्यायालय द्वारा थल सेना प्राधिकारियों द्वारा जारी प्रमाण पत्र प्रदर्शित किये गये क्योंकि उनकी ग्राह्यता के सम्बन्ध में प्रत्यर्थी द्वारा कोई आक्षेप नहीं किया गया - दस्तावेजों की ग्राह्यता सम्बन्धी प्रश्न अपीलीय प्रक्रम पर नहीं उठाया जा सकता।

C. Evidence Act (1 of 1872), Section 11 - Plea of alibi - Burden to proof is on accused but it stands discharged by showing preponderance of probability in favour of the plea on the basis of the material on record.

(Para 25)

ग. साक्ष्य अधिनियम (1872 का 1), धारा 11 - अन्यत्र उपस्थित होने का अभिवाक् - साबित करने का भार अभियुक्त पर है किन्तु यह अभिलेख पर उपलब्ध सामग्री के आधार पर अभिवाक् के पक्ष में अधिसंभाव्यता की प्रबलता दर्शाकर उन्मोचित हो जाता है।

D. Penal Code (45 of 1860), Section 376 - Rape - Appellant and prosecutrix residents of Delhi - Prosecutrix was called at Jhansi by the appellant for procuring job for her brother or in the alternative for refund of amount which prosecutrix has given to appellant - Railway ticket of train alleged to be of appellant produced by prosecutrix - Held - Railway ticket did not contain name of appellant - Merely because age of passenger was about 40 years would not prove that ticket belonged to appellant - Ticket also not seized from the place of incident but was produced by prosecutrix - Prosecution failed to prove that railway ticket was of appellant.

(Para 26)

घ. दण्ड संहिता (1860 का 45), धारा 376 - बलात्संग - अपीलार्थी और अभियोक्त्री दिल्ली के निवासी - अपीलार्थी द्वारा अभियोक्त्री को उसको भाई के लिए नौकरी उपाप्त करने या विकल्प में रकम, जो अभियोक्त्री ने अपीलार्थी को दी है, की वापसी के लिए झाँसी बुलाया गया - रेलगाड़ी का रेल टिकट जो अपीलार्थी का होना कथित किया गया, अभियोक्त्री द्वारा पेश किया गया - अभिनिर्धारित - रेल टिकट में अपीलार्थी का नाम अन्तर्विष्ट नहीं - केवल इसलिए कि यात्री की आयु लगभग 40 वर्ष थी यह साबित नहीं होता कि वह टिकट अपीलार्थी का था - टिकट भी घटनास्थल से अभिग्रहीत नहीं किया गया बल्कि अभियोक्त्री द्वारा पेश किया गया - अभियोजन यह साबित करने में असफल हो गया कि रेल टिकट अपीलार्थी का था।

E. Penal Code (45 of 1860), Section 354 - Attempt to outrage modesty - Prosecutrix having grudge against appellant - Her evidence with respect to rape already disbelieved by trial Court - Prosecutrix not a truthful witness - Plea of alibi taken by appellant appears probable - Unsafe to convict appellant u/s 354 - Appellant acquitted - Appeal allowed.

(Para 28)

ड. दण्ड संहिता (1860 का 45), धारा 354 - लज्जा भंग करने का प्रयत्न - अभियोक्त्री अपीलार्थी के विरुद्ध दुर्भाव रखती थी - विचारण न्यायालय द्वारा बलात्संग सम्बन्धी उसके साक्ष्य पर पूर्व में ही अविश्वास किया गया - अभियोक्त्री सच्ची साक्षी नहीं - अपीलार्थी द्वारा लिया गया अन्यत्र उपस्थित होने का अभिवाक् अधिसंभाव्य प्रतीत होता है - अपीलार्थी को धारा 354 के अन्तर्गत दोषसिद्ध करना असुरक्षित - अपीलार्थी दोषमुक्त - अपील मंजूर।

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(2002) 8 SCC 165, AIR 1997 SC 322, (2003) 8 SCC 180, (1972) 1 SCC 9, (2003) 8 SCC 752, AIR 1977 SC 1614, AIR 2003 SC 507.

Anil Khare & Namrata Kesharwani, for the appellant.

J.K. Jain, Dy.A.G., for the respondent No.1.

Manish Datt & Siddharth Datt, for the respondent No.2 / Complainant.

J U D G M E N T

The Judgment of the Court was delivered by **RAKESH SAKSENA, J.** :- Since both the appeals arise out of a common judgment passed by the Court below, they are being disposed of by this common judgment.

2. Criminal Appeal No. 1854/2008 has been filed by the State against the impugned judgment dated 6.2.2008, passed by the Additional Judge to the court of I Additional Sessions Judge, Tikamgarh, in Sessions Trial No. 278/01, acquitting the respondent/accused Pavinder Ahluwalia of the offence under Section 376 of the Indian Penal Code.

3. Criminal Appeal No.401/2008 has been filed by accused Pavinder Ahluwalia against the same judgment whereby the trial Court convicted him under Section 354 of the Indian Penal Code and sentenced him to rigorous imprisonment for two years with fine of Rs.25,000/-. In default of payment of fine, further rigorous imprisonment for six months.

4. In short, the facts of the case are that the prosecutrix (PW-1) resided at Delhi. She was working as a Personal Assistant in the Civil Aviation at Palam Airport, Delhi. In November 1998, she consulted accused, who was an army officer, about getting her brother Suresh employed in some Government job. According to her, for that purpose she paid Rs.60,000/- to him at Delhi, but he did not procure any job for her brother. She, therefore, demanded her money back. Accused assured her that he would get a job for her brother at Jhansi, else he would take the money back from the person to whom he had paid. He asked her to come to Jhansi. On 12.3.1999, she boarded Mangla Express Train from Delhi and reached Jhansi on the same day at about 4.00 p.m.. She stayed at Raj Palace Hotel. On 13.3.1999, at about 10.30 a.m., accused also reached Jhansi by Shatabdi Express Train. Prosecutrix met accused at railway station. It is said that at about 4.45 p.m. accused made a telephone call to prosecutrix calling her at Elite Square at about 5.00 p.m.. At the appointed place, accused came in a Maruti Van and asked her to accompany him for meeting the person to whom he had paid the money, who, according to him, resided about 10-15 Kms. away from the township. He told to her that the said person would be available at about 7.30 p.m., therefore, they could have a trip to Orchha to see lighting. They reached Orchha and went to the other side of the river. Accused parked the Maruti Van by the side of the road in the forest and took her inside a place which was surrounded by fencing

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and grappled with her, as a result of which her shirt got torn. He threw her to the ground and after removing her 'Salwar' and Panty committed rape on her. She shouted, but nobody heard. After committing the offence, accused made her to smell something whereby she felt giddiness and he ran away. She, then went to Police Station, Orchha and lodged the first information report (Ex.P/1) at 20.30 hours and also handed over to police a railway ticket of Shatabdi Express from New Delhi to Jhansi and a bill of Bank, which, according to her, had fallen from the pocket of accused at the spot. Police registered the offence against the accused under Section 376 of the Indian Penal Code. Prosecutrix was sent for medical examination where doctor seized her cloths and prepared a slide of her vaginal swab.

5. After recording the statements of witnesses, police came to conclusion that it was a case of false implication and there was no sufficient evidence to prosecute the accused, and filed the final report before the Court of Magistrate. Since police did not take any action against the accused, prosecutrix filed the complaint before the Court of Judicial Magistrate First Class, Orchha. Learned Magistrate, after recording the statement of prosecutrix under Section 200 of the Code of Criminal Procedure took cognizance and committed the case to the Court of Session.

6. During trial, accused abjured his guilt and pleaded false implication by the prosecutrix in connivance with Ashok Bhadoriya and Brijendra Singh. According to him, on the date of incident he was at Delhi as his maternal grandmother had died and that he was present there on his duty also. In his defence, he examined DW-1 O.P. Popli, DW-2 Mani Kandan, DW-3 Ved Prakash, DW-4 Sardar Manjeet Pal Singh and DW-5 Mohanlal Pandey. He also exhibited documents from Exhibits D/1 to D/25.

7. Prosecution, to substantiate its case, examined 8 witnesses viz PW-1 prosecutrix (complainant), PW-2 Surendra Kumar Tiwari, PW-3 Jaihind Singh, PW-4 Rajesh Kumar, PW-5 lady constable Madhuri, PW-6 Head Constable Ram Prasad Shukla, PW-7 J.P. Ukey, Investigating Officer and PW-8 Dr. Madhu Jain.

8. Trial Court, though held the prosecution story about rape false, yet held that the accused had outraged the modesty of the prosecutrix and was, therefore, liable to be convicted under Section 354 of the Indian Penal Code and accordingly acquitted him of the offence under Section 376 of the Indian Penal Code, but convicted and sentenced him under Section 354 of the Indian Penal Code, as mentioned above.

9. Learned counsel for the accused submitted that the evidence of prosecutrix (PW-1) was wholly unreliable. She was inimically disposed towards the accused therefore she levelled false allegation of rape against him at the behest of Ashok Bhadoriya and Brijendra Singh, who were on inimical terms with him. He submitted that the evidence of prosecutrix was totally belied by the medical evidence, as it was established by the evidence of Dr. Madhu Jain (PW-8) and FSL report (Ex.

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P/11) that she was not subjected to sexual intercourse. In convicting the accused under Section 354 of the Indian Penal Code, while finding the accusation of rape false, trial Court acted on surmises and conjectures. From the evidence of prosecutrix itself, it was established that she entertained grudge against the accused. Therefore, in the circumstances of the case, no reliance could have been placed on her uncorroborated sole testimony. He submitted that the trial Court committed serious error in holding that the railway ticket (Ex. P/2), handed over by the prosecutrix to police, belonged to accused, in the absence of reservation record of the railway. Merely by the production of the said railway ticket and the document Ex. P/3 by the prosecutrix, it could not have been presumed that the accused was present at the place of alleged incident, since these documents were not seized from the spot. Learned counsel further submitted that the trial Court wrongly disbelieved the evidence of defence witnesses and the documents produced by the accused in defence, which clearly established that the accused, at the relevant time, was present in Delhi. Placing reliance on the ratio of *Jayantibhai Bhenkarbhai vs. State of Gujarat*-(2002) 8 SCC 165, he submitted that in the facts and circumstances of the case, by the evidence adduced by the accused in support of his plea of alibi, at least a reasonable doubt was created about the truthfulness of the prosecution case. Therefore, accused was entitled to be acquitted.

10. On the other hand, learned counsel for the State and the learned counsel for the complainant contended that the evidence of PW-1 prosecutrix was reliable. Even if her evidence was not corroborated by the medical evidence, it could not have been discarded altogether. There was no reason for her to have put her prestige at stake by making false allegation of rape against the accused. Presence of accused at Orchha was established by the documents Ex. P/2 and Ex. P/3, which were handed over by the prosecutrix to police immediately after the incident. Counsel submitted that the documents produced by the accused in his defence were not legally admissible and reliable, as no witness, who himself had seen the accused at Delhi was examined in the court. By mere production of certificates and documents, the plea of alibi taken by the accused was not established. They placed reliance on *Binay Kumar Singh Vs. State of Bihar*-AIR 1997 SC 322 and submitted that strict proof is required for establishing the plea of alibi. They submitted that the trial Court committed error in acquitting the accused of the offence under Section 376 of the Indian Penal Code.

11. We have heard learned counsel of both the sides and perused the oral and the documentary evidence on record carefully.

12. This case rests on the solitary testimony of the prosecutrix (PW-1). According to her, in the year 1998, accused assured her for securing a job in army for her brother and for that purpose he obtained Rs.60,000/- from her. For one year he did not arrange for the job. On asking in the year 1999, he told her that

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they would have to go to Jhansi. Therefore, on 12.3.1999, she went to Jhansi and stayed there in Hotel Raj Palace. Next day, accused also reached there. She met him at railway station at about 10.30 a.m.. At about 4.00 p.m., when she was at hotel, she received a call from the accused. He called her at Elite Square. When she met him there, he told that it would take some time to meet that person. He suggested that in the meantime, they may visit Orchha. In the car, they went to Orchha. After crossing the river, accused stopped the car near the forest and took her in a hut. While they were sitting in the hut, suddenly accused grappled with her and threw her on the ground and after pulling out her Salwar and underwear, committed rape on her. She shouted, but nobody heard. Accused made her to smell something in his handkerchief, due to which she felt reeling and he went away. When prosecutrix came out of the hut, she found a railway ticket and a bill, which belonged to accused. She picked them up and went to police station and lodged the report (Ex. P/1) and handed over the railway ticket (Ex. P/2) and the bill (Ex. P/3) to police, which were seized. Next day, she was sent to Government Hospital for medical examination. After lodging the report with the police, she also filed a complaint in the Court.

13. Learned counsel for the accused pointed out that the evidence of prosecutrix was belied by the medical evidence of Dr. Madhu Jain (PW-8), as absolutely no mark of any external or internal injury was found on the person of prosecutrix and further that the fact of rape was not confirmed by the FSL report (Ex. P/11).

14. Dr. Madhu Jain (PW-8), who was posted in District Hospital, Tikamgarh, deposed that on 14.3.1999 she conducted medical examination of prosecutrix, who was brought by Police Constable Madhuri. According to her, prosecutrix told to her that she had not taken bath and had not changed her cloths. Dr. Madhu Jain (PW-8) stated that she did not find any injury on the body of prosecutrix. There was no injury on her private parts also. Her hymen was old torn. She could not give any definite opinion about rape because prosecutrix was habitual to sexual intercourse. She did not find any sign of discharge on the private parts of the prosecutrix. She prepared slides of her vaginal smear and also seized her clothes and handed over to the constable. Prosecutrix, as revealed from the first information report, was a woman of about 37 years of age. Had there been grappling or had she been thrown to the ground and her clothes removed, certainly some telltale marks would have been found on her body. If she would have resisted the aggression made by accused, she would have naturally received some marks of injuries on her body as it would not have been easy for the accused to remove her clothes and commit the rape on her. According to prosecutrix, after commission of rape when she attempted to cry, accused made her to smell something in a handkerchief, which made her feel giddy. It sounds quite unnatural. If accused wanted to commit sexual intercourse with the prosecutrix against her wish, he could have used that thing, which made her giddy, before committing the offence.

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Besides that, prosecutrix stated that after the sexual intercourse by the accused, the discharge from her vagina had come on her clothes and also on the pubic hair. But, no seminal stains and spermatozoa were detected on her clothes or in the slides prepared of her vaginal swab in the chemical examination/FSL report (Ex. P/4). In these circumstances, the story of rape given by the prosecutrix clearly appeared to be false. Trial Court, therefore disbelieved the evidence of prosecutrix about commission of rape and acquitted the accused of the charge under Section 376 of the Indian Penal Code.

15. Since, except the evidence of prosecutrix there was no other evidence on record about the accusation of rape against the accused, in the opinion of this Court, trial Court was justified in acquitting him of the charge of rape. In *State of Rajasthan v. Raja Ram*-(2003)8 SCC 180, Apex Court held:

“The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*-(1973) 2 SCC 793, *Ramesh Babulal Doshi v. State of Gujrat*-(1996) 9 SCC 225 and *Jaswant Singh v. State of Haryana*-(2000) 4 SCC484.”

16. For the aforesaid reasons, Criminal Appeal No.1854/2008 filed by the State against the order of acquittal of accused under Section 376 of the Indian Penal Code is dismissed.

17. Now the question before this Court is whether the conviction of accused under Section 354 of the Indian Penal Code was justified. The arguments advanced by the learned counsel of the accused are (1) at the relevant time accused was at Delhi, he had not gone to Jhansi or Orchha. Therefore, the allegation of commission of any offence against him is false; and (2) that the evidence of prosecutrix, who was the solitary witness of the incident, was not reliable because it was belied by the medical and expert evidence.

18. In *Jayantibhai Bhenkarbhai v. State of Gujrat*-(2002)8 SCC 165=2002 Cri.L.J. 4734, the Apex Court held:

“The plea of alibi taken by the accused needs to be considered only when the burden which lies on the prosecution has been discharged satisfactorily. If the prosecution has failed in discharging its burden of proving the commission of crime by the accused beyond any reasonable doubt, it may not be necessary to go into the question whether the accused has succeeded in proving the defence of alibi. But once the prosecution succeeds in discharging

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its burden then it is incumbent on the accused taking the plea of alibi to prove it with certainty so as to exclude the possibility his presence at the place and time of occurrence. An obligation is cast on the court to weigh in scales the evidence adduced by the prosecution in proving the guilt of the accused and the evidence adduced by the accused in proving his defence of alibi. If the evidence adduced by the accused is of such a quality and of such a standard that the Court may entertain some reasonable doubt regarding his presence at the place and time of occurrence, the court would evaluate the prosecution evidence to see if the evidence adduced on behalf of the prosecution leaves any slot available to fit therein the defence of alibi. The burden of the accused is undoubtedly heavy. This flows from section 103 of the Evidence Act which provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence. However, while weighing the prosecution case and the defence case, pitted against each other, if the balance tilts in favour of the accused, the prosecution would fail and the accused would be entitled to the benefit of that reasonable doubt which would emerge in the mind of the Court."

19. Accused, in his defence under Section 313 of the Code of Criminal Procedure, stated that on the date of incident he was at Delhi as his maternal grand mother had died. Besides that, while cross examining the prosecutrix, he also suggested that on 13th March 1999 he was present at his military residence in 'Kashmir House' area. To substantiate his defence, he examined number of witnesses and produced documents:

20. Sardar Manjeet Pal Singh (DW-4), who was posted as Subedar in E-in-C Core-6 in the year 2005, deposed that accused was posted in the army as a Lieutenant Colonel. He produced some documents in a sealed cover. One of the documents was a certificate (Ex. D-16), issued by Brig. T.P.S. Chowdhury on 24th September 1999. According to this document, it was certified that as per the documents available in the headquarter, Lt. Col. Pavinder Ahluwalia, posted in E-in-C's Branch, Army HQ, had reported to the E-in-C Branch, Army Headquarter, New Delhi, on 13th March 1999. It was also certified that the official's permanent resident address was D-4 (Second Floor), Defence Colony, New Delhi. This certificate was further authorized by Brig. T.P.S. Chowdhury by his certificate dated 1.10.1999 (Ex. D/15). Though these documents were not executed before DW-4 Manjeet Pal Singh, yet, according to him, since Brig. T.P.S. Chowdhury was posted in the same office where he was posted, and he had seen him signing, he knew his signatures.

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21. A similar certificate (Ex. D/20) was also collected by the police during the investigation and was produced before the Court alongwith the final report submitted by the police before the learned Magistrate. It was proved by Mohan Lal Pandey (DW-5), who was the Station Officer of Police Station, Orchha between October 2000 to 31.12.2001. By the letter Ex. D-17, Col. G.K. Swami deputed Manjeet Pal Singh (DW-4) as an authorized representative of the army headquarter to produce the above documents pertaining to the confirmation of the attendance of Lt. Col. Pavinder Ahluwalia in the office on 13th March 1999 in E-in-C's Branch, IHQ of MoD (Army), Kashmir House, Rajaji Marg, before the court. According to Manjeet Pal Singh (DW-4), Col. G.K. Swami signed this letter before him. Col. G.K. Swami further sent a letter to the trial Court in response to the summons issued by the court stating that he had sent the certified copies of the documents, including the extract of In/Out Register of Kashmir House of 13th March 1999 and also the certificate given by Brig. T.P.S. Chowdhury to the police authorities of Tikamgarh after checking all the records of attendance of Lt. Col. Pavinder Ahluwalia (accused) in the office of E-in-C Branch on 13th March 1999. The trial court disbelieved the aforesaid documents on the ground that none of the aforesaid documents were executed by witness Manjeet Pal Singh (DW-4) and no person who himself executed the aforesaid document was produced before the court to prove the aforesaid documents, and that the copy of In/Out Register, which was annexed with Ex. D/19, as a proof of attendance of accused on duty, could not have been believed, as the entry of his name was the 'last entry of the day' which was a holiday.

22. Learned counsel for the State contended that the aforesaid documents were not admissible in evidence as they were not proved by the persons, who executed them and even if they were exhibited before the Trial Court, the contents thereof could not be read in the evidence in the absence of evidence of the persons who executed them.

23. Learned counsel for the accused contended that since no objection was taken by the State or the complainant before the trial Court regarding the admissibility of the above documents, that question could not be raised now. He placed reliance on *P.C. Purushothama Reddiar v. S. Perumal*-(1972)(1) SCC 9.

24. In *P.C. Purushothama Reddiar* (supra) certain police reports were admitted in evidence before the trial Court in the absence of the evidence of the Head Constable, who covered the meeting, in regard of which the reports were made by him. Those reports were marked without any objection. The Apex Court held that since the reports were marked without any objection, hence, it was not open to respondent to object their admissibility. The contention of the respondent that even if the reports in questions were admissible, their contents could not be looked into, was again found unacceptable and it was held that once a document was properly admitted, the contents of that document were also admitted in evidence,

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though contents might not be conclusive evidence. The above proposition of law was approved by the Apex Court in *R.V.E. Venketachala Gounder v. Arulmigu Niswesaraswami & V.P. Temple (and another)* (2003) 8 SCC 752 holding :

"Since documents Exts. A-30 and A-34 were admitted in evidence without any objection, the High Court erred in holding that these documents were inadmissible being photocopies, the originals of which were not produced."

25. In the light of the above legal position, in our opinion, learned trial Court committed error in not accepting and considering the documents produced by the accused in his defence. The burden of establishing the plea of alibi is of course on the accused, but that stands discharged by showing preponderance of probability in favour of the plea on the basis of the material on record. In *Binay Kumar Singh* (supra) it was held that:

"If the evidence adduced by the accused is of such a quality and of such a standard that the Court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy."

In the case in hand, the documentary evidence adduced by the accused militates against the version of prosecutrix that he was at Orchha and had committed the offence. In *Jayantibhai* (supra) Apex Court held that:

"An obligation is cast on the court to weigh in scales the evidence adduced by the prosecution in proving the guilt of the accused and the evidence adduced by the accused in proving his defence of alibi. If the evidence adduced by the accused is of such quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the place and time of occurrence, the court would evaluate the prosecution evidence to see if the evidence adduced on behalf of the prosecution leaves any slot available to fit therein the defence of alibi.....the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence. However, while weighing the prosecution case and the defence case, pitted against each other, if the balance tilts in favour of the accused, the prosecution would fail and the accused would be entitled to the benefit of that reasonable doubt which would emerge in the mind of the court."

26. The evidence of prosecutrix that after the incident she had found a railway

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ticket (Ex. P/2) and a bill (Ex. P/3), which belonged to accused, cannot, in our opinion, be accepted to prove the presence of accused at the place of occurrence beyond doubt. The railway ticket (Ex. P/2) did not contain the name of the accused. Trial Court assumed it to be of accused on the basis that it belonged to a male person of about 40 years of age and was of Bhopal Shatabdi Express. Trial Court, in our opinion, committed error in presuming it to be of accused on the ground that the age of the accused was about 38 to 40 years in the year 1999. Trial Court further committed error in placing burden on the accused to disprove that the ticket did not belong to him. It was for the prosecution to prove beyond doubt that the seized ticket belonged to accused. In our opinion, production and seizure of the ticket and the bill (Ex. P/3) belonging to accused also does not prove the presence of accused at the spot for the simple reason that it was not seized from the place of incident by the police, rather it was handed over by the prosecutrix to police while lodging report at the police station. Had these documents been seized by the police at the place of occurrence, it would have been an important piece of evidence, but handing over of these documents by the prosecutrix cannot be treated one and the same thing. The document Ex. P/3 is a statement of accounts of the Bank of accused. This document bears the date 30.9.1997. According to prosecutrix she had many occasions to meet accused and that she had also visited the house of accused at Delhi. In these circumstances, the possibility that it could have been obtained by her sometime in the past, cannot be ruled out.

27. From the prosecution case itself it is apparent that prosecutrix had handed over Rs.60,000/- to accused for securing a Government job for her younger brother, but accused did not do so. She demanded her money back, but instead of giving the money back, he asked her to go to Jhansi. It seems that prosecutrix entertained grudge against the accused, as he obtained money from her on the false assurance of securing job for her brother. Her evidence, with respect to the accusation of rape, was disbelieved by the trial Court holding that out of anger she had exaggerated. In these circumstances, in our opinion, the prosecutrix could not have been treated as a wholly reliable witness. In *Hanuman vs. State of Haryana*-AIR 1977 SC 1614 the Apex Court disbelieved the prosecutrix when she made exaggeration in her evidence, and acquitted the accused of the charge under Section 354 of the Indian Penal Code. In *Joseph vs. State of Kerala*-AIR 2003 SC 507 the Apex Court held :

“It is permissible for a court to record and sustain a conviction on the evidence of a solitary eyewitness. But, at the same time such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and intune with probability and inspire implicit confidence. By this standard when the prosecution case rests mainly on the sole testimony of an eyewitness it should be wholly reliable. Even though such witness is an injured witness

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and his presence may not be seriously doubted, when his evidence is in conflict with other evidence, the view taken by the trial Court that it would be unsafe to convict the accused on his sole testimony cannot be stated to be unreasonable."

28. Since it has been found that the prosecutrix was not a truthful witness and had gone to the extent of making a false accusation of rape against the accused, and that she entertained grudge against the accused, in our opinion, she cannot be termed a trustworthy and reliable witness, therefore, the plea advanced by the accused that at the relevant time he was at Delhi, to our mind, appears probable. In these circumstances, it would be unsafe to convict the accused on the sole testimony of the prosecutrix.

29. For the reasons stated herein above we are of the view that the prosecution failed to establish beyond a reasonable doubt that the accused committed the offence under Section 354 of the Indian Penal Code by outraging modesty of the prosecutrix. The view taken by the trial Court in holding accused guilty under Section 354 of the Indian Penal Code cannot be said to be reasonable one.

30. In this view of the matter, the appeal (Criminal Appeal No.401/2008) is allowed. The judgment of conviction and sentence passed by the trial Court against the appellant is set aside. He is acquitted.

31. For the reasons stated in Para-16 of this judgment, Criminal Appeal No.1854/08, filed by the State, is dismissed.

32. Accused is on bail. His bail bond and surety bond are discharged.

33. A copy of this judgment be placed in the record of Criminal Appeal No.1854/2008.

Appeal allowed.(Cri. A, 401/2008)

I.L.R. [2009] M. P., 3437

APPELLATE CRIMINAL

Before Mr. Justice R.C. Mishra

5.October, 2009*

FAREEDA

Vs.

STATE OF M.P.

..... Appellant

... Respondent

Penal Code (45 of 1860), Section 318, Evidence Act, 1872, Section 106 - Appellant convicted for concealment of birth of her child by secret disposal of dead body - Lady Doctor categorically opined that the appellant had delivered a full term child - Held - It is sufficient to show that a child was born - Offence becomes complete when birth of child is concealed by

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any means - It is not the law that the prosecution has to eliminate all possible evidence and circumstances which may exonerate appellant - If those facts are within the special knowledge of the appellant then she has to prove that - Non-explanation of the circumstances leading to removal of a newly born child from appellant's care and custody was the strongest possible circumstance to reject the plea of false implication - Conviction maintained - However, in the facts of the case, appellant released on probation of good conduct - Appeal partly allowed.
(Para 5)

दण्ड संहिता (1860 का 45), धारा 318, साक्ष्य अधिनियम, 1872, धारा 106 - अपीलार्थी को शव का गुप्त व्ययन करके अपने शिशु का जन्म छिपाने के लिए दोषसिद्ध किया गया - महिला चिकित्सक ने स्पष्ट रूप से राय दी कि अपीलार्थी ने एक पूर्ण अवधि के शिशु को जन्म दिया - अभिनिर्धारित - यह दर्शाना पर्याप्त है कि एक शिशु का जन्म हुआ - अपराध पूर्ण हो जाता है जब किसी साधन द्वारा शिशु का जन्म छिपाया जाता है - यह विधि नहीं है कि अभियोजन को सभी संभाव्य साक्ष्य और परिस्थितियाँ, जो अपीलार्थी को उन्मुक्त कर सकती हैं, दूर करनी होंगी - यदि वे तथ्य अपीलार्थी के विशिष्ट ज्ञान में हैं तब उसे ही उन्हें साबित करना होगा - हाल ही उत्पन्न हुए शिशु को अपीलार्थी की देखरेख और अभिरक्षा से हटाने वाली परिस्थितियों का स्पष्टीकरण न देना मिथ्या आलिंगन करने के अभिवचन को अस्वीकार करने के लिए प्रबलतम संभाव्य परिस्थिति थी - दोषसिद्धि कायम रखी गयी - तथापि, मामले के तथ्यों में, अपीलार्थी को सदाचरण की परीक्षा पर छोड़ा गया - अपील अंशतः मंजूर।

Cases referred :

AIR 1941 Madras 1, (1989) 1 Bom LR 155, AIR 1975 SC 1703.

S.C. Datt with Ajay Mishra, for the appellant.

G.S. Thakur, Panel Lawyer, for the respondent/State.

J U D G M E N T

R.C. MISHRA, J. :- This appeal has been preferred against the judgment dated 03.01.1995 passed by First Additional Sessions Judge, Khandwa in S.T. No.119/1993, whereby the appellant was convicted under Section 318 of the IPC and sentenced to undergo S.I. for 1 year. By this judgment only, the appellant was acquitted of the offence punishable under Sections 302 read with 109 whereas the co-accused namely Sheikh Mehboob was acquitted of the offences under Sections 302 and 201 of the IPC. Admittedly, no appeal has been preferred by the State against the order of acquittal.

2. The prosecution case, in short, is that on 27.06.1992 at about 6 p.m., dead body of a newly born child was found floating in a Well, situated near the house of Dandu Kahar in village Chhaigaon Makhan. Inquiry into the merg (death case), registered upon information given by Deepak (PW8) revealed that -

(a) the child was born out of an illicit relationship between the appellant and Sheikh Mehboob and

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(b) after giving birth to the child in the night intervening 26th and 27th June, 1992, she handed him over to Sheikh Mehboob.

3. Ikhtiyar Bi (PW7), mother of the appellant, did not corroborate the prosecution version. She even denied the factum of the appellant's pregnancy. However, Dr. Smt. Raksha Sharma (PW1), who had the occasion to examine her on 10.07.1992, categorically opined that the appellant had delivered a full term child within 14 to 21 days. In the cross-examination, she further explained that it was not a case of abortion. The physical features described by the lady doctor in the report (Ex.P-1) were sufficient to fortify her conclusion.

4. Deepak (PW8) reaffirmed the fact that it was he who had informed the police about the dead body. His statement drew support from the testimony of the Investigating Officer namely L.S. Chauhan (PW9), who further deposed that after inquest proceedings, body of the dead child was sent for post-mortem. In the opinion of Autopsy Surgeon Dr. S.K. Gupta (PW2), cause of the child's death was asphyxia on account of compression over chest, abdomen & skull and not due to drowning.

5. Placing implicit reliance on the decision of Madras High Court in *Emperor v. Kuppammal* A.I.R. 1941 Madras 1, learned Senior Counsel has strenuously contended that guilt of the appellant could not be held to be proved beyond a reasonable doubt in absence of cogent evidence as to (i) the identity of the dead child as her child and (ii) her presence near or about the well. However, these facts, though relevant to the charge of murder of a new born infant, were not required to be established in a trial relating to the offence of concealment of birth by secret disposal of child's dead body. As explained by the Division Bench of Bombay High Court in *Queen-Empress v. Radha* (1899) 1 Bom LR 155, to support a conviction under S.318 of IPC, it is sufficient to show that a child was born. In other words, the offence under S.318 becomes complete when birth of child is concealed by any means. This apart, it is not the law of the country that the prosecution has to eliminate all possible evidences and circumstances which may exonerate him. If those facts are within the special knowledge of the accused then he has to prove them. In this view of the matter, the non-explanation of the circumstances leading to removal of a newly born child from appellant's care and custody was the strongest possible circumstance to reject the plea of false implication (*Gajendra Singh v. State of U.P.* AIR 1975 SC 1703 referred to). Further, it was not her defence that custody of the child was given to the co-accused for his nurturing and upbringing. For these reasons, the conviction in question deserves to be maintained as well-merited.

6. The offence was committed at the time when the appellant was a young unmarried girl aged about 18 years. Taking into consideration the social impact of

VINOD Vs. STATE OF M.P.

the crime and other relevant circumstances including that a considerable period of nearly 17 years has already elapsed thereafter, interests of justice would be met that if she is released on probation.

7. In the result, the appeal is partly allowed. The impugned conviction of the appellant under Section 318 of the IPC is hereby affirmed but the consequent custodial sentence is set aside. Instead, it is directed that the appellant shall be released on probation of good conduct, under Section 4(1) of the Probation of Offenders Act, 1958, on her furnishing a personal bond of Rs.5,000/- to appear and receive sentence when called upon during the period of one year commencing from the date of bond and, in the meantime, to keep the peace and be of good behaviour with a surety in the like amount to the satisfaction of the trial Court.

8. Appellant Fareeda is directed to remain present for the purpose in the trial Court at Khandwa on 03.12.2009 at 11 a.m. positively.

Appeal partly allowed.

I.L.R. [2009] M. P., 3440
APPELLATE CRIMINAL
Before Mr. Justice S. Samvatsar
 1 December, 2009*

VINOD

... Appellant

Vs.

STATE OF M.P.

... Respondent

A. Evidence Act (1 of 1872), Section 119; Criminal Procedure Code, 1973, Section 282 - Examination of dumb & deaf witness - Procedure & precautions for recording evidence - Explained.

"Before recording the statement of deaf & dumb witness the Court is required to ascertain that he possesses the requisite amount of intelligence, and that he understands the nature of oath. Not only this, but he is also required to record the satisfaction to that effect. The Court is required to ascertain, if the witness either by writing or by sign, can make intelligible of what he has to speak. If he is able to communicate his statement perfectly by writing, it will be more satisfactory method of taking evidence. When such a witness is not able to write then he can make sign showing what he wants to say. If, it is by signs, those signs must be recorded and not only the interpretations of those signs. It is necessary to enable the appellate Court to know whether the interpretation of sign is correct or not. It is not safe for a Court to embark upon the examination of a deaf & dumb witness on his own without the help of an expert or a person familiar with his mode of conveying ideas to others in day to day life. However, such a person should not be an interested person,

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who had participated in the investigation and who is also a witness in the same trial. (Para 26)

क. साक्ष्य अधिनियम (1872 का 1), धारा 119, दण्ड प्रक्रिया संहिता, 1973, धारा 282 — मूक एवं वधिर साक्षी की परीक्षा — साक्ष्य अभिलिखित करने की प्रक्रिया और सावधानी — स्पष्ट की गयी।

B. Evidence Act (1 of 1872), Sections 3 & 119, Penal Code, 1860, Section 376(2)(g) - Appreciation of evidence of deaf & dumb witness - Signs and gestures made by prosecutrix are not recorded by trial Court - Therefore, cannot be examined by appellate Court while appreciating her evidence - Apart from that, it appears that no oath was administered to the Instructor, Deaf & Dumb Welfare Society - Evidence of the prosecutrix cannot be said to be legal evidence. (Para 31)

ख. साक्ष्य अधिनियम (1872 का 1), धाराएँ 3 व 119, दण्ड संहिता, 1860, धारा 376(2)(जी) — वधिर और मूक साक्षी के साक्ष्य का अधिमूल्यन — अभियोक्त्री द्वारा किये गये संकेत और अंगविक्षेप विचारण न्यायालय द्वारा अभिलिखित नहीं किये गये — इसलिए, अपीलीय न्यायालय द्वारा उसकी साक्ष्य का अधिमूल्यन करते समय परीक्षा नहीं की जा सकती — उसके अतिरिक्त यह प्रतीत होता है कि वधिर एवं मूक कल्याण समिति के अनुदेशक को कोई शपथ नहीं दिलाई गयी — अभियोक्त्री का साक्ष्य विधिक साक्ष्य होना नहीं कहा जा सकता।

C. Penal Code (45 of 1860), Section 376(2)(g) - Prosecutrix dumb & deaf - It is true that normally conviction for commission of offence u/s 376 of IPC can be based on the statement of prosecutrix without any corroboration - Moreover, the statements of the prosecutrix in the present case are not corroborated by any evidence even Doctor has not given a definite opinion about the commission of rape - Evidence of the prosecutrix is not legal evidence to support the conviction - Conviction & sentence set-aside - Appeal allowed. (Para 31)

ग. दण्ड संहिता (1860 का 45), धारा 376(2)(जी) — अभियोक्त्री मूक एवं वधिर — यह सही है कि सामान्यतः भा.द.सं. की धारा 376 के अन्तर्गत अपराध करने के लिए दोषसिद्धि बिना किसी सम्पुष्टि के अभियोक्त्री के कथन पर आधारित हो सकती है — इसके अतिरिक्त, प्रस्तुत मामले में अभियोक्त्री के कथनों की किसी साक्ष्य से सम्पुष्टि नहीं हुई और चिकित्सक ने भी बलात्संग किये जाने के बारे में कोई निश्चित राय नहीं दी है — अभियोक्त्री की साक्ष्य दोषसिद्धि का समर्थन करने के लिए विधिक साक्ष्य नहीं है — दोषसिद्धि और दण्डादेश अपास्त — अपील मंजूर।

Cases referred :

1912 Criminal Law Journal of India (Vol XIII) (271), AIR 1966 Gujarat 101, 1999 (1) Crimes 675, 2007 Cr.L.J. 3029, 2006 Cri.L.J. 3008, 2005 Cri.L.J. 2687 1982 Cri.L.J. 94, 1997 Cr.L.J. 4003.

Atul Gupta with Raghuveer Singh, for the appellant.

P.N. Gupta, P.P., for the respondent/State.

K.N. Gupta, amicus curiae.

VINOD Vs. STATE OF M.P.

J U D G M E N T

S. SAMVATSAR, J. :—This judgment shall govern disposal of both the appeals i.e. Criminal Appeal No. 232 of 2003 and Criminal Appeal No. 309 of 2003 as they arise out of a common judgment dated 31/3/2003, passed by the Third Additional Sessions Judge (Fast Track), Guna (M.P.) in Sessions Trial No. 178 of 2001, whereby the Sessions Court has convicted the appellants in both the appeals for commission of offence under Section 376 (2)(g) of IPC and sentenced them to undergo rigorous imprisonment for ten years with a fine of Rs.5,000/- each, in lieu six months rigorous imprisonment.

2. As per prosecution story, accused Vinod was carrying on business of driving a jeep on hire. Brijmohan P.W.1 was cleaner on the said jeep. On 12/03/2001 Vinod had brought his jeep from Raghogarh to Guna along with cleaner Brijmohan P.W.1. At Guna, they met Sahjad, Govind and Narayan Singh along with a deaf and dumb girl (prosecutrix P.W.8). They boarded the jeep at Guna bus stand along with other passengers. Narayan Singh and Govind told Vinod that he will look after the girl till the evening and return her back in the evening. When the jeep returned to Raghogarh, all the passengers got down except the prosecutrix (P.W.8). Vinod gave Rs. 50/- to Brijmohan and asked him to buy some food and come at the well of Moiya. Brijmohan P. W.1 after purchasing food went to the well of Moiya where Govind, Narayan Singh and Vinod took the food. Thereafter, Govind, Narayan and Vinod took the girl to the jungle where Govind, Narayan and Vinod committed rape on her and left her near Astabhuja temple. Gopal P.W.7 met the prosecutrix at Astabhuja temple and took the prosecutrix to the police station Raghogarh where report was lodged.

3. On the basis of the report, police registered crime no.384 of 2001 against the accused as Ex.P/10. Co- accused Govind was absconding. Hence, the police after completion of investigation filed challan only against present appellants. The matter was committed to the Sessions Court where the Sessions Court framed the charge against the accused for commission of offence under Section 376(2)(g) of IPC. After recording the evidence and appreciating the same, the Sessions Court convicted and sentenced the present appellants as stated herein-above. Hence, this appeal.

4. The contention of learned counsel Shri Atul Gupta appearing on behalf of appellants with learned counsel Shri Raghuveer Singh is that the findings arrived at by the Sessions Court holding the present appellants guilty of commission of offence under Section 376(2)(g) of IPC are based on no evidence, are perverse and liable to be set aside. They contended that in absence of any legal evidence against the present appellants the conviction cannot be maintained.

5. On the other hand, Shri P. N. Gupta, learned Public Prosecutor appearing on behalf of respondent- State supported the impugned judgment of conviction and sentence.

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6. To appreciate the arguments of both the parties, it is necessary for this Court to marshal the evidence on record.

7. P.W.1 Brijmohan is the witness examined by the prosecution. This witness was cleaner of the jeep which was driven by Vinod. He says that at about 4-6 months prior to the incident, he was going from Raghogarh to Guna in the jeep. Vinod was driving the said jeep and he was cleaner. They left Raghogarh at about 8 in the morning and reached Guna at about 11 in the morning. Accused Narayan Singh had also accompanied these persons. The jeep reached the bus-stand, Guna where they boarded some passengers. They also met Sahjad and Govind who were accompanied by a deaf and dumb girl. They asked to bring the said girl in the jeep. Thereafter, at Raghogarh where all other passengers got down from the jeep, accused Vinod gave him Rs. 50/- and asked him to purchase some food and come to the well of Moiya. When Brijmohan met there with food, he found accused Narayan Singh and Vinod along with the said deaf and dumb girl. Four of them after taking food went to Astabhuja temple. This witness further says that no wrong act has been committed with the girl. This witness has been declared hostile by the prosecution. In his cross-examination, this witness said that his statements were recorded by the police under Section 161 of IPC as Ex.P.2, in which he has stated that accused had committed rape on the girl. But, he says that this statement was given at the instance of the police.

8. The next witness in the present case is P.W. 2 Dr. (Smt.) Aradhana Vijaywargiya, who has examined the prosecutrix P.W.8 on 14/3/2001. She has identified the girl and did not find any external or internal injury on her body. According to the doctor, her hymens was ruptured. According to the opinion of doctor, sexual characters are well developed and as per her opinion, there was a possibility of rape.

9. P.W.3 is Dr. Rajesh Deebakar. According to this witness, he has examined the girl and found that the girl was deaf and dumb. He had referred the girl to ENT Specialist.

10. P. W.4 is Om Prakash who says that he knows the accused. This witness says that he was driver in a jeep bearing registration no. MP08 5050. Narayan Singh was cleaner in his jeep. He says that on the date of incident, his jeep was coming from Raghogarh to Guna. At about 1:30 in the noon where he saw a deaf and dumb girl, wearing 'salwar kurti' was trying to speak but her language was not understandable. She sat in the jeep along-with the passengers. When other passengers got down from the jeep, Narayan Singh asked her to get down from the jeep and demanded money. This witness says that he went to bus-stand to put his jeep in que. When this girl did not give money, some persons suggested to leave the girl from where she had come. This witness says that then he was standing at bus-stand, Raghogarh. He does not know what happened thereafter.

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This witness also says that accused Narayan Singh went to his home. At this stage, this witness was declared hostile by the prosecution.

11. P.W.5 Munna is the conductor at bus-stand. This witness has been declared hostile by the prosecution as he has not supported the case of the prosecution.

12. P. W.6 Surendra Kumar is SDO at Raghogarh, Guna. According to him, he was reader of SDM, Raghogarh. At that time, a lady constable, Krishna Sharma brought the girl to him. The girl was unable to speak and hear.

13. Gopal P.W.7 is the next witness in the present case. He says that he knows accused Vinod, Narayan Singh and one Sabir. He knows absconding accused Sahjad and Govind. On 13/3/2001 at about 7 in the evening, he had gone to Astabhuja Mandir where he met accused Narayan Singh with a girl. The girl aged about 20-22 years was fair in complexion and she was deaf and dumb. He took the girl to his house along-with him, gave her food and asked her to sleep along-with his mother. On the next day, he took the girl to the police station and asked the police to keep the girl in custody.

14. P.W.8 is the prosecutrix examined herself before the Court. The Court while recording her statement observed that the girl is unable to speak and hear. The Court had appointed Ram Ablesh Singh, who is an instructor in Madhya Pradesh Deaf and Dumb Welfare Society at Gwalior. He was administrated oath before the Sessions Court. He, on the basis of signs and moment of lips of the girls, has given statement. As per the statement, when he asked the girl to identify the accused before the Court, she identified the accused by pointing her finger. She says that both the accused took her and offered food. She also says that accused Narayan Singh had consumed liquor. Thereafter, accused Vinod took off her clothes. She was crying at that time but accused Narayan Singh caught hold of her. One more person who has committed rape on her. The present appellants have not done anything with her. They have given lift to her in the jeep. In cross-examination, she was asked when she was taken by the accused but she was unable to answer this question. No further question was asked by the defence to her in her cross-examination.

15. Dr. G.S. Kushwah is the doctor at Civil Hospital, Guna. He has examined himself as P.W.9. He says that on 15/1/2001, at about 9:00 in the morning he had examined the prosecutrix P.W.8. He says that the girl was deaf and dumb. The doctor says that he had performed x-ray. The girl was not able to understand any language. She was trying to speak something. He could not understand her language.

16. P.W.10 Ram Singh says that on 14/03/2001 he was posted at police station Raghogarh. After making entry in Raojnamcha Sanha, he had referred the girl to a lady police.

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17. Rambalavsingh Chouhan P.W.11 is Station House Officer at police station Raghogarh. This witness says that he had registered the crime and sent the copy of FIR to the Magistrate. He arrested accused and conducted investigation. In his cross-examination, he says that the girl was deaf and dumb. This witness also says that he had not called any expert at the time of investigation. He also admits that he has not recorded the statements of the girl at the time of recording of the evidence.

18. Thus, in the present case, the only evidence is statement of P.W.8, the prosecutrix. As per the assessment of the Court, her age is about 18 years of age. Her name, her father and mother's name are unknown. In her statement, she has stated that accused Vinod had forcibly taken off her clothes, co-accused Narayan Singh caught hold of her and third co-accused Govind who is absconding, has committed rape on her.

19. It is true that for convicting the accused under Section 376 of IPC the statement of the prosecutrix alone is sufficient and no corroboration is required. Thus, conviction can be maintained on the sole testimony of the prosecutrix without any corroboration.

20. The question in the present case is whether the statements of prosecutrix P.W.8 are admissible in evidence and if so, whether the conviction can be based solely upon the statements of prosecutrix, particularly, when she was deaf and dumb.

21. Section 119 of the Indian Evidence Act makes a provision for examining the dumb witnesses. The said Section reads as under:—"Dumb witnesses.- A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidences.

22. As per the aforesaid Section, a witness who is unable to speak and give his/her evidence in any other manner in which he/she can make it intelligible, as by writing or by signs; but such writing must be written and the signs must be made in open Court. These provisions have considered by the High Court of Madras in the case of *VENKATTAN alias VENKATACHELLAM & OTHERS. Vs. EMPEROR* 1912 Criminal Law Journal of India (Vol XIII) [271]. The High Court of Madras has held that a witness who is so deaf and dumb that it is impossible to make him understand the questions put in cross-examination, is not a competent witness, and his evidence, if taken, ought to be struck out; and a conviction based solely on his evidence, must be quashed. The Madras High Court further held that deaf and dumb witness who is unable to understand the questions put to her in her cross-examination, is not a competent witness and cannot be relied for convicting any other person.

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23. Next judgment is in the case of *Kumbhar Musa Alib Vs. State of Gujarat* AIR 1966 Gujarat 101. In that case, the High Court of Gujarat while considering the provisions of Section 119 of the Indian Evidence Act, has held that if dumb witness gives signs as required under Section 119 of the Indian Evidence Act the evidence must be a record of signs and not the interpretation of signs. It is true that at some places, the learned Sessions Judge has recorded the signs as well as the interpretations, but the signs made by the witness in answer to several other questions are not recorded but only the interpretations. That is not a correct compliance with Section 119 of the Indian Evidence Act. The High Court of Gujarat has further held that the appellate Court is unable to know whether the interpretation of the signs is correct or not. In such a situation, the High Court has set aside the conviction of accused. In that case, due to assault complainant has lost his power of speech.

24. In the case of *Prakash Chand Vs. State of Himachal Pradesh* 1999 (1) Crimes 675, the High Court of Himachal Pradesh again considered the provisions of Section 119 of the Indian Evidence Act and has held that while dealing with the manner in which the evidence of a dumb witness is to be recorded under Section 119 of the Indian Evidence Act, it must be a record of signs made by witness and not the interpretation of signs. The High Court of Himachal Pradesh has also held that if the trial Court fails to record the signs made by the witness in answer to questions put to him and records only the interpretation of such signs, there is no full compliance of Section 119 of the Evidence Act. The High Court of Himachal Pradesh has further held that the appellate Court must have to know whether the interpretation of the signs is correct or not. Then, of course, the conviction cannot be maintained. It is further held that while recording the statement of a deaf and dumb witness with the help of an expert or some person who is very much familiar with the witness, the learned Sessions Court cannot be expected to have anything more than a layman's knowledge in conversing with a deaf and dumb person, it was highly improper on his part to embark upon the examination of such witness without the help of an expert or a person familiar with his mode of conveying ideas to others in day-to-day life. In absence of such evidence, the witness cannot be reliable.

25. In the case of *Rajesh Kumar & Anr. Vs. State of H.P.* 2007 Cri.L.J. 3029, the High Court of Himachal Pradesh has laid down that the learned Sessions Court cannot be expected to have anything more than a layman's knowledge in conversing with a deaf and dumb person. It is highly improper on his part to embark upon the examination of the witness's statement which is recorded without the help of an expert or a person familiar with his mode of conveying ideas to others in day-to-day life. Thus, the High Court of Himachal Pradesh has reiterated the earlier view as has been expressed in the case of *Prakash Chand* (surpa).

26. In the case of *Darshan Singh alias Darshan Lal Vs. State of Rajasthan* 2006 Cri. L. J. 3008, the High Court of Rajasthan while dealing with the provisions of Section 119 of the Indian Evidence Act, has laid down that before recording

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the statement of a deaf and dumb witness the Court is required to ascertain that he possess the requisite amount of intelligence, and that he understands the nature of oath. Not only this, but he is also required to record the satisfaction to that effect. The Court is required to ascertain, if the witness either by writing or sign can make intelligible of what he has to speak. If he is able to communicate his statement perfectly by writing, it will be more satisfactory method of taking evidence. When such a witness is not able to write then he can make sign showing what he wants to say. If, it is by signs, those signs must be recorded and not only the interpretations of those signs. It is necessary to enable the appellate Court to know whether the interpretation of the sign is correct or not. It is not safe for a Court to embark upon the examination of a deaf and dumb witness on his own without the help of an expert or a person familiar with his mode of conveying ideas to others in day-to-day life. However, such a person should not be an interested person, who had participated in the investigation and who is also a witness in the same trial.

27. In the case of *Dilawarsab Alisab Jakati Vs. State of Karnataka* 2005 Cri. L. J. 2687, the High Court of Karnataka has laid down that before recording the statement of the witness, interpreter as well as witness both have to be administered oath before the Court proceeds to record evidence of a dumb witness, must record both signs as well as the interpretations of the interpreter and then only it becomes admissible under Section 119 of the Indian Evidence Act.

28. In the case of *Kadungoth Alavi Vs. State of Kerala* 1982 Cri.L.J.94, the High Court of Kerala has held that a deaf and dumb witness can be examined with the assistance of an expert or person familiar with signs or gestures. The Court has power to take help of an expert in exercise of powers under Section 282 of Cr.P.C for assisting the Court to examine a witness who is familiar with his mode of conveying ideas and if such witness is the only eye-witness, his statement can be relied for upholding the conviction.

29. Similar is in the case of *The Public Prosecutor. High Court of A.P. Hyderabad Vs. Lingisetty Sreenu* 1997 Cri.LJ. 4003. In that case of rape, the High Court of Andhra Pradesh from a bare reading of Section 119 of the Indian Evidence Act, found that a deaf and dumb person can be a competent witness. According to the said Section, a witness who is unable to speak, may give his or her evidence in any other manner he or she can make such evidence intelligible. The other manners in which a person can make his ideas intelligible would be either by a written word or by signs. The only restriction is that such expressions of the ideas by means of signs or writing should be made in open Court. The Court in order to understand and appreciate the evidence of such witnesses expressing their ideas with the help of signs, it should necessarily seek the assistance of an expert so as to safely rely on such an evidence. The object of such principles is that by misunderstanding such signs an innocent person shall not be convicted and thus, it is a rule of prudence that such an expert evidence would

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be necessary in the circumstances. Section 282 of Cr. P. C. also enables the criminal Court to take the services of an interpreter for interpreting any evidence or statement, and such interpreter when required by the criminal Court is bound to state the true interpretation of such evidence or statement. Having appreciated this position of law only the Court below appointed the Principal, Government Residential School for Deaf as an interpreter to this witness by administering the oath to him. It cannot be said that such a person who has been educating the deaf and dumb witness, is not an expert. From the evidence of an elicited witness with the help of an interpreter, it is proved that not only the commission of the offences but also the identity of the offender who is the accused before the Court.

30. In the present case, the Sessions Court has taken help on the principle of deaf and dumb witness at the time of recording of the statement of P. W.8 the prosecutrix on the basis of her gestures, her movement of lips before the Court. This expert cannot be said to be interested in the out-come of the trial. It was definitely a position to understand the expression of the prosecutrix by her signs or movement of lips.

31. In the present case, the prosecutrix is a competent witness but the evidence of the prosecutrix cannot be said to be legal evidence because the signs and gestures made by her, are not recorded by the Court and cannot be examined by the Appellate Court while appreciating her evidence. Apart from that, from a perusal of the record, it appears that no oath was administered to the Instructor, M.P. Deaf and Dumb Welfare Society, Gwalior. Moreover, the statements of the prosecutrix in the present case are not corroborated by any other medical evidence. Even as per the statement of Dr. (Smt.) Aradhana Vijaywargiya (P.W.2), she has not given a definite opinion about the commission of rape. It is true that normally conviction for commission of offence under Section 376 of IPC can be based on the statement of the prosecutrix without any corroboration but in the instant case, the evidence of the prosecutrix who has been examined as P.W.8 herself, is not legal evidence to support the conviction.

32. Hence, both the appeals, i-e. Criminal Appeal No. 232 of 2003 and Criminal Appeal No. 309 of 2003 stand allowed. The impugned judgment of conviction and sentence is hereby set aside. The appellants are also acquitted from the commission of offence under Section 376(2)(g) of IPC. The appellants are on bail, their bail bonds and sureties shall stand discharged.

33. Before parting with this case, this Court appreciate the valuable assistance rendered by Shri K.N. Gupta, learned Senior Advocate as amicus curiae in setting the issue in the present case at rest.

Appeal allowed.

OM PRAKASH MALVIYA Vs SHAMBHUNATH SINGH

I.L.R. [2009] M. P., 3449

CIVIL REVISION*Before Mr. Justice Prakash Shrivastava*

12 November, 2009*

OM PRAKASH MALVIYA & ors.

... Applicants

Vs.**SHAMBHUNATH SINGH & ors.**

... Non-applicants

A. Civil Procedure Code (5 of 1908), Order 7 Rule 11(d) & Order 8 Rule 6-D - Rejection of plaint - Effect of discontinuance of suit - Civil suit dismissed for want of prosecution - Application under Order 7 Rule 11(d) for rejection of counter claim made - Trial Court rejected the application - Held - Counter claim filed by defendants setting up his claim against plaintiffs and co-defendants - If the suit is discontinued subsequently for one reason or the other, the counter claim does not come to an end and it can be proceeded with - Counter claim does not appear to be barred by any law - No jurisdictional error or illegality or material irregularity found in order - Revision dismissed. (Paras 9 to 13)

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11(डी) व आदेश 8 नियम 6-डी; - वादपत्र का नामजूर किया जाना - वाद के बन्द कर दिए जाने का प्रभाव - सिविल वाद अभियोजन के अभाव में खारिज - प्रतिदावा नामजूर करने के लिए आदेश 7 नियम 11(डी) के अन्तर्गत आवेदन किया गया - विचारण न्यायालय ने आवेदन नामजूर किया - अभिनिर्धारित - प्रतिवादियों द्वारा वादियों और सह-प्रतिवादियों के विरुद्ध अपना दावा स्थापित करते हुए प्रतिदावा पेश किया - यदि तत्पश्चात् वाद एक या अन्य कारण से बन्द कर दिया जाता है तो प्रतिदावा समाप्त नहीं होता और उसमें आगे कार्यवाही की जा सकती है - प्रतिदावा किसी विधि द्वारा वर्जित होना प्रतीत नहीं होता - आदेश में कोई अधिकारिता की त्रुटि या अवैधता या तात्त्विक अनियमितता नहीं पायी गयी - पुनरीक्षण खारिज।

B. Civil Procedure Code (5 of 1908), Order 8 Rule 6-A - Counter claim by defendant - The language of Order 8 Rule 6-A makes it clear that the counter claim solely against the co-defendants cannot be filed. (Para 9)

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 8 नियम 6-ए - प्रतिवादी द्वारा प्रतिदावा - आदेश 8 नियम 6-ए की भाषा यह स्पष्ट करती है कि केवल सह-प्रतिवादियों के विरुद्ध प्रतिदावा पेश नहीं किया जा सकता।

Cases referred :

2002(I) MPWN 31, ILR (2009) MP 2023, AIR 2007 SC 10.

*Arvind Shrivastava with Rajendra Gupta, for the applicants.**Dhanajay Chaturvedi, for the non-applicant No.2.**A.G. Dhande with D. Soni.**None, for the non-applicant No.1.*

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between a civil case and a criminal case. Speedy trial is a fundamental right of an accused. The orders passed by the competent court of law as also the provisions of the Code of Criminal Procedure must be construed having regard to the constitutional scheme and the legal principles in mind.

7. The disturbing feature of the case on hand is that the complaint was filed as early as on 15.05.1996 and after getting the evidence of Chandra Mohan Dubey recorded on 03.08.2000, the complainant had availed of a series of adjournments for adducing the remaining evidence.

8. Be that as it may, law is well settled on the point that the discretion to dismiss the complaint on the technical ground of non-appearance of the complainant should be exercised judicially and fairly without impairing the cause of administration of criminal justice. (See. *Associated Cement Co. Ltd. v. Keshvanand*, AIR 1998 SC 596 that was followed in *S. Anand v. Vasumathi Chandrasekar* (2008) 4 SCC 67. Accordingly, the learned Magistrate, instead of taking recourse to a shortcut, ought to have proceeded to decide the complaint on merits in the light of the evidence already brought on record by the complainant.

9. The appeal is, therefore, allowed and the impugned order of acquittal is hereby set aside. The matter is remanded to the trial Court with a direction to proceed from the stage where it had reached before the order under challenge was passed. However, no further adjournment shall be granted to the complainant to produce the remaining evidence.

10. Parties are also directed to remain present before the Court of CJM, Jabalpur on 29/7/2009, which is fixed with the consent of the parties as the final date for recording of the remaining prosecution evidence.

11. Record of the trial Court be returned immediately along with the copy of the order.

C.C. as per rules.

Appeal allowed.

I.L.R. [2009] M. P., 3454

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice J.K. Maheshwari

9 July, 2009*

PRAKASH CHATTRANI

Vs.

STATE OF M.P.

... Applicant

... Non-applicant

A. Criminal Procedure Code, 1973 (2 of 1974), Section 207 - Compact Disc - CD was displayed in Court in the presence of counsel for the

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accused before framing of charge - No objection by Advocate that because of non-supply of CD they cannot advance arguments on the question of framing of charge - Non-supply of CD did not cause prejudice to the accused.
(Paras 9 & 10)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 207 - कॉम्पैक्ट डिस्क - आरोप विरचित करने के पूर्व अभियुक्त के अधिवक्ता की उपस्थिति में न्यायालय में सीडी दिखाई गयी - अधिवक्ता द्वारा कोई आपत्ति नहीं कि सीडी प्रदाय न किये जाने के कारण वे आरोप विरचित करने के प्रश्न पर बहस प्रस्तुत नहीं कर सकते हैं - सीडी प्रदाय न किये जाने के कारण अभियुक्त को कोई पूर्वाग्रह कारित नहीं हुआ।

B. Penal Code (45 of 1860), Sections 506 & 509, Information Technology Act, 2000, Section 67 - Publishing of information which is obscene in electronic form - Photographs of a girl taken, transmitted by bluetooth in electronic form and published by CD recovered from the possession of applicant - Counsel for applicant conceding framing of charge u/ss. 506 & 509 of IPC - Basis for framing of charge is some obscene photographs and gestures of a girl - Objection with regard to framing of charge u/s 67 of Act, 2000 cannot be accepted - Application dismissed.
(Para 14)

ख. दण्ड संहिता (1860 का 45), धाराएँ 506 व 509, सूचना प्रौद्योगिकी अधिनियम, 2000, धारा 67 - इलेक्ट्रॉनिक रूप में सूचना का प्रकाशन जो अश्लील है - आवेदक के कब्जे से एक लड़की के छायाचित्र जो ब्लूटूथ द्वारा इलेक्ट्रॉनिक रूप में संचारित और सीडी के द्वारा प्रकाशित, बरामद किये गये - आवेदक के अधिवक्ता ने भा.द.सं. की धारा 506 व 509 के अन्तर्गत आरोप विरचित करने को स्वीकार किया - आरोप विरचित करने का आधार एक लड़की के कुछ अश्लील छायाचित्र और अंगविक्षेप हैं - अधिनियम, 2000 की धारा 67 के अन्तर्गत आरोप विरचित करने के सम्बन्ध में आपत्ति स्वीकार नहीं की जा सकती - आवेदन खारिज।

Cases referred :

1997 CrLJ 1232, 2002 CrLJ 1852, 2003 CrLJ 4985 (SC).

Atul Shridharan, for the applicant.

C.R. Karnik, Dy.G.A., for the non-applicant.

ORDER

J.K. MAHESHWARI, J. :- This petition has been filed under Section 482 of the Cr.P.C. against the order dated 30.1.09 passed in Criminal Case No.528/07, which was affirmed by the revisional court by a common order dated 16.4.2008 passed in Criminal Revisions No.27/08 and 28/08, by which the charge under Sections 509, 506 of IPC and Section 67 of the Information Technology Act, 2000 was framed.

2. Perusal of the order of the trial Court indicates that a Compact Disc (hereinafter referred to as 'CD'), filed along with the challan papers has been seen in the Court, in front of the advocates Shri Mundra, Shri Rawat and Shri

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N.K. Sharma. The CD was displayed by the S.D.O.P., Sushri Pratima Patel as directed by Court; on the demand of defence counsel. Later Shri N.K. Sharma, Advocate has appeared on behalf of Shri Mundra Advocate and argued on the question of framing of charge. At the out set, it is conceded by him that on the framing the charge under Sections 509 and 506 of IPC, he does not have serious objection, but to frame a charge under Section 67 of the Information Technology Act, he is having serious objection; referring the provisions of Section 67 of Information Technology Act it is argued that even assuming that the CD is obscene, but no material is available to believe that it was broadcasted by accused Prakash, which is the necessary requirement to framing charge under Section 67 of the Information Technology Act. However, it was argued that the CD was not prepared or broadcasted by him; however, charge under Section 67 of the Information Technology Act cannot be framed. The Court has recorded a finding that on perusal of the CD, which is seen in the Court, it is apparent that the material available therein is obscene to them who have seen it. The finding has also been recorded that the CD was broadcasted, as apparent from the statements of some of the witnesses recorded by the police under Section 161 of Cr.P.C. wherein it is said that on going through the CD, on its broadcast, it has also come in their knowledge that the girl Mariyam is not the good girl. In some of the statements of witnesses it has further indicated that by using bluetooth obscene photographs have been transmitted to others through cellphone (mobile). However, looking to, over all allegations, and material collected by prosecution in case diary, the charge under Section 67 of Information Technology Act against accused Prakash (petitioner herein) has also been framed.

3. The said finding recorded by the trial Court has been affirmed by the revisional Court, with the observation, in a case of Information Technology Act as per Section 78 investigation ought to have done by the Police Officer not below the rank of Deputy Superintendent of Police. However, the investigation was done by such Officer, and if some of the documents have prepared by the Head Constable, it may not vitiate the investigation, and such argument cannot be accepted at the stage of framing the charge. It has also observed, the absence of photographs of girl Mariyam have been transmitted publicly without her knowledge and broadcasted to others it causes bad fame to her. On perusal of the challan papers it appears that while lodging the FIR by the father of the girl Mariyam one CD was supplied to police authorities and another CD was recovered from accused Prakash during investigation. The Court has seen the CD on a television/DVD and the Court has recorded its prima facie opinion to frame the charges under Section 67 of the Information Technology Act. However, the interference at the stage of framing of charge has been refused by revisional Court.

4. Shri Atul Shridharan learned counsel appearing for the petitioner submits that the CD, on the basis of which charge under Section 67 of the Information

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Technology Act has been framed, has not been supplied to him. However, the right to defend himself has been taken away due to such non-compliance of the mandatory provisions. He further submits that in the said CD, no obscene material is available, which is sufficient to frame the charge of Section 67 of the Information Technology Act. If it was supplied to him then he may be in a position to establish before the Court that the charge under Section 67 of the Information Technology Act may not be made out. It is also argued by him that the trial Court in its order at one place stated that the Advocate of the petitioner Shri Mundra was present, but in the later part of order at the time of argument his junior Shri N.K. Sharma addressed the Court, because Shri Mundra was not well. However, it is argued that, in fact, the CD was not seen in front of the advocates of the accused, but behind their back. Thus, the fact as stated of its seeing by advocate at the time of framing the charge is contrary to record; hence, the findings are perverse. It is also contended, the Court has not acted with fairness, depriving the petitioner from his right to address at the time of framing of charge by not supplying the material documents.

5. At last, it is argued that the language of Section 207 of Cr.P.C. indicates that whatever the material which is being used against him and collected by the prosecution ought to have been supplied to him, with a view to furnish a reasonable opportunity, the non-supply of CD has caused serious prejudice at the time of framing of charge to the accused. He has placed reliance on three judgments. First judgment is of this Court in the case of *Sadhvi Ritumbhara v/s State of M.P.*, reported in 1997 Cri. LJ 1232, while another judgment is of Allahabad High Court in the case of *Suresh Kumar Upadhayay & another v/s State of U.P. & another*, reported in 2002 Cri. LJ 1852 and the third judgment is of the Supreme Court in the case of *Jitendra and another v/s State of M.P.*, reported in 2003 Cri. LJ 4985 (SC).

6. On the other hand Shri C.R. Katnik, learned Deputy Government Advocate has argued with vehemence and submits that at the time of framing of the charge the allegations ought to have been seen with an intent to bring home the charges for which the offence was registered against the accused. After perusal of the material collected by the prosecution and on perusal of the CD on a television in the Court, in front of the defence counsel the trial Court has recorded a prima facie opinion that the charge under Sections 509 and 506 of the IPC read with Section 67 of the Information Technology Act is made out against the petitioner. It is also argued by him that all the material documents have been supplied to the petitioner except the CD, which was made available in Court, which is seen in front of the advocate of the petitioner. The advocate of the petitioner, after visualizing the picture of that CD, has addressed the Court without making demand of its supply; however, at the stage of framing of charge raising objection of non-supply of document even on seeing the CD in Court is unsustainable, particularly the said

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CD was recovered from his possession. It is also argued by him that the counsel for the petitioner has conceded to not to have any objection in framing charge under Sections 509 & 506 of the IPC, he merely raised objection of framing of charge under Section 67 of the Information Technology Act. Once the objection has not been raised for framing of charge under Sections 509 & 506 of the IPC he may not object for framing the charge under Section 67 of the Information Technology Act, because the charge under Sections 509 & 506 of the IPC relates to the said offence. In that view of the matter, the charge as framed by the trial Court is not liable to be interfered with at this stage. Learned counsel further submits that when the CD was displayed counsel for the petitioner and Shri Mundra, Shri Rawal and Shri N.K. Sharma (all the three) were present. But, at the time of arguments it was expressed by Shri N.K. Sharma that his senior is not well; however, he is advancing the argument before Court. Thus, looking to all the facts, the grievance as ventilated is upon after thought and liable to be rejected. At last it is submitted that present petition filed by the petitioner is devoid of any merit, hence, liable to be dismissed.

7. After having heard learned counsel for the parties and on perusal of the FIR it is apparent that there is an allegation against the present petitioner of taking the obscene photographs of one girl Mariyam and to prepare a CD, which is broadcasted. The photographs were also transmitted by using bluetooth and infrared function through mobile, the said mobile and CD are recovered from the present petitioner. Some of the witnesses deposed under Section 161 of the Cr.P.C., and said that after going through the CD it has come to their knowledge that Mariyam is not a good girl. By some of the statements it has also come on record that those photographs have been transmitted to them by way of bluetooth. In such a situation prima facie involvement of the petitioner to frame the charge was found by trial, therefore, charge under Sections 509 & 506 of the IPC read with Section 67 of the Information Technology Act has been framed.

8. Now to advert the argument as advanced by Shri Shridharan regarding nonavailability of the counsel Shri Mundra in the Court at the time of when the CD was displayed and seen, is of merit-less and liable to be turned down. In this respect, the proceedings of trial Court indicates, after calling the OIC, S.D.O.P., Sushri Pratima Patel, she had displayed the CD on television in the Court in presence of Shri Mundra, Shri Rawat and Shri N.K. Sharma (all three) advocates, but the argument had advanced by Shri N.K. Sharma showing inability being not well of Shri Mundra. Thus, it is apparent when the CD was displayed in the Court when Shri N.K. Sharma was also present and on visualizing the CD he has advanced the arguments at the of stage framing charges without raising any objection to supply CD, therefore, the argument of Shri Shridharan is not acceptable on the point that the Court has seen the CD behind the back of the counsel for the petitioner.

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9. The next argument as advanced by Shri Shridharan regarding non-supply of the CD causes serious prejudice to accused is of no consequence for the reason that bare reading of the order of trial Court dated 31.1.09 itself indicates that the counsel appearing on behalf of the accused were ready to peruse the CD in front of the Court; however, whatever the material collected by the prosecution has been shown to the advocates, who were representing the accused, but none of the advocate has raised any objection that without supply of the CD they cannot advance the argument. On the contrary, they were ready to address the Court at the stage of framing of charge without raising demand of CD. In such circumstances, in my opinion, the argument advanced by Shri Shridharan regarding noncompliance of Section 207 of the Cr.P.C., and of causing serious prejudice to the accused person and depriving him in putting his effective defence at the time of framing of the charge is not of any substance and liable to be turned down. In fact, the purpose of supply of the police report and other documents at the time of framing of the charge to the accused is required to be followed with a view to have an opportunity of hearing. In the facts & circumstances of the present case in the opinion of this Court, counsel for the applicant is unable to make out a case of deprivation of an opportunity of hearing, because prior to advancing the argument of framing of charge the CD was seen by the Court and the advocates of both the sides. Thereafter, the arguments were advanced and the charge was framed. Thus, in the opinion of this Court the compliance of Section 207 of the Cr.P.C. has been completed.

10. The decisions relied upon by Shri Shridharan are also of no help to them, because in the case of *Sadhvi Ritumbhara* (supra) the video cassettes were not supplied by the Magistrate on the ground of nonavailability of the Machinery required for preparing the copies of those audio / video cassettes. In the case in hand the CD was recovered from the petitioner himself on production in the Court, the same was seen on display in front of the advocates representing the accused. The Court has also recorded its opinion after seeing those CDs that prima facie case under Section 67 of the Information Technology Act is made out; however, in the facts & circumstances of the present case the judgment of *Sadhvi Ritumbhara* (supra) is having no application. The another judgment of Allahabad High Court is only with respect to supply of statements prior to framing of the charge. In the present case it is not the case of the petitioner that other statements have not been supplied to him. It is merely on the basis of the CD, which has been seen by the counsel for the petitioner in the Court the argument has been advanced of non-supply of the same; such argument cannot be accepted. So far as judgment of the apex Court in the case of *Jitendra & another* (supra) is concerned, it is the judgment after recording the statement, on merit. On going through the said judgments it is apparent that one of the letter written by the Superintendent Datia to the Director State Forensic Laboratory was considered by the Court, which

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was not produced during trial; however, the inference of non supply of document was drawn by the apex Court. But, in the facts of the present case wherein the issue has been raised at the stage of framing of the charge, when all the material has placed along with the challan paper before the Court and the CD has been displayed before the counsel for the petitioner; however, no benefit may be denied to him from the said judgment. In view of the said facts the argument as advanced by Shri Shridharan is of no help to them.

11. At this stage it is to be seen when the petitioner has not raised any serious objection to frame the charge under Sections 509 & 506 of the IPC, can be objected only to frame charge under Section 67 of the Information Technology Act. Sections 509 & 506 of the IPC is relevant, however, reproduced here as under:-

"509. Word, gesture or act intended to insult the modesty of a woman.- Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

"506. Punishment for criminal intimidation.- Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

"If threat be to cause death or grievous hurt, etc.- And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

The Criminal intimidation has been defined under Section 503 of the IPC, which is also reproduced hereunder:-

"503. Criminal intimidation.- Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to

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do, as the means of avoiding the execution of such threat, commits criminal intimidation."

12. On going through the ingredients of Section 503 of the IPC it is apparent that whosoever threatens another with an intention to cause any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or omit to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding of such threat the said persons commits an act of criminal intimidation which is punishable under Section 506 of the IPC. The language of Section 509 of the IPC indicates that when any person intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished. Once the counsel for the petitioner was not having any objection regarding framing of charge under Section 509 of the IPC but having objection with respect to framing of charge under Section 67 of the Information Technology Act, which relates to publishing of information, which is obscene in the electronic form i.e., CD cannot be said to be accepted, in the facts and circumstances of the present case. It would be relevant to refer Section 67 of the Information Technology Act, for ready reference:

"67. Publishing of information which is obscene in electronic form.-- Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

13. Bare reading of the above, it is apparent that if any person publishes or transmits or causes to be published in the electronic form any material lascivious or appeals to prurient interest or its effect is such to deprave and a corrupt person who having regard to all relevant circumstances read, see or hear the matter contained or embodied is amounting to publishing of information obscene in electronic form. In the present case photographs of a girl were taken, transmitted by bluetooth in the electronic form, it was published by the CD recovered from the applicant; however, on conceding to frame a charge under Section 506 and

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509 of the IPC, on availability of the CD objection to not to frame charge under Section 67 of the Information Technology Act cannot be accepted. Therefore, the argument as advanced by Shri Shridharan is liable to be turned down.

14. In the present case the charge was framed under Sections 509 & 506 of the IPC and Section 67 of the Information Technology Act. The basis for framing of the charge as per the allegations is that some obscene photographs and gestures of one girl Mariyam have been taken in the CD, which is seen by the Court on display in front of defence counsel and some gesture of the words were also there. Those photographs have been transmitted by SMS by using bluetooth and infrared function to the others. The said CD was seized from the possession of the petitioner. On visualizing the CD the arguments were advanced by the counsel representing the petitioner. However, in such case the objection raised to not to frame the charge under Section 67 of the Information Technology Act, cannot be accepted. Once the charge under Sections 509 & 506 of the IPC have been conceded to be framed, as per the statement made at Bar, objection of not framing the charge of Section 67 of the Information Technology Act is not acceptable. Thus, I do not find any substance in this petition, therefore, it is liable to be dismissed.

15. Accordingly, this petition is dismissed with no order as to costs.

Petition dismissed.

I.L.R. [2009] M. P., 3462

MISCELLANEOUS CRIMINAL CASE

Before Mrs. Justice Indrani Datta

26 August, 2009*

SANJAY MISHRA

... Applicant

Vs.

STATE OF M.P.

... Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 227, Penal Code, 1860, Section 307 - Attempt to murder - Framing of charge - Important factor is intention or knowledge to cause death - At the stage of framing of charge, standard of tests regarding guilt or otherwise of accused cannot be applied - Court has to be satisfied about the prima facie existence of the factual ingredients constituting the offence - Application dismissed. (Paras 8 & 9)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227, दण्ड संहिता, 1860, धारा 307 - हत्या का प्रयत्न - आरोप विरचित करना - महत्वपूर्ण कारक हत्या कारित करने का आशय या ज्ञान है - आरोप विरचित करने के प्रक्रम पर अभियुक्त के दोष या अन्यथा से सम्बंधित परीक्षणों का मानक लागू नहीं हो सकता - न्यायालय को अपराध गठित करने वाले तथ्यात्मक तत्वों के प्रथम दृष्ट्या अस्तित्व के बारे में समाधान करना होगा - आवेदन खारिज।

SANJAY MISHRA Vs. STATE OF M. P.**Cases referred :**

(1998) SCC (Cri) 202, 1991(I) MPWN 119, (2008) 10 SCC 681, (1992) SCC (Cri) 335, (2005) SCC (Cri) 415, (2008) 10 SCC 109.

Sunil Soni, for the applicant.

Mohd. Irshad, P.L., for the non-applicant/State.

ORDER

MRS. INDRANI DATTA, J. :- Heard on admission.

With the consent of the parties, the matter is heard finally at motion stage.

2. This petition has been preferred by the petitioner under section 482 of Code of Criminal Procedure against the order dated 3.7.2009 passed by Additional Sessions Judge, Sevdha in Case No.3 of 2009 ST by which, charges under section 307/34, 325/34 and 324/34 of IPC have been framed against present petitioners.

3. As per prosecution case complainant Ajay Mishra is Pujari in Gopurush Mandir, Indergarh, distt. Datia. On the date of incidence, he was in the temple with his wife Manju. In the evening on 8.4.2008 at about 6. PM present petitioner and co-accused reached there and abused him. Present petitioner was armed with luhangi. He caused injury to Ajay by means of luhangi. Ajay sustained injury in his head, chest, left shoulder, wrist, fingers and left leg. Manju tried to rescue, complainant then co-accused inflicted knife blow on the head of Manju and she suffered injuries on different parts of body. Co-accused Vijay Mishra was exhorting petitioner and other co-accused to kill complainant and his wife.

4. On the report lodged by Ajay, Crime no.66 of 2008 was registered at PS Indergarh against present petitioner and co-accused for commission of above mentioned offences. Copy of the FIR is Annexure A/2.

5. It is contended on behalf of the petitioner that cross case has been registered on the report of Shivangi against injured Ajay Mishra, Manju Mishra and others in connection with Crime no .65 of 2009 for offence punishable under section 302, 307, 294 and 323/34 of IPC and in the incidence, Shvangi's brother Vijay died. Thereafter, present report is lodged which is registered at Crime no.66 of 2008. It is further submitted that it is a case of free fight and incidence occurred all of a sudden. Injured Ajay Mishra and Manju Mishra are aggressors and co-accused Raju and Umesh inflicted knife blow to deceased Vijay and Ajay Mishra inflicted luhangi blows to deceased Vijay and committed his murder. It is further submitted that as it is a case of sudden fight, there was no pre meditation and there was no intention to kill injured Ajay and Manju who sustained injury in that incidence, so case under section 307 of IPC is not made out. It is further submitted that as per MLC report of injured Ajay Mishra, he sustained three incised wounds on parietal and occipital region and two contusions and in skiagraphy report, no bony injury has been detected on his head and only fracture of terminal phalanx and 5th M.C

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base on left hand have been detected which are not on vital part of the body. Injured Manju has sustained one incised wound on right parietal region and lacerated wound on occipital region and some contusions and lacerated wounds on elbow, chin, arm and little finger and as per her skiagraphy report, no bony injury has been detected on skull and only fracture of RV 1/3rd and little finger has been detected which are not on vital part of the body. Therefore prayed to quash the charge under section 307 of IPC framed against petitioner.

6. Learned PP opposed the petition and submitted that petitioner and co-accused caused injuries to Manju and Ajay in furtherance of their common intention to kill them. They sustained injuries on parietal and occipital region of head that is 'on vital part of body and at this stage, it cannot be decided whether, petitioner never intended to kill Manju and Ajay as the act was done in furtherance of common intention of petitioner and co-accused. It is further contended that it can't be decided at this stage that who was aggressor and whether incidence was a result of sudden free fight or not, it can be decided only after evidence is recorded.

7. Learned counsel for the petitioner placed reliance on *Pundalik Mahadu Bhane and Others Vs. State of Maharashtra* 1998 SCC (Cri) 202 which was a case of sudden free fight in two groups, it was held that each of the persons involved therein would be liable for his individual act and not vicariously and in that case, appellants assaulting the deceased with sticks resulting in grievous injuries, were held liable to be convicted under section 325 and not Sub. section 148 and 302/34 of IPC.

8. *Abdul Hamid Vs. State of U.P.* MPWN 1991 (Volume 1) 119 was also a case of free fight. Persons of both groups received injuries and reports also lodged by both parties and individual act was not shown, it was held that none can be punished. Both these cases cited by the petitioner are distinguishable as final conclusion was drawn after scrutiny of evidence produced in that cases. Moreover each case is to be examined on the basis of it's own facts and circumstances. It is difficult to lay down rule of universal application, however, if two views are equally possible and Judge is satisfied that the evidence produced before him gives rise to grave suspicion against accused, he will be fully within his right to frame charge. At this stage of charge, the standard of tests regarding guilt or otherwise of accused cannot be applied. The Court has to be satisfied about the prima facie existence of the factual ingredients constituting the offence.

9. Perused the FIR, statements of injured witness and other witnesses recorded under section 161 of Cr.P.C as well as MLC and X-Ray report. As per MLC report, injured have sustained lacerated wounds on parietal occipital region of head though in skiagraphy report, no bony injury is detected on skull.

Essential ingredients of section 307 of IPC are as follows :

- (i). That accused did an act;

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(ii). that, act was done with intention or knowledge and under such circumstances to cause bodily injury as the accused knew to be likely to cause death or that such bodily injury was in the ordinary course of nature to cause death or that accused attempted to cause such death by doing an act known to him to be so imminently dangerous that it must in all possibility cause death or such bodily injury as is likely to cause death; and

(iii). that the accused had no excuse for increasing the risk of causing such death or injury.

On bare reading of section 307 of IPC, it is apparent that to prove offence under section 307 of IPC, the most important factor is intention or knowledge to cause death which must be established in the case. In the present case, whether petitioner and co-accused in furtherance of their common intention have caused injury to injured Ajay and Manju on vital part of their body with intention or knowledge to cause death, is to be established after evidence is recorded in the case.

10. Apex Court in the case of *Sanghi Brothers (Indore) Pvt. Ltd. Vs. Sanjay Choudhary and Others* (2008) 10 SCC 681 has held that while framing charge, only prima facie test is to be applied strong suspicion about the commission of offence and the involvement of the accused is sufficient for the Court to frame a charge. At that stage, formulating the opinion about the prospect of conviction is not necessary.

11. Over and above the earlier citations Apex Court in the case of *State of Haryana and others Vs. Bhajan Lal and Others* 1992 SCC (Cri) 335 has held that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint.

12. Further Apex Court in the case of *State of Orissa Vs. Debendra Nath Padhi* 2005 SCC (Cri) 415 has held that at the stage of framing charge roving and fishing inquiry is impermissible and a mini trial cannot be conducted at such stage.

13. Further more in the case of *Bharat Parikh Vs. Central Bureau of Investigation and Others* (2008) 10 SCC 109, the apex Court has held with regard to the High Court's powers to look into materials produced on behalf of or at the instance of the accused for the purpose of invoking its powers under section 482 of the Code for quashing the charges framed, it has to be kept in mind that after the stage of framing charge evidence has to be led on behalf of the prosecution

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to prove the charge if an accused pleads not guilty to the charge and/or charges and claims to be tried. It is only in the exceptional circumstances enumerated in *State of Haryana Vs. Bhajan Lal* (Supra) that a criminal proceeding may be quashed to secure the ends of justice, but such a stage will come only after evidence is led, particularly when the prosecution had produced sufficient material for charges to be framed.

14. Considering the above legal position at this stage, it is not just possible to hold that prosecution is false, frivolous or fictitious and petitioner is no way concerned with the incidence. All these points will be decided after evidence is recorded in the concerned trial. So no ground is made out for setting-aside the charges framed by learned Second ASJ Sevdha, distt. Datia in Case no.3 of 2009 ST.

15. Hence, this petition is dismissed accordingly
Copy to concerned Court as per rules.

Petition dismissed.
