I. L. R. (2010) M.P.

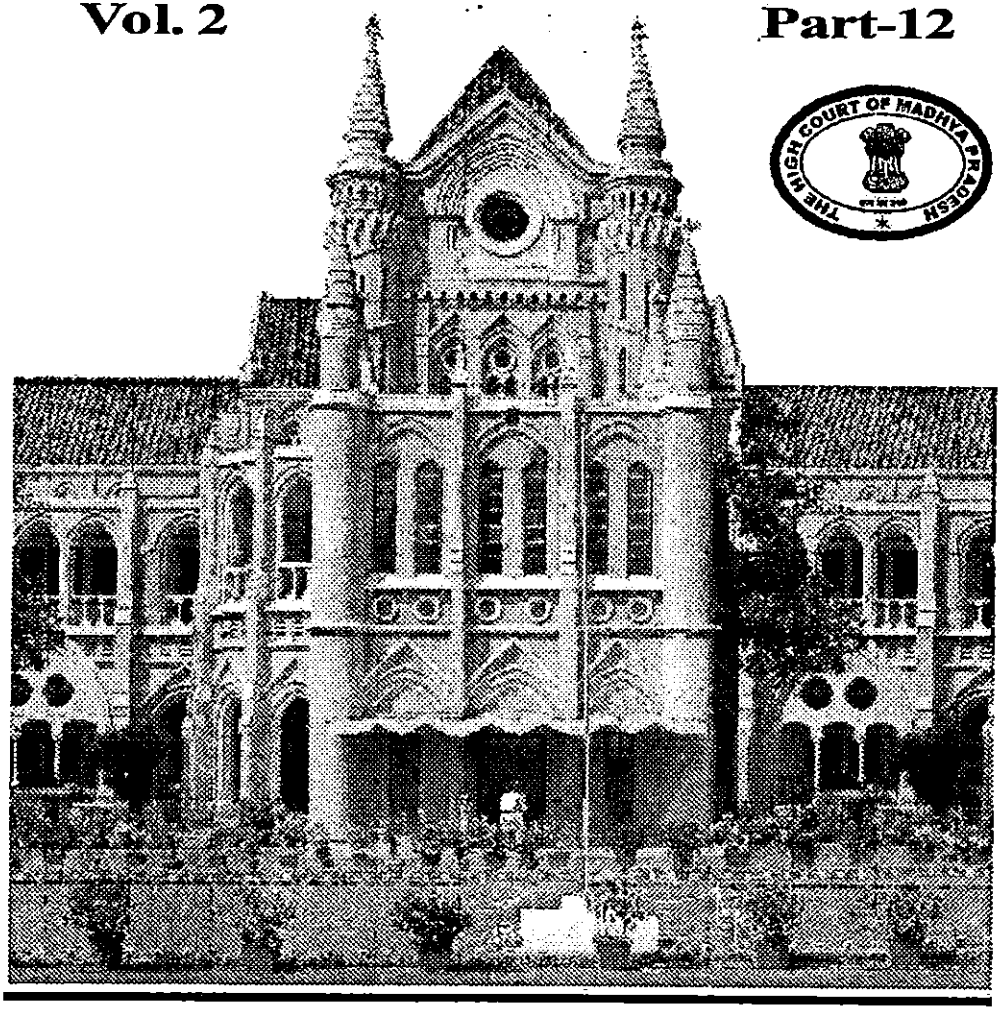
RNI. Regn. No. MPBIL/2009/32366
Postal Regn. No. L4/N.P./2010-12
Jabalpur M. P.

THE INDIAN LAW REPORTS

CONTAINING M. P. SERIES

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

Vol. 2 **Part-12**



December (Single copy ₹ 30) **2010**
(pp. 2441 to 2652) * *(All Rights Reserved)*

LAW REPORTING COMMITTEE OF ILR, M.P. SERIES
2010

PATRON

Hon'ble Shri Justice S. RAFAT ALAM
Chief Justice

PRESIDENT

Hon'ble Shri Justice K.K. LAHOTI

MEMBERS

Shri R. D. Jain, Advocate General, *(ex-officio)*
Shri Rajendra Tiwari, Senior Advocate
Shri P. R. Bhave, Senior Advocate
Shri Rohit Arya, Senior Advocate
Shri G.S. Ahluwalia, Advocate *(ex-officio)*
Ku. Sushma Khosla, Principal Registrar (Judl.), *(ex-officio)*

SECRETARY

Shri G.S. Ahluwalia, Advocate, Editor,(*Part-time*),*(ex-officio)*
Shri D. K. Mishra, Assitt. Editor.

Shri AWDHESH KUMAR SHRIVASTAVA, PRINCIPAL REGISTRAR, (ILR)

THE HIGH COURT OF MADHYA PRADESH
JABALPUR 2010

CHIEF JUSTICE

Hon'ble Shri Justice S. Rafat Alam
Chief Justice

PUISNE JUDGES

Hon'ble Shri Justice R.S. Garg	(Appointed as Chief Justice of Gauhati High Court & Ovation on 15-04-2010.)
Hon'ble Shri Justice A.K. Mishra	(Transferred to Rajasthan High Court & Ovation on 09-09-2010.)
Hon'ble Shri Justice A.M. Sapre	(Transferred to Rajasthan High Court & Ovation on 08-02-2010.)
Hon'ble Shri Justice S.L. Kochar	(Retired on 25-10-2010)
Hon'ble Shri Justice K.K. Lahoti	
Hon'ble Shri Justice Ajit Singh	
Hon'ble Shri Justice Rajendra Menon	
Hon'ble Shri Justice Viney Mittal	(Retired on 30-11-2010)
Hon'ble Shri Justice A.K. Shrivastava	
Hon'ble Shri Justice S.S. Kemkar	
Hon'ble Shri Justice S.K. Seth	
Hon'ble Shri Justice Rakesh Saksena	
Hon'ble Shri Justice N.K. Mody	
Hon'ble Shri Justice U.C. Maheshwari	
Hon'ble Shri Justice S.K. Gangele	
Hon'ble Shri Justice P.K. Jaiswal	
Hon'ble Smt. Justice Shubhada R. Waghmare	
Hon'ble Shri Justice Abhay M. Naik	
Hon'ble Shri Justice Ram Kishore Gupta	(Seeking Retirement & Ovation on 30-11-2010)
Hon'ble Shri Justice Ravi Shankar Jha	
Hon'ble Shri Justice S.S. Dwivedi	(Retired on 30-08-2010)
Hon'ble Shri Justice J.K. Maheshwari	
Hon'ble Shri Justice Sri Niwas Aggarwal	(From Delhi High Court)
Hon'ble Smt. Justice Sushma Shrivastava	

Hon'ble Shri Justice S.C. Sinho

Hon'ble Shri Justice R.C. Mishra

Hon'ble Shri Justice Sanjay Yadav

Hon'ble Shri Justice K.S. Chauhan (Retired on 06-05-2010)

Hon'ble Shri Justice S.C. Sharma

Hon'ble Shri Justice Prakash Shrivastava

Hon'ble Smt. Justice Indrani Datta

Hon'ble Shri Justice I.S. Shrivastava

Hon'ble Shri Justice Piyush Mathur (Resignation w.e.f. 01-09-2010)

Hon'ble Shri Justice Alok Aradhe

Hon'ble Shri Justice B.K. Dube

Hon'ble Shri Justice G.S. Solanki

Hon'ble Shri Justice N.K. Gupta

Hon'ble Shri Justice Anil Kumar Sharma

Hon'ble Smt. Justice Vimla Jain

Hon'ble Shri Justice M.A. Siddiqui

TABLE OF CASES REPORTED

(Note An asterisk (*) denotes Note number)

Abdul Naim v. State of M.P. ...2486
Abhimanyu Singh v. State of M.P. ...2518
ACME Papers Limited (M/s.) v. M.P. Financial Corporation ...*56
Akanksha Pandey v. State of M.P. ...2541
Akhil Bhartiya Upbhokta Congress v. State of M.P. ...2478
All India State Bank of Indore Officers' Co-ordination Committee v. State Bank of Indore ...*74
Anandi Prasad Dwivedi v. State of M.P. ...1904
Anil Kumar Markhedkar v. State of M.P. ...2307
Anil Kumar Purohit v. Dr. Hari Singh Gaur Vishwa Vidhyalaya Sagar ...2135
Anita Khare (Smt.) v. State of M.P. ...*57
Anita Pawar v. Dharmendra Sikarwar ...2422
Ansar Ahmed v. Halim @ Abdul Hakim ...2330
Anusuiya Singh v. State of M.P. ...1981
Ashish Kumar Shrivastava v. Western Coal Fields Ltd. ...2094
Ashish Raj (Dr.) v. State of M.P. ...2061
Ashit Verma v. State of M.P. ...*58
Ashok Kumar v. Smt. Meena ...*24
Ashutosh Sharma (Dr.) v. School of Planning & Architecture, Bhopal ...*75
Baijnath Choudhary v. Secretary, M.G.M., Higher Secondary School ...2339
Balaram v. State of M.P. ...2438
Balbir @ Bunty v. State of M.P. ...*76
Balla @ Baladeen v. State of M.P. ...2620
Bank of Maharashtra v. Manoj Kumar Deharia FB...1876
Banshidhar Goyanka v. Alok Kumar ...*59
Bansilal v. State of M.P. ...*77
Barwani Sugar v. Union of India ...*40
Bhagmal v. Kunwar Lal SC...2252
Bhagwati Singh Verma v. State of M.P. ...2466
Bhawarsingh v. State of M.P. ...2609
Bherulal v. State of M.P. ...1907
Bhopal Citizen's Forum v. State of M.P. ...2111
Bhupendra Singh Kushwah v. State of M.P. ...2482
Bindu Patel (Ku.) v. State of M.P. ...1956
C.B. Awasthy, Senior Co-operative Inspector Prashasan Sahakari Vipnun Sanstha v. Ramnarayan ...2569
Champalal v. State of M.P. ...*25
Chanda (Smt.) v. Sanjay Chouhan ...2224
Chhenu @ Yunus v. State of M.P. ...*26

Chitrarekha Saulakhe (Ku.) v. Suresh Saulakhe ...1945
D.K. Shrivastava v. State of M.P. SC...1865
D.V. Paul v. Manisha Lalwani ...*78
Deepa Dubey (Mrs.) v. Union of India ...2054
Dinesh Chandra Pandey v. High Court of M.P. SC...2007
Dinesh Jaiswal v. State of M.P. SC ...1839
Durga Prasad v. State of M.P. ...2089
Durga Prasad v. State of M.P. SC...1853
Emami Ltd. (M/s.) v. Registrar, M.P. Commercial Tax ...2497
Executive Engineer v. Smt. Kalawati ...1967
Fuljencia Kujur (Smt.) v. State of M.P. ...2504
G.P. Dewangon v. State of M.P. ...2547
G.V.S. Shastri v. M.P. State Electronics Development Corporation Ltd., Bhopal ...*79
Ganesh Prasad v. Asadulla Usmani ...2528
Gangaram v. Mangilal ...*80
Ganpatlal Vyas v. State of M.P. ...1900
Gaya Prasad v. Pradumn Prasad ...2343
Geeta Bakade (Dr.) v. State of M.P. ...*41
Gendaua (Smt.) v. State of M.P. ...1973
Ghanshyam @ Ghanshu v. State of M.P. ...*42
Girish Kumar v. State of M.P. ...2373
Girish Shrivastava v. N.K. Pateria ...2165
Golman v. Muniya Bai ...2588
Gopal Singh v. State of M.P. SC...1847
Gurudayal Gupta v. Satpura Narmada Kshetriya Gramin Bank, Chhindwara ...2101
H.L. Taneja (Deceased) Through L.Rs. v. Jitendra Mohan Khungar ...*27
Hareram Kaurav v. State of M.P. ...2612
Hargovind Nagaich v. State of M.P. ...1916
Haricharan v. State of M.P. ...2201
Heeralal v. The State of M.P. ...2220
Hiralal v. Mangilal ...1960
ICICI Lombard General Insurance Company Ltd. v. Haroon Bi ...2601
In Reference v. Mohammad Shafiq @ Munna @ Shafi ...2405
In Reference v. Rahul ...2206
Institute of Technology & Management v. Govt. of M.P. ...*43
ITI Limited v. State of M.P. ...2399
Jabalpur Co-operative Milk Producers Union Ltd. v. Union of India ...*60
Jaspreet Kaur (Smt.) v. Ramkrishna ...1939
Jinendra Kumar Jain v. State of M.P. ...1910
Jyoti Bangde (Smt.) v. Sanjay Bangde ...2425

K.P. Bhalse v. State of M.P. ...2292
Kamla Rusiya (Smt.) v. State of M.P. ...2001
Kanshiram Kushwaha v. Chief Conservator of Forest ...*28
Kapil Durgwani v. State of M.P. ...2003
Khoobiram v. Smt. Urmila Chouhan ...*61
Kineco Private Ltd. v. West Central Railways ...2489
Kishore Goyal v. Hanif Patel ...1994
Kishori Lal v. State of M.P. ...2172
Kodulal @ Laxman v. State of M.P. ...2181
Krishi Upaj Mandi Samiti v. M/s. Agro Solvent Products (P) Ltd. ...*29
Kuldeep Singh Punjabi v. State of M.P. ...2068
Lajjaram Pandey v. Madhya Pradesh State Information Commission ...2064
Lakhan v. State of M.P. SC...2018
Lalit Tongia v. State of M.P. ...*81
Laxmi Sahu v. State of M.P. ...2397
M.M. Traders v. State of M.P. ...*62
M.P. Hasta Shilpa Hathkargha Vikas Nigam Maryadit v. Om Prakash Kori ...2562
M.P. Human Rights Commission v. State of M.P. ...*45
Maa Jalpa Enterprises (M/s.) v. State of M.P. ...2284
Mahesh v. State of M.P. ...2057
Mahmood Hasan v. South Eastern Coal fields Ltd. ...*63
Makhmad Khan v. CBN Mandsaur ...2633
Manish Gupta v. State of M.P. ...*64
Manju Rajak (Smt.) v. Parvinder Singh ...*44
Mankunwar Bai (Smt.) v. Chairman ...*82
Mankunwarbai v. Vinod Kumar ...*83
Manoj v. State of M.P. ...1990
Maszid Chandal Bhata Prabandh Committee v. Secretary, Local Self Department ...1952
Mathura Prasad Yadav v. State of M.P. ...1950
Meena Rathore (Smt.) v. CBI, ACB, Bhopal ...*30
Mehmooda Bai (Smt.) v. Central Bank of India ...2310
Mewalal Sharma v. State of M.P. ...2645
Mhod. Yunus v. Devjani ...2105
Mohd. Aslam v. State of M.P. ...2428
Mool Chand Rajak v. S.P. Kapoor ...2582
Mubarik Khan v. U.O.I. ...*84
Mukesh Tripathi v. Registrar General ...*31
Mulchand v. Union of India ...*65
Murarilal Sharma v. State of M.P. ...2395
Murli Dhar v. Ishwar Dayal Girdhani ...2230

Nannu Sahu v. State of M.P. ...2191
Narayan Dharmshala v. Registrar, Public Trust ...2463
Narendra Kumar Singh & Raj Kumar Jain v. MPSEB ...*46
National Insurance Co. Ltd., Indore v. Mangilal ...2575
Navjyoti Sakh Sahkari Samiti Mydt., Khandwa v. State of M.P. ...2295
Nisha Patel v. Syed Mustaq ...2565
Om Prakash Chaturvedi v. State of M.P. ...1998
Pappu @ Kamod v. State of M.P. ...*47
Patiram v. State of M.P. SC...1842
Pawan Kumar Jain (M/s.) v. The Commercial Tax Officer ...2049
Phoenix Poultry (M/s.) v. State of M.P. ...2301
Pista Devi Goyal (Smt.) v. Brij Mohan Garg ...*32
Pradeep Dantre v. State of M.P. ...2045
Pradeep Kumar v. Shivshankar ...*48
Prahlad v. Shiv Nandan Kumari (Dead) Through L.Rs. SC...2441
Prakash Dabar v. State of M.P. ...2349
Pramod Kumar Gupta v. State of M.P. ...2074
Purshottamlal Sahu v. State of M.P. ...1948
Purushottam Patel v. State of M.P. ...*66
Pyarelal v. State of M.P. ...*33
R. Hanfi v. Yogendra Singh Dashmer ...2402
R.R. Sonver v. Mukhtyar Singh ...*67
Radhakant Verma (Dr.) v. State of M.P. ...2558
Radheshyam v. Union of India ...*34
Radhiya @ Radheshyam v. State of M.P. ...2379
Raghvendra Prasad Gautam v. Union Bank of India FB ...2275
Rajaram Pal v. State of M.P. ...2299
Rajeev Lochan v. State of M.P. ...*85
Rajendra Singh v. State of M.P. ...*68
Rajesh Singh v. State of M.P. ...*35
Raju Bai (Smt.) (dead) through L.R.-Dimak Chand vs. Collector, Balaghat FB ...2031
Ram Bhadra Tiwari v. State of M.P. ...2625
Ram Pratap v. State of M.P. FB...1896
Ramdin v. State of M.P. ...*86
Ramesh Chandra Gupta v. State of M.P. ...2506
Ramesh Chandra v. State of M.P. ...2368
Ramesh Kumar v. State of M.P. SC...1843
Raminder Singh Kalra v. Kanhaiya Tiwari ...2468
Ratichand v. State of M.P. ...1936
Ratna Shrivastav v. Mr. M.M. Bhargava ...2132

Ravendra Prasad Verma v. State of M.P. ...2525
Ravi v. State of M.P. ...2641
Ravindra Kumar Ganvir v. State of M.P. ...*87
Ravindra Kumar Gupta v. State of M.P. ...2511
Ravindra Kumar v. State of M.P. ...2176
Reg. Vidhichand Dharamshala Trust v. Shyam Singh ...*49
Rupindersingh Anand v. Smt. Gajinder Pal Kaur ...*50
S.K. Dasgupta v. Vijay Singh Sengar SC...2248
Sahnaz Bee v. Nirmala Road Lines ...2326
Sajid v. Amtulah Bai ...2595
Sameer Kumar Pal v. Sheikh Akbar SC...2271
Sanjay Deevan v. State of M.P. ...2389
Sanjay v. State of M.P. ...*88
Sanjeev Kumar Batham v. State of M.P. ...1931
Santosh Tomar (Smt.) v. Rajesh Singh Tomar ...2647
Santosh v. State of M.P. ...2233
Satendra Singh Gujar v. Bank of India ...2321
Satish Vishwakarma v. Asstt. Commissioner of Income Tax Circle 1(1), Bhopal ...*51
Satya Prakash v. Bhagwan Das ...2603
Satyapal G. Purswani v. Central Bank of India ...*36
Sayeed Mohd. v. Union of India ...2500
Shabana Bi (Smt.) v. State of M.P. ...*52
Shailendra Kumar Sahu v. State of M.P. ...1922
Shankar Yadav v. Basantibai ...*89
Shanti Bai v. State of M.P. ...*69
Shanti Devi (Smt.) v. State of M.P. ...2316
Sharad Kumar Mishra v. Shriram Transport Finance Company Ltd. ...2170
Sheetal Agrawal v. State of M.P. ...*90
Shesh Upadhyaya @ Sheshmani v. State of M.P. ...*91
Shiv Charan v. State of M.P. ...2198
Shiva Corporation v. State of M.P. ...2289
Shri Bhagwatacharya Narayan Dharmarth Trust, Balaji Mandir v. Jai Prakash ...2578
Shyam Kishore Malviya v. State of M.P. ...*53
Shyam Murari Sharma v. Additional Commissioner, Sagar Division ...*92
Sigma Construction (M/s.) v. Bharat Heavy Electricals Ltd ...*70
Smriti Patel v. State of M.P. ...*37
Sona Bai (Smt.) v. Anand Kumar ...*54
Sonu v. State of M.P. ...2418
Srikant Pandey v. State of M.P. ...2473
State of M.P. Through Collector, Dhar v. Vinayak Rao ...2154

State of M.P. v. Balram Mihani SC...2243
State of M.P. v. Harishankar Bhagwan Pd. Tripathi SC...2027
State of M.P. v. Kanhaiyalal ...1971
State of M.P. v. Nerbudda Valley Refrigerated Products Pvt. Ltd. SC...1858
State of M.P. v. Pappoo @ Saleem ...2383
State of M.P. v. Paramlal ...2357
State of M.P. v. Ratan Das ...2336
State of M.P. v. Veeru Alias Veer Singh ...2187
State of Maharashtra v. Nandlal Dewani ...*71
Sulabh Jain v. State of M.P. ...2433
Sunil Radhelia v. Awadh Narayan FB...2454
Suresh Kumar Singh v. State of M.P. ...2237
Suryakant Singh v. State of M.P. ...*55
Tarun Sharma v. Vishwas Sarang ...*38
Tilak Pradhan v. Smt. Ranjana Pradhan ...*39
Tukaram v. State of M.P. ...*72
Tulsiram v. Gambhir Singh ...1987
UCO Bank v. M/s. Shankar Enterprises ...2157
Ujjwal Kesari v. Shri Krishna Gupta ...2538
Umakant Mudgal v. State of M.P. ...2552
United India Insurance Co. Ltd. v. Smt. Vandana ...*93
Vijay @ Chinee v. State of M.P. SC...2257
Vijay Singh v. Surendra Singh ...2346
Vikram Cement v. Commissioner of Commercial Tax FB...2443
Vinay Kumar Kedia v. State of M.P. ...*94
Vineet Kabra v. State of M.P. ...2533
Virendra Kumar Mandloi v. State of M.P. ...*73
Yashoda Devi (Smt.) v. Kanhaiyalal ...*95
Yashwant Singh v. Smt. Sita Singh ...2650
Yogendra Gupta v. Smt. Renu Agrawal ...*96
Yogesh Kumar Gulati v. Satya Prakash Dhingra ...2324
Yogesh Tembhurne v. M.P. Professional Examination Board ...2085

******

Comparative Table

(Note An asterisk (*) denotes Note number)

ILR (M.P. Series) 2010=Other Journals

ILR (M.P. Series) 2010=JLJ

11=	2010 (1) JLJ 1
17=	2010 (2) JLJ 291
29=	2010 (1) JLJ 221
86=	2010 (1) JLJ 151
310=	2010 (1) JLJ 135
326=	2010 (2) JLJ 231
335=	2010 (1) JLJ 354
341=	2010 (1) JLJ 412
347=	2010 (1) JLJ 233
368=	2010 (2) JLJ 319
442=	2010 (1) JLJ 388
447=	2010 (2) JLJ 351
539=	2010 (2) JLJ 251
547=	2010 (2) JLJ 278
598=	2010 (1) JLJ 403
674=	2010 (1) JLJ 373
729=	2010 (1) JLJ 298
844=	2010 (2) JLJ 39
896=	2010 (1) JLJ 417
1021=	2010 (2) JLJ 1
1080=	2010 (2) JLJ 56
1181=	2010 (2) JLJ 309
1196=	2010 (2) JLJ 88
1201=	2010 (2) JLJ 414
1227=	2010 (2) JLJ 210 (SC)
1248=	2010 (2) JLJ 242 (SC)
1317=	2010 (2) JLJ 258
1331=	2010 (1) JLJ 422
1839=	2010 (2) JLJ 85
1843=	2010 (2) JLJ 444
*22=	2010 (2) JLJ 201
*44=	2010 (2) JLJ 372
*47=	2010 (2) JLJ 325

ILR (M.P. Series) 2010=MPLJ

62=	2010 (1) MPLJ 667
160=	2010 (1) MPLJ 98
283=	2010 (2) MPLJ 156
292=	2010 (1) MPLJ 399
296=	2010 (2) MPLJ 127
326=	2010 (1) MPLJ 380
347=	2010 (1) MPLJ 626
364=	2010 (2) MPLJ 52
374=	2010 (1) MPLJ 417
387=	2010 (1) MPLJ 444
417=	2010 (2) MPLJ 173
420=	2010 (2) MPLJ 40
433=	2010 (1) MPLJ 147
442=	2010 (1) MPLJ 617
458=	2010 (1) MPLJ 587
536=	2010 (2) MPLJ 609
550=	2010 (2) MPLJ 101
581=	2010 (1) MPLJ 407
593=	2010 (1) MPLJ 415
598=	2010 (1) MPLJ 612
603=	2010 (2) MPLJ 300
608=	2010 (2) MPLJ 357
630=	2010 (2) MPLJ 430
646=	2010 (2) MPLJ 436
654=	2010 (2) MPLJ 322
691=	2010 (1) MPLJ 359
699=	2010 (2) MPLJ 426
707=	2010 (2) MPLJ 621
771=	2010 (2) MPLJ 689 (FB)
788=	2010 (2) MPLJ 443
820=	2010 (2) MPLJ 341
833=	2010 (1) MPLJ 567
844=	2010 (2) MPLJ 130
896=	2010 (2) MPLJ 289
939=	2010 (1) MPLJ 427
1021=	2010 (2) MPLJ 304
1027=	2010 (1) MPLJ 60
1032=	2010 (2) MPLJ 662 (FB)
1072=	2010 (1) MPLJ 594
1077=	2010 (2) MPLJ 140
1080=	2010 (2) MPLJ 59
1089=	2010 (2) MPLJ 167
1097=	2010 (2) MPLJ 175
1100=	2010 (3) MPLJ 77

1141=	2010 (2) MPLJ 333
1146=	2010 (2) MPLJ 377
1156=	2010 (3) MPLJ 103
1196=	2010 (2) MPLJ 617
1221=	2010 (3) MPLJ 708
1248=	2010 (3) MPLJ 131 (SC)
1265=	2010 (2) MPLJ 230
1271=	2010 (1) MPLJ 577
1290=	2010 (2) MPLJ 104
1304=	2010 (2) MPLJ 202
1317=	2010 (3) MPLJ 324
1331=	2010 (2) MPLJ 183
1405=	2010 (3) MPLJ 466
1410=	2010 (2) MPLJ 555
1423=	2010 (2) MPLJ 401
1456=	2010 (2) MPLJ 55
1461=	2010 (2) MPLJ 636
1493=	2010 (2) MPLJ 385
1509=	2010 (2) MPLJ 236
1517=	2010 (3) MPLJ 407
1534=	2010 (2) MPLJ 422
1539=	2010 (2) MPLJ 395
1581=	2010 (3) MPLJ 460
1596=	2010 (3) MPLJ 99
1600=	2010 (2) MPLJ 644
1618=	2010 (2) MPLJ 549
1701=	2010 (2) MPLJ 218
1723=	2010 (3) MPLJ 151
1729=	2010 (4) MPLJ 207
1734=	2010 (2) MPLJ 408
1737=	2010 (3) MPLJ 589
1753=	2010 (3) MPLJ 636
1771=	2010 (2) MPLJ 603
1786=	2010 (2) MPLJ 596
1876=	2010 (3) MPLJ 213 (FB)
1896=	2010 (3) MPLJ 598 (FB)
1907=	2010 (3) MPLJ 454
1916=	2010 (2) MPLJ 418
1931=	2010 (4) MPLJ 285
1936=	2010 (2) MPLJ 392
1939=	2010 (3) MPLJ 387
1950=	2010 (3) MPLJ 323
1956=	2010 (4) MPLJ 231
1967=	2010 (3) MPLJ 404
2031=	2010 (4) MPLJ 452
2049=	2010 (3) MPLJ 157
2057=	2010 (3) MPLJ 470
2064=	2010 (3) MPLJ 369
2085=	2010 (3) MPLJ 545
2101=	2010 (4) MPLJ 105
2105=	2010 (4) MPLJ 24
2157=	2010 (3) MPLJ 67
2275=	2010 (4) MPLJ 466 (FB)
2292=	2010 (3) MPLJ 401
2299=	2010 (3) MPLJ 452
2301=	2010 (3) MPLJ 532
2316=	2010 (4) MPLJ 249
2321=	2010 (4) MPLJ 292
2336=	2010 (4) MPLJ 415
2343=	2010 (4) MPLJ 311
2402=	2010 (4) MPLJ 321
2425=	2010 (4) MPLJ 391
2454=	2010 (4) MPLJ 431 (FB)
2463=	2010 (4) MPLJ 384
2482=	2010 (4) MPLJ 225
2506=	2010 (4) MPLJ 345
2511=	2010 (4) MPLJ 439
2538=	2010 (4) MPLJ 399
2547=	2010 (4) MPLJ 327
2603=	2010 (4) MPLJ 421
*1=	2010 (2) MPLJ 121
*3=	2010 (1) MPLJ 181
*5=	2010 (1) MPLJ 196
*17=	2010 (3) MPLJ 124
*20=	2010 (3) MPLJ 373
*22=	2010 (3) MPLJ 35
*23=	2010 (3) MPLJ 379
*26=	2010 (4) MPLJ 253
*29=	2010 (4) MPLJ 86
*31=	2010 (3) MPLJ 170
*32=	2010 (4) MPLJ 235
*33=	2010 (3) MPLJ 351
*35=	2010 (4) MPLJ 65
*36=	2010 (3) MPLJ 664

*39=	2010 (3) MPLJ 392
*40=	2010 (3) MPLJ 29
*43=	2010 (3) MPLJ 643
*44=	2010 (2) MPLJ 543
*46=	2010 (4) MPLJ 57
*49=	2010 (3) MPLJ 428
*53=	2010 (3) MPLJ 492
*56=	2010 (3) MPLJ 602
*59=	2010 (4) MPLJ 49
*61=	2010 (3) MPLJ 522
*63=	2010 (2) MPLJ 649
*82=	2010 (2) MPLJ 536
*86=	2010 (2) MPLJ 682
*94=	2010 (4) MPLJ 374

ILR (M.P. Series) 2010=MPHT

62=	2010 (1) MPHT 284
86=	2010 (1) MPHT 154
111=	2010 (1) MPHT 101
129=	2010 (1) MPHT 477
136=	2010 (1) MPHT 25
185=	2010 (1) MPHT 233 (DB)
191=	2010 (2) MPHT 374
199=	2010 (4) MPHT 495
231=	2010 (5) MPHT 59
243=	2010 (2) MPHT 301
253=	2010 (3) MPHT 375 (DB)
261=	2010 (2) MPHT 306
280=	2010 (1) MPHT 309
283=	2010 (1) MPHT 462
296=	2010 (1) MPHT 133
335=	2010 (4) MPHT 406 (DB)
341=	2010 (1) MPHT 34
364=	2010 (3) MPHT 199 (DB)
368=	2010 (1) MPHT 349
376=	2010 (1) MPHT 435
391=	2010 (4) MPHT 266
413=	2010 (2) MPHT 324 (DB)
415=	2010 (3) MPHT 367
417=	2010 (3) MPHT 180
420=	2010 (1) MPHT 396
438=	2010 (2) MPHT 122
442=	2010 (2) MPHT 149
458=	2010 (1) MPHT 252
467=	2010 (2) MPHT 462
473=	2010 (3) MPHT 378
485=	2010 (1) MPHT 267
490=	2010 (2) MPHT 70 (DB)
503=	2010 (2) MPHT 48
506=	2010 (2) MPHT 177 (DB)
515=	2010 (1) MPHT 429
520=	2010 (3) MPHT 189
530=	2010 (1) MPHT 137
539=	2010 (2) MPHT 361
550=	2010 (5) MPHT 133 (DB)
581=	2010 (2) MPHT 332
593=	2010 (2) MPHT 140
595=	2010 (2) MPHT 457 (DB)
598=	2010 (1) MPHT 493
603=	2010 (4) MPHT 64 (DB)
646=	2010 (2) MPHT 194
691=	2010 (1) MPHT 124
699=	2010 (2) MPHT 14
703=	2010 (1) MPHT 280 (DB)
742=	2010 (1) MPHT 149
753=	2010 (1) MPHT 508
758=	2010 (1) MPHT 421
764=	2010 (2) MPHT 135
769=	2010 (2) MPHT 13 (SC)
771=	2010 (2) MPHT 233 (LB)
788=	2010 (2) MPHT 251 (FB)
815=	2010 (4) MPHT 400 (DB)
833=	2010 (1) MPHT 567
840=	2010 (4) MPHT 69 (DB)
852=	2010 (2) MPHT 22
891=	2010 (3) MPHT 184
896=	2010 (3) MPHT 27 (DB)
912=	2010 (4) MPHT 54 (DB)
932=	2010 (2) MPHT 83 (DB)
953=	2010 (3) MPHT 258
956=	2010 (1) MPHT 300
970=	2010 (4) MPHT 352
1006=	2010 (3) MPHT 96
1017=	2010 (1) MPHT 426

1032=	2010 (2) MPHT 469 (FB)	1834=	2010 (4) MPHT 179
1072=	2010 (2) MPHT 158 (DB)	1876=	2010 (4) MPHT 18 (FB)
1097=	2010 (3) MPHT 310 (DB)	1896=	2010 (4) MPHT 297 (FB)
1156=	2010 (5) MPHT 95	1936=	2010 (4) MPHT 60
1165=	2010 (5) MPHT 173	1939=	2010 (4) MPHT 223 (DB)
1170=	2010 (2) MPHT 314 (DB)	1950=	2010 (4) MPHT 177
1181=	2010 (5) MPHT 218 (DB)	1952=	2010 (5) MPHT 33
1196=	2010 (4) MPHT 425	1956=	2010 (5) MPHT 37 (DB)
1212=	2010 (3) MPHT 64	1967=	2010 (5) MPHT 207
1248=	2010 (2) MPHT 486 (SC)	1987=	2010 (4) MPHT 137
1265=	2010 (2) MPHT 447 (DB)	1994=	2010 (4) MPHT 426
1271=	2010 (2) MPHT 389	2003=	2010 (5) MPHT 42
1280=	2010 (3) MPHT 269	2031=	2010 (4) MPHT 319 (FB)
1304=	2010 (2) MPHT 202 (DB)	2054=	2010 (4) MPHT 191
1405=	2010 (4) MPHT 182	2064=	2010 (4) MPHT 450
1420=	2010 (4) MPHT 500	2085=	2010 (4) MPHT 257
1423=	2010 (5) MPHT 184	2101=	2010 (3) MPHT 392 (DB)
1427=	2010 (4) MPHT 456	2157=	2010 (3) MPHT 441
1435=	2010 (3) MPHT 16	2191=	2010 (3) MPHT 144
1465=	2010 (3) MPHT 370	2224=	2010 (5) MPHT 225
1493=	2010 (1) MPHT 499	2237=	2010 (5) MPHT 84 (DB)
1509=	2010 (3) MPHT 301 (DB)	2243=	2010 (3) MPHT 320 (SC)
1534=	2010 (2) MPHT 522 (DB)	2275=	2010 (4) MPHT 309 (FB)
1539=	2010 (3) MPHT 468 (DB)	2284=	2010 (5) MPHT 90 (DB)
1578=	2010 (5) MPHT 125	2295=	2010 (5) MPHT 72
1596=	2010 (3) MPHT 449	2299=	2010 (3) MPHT 466
1600=	2010 (3) MPHT 243 (DB)	2389=	2010 (5) MPHT 194 (DB)
1633=	2010 (1) MPHT 408 (DB)	2405=	2010 (4) MPHT 161 (DB)
1662=	2010 (3) MPHT 262 (DB)	2422=	2010 (5) MPHT 261
1672=	2010 (4) MPHT 382	2433=	2010 (4) MPHT 73
1687=	2010 (4) MPHT 302 (FB)	2454=	2010 (4) MPHT 477 (FB)
1694=	2010 (3) MPHT 399 (DB)	2463=	2010 (5) MPHT 257 (DB)
1707=	2010 (2) MPHT 189 (DB)	2511=	2010 (5) MPHT 46
1721=	2010 (4) MPHT 466	2641=	2010 (5) MPHT 265
1723=	2010 (3) MPHT 406 (DB)	*9=	2010 (2) MPHT 155
1729=	2010 (4) MPHT 188	*10=	2010 (4) MPHT 434
1745=	2010 (4) MPHT 195 (DB)	*12=	2010 (4) MPHT 87
1761=	2010 (5) MPHT 212	*17=	2010 (4) MPHT 229
1771=	2010 (4) MPHT 44	*20=	2010 (3) MPHT 349
1786=	2010 (5) MPHT 167	*21=	2010 (3) MPHT 208
1800=	2010 (3) MPHT 12 (DB)	*22=	2010 (4) MPHT 102
1814=	2010 (3) MPHT 285	*23=	2010 (3) MPHT 435

*35=	2010 (5) MPHT 202
*37=	2010 (3) MPHT 357 (DB)
*43=	2010 (4) MPHT 111 (DB)
*44=	2010 (4) MPHT 141 (DB)
*59=	2010 (5) MPHT 78
*72=	2010 (3) MPHT 475

ILR (M.P. Series) 2010=MPJR

25=	2010 (1) MPJR SN 25
29=	2010 (1) MPJR 24
95=	2010 (1) MPJR 129
160=	2010 (1) MPJR 232
247=	2010 (1) MPJR SN 16
310=	2010 (2) MPJR (SC) 104
347=	2010 (1) MPJR SN 21
368=	2010 (2) MPJR SN 1
391=	2010 (3) MPJR SN 3
447=	2010 (3) MPJR SN 1
467=	2010 (3) MPJR 240
515=	2010 (2) MPJR 39
603=	2010 (1) MPJR 264
646=	2010 (3) MPJR 130
864=	2010 (2) MPJR SN 16
891=	2010 (2) MPJR 56
912=	2010 (3) MPJR 36
1001=	2010 (3) MPJR 126
1021=	2010 (1) MPJR (SC) 217
1032=	2010 (2) MPJR (FB) 97
1065=	2010 (3) MPJR 42
1097=	2010 (3) MPJR 111
1100=	2010 (4) MPJR 59
1156=	2010 (2) MPJR SN 27
1170=	2010 (2) MPJR 30
1201=	2010 (2) MPJR SN 15
1227=	2010 (1) MPJR (SC) 224
1243=	2010 (3) MPJR (SC) 49
1248=	2010 (1) MPJR (SC) 250
1280=	2010 (2) MPJR SN 20
1301=	2010 (2) MPJR SN 14
1304=	2010 (1) MPJR 196
1331=	2010 (2) MPJR 366
1371=	2010 (3) MPJR 18
1410=	2010 (4) MPJR 92
1465=	2010 (3) MPJR 93
1596=	2010 (2) MPJR 263
1694=	2010 (4) MPJR 103
1707=	2010 (3) MPJR 26
1729=	2010 (4) MPJR 142
1732=	2010 (3) MPJR 91
1853=	2010 (3) MPJR (SC) 216
1865=	2010 (3) MPJR (SC) 309
1896=	2010 (4) MPJR (FB) 10
1904=	2010 (2) MPJR 5
1931=	2010 (4) MPJR 115
1945=	2010 (4) MPJR 138
1971=	2010 (3) MPJR 109
1990=	2010 (4) MPJR SN 4
2111=	2010 (3) MPJR 377
2157=	2010 (2) MPJR 234
2237=	2010 (3) MPJR SN 10
2243=	2010 (2) MPJR (SC) 241
2275=	2010 (4) MPJR (FB) 1
2316=	2010 (4) MPJR 127
2368=	2010 (3) MPJR 173
2405=	2010 (3) MPJR 318
2418=	2010 (3) MPJR SN 13
2454=	2010 (3) MPJR (FB) 412
2504=	2010 (4) MPJR 101
2603=	2010 (4) MPJR 86
*5=	2010 (2) MPJR 231
*11=	2010 (2) MPJR 60
*19=	2010 (3) MPJR SN 9
*23=	2010 (3) MPJR 288
*33=	2010 (3) MPJR 10
*43=	2010 (2) MPJR 343
*49=	2010 (3) MPJR 142
*69=	2010 (3) MPJR SN 11

******

INDEX

(Note An asterisk (*) denotes Note number)

Accommodation Control Act, M.P. (41 of 1961) - ***Right of pre-emption - Held*** - *Tenant always remains tenant and does not acquire any right of preemption against the landlord to purchase the premise unless some express contract taken between the parties by their act.* [Moolchand Rajak v. S.P. Kapoor] ...2582

Accommodation Control Act, M.P. (41 of 1961), Section 3 - *Notification of exemption to public trust registered under M.P. Public Trust Act - If defendant succeeds in establishing by cogent evidence that the utilization of entire income has not been made for trust, a suit for eviction by trust under shelter of exemption of S. 3 read with notification is liable to be dismissed in absence of existence of any of the grounds enumerated u/s 12(1) of the Act.* [Reg. Vidhichand Dharamshala Trust v. Shyam Singh] ...*49

Accommodation Control Act, M.P. (41 of 1961), Section 3(2) - ***Exemption*** - *Appellant Trust is registered at Bombay and the property of Trust is also situated in M.P. - Held - Registration of Trust under the provisions of Bombay Public Trust Act, suffice the purpose and the exemption granted u/s 3(2) of M.P. Accommodation Control Act is equally applicable for the appellant Trust.* [Shri Bhagwatacharya Narayan Dharmarth Trust, Balaji Mandir v. Jai Prakash] ...2578

Accommodation Control Act, M.P. (41 of 1961), Sections 3(2) & 20 - *Even if a public institution who is not covered u/s 3(2) of the Act files a suit for eviction, then too, the said institution is not governed by S. 12, but is governed by S. 20 of the Act.* [Shri Bhagwatacharya Narayan Dharmarth Trust, Balaji Mandir v. Jai Prakash] ...2578

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a) - ***Arrears of rent*** - *At the time of notice appellants/tenants were not in arrears and also there is no proof of receipt of notice - The ground u/s 12(1)(a) is not availabe.* [Sajid v. Amtulah Bai] ...2595

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a) - ***Arrears of rent - When payable - Held*** - *It is to be paid within 30 days of summons of the court or on service of notice as the case may be.* [Ansar Ahmed v. Halim @ Abdul Hakim] ...2330

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a) & (c), Civil Procedure Code, 1908, Section 100 - *Relation between landlord & tenant being finding of fact - Scope of interference in Second Appeal - Held - If there is no concurrent findings of facts of the Courts below then the relation between landlord & tenant can be interfered in a Second Appeal.* [Sona Bai (Smt.) v. Anand Kumar] ...*54

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(b) - ***Sub-letting - Onus of proof - Held*** - *Plaintiff is required to place on record*

INDEX

(Note An asterisk (*) denotes Note number)

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41) – अग्रक्रयाधिकार – अभिनिर्धारित – किरायेदार/अभिधारी सदा ही किरायेदार/अभिधारी रहता है और भूस्वामी के विरुद्ध परिसर को क्रय करने का कोई अग्रक्रयाधिकार अर्जित नहीं करता है जब तक कि पक्षकारों के मध्य उनके कार्य द्वारा कोई अभिव्यक्त संविदा न की गयी हो। (मूलचंद रजक वि. एस.पी. कपूर) ...2582

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 3 – म.प्र. लोक न्यास अधिनियम के अंतर्गत रजिस्ट्रीकृत लोक न्यास को छूट की अधिसूचना – यदि प्रतिवादी तर्कपूर्ण साक्ष्य द्वारा यह स्थापित करने मे सफल होता है कि संपूर्ण आय का उपयोग न्यास के लिए नहीं किया गया है, धारा 3 सहपठित अधिसूचना की छूट के आश्रय के अंतर्गत न्यास द्वारा बेदखली के लिए वाद अधिनियम की धारा 12(1) के अंतर्गत दिये गये आधारों में से किसी के अस्तित्व के अभाव में खारिज किये जाने योग्य है। (पंजी. विधिचंद धर्मशाला ट्रस्ट वि. श्याम सिंह) ---*49

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 3(2) – छूट – अपीलार्थी ट्रस्ट मुम्बई में पंजीकृत तथा ट्रस्ट की सम्पत्ति म.प्र. में भी स्थित – अभिनिर्धारित – मुम्बई सार्वजनिक न्यास अधिनियम के उपबंधों के अन्तर्गत ट्रस्ट का पंजीकरण, प्रयोजन के लिए पर्याप्त है एवं म.प्र. स्थान नियन्त्रण अधिनियम की धारा 3(2) के अन्तर्गत दी गयी छूट भी अपीलार्थी ट्रस्ट के लिये समान रूप से लागू होती है। (श्री भगवताचार्य नारायण धर्मार्थ ट्रस्ट, बालाजी मंदिर वि. जय प्रकाश)...2578

स्थान नियंत्रण अधिनियम म0प्र0 (1961 का 41), धाराएँ 3(2) एवं 20 – यद्यपि कोई लोक संस्था, जो अधिनियम की धारा 3(2) के अंतर्गत शामिल नहीं है, बेदखली के लिए वाद दाखिल करती है, तब भी उपरोक्त संस्था धारा 12 से शासित नहीं होती बल्कि अधिनियम की धारा 20 से शासित होती है। (श्री भगवताचार्य नारायण धर्मार्थ ट्रस्ट, बालाजी मंदिर वि. जय प्रकाश) ...2578

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए) – किराये का बकाया – सूचना देने के समय अपीलार्थी/किरायेदार पर बकाया नहीं था एवं सूचना प्राप्ति का कोई सबूत भी नहीं था – धारा 12(1)(ए) के अन्तर्गत आधार उपलब्ध नहीं। (साजिद वि. अम्तुलाह बाई) ...2595

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए) – भाड़े का बकाया – कब देय – अभिनिर्धारित – उसे न्यायालय के समन्स के 30 दिनों के भीतर अथवा सूचना की तामीली पर, जैसी भी स्थिति हो, अदा करना होगा। (अंसार अहमद वि. हलीम उर्फ अब्दुल हकीम) ...2330

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए) व (सी), सिविल प्रक्रिया संहिता, 1908, धारा 100 – भू–स्वामी और भाड़ेदार के बीच संबंध तथ्य का निष्कर्ष होते हुये – द्वितीय अपील में हस्तक्षेप का विस्तार – अभिनिर्धारित – यदि निचले न्यायालयों के तथ्यों के कोई समवर्ती निष्कर्ष नहीं हैं तब भू–स्वामी और भाड़ेदार के बीच संबंध में द्वितीय अपील में हस्तक्षेप हो सकता है। (सोना बाई (श्रीमति) वि. आनंद कुमार) ---*54

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ब) – उप–भाड़ेदारी – साबित करने का भार – अभिनिर्धारित – याची से केवल यह अपेक्षित है कि वह कतिपय

certain circumstances from which an inference with regard to sub-letting can be drawn - Held - When such circumstances are proved, prima facie the burden on the plaintiff is discharged and the onus shifts on the defendant to prove by positive fact about the non-existence of alleged sub-tenant. [Yashoda Devi (Smt.) v. Kanhaiyalal] ...*95

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) - *Disclaimer of title - What amounts to - Held - The essential characteristic of disclaimer of title by tenant is that it must amount to a renunciation by the tenant of his character of tenant, either by setting up a title in another or by claiming title in himself - A mere renunciation of tenancy without more, though it may operate as a surrender, cannot amount to a disclaimer.* [Pradeep Kumar v. Shivshankar] ...*48

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) - *Tenant denying title of landlord, has also claimed ownership of third party - He also lodged a complaint against the landlord - He also alleged that landlord got to manage removal of record and manupulation in record of Government - No error in passing decree of eviction against him - Appeal dismissed.* [Pradeep Kumar v. Shivshankar] ...*48

Accommodation Control Act, M.P. (41 of 1961), Sections 12(1)(c), 12(1)(f) & 12(1)(g) - See - *Civil Procedure Code, 1908, Section 100* [Sameer Kumar Pal v. Sheikh Akbar] SC...2271

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - *Bona fide requirement - Eviction sought on basis of bona fide requirement of plaintiffs "B" & "D" - "B" died during pendency of suit and after obtaining vacant possession of another shop - Ownership of "D" not established - Held -Alleged need is not proved/covered u/s 12(1)(f) of the Act.* [Satya Prakash v. Bhagwan Das] ...2603

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - *Bona fide requirement for non residential purpose - Pleadings - Landlord having alternative residential accommodation not expressly pleaded in the plaint - Effect - Held - If a plea is covered by issue by implication then mere fact that the plea was not expressly taken in pleading would not necessary disentitle a party from relying upon it if it is satisfactorily proved by evidence.* [Hiralal v. Mangilal] ...1960

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - *Bona fide requirement - Inexperience and want of funds are not relevant consideration for refusing eviction.* [Ansar Ahmed v. Halim @ Abdul Hakim] ...2330

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - *Bona fide requirement - Landlord residing in other town - Can he seek eviction on the ground of bona fide requirement - Held - The landlord, who*

परिस्थितियाँ अभिलेख पर लाये जिनसे उप–भाड़ेदारी के सम्बन्ध में अनुमान निकाला जा सके – अभिनिर्धारित – जब ऐसी परिस्थितियां साबित की जाती है, वादी प्रथम दृष्टया भार से प्रमुक्त हो जाता है और दायित्व प्रतिवादी पर आ जाता है कि वह कथित उपभाड़ेदारी के अनस्तित्व के बारे में सकारात्मक तथ्य द्वारा साबित करे। (यशोदा देवी (श्रीमति) वि. कन्हैयालाल) ---*95

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(सी) – हक से इनकारी – की कोटि में क्या आता है – अभिनिर्धारित – भाड़ेदार द्वारा हक से इनकारी का आवश्यक लक्षण यह है कि वह भाड़ेदार द्वारा उसकी भाड़ेदार की हैसियत के त्याग की कोटि में आना चाहिए, या तो किसी और में हक स्थापित कर अथवा स्वयं में हक का दावा करके – बिना और कुछ, मात्र अभिधृति का त्याग, यद्यपि वह अभ्यर्पण के रूप मे प्रभावी हो सकता है, हक से इंकारी की कोटि में नहीं आ सकता। (प्रदीप कुमार वि. शिवशंकर) ---*48

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(सी) – भाड़ेदार ने भू–स्वामी के हक से इनकार करते हुए तृतीय पक्ष के स्वामित्व का भी दावा किया – उसने भू–स्वामी के विरुद्ध शिकायत भी दर्ज करायी – उसने यह भी अभिकथन किया कि भू–स्वामी अभिलेख हटाने में और सरकार के अभिलेखों में छलसाधन कराने में सफल रहा – उसके विरुद्ध बेदखली की डिक्री पारित करने में कोई त्रुटि नहीं – अपील खारिज। (प्रदीप कुमार वि. शिवशंकर) ---*48

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराएँ 12(1)(सी), 12(1)(एफ) व 12(1)(जी) : देखें – सिविल प्रक्रिया संहिता, 1908, धारा 100 (समीर कुमार पाल वि. शेख अकबर) SC---2271

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – वास्तविक आवश्यकता – वादी "बी" एवं "डी" की वास्तविक आवश्यकता के आधार पर बेदखली चाही गयी – वाद के लम्बित रहने के दौरान एवं अन्य दुकान का रिक्त कब्जा प्राप्त करने के बाद "बी" की मृत्यु – "डी" का स्वामित्व सिद्ध नहीं – अभिनिर्धारित – तथाकथित आवश्यकता अधिनियम की धारा 12(1)(एफ) के अन्तर्गत सिद्ध/सम्मिलित नहीं। (सत्य प्रकाश वि. भगवान दास) ...2603

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – अनिवासीय प्रयोजन हेतु सद्भावी आवश्यकता – अभिवचन – मकान मालिक के पास वैकल्पिक आवास होने के सम्बंध में वादपत्र में स्पष्ट अभिवचन नहीं है – प्रभाव – अभिनिर्धारित – यदि अभिवचन विवाद्यकों के अभिप्राय द्वारा समाविष्ट है तब मात्र यह तथ्य की तर्क का स्पष्ट रूप से अभिवाक नहीं किया गया, किसी पक्षकार को आवश्यक रूप से इस पर अवलम्ब करने से अनाधिकृत नहीं करेगा यदि यह साक्ष्य द्वारा भलीभांति सिद्ध हो। (हीरालाल वि. मांगीलाल) ...1960

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – वास्तविक आवश्यकता – अनुभवहीनता तथा निधि का अभाव, बेदखली नामंजूर करने के लिये सुसंगत बात नहीं हैं। (अंसार अहमद वि. हलीम उर्फ अब्दुल हकीम) ...2330

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12 (1)(एफ) – वास्तविक आवश्यकता – अन्य शहर में निवास करने वाला मकान मालिक – क्या वह वास्तविक आवश्यकताओं के आधार पर बेदखली का निवेदन कर सकता है – अभिनिर्धारित – मकान मालिक, जो कि उस

is residing out side the town of disputed premises on proving his/her bona fide genuine requirement to start the business in such town is entitled to get decree of eviction against the tenant. [Ashok Kumar v. Smt. Meena] ...*24

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - ***Bona fide requirement - Plaintiff's son wants to do business at Shajapur in his own shop - His parents and sisters are residing at Shajapur - He is also having ancestral property at Shajapur - Even if it is assumed that the plaintiff's son doing some business at Mumbai, it can not be said that the need of plaintiff is not bona fide - Appeal dismissed.*** [Sajid v. Amtulah Bai] ...2595

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - ***Bona fide tequirement - Tenant disputing bona fide requirement on the ground other shops are also available though occupied by other tenants - Permissibility -Held - Court, as rationing authority, cannot insist or direct the plaintiff to get the eviction of some other shop as such the plaintiff is a sole Judge to decide that which shop or premises is suitable and convenient for his/her alleged need.*** [Ashok Kumar v. Smt. Meena] ...*24

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - See - *Civil Procedure Code, 1908, Section 100,* [Ashok Kumar v. Smt. Meena]...*24

Accommodation Control Act, M.P. (41 of 1961), Section 13(6), Civil Procedure Code, 1908, Order 47 Rule 1 - ***Delay in deposit of rent - Trial Court after condonation directed tenant to deposit all arrears of rent within one month -Tenant deposited arrears of rent and rent in advance but failed to produce receipts in Court within time - Order striking of defense passed - Application for review filed along with rent receipts also rejected - Held - Tenant was not in arrears of rent and he had deposited all the arrears of rent in compliance of order and thereafter in accordance with provision as contained u/s 13(1) of the Act - Trial Court erred in rejecting application for review - Petition allowed.*** [Ganesh Prasad v. Asadulla Usmani] ...2528

Accommodation Control Act, M.P. (41 of 1961), Section 23-A(b) - ***A widow, who is a co-owner and landlady of the premises can in her own right initiate proceedings for eviction u/s 23-A(b), without joining other co-owners / co-landlords as party to the proceedings, on being the owner of the property for commencing business of any of her major sons, even when her major sons, who are also the co-owners/co-landlords have not been joined as party to the proceedings and it would not affect the locus of the landlady or the maintainability of the proceedings - The consent of the other co-owners for instituting the proceedings for eviction of the tenant would not be required and the bona fide requirement to evict the tenant could be established without even suggesting for the consent of co-owner about the institution of the eviction proceedings.*** [Pista Devi Goyal (Smt.) v. Brij Mohan Garg] ...*32

Accommodation Control Act, M.P. (41 of 1961), Section 23-A(b) -

शहर से जहां विवादित परिसर स्थित है से अन्यत्र निवास कर रहा है शहर में व्यापार प्रारंभ करने की सद्भाविक आवश्यकता को सिद्ध करके किरायेदार के विरूद्ध बेदखली की डिक्री प्राप्त करने का अधिकारी है। (अशोक कुमार वि. श्रीमति मीना) ---*24

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – वास्तविक आवश्यकता – वादी का पुत्र शाजापुर में अपनी स्वयं की दुकान में व्यवसाय करना चाहता है – उसके माता–पिता एवं बहनें शाजापुर में रहती हैं – शाजापुर में उसका पैतृक निवास भी है – यह मान लेने पर भी कि वादी का पुत्र मुम्बई में कोई व्यवसाय कर रहा है तो भी यह नहीं कहा जा सकता कि वादी की आवश्यकता वास्तविक नहीं है – अपील खारिज। (साजिद वि. अम्तुलाह बाई)...2595

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – वास्तविक आवश्यकता – किरायेदार द्वारा वास्तविक आवश्यकता को अन्य दुकानों के उपलब्ध होने जिन्हें अन्य किरायेदारों के कब्जे के आधार पर विवादित – अनुज्ञेयता – अभिनिर्धारित – एक राशनिंग प्राधिकारी के रूप में न्यायालय वादी को किसी अन्य दुकान से बेदखली करवाने के लिये दबाव या निर्देश नहीं दे सकता क्योंकि अपनी आवश्यकता हेतु कौन सी दुकान उपयुक्त या सुविधाजनक है यह तय करने का अधिकार सिर्फ वादी को ही है। (अशोक कुमार वि. श्रीमति मीना) ---*24

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – देखें – सिविल प्रक्रिया संहिता 1908, धारा 100, (अशोक कुमार वि. श्रीमति मीना) ---*24

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 13(6), सिविल प्रक्रिया संहिता, 1908, आदेश 47 नियम 1 – किराया ज़मा करने में विलम्ब – विचारण न्यायालय ने विलम्ब क्षमा करने के बाद किरायेदार को एक माह के अन्दर किराये की सम्पूर्ण बकाया राशि जमा करने का निदेश दिया – किरायेदार ने किराये की बकाया राशि तथा अग्रिम किराया जमा कर दिया परन्तु समय सीमा के अन्तर्गत न्यायालय में रसीद प्रस्तुत करने में असमर्थ रहा – प्रतिरक्षा काट दिये जाने का आदेश पारित – किराये की रसीदों के साथ प्रस्तुत पुनर्विलोकन का आवेदन भी नामंजूर किया गया – अभिनिर्धारित – किरायेदार पर किराया बकाया नहीं था एवं उसने आदेश के पालन में तथा उसके पश्चात् अधिनियम की धारा 13(1) में अन्तर्विष्ट उपबंधों के अनुसार किराये की सम्पूर्ण बकाया राशि जमा कर दी थी – विचारण न्यायालय ने पुनर्विलोकन का आवेदन नामंजूर करने में त्रुटि की – याचिका मंजूर। (गनेश प्रसाद वि. असदउल्ला उस्मानी) ...2528

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–ए(बी) – कोई विधवा, जो भवन की सहस्वामिनी और भूस्वामिनी है, सम्पत्ति की स्वामी होने पर अन्य सह–स्वामियों/सह–भूस्वामियों को कार्यवाहियों के पक्षकार के रूप में जोड़े बिना, अपने निज के अधिकार से उसके वयस्क पुत्रों में से किसी का कारबार प्रारम्भ करने के लिए धारा 23–ए(बी) के अन्तर्गत बेदखली के लिए कार्यवाहियाँ प्रारम्भ कर सकती है, जब उसके वयस्क पुत्रों, जो सह–स्वामी/सह–भूस्वामी भी हैं, को भी कार्यवाहियों के पक्षकार के रूप में नहीं जोड़ा गया हो और यह भूस्वामिनी के स्थान या कार्यवाहियों की पोषणीयता को प्रभावित नहीं करेगा – बेदखली की कार्यवाहियाँ संस्थित करने के लिए अन्य सह–स्वामियों की सहमति अपेक्षित नहीं होगी और किरायेदार को बेदखल करने की वास्तविक आवश्यकता बेदखली की कार्यवाहियाँ संस्थित करने के बारे में सह–स्वामी की सहमति के लिए सुझाव दिये बिना भी साबित की जा सकती थी। (पिस्ता देवी गोयल (श्रीमति) वि. ब्रजमोहन गर्ग) ---*32

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–ए(बी) – अन्य

The presence and/or absence of other co-owners would be of no use or rather it would be inconsequential for all the purposes, because it would not alter the nature of claim preferred by the widow landlady and would not take away the proceedings beyond of the scope of S.23-A(b). [Pista Devi Goyal (Smt.) v. Brij Mohan Garg] ...*32

Administrative Law - *Policy decision - Scope of judicial review - Held - The policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy unless it does not offend any provision of the statute or the Constitution of India.* [Barwani Sugar v. Union of India] ...*40

Admission (Reservation to NRI) Regulation, M.P. 2009, Regulation 3 & 5 - See - *Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, M.P., 2007* [Lalit Tongia v. State of M.P.]...*81

Advocacy - *General principles and legal ethics summarised.* [Balaram v. State of M.P.] ...2438

Arbitration and Conciliation Act (26 of 1996), Section 8 - *Power to refer parties to arbitration where there is an arbitration agreement - Meaning - Held - The section contemplates seeking reference to an arbitral tribunal, for which the dispute has to be between the parties to the arbitral agreement and the dispute should be with regard to execution of the agreement, wherein the arbitration agreement is incorporated.* [H.L. Taneja (Deceased) Through L.Rs. v. Jitendra Mohan Khungar] ...*27

Arbitration and Conciliation Act (26 of 1996), Section 11(6) - *Appointment of an Arbitrator - Objection on ground of (i) The existence of the remedy of adjudication to the petitioner under the M.P. Madhyastham Adhikaran Adhiniyam, 1983, (ii) Certain concealment of fact by the petitioner before entering into agreement, (iii) Merit of the dispute and justification of the respondents in terminating the agreement - Held - Since (i) There is provision in agreement for resolution of dispute by appointing an arbitrator, (ii) Contract is basically terminated for the breach of agreement and non-performance of the contract and not only on the ground of concealment of facts, (iii) It is beyond the jurisdiction of High Court to go into the said area on merit of the dispute in these proceedings - All the objections are unsustainable - Petition allowed.* [ITI Limited v. State of M.P.] ...2399

Arbitration and Conciliation Act (26 of 1996), Section 11(6) - *Even if the Court is to exercise the jurisdiction and is to appoint Arbitrator, the Arbitrator named in the agreement, is to be given preference and under normal circumstance he has to be appointed as Arbitrator - The arbitrator appointed by respondent during Court proceeding, approved by the Court and permitted to proceed and decide the dispute.* [Sigma Construction (M/s.) v. Bharat Heavy Electricals Ltd.] ...*70

सह–स्वामियों की उपस्थिति और/अथवा अनुपस्थिति किसी उपयोग की नहीं होगी बल्कि यह सभी प्रयोजनों के लिए महत्वहीन होगी, क्योंकि यह विधवा भूस्वामिनी द्वारा पेश दावे की प्रकृति को परिवर्तित नहीं करती और कार्यवाहियों को धारा 23–ए(बी) के क्षेत्र के परे नहीं ले जाती। (पिस्ता देवी गोयल (श्रीमति) वि. ब्रजमोहन गर्ग) ---*32

प्रशासनिक विधि – नीति निर्धारण – न्यायिक पुनर्विलोकन का विस्तार – अभिनिर्धारित – नीति निर्धारण राज्य के प्रशासनिक प्राधिकार के अधीन है और न्यायालय को लोक नीति के अनधिकृत महासागर में नहीं उतरना चाहिये और प्रभावकारिता पर आक्षेप नहीं लेना चाहिये जब तक वह कानून अथवा भारत के संविधान के किसी उपबंध का उल्लंघन नहीं करती। (बरवानी शुगर वि. यूनियन ऑफ इंडिया) ---*40

प्रवेश (अनिवासी भारतीय को आरक्षण) विनियम, म.प्र. 2009, विनियम 3 व 5 – देखें – निजी व्यावसायिक शिक्षण संस्था (प्रवेश का विनियमन एवं शुल्क का निर्धारण) अधिनियम, म.प्र. (2007 का 21) (ललित टोंगिया वि. म.प्र. राज्य) ---*81

वकालत – सामान्य सिद्धान्त एवं विधिक नीतिशास्त्र संक्षेपतः वर्णित। (बालाराम वि. म.प्र. राज्य) ...2438

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 8 – जहां मध्यस्थता अनुबंध होने पर मध्यस्थता के पक्षकारों को निर्दिष्ट करने की शक्ति – अर्थ – अभिनिर्धारित – इस धारा का उद्देश्य मध्यस्थता अनुबंध के पक्षकारों के मध्य जिस विवाद के सम्बंध में मध्यस्थता अनुबंध समाविष्ट है उसके निष्पादन संबंधी विवाद को मध्यस्थता अधिकरण को निर्दिष्ट करना है। (एच.एल. तनेजा (मृतक) द्वारा विधिक प्रतिनिधि वि. जितेन्द्र मोहन खुंगार) ---*27

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(6) – मध्यस्थ की नियुक्ति – उसके सम्बन्ध में (i) याची को म.प्र. माध्यस्थम् अधिकरण अधिनियम, 1983 के अन्तर्गत न्यायनिर्णयन के उपचार के अस्तित्व, (ii) याची द्वारा करार करने के पूर्व तथ्य के कतिपय छिपाव, (iii) विवाद के गुणदोष और करार समाप्त करने में प्रत्यर्थियों के न्यायोचित्य के आधार पर आक्षेप – अभिनिर्धारित – चूंकि (i) करार में मध्यस्थ की नियुक्ति द्वारा विवाद के विनिश्चय के लिए उपबंध है, (ii) संविदा करार के भंग और संविदा के अननुपाल के कारण मूलतः पर्यवसित होती है न कि केवल तथ्यों के छिपाव के आधार पर, (iii) यह उच्च न्यायालय की अधिकारिता के परे है कि इन कार्यवाहियों में कथित क्षेत्र में विवाद के गुणदोषों पर विचार करे – सभी आक्षेप अपोषणीय हैं – याचिका मंजूर। (आई.टी.आई लि. वि. म.प्र. राज्य) ...2399

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(6) – यदि न्यायालय को अधिकारिता का प्रयोग करना हो और मध्यस्थ की नियुक्ति करना हो, तो भी अनुबंध में नामित मध्यस्थ को अधिमान्यता दी जानी होगी एवं सामान्य परिस्थिति में उसे ही मध्यस्थ नियुक्त किया जाना होगा – न्यायालय की कार्यवाही के दौरान प्रत्यर्थी द्वारा नियुक्त किये गये मध्यस्थ को न्यायालय द्वारा अनुमोदित किया गया और आगे कार्यवाही करने व विवाद का निराकरण करने की अनुज्ञा दी गई। (सिग्मा कंस्ट्रक्सन (मे.) वि. भारत हैवी इलेक्ट्रिकल्स लि.) ---*70

Arms Act (54 of 1959) Sections 25(1-B)(a) & 30 - See - *Penal Code, 1860, Section 216-A* [State of M.P. v. Veeru @ Veer Singh] ...2187

Central Sales Tax Act (74 of 1956), Section 3 - ***Inter-State sale - What amounts to - Held*** - *The sale would be inter-state sale in case there is stipulation express or implied in the agreement of sale or the movement of goods is incidental and must be the necessary consequence of sale or purchase - It must be a case of cause and effect; cause being sale & purchase and effect being movement of the goods from one State to another - The sale and movement of goods must be a part of same transaction.* [M.M. Traders v. State of M.P.] ...*62

Civil Procedure Code (5 of 1908) - ***Transfer of case - Permissibility - Held*** - *It is a cardinal principle of law that unless the nature of the two suits pending between identical set of parties are not similar then the two cases either diverse in nature or pending amongst different set of litigation could not be tried together merely on account of commonness of the suit property.* [Tulsiram v. Gambhir Singh] ...1987

Civil Procedure Code (5 of 1908) - ***Transfer of case - Power of the Court - Held*** - *The power of the Court to transfer the suit is certainly wide in terms of S. 24 of CPC which empowers the District Court and the High Court to transfer the suit or appeal for their trial or disposal to any Court subordinate to it and competent to try and dispose of the same, but the Court exercise this power only in such circumstance where it become imperative for the Court to exercise the power for meeting the ends of justice.* [Tulsiram v. Gambhir Singh] ...1987

Civil Procedure Code (5 of 1908), Section 9, Land Revenue Code, M.P. 1959, Sections 57(2) & 257 - *Dispute pertains to ancestral land and the plaintiffs are in possession of the said land and in the records as Jagir Bhumi of their ancestor since 1907-08 as owners/Bhumiswami - Determination of question of Bhumiswami rights lies within the province of the Civil Court.* [State of M.P. through Collector, Dhar v. Ratan Das] ...2336

Civil Procedure Code (5 of 1908), Section 24 - ***Transfer of matrimonial case*** - *In the matter of difficulties and convenience, the women requires more consideration in comparison of men.* [Jyoti Bangde (Smt.) v. Sanjay Bangde] ...2425

Civil Procedure Code (5 of 1908) - **Section 34** - ***Grant of Pendente lite Interest-No Rate of Interest specified- Permissibility - Held*** - *Where there exists no evidence about the mutually agreed rate of interest, or contractual interest or the rate at which the Nationalized Bank charge interest, on the commercial transactions, the Court can conveniently award pendente lite interest up to a maximum of 6% per annum.* [UCO Bank v. M/s. Shankar Enterprises] ...:2157

आयुध अधिनियम (1959 का 54), धाराएँ 25(1–बी)(ए) व 30 – देखें – दण्ड संहिता, 1860, धारा 216–ए (म.प्र. राज्य वि. वीरू उर्फ वीर सिंह) ...2187

केन्द्रीय विक्रय कर अधिनियम (1956 का 74), धारा 3 – अन्तर्राज्यिक विक्रय – की कोटि में क्या आता है – अभिनिर्धारित – विक्रय अन्तर्राज्यिक विक्रय होगा यदि विक्रय के करार में अभिव्यक्त या विवक्षित शर्त हो या माल का संचलन आनुषंगिक हो और विक्रय या क्रय का आवश्यक परिणाम हो – इसे कार्य कारण का मामला होना चाहिए, कारण विक्रय और क्रय हो और कार्य एक राज्य से दूसरे में माल का संचलन हो – विक्रय और माल का संचलन एक ही संव्यवहार का भाग होना चाहिए। (एम.एम. ट्रेडर्स वि. म.प्र. राज्य) ---*62

सिविल प्रक्रिया संहिता (1908 का 5) – वाद का अंतरण – अनुज्ञेयता – अभिनिर्धारित – यह विधि का मुख्य सिद्धांत है कि जब तक कि समान संवर्ग के पक्षों के बीच लंबित दोनों वादों की प्रकृति एक समान नहीं है तब तक या तो अलग–अलग प्रकृति के या दो भिन्न संवर्ग के मुकदमों में लंबित वह दोनों वाद मात्र वाद सम्पत्ति समान होने के कारण उनका एक साथ विचारण नहीं किया जा सकता। (तुलसीराम वि. गंभीरसिंह) ...1987

सिविल प्रक्रिया संहिता (1908 का 5) – वाद का अंतरण – न्यायालय की शक्ति – अभिनिर्धारित – वाद अंतरित करने की न्यायालय की शक्ति सि.प्र.सं. की धारा 24 के पद में निश्चित रूप से व्यापक है, जो जिला न्यायालय तथा उच्च न्यायालय को वाद अथवा अपील किसी भी अधीनस्थ तथा उसका विचारण और निराकरण करने के लिये सक्षम न्यायालय को विचारण अथवा निराकरण करने के लिए अंतरित करने की शक्ति प्रदान करती है, परंतु न्यायालय इस शक्ति का प्रयोग केवल ऐसी परिस्थितियों में करता है, जहाँ न्याय करने के लिए इस शक्ति का प्रयोग करना न्यायालय के लिए अत्यावश्यक हो जाता है। (तुलसीराम वि. गंभीरसिंह) ...1987

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9, भू राजस्व संहिता, म.प्र. 1959, धारा 57(2) एवं 257 – विवाद पैतृक भूमि से संबधित और कथित भूमि वादी के कब्जे में एवं अभिलेख में स्वामी/भूमिस्वामी के रूप में 1907–08 से उनके पूर्वज की जागीर भूमि के रूप में – भूमिस्वामी अधिकार के प्रश्न का अवधारण सिविल न्यायालय के अधिकार क्षेत्र में है। (म.प्र. राज्य द्वारा कलेक्टर, धार वि. रतन दास) ...2336

सिविल प्रक्रिया संहिता (1908 का 5), धारा 24 – विवाह विषयक मामले का अंतरण – कठिनाईयों और सुविधा के मामले में, पुरुषों की तुलना में महिलाओं पर अधिक ध्यान देना आवश्यक है। (ज्योति बांगडे (श्रीमति) वि. संजय बांगडे) ...2425

सिविल प्रक्रिया संहिता (1908 का 5) – धारा 34 – वाद लंबित कालावधि हेतु ब्याज की स्वीकृति– ब्याज दर निर्दिष्ट नहीं– अनुज्ञेयता– अभिनिर्धारित– जब परस्पर सहमति से तय की गयी ब्याज दर अथवा संविदात्मक ब्याज अथवा वाणिज्यिक संव्यवहार पर राष्ट्रीयकृत बैंक द्वारा ब्याज प्रभारित करने की दर के संबंध मे जहां कोई साक्ष्य उपलब्ध न हो तो न्यायालय अधिकतम 6 प्रतिशत प्रतिवर्ष की दर से वाद लंबित रहने की कालावधि का ब्याज आसानी से स्वीकृत कर सकती है । (यूको बैंक वि. मे. शंकर इंटरप्राइजेस) ...2157

Civil Procedure Code (5 of 1908) - Section 34 - ***Grant of Pendente lite Interest-Principles to be followed- Held-The issue of interest pendente lite would certainly be governed by the peculiar facts and circumstances of the case - The Court would be justified in exercising its discretion to award pendente lite interest, at a rate found reasonable, in the discretion of the Court.*** [UCO Bank v. M/s. Shankar Enterprises] ...2157

Civil Procedure Code (5 of 1908) - Section 34 - ***Interest-Rate of Interest - Held - The Legislature has provided that the Court may order payment of interest at such rate as the Court deems reasonable to be made on the 'principal sum adjudged' from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum, for any period prior to the institution of the suit, with further interest at such rate not exceeding 6% per annum and the Proviso appended to Section 34 meet such exigencies, when the rate of interest is specified or not specified in an agreement.*** [UCO Bank v. M/s. Shankar Enterprises] ...2157

Civil Procedure Code (5 of 1908) - Section 34, Order 34 Rule 11- ***Grant of Pendente lite Interest-Trial court granting 5% Interest pendente lite-Held Permissibility-The Scheme of the payment of interest as reflected in Section 34 and Order 34 of CPC provide for payment of 6% interest as the outer limit for the rate of interest - It could not be said that the Trial Court had erred in awarding 5% rate of interest on the principal sum for the period of the suit.*** [UCO Bank v. M/s. Shankar Enterprises] ...2157

Civil Procedure Code (5 of 1908), Sections 94, 151, Order 39 Rules 1 & 2 - ***Grant of injunction - Duty of the Court - Held - The Court while passing an order in favour of a party shall not be ignorant of the rights of the opposite party and shall equally carry an obligation that its order though, shall grant protection to the applicant but the efforts shall be made in special circumstances to achieve it simultaneously by taking care of the opposite party -Court shall always make an effort that while granting an order of injunction, the opposite party may not be put to unnecessary loss.*** [Tilak Pradhan v. Smt. Ranjana Pradhan] ...*39

Civil Procedure Code (5 of 1908), Section 100, Accommodation Control Act, M.P. 1961, Sections 12(1)(c), 12(1)(f) & 12(1)(g) - *Concurrent findings of fact in a case cannot be reversed in second appeal by weaving out an entirely new case without pleadings or basis - Judgment & order of trial Court as affirmed by first appellate Court is restored - Appeal allowed.* [Sameer Kumar Pal v. Sheikh Akbar] SC...2271

Civil Procedure Code (5 of 1908), Section 100, Accommodation Control Act, M.P. 1961, Section 12(1)(f) - ***Concurrent findings of fact - Interference - Permissibility - Held -*** *The concurrent findings on the ground of bona fide genuine requirement enumerated u/s 12(1)(e) & (f) of the Act,*

सिविल प्रक्रिया संहिता (1908 का 5) – धारा 34 – वाद कालावधि ब्याज– अनुकरणीय सिद्धांत–अभिनिर्धारित– वाद कालीन ब्याज का विवाद्यक निश्चित रूप से प्रकरण के विशेष तथ्यों एवं परिस्थितियों से नियमित होगा– न्यायालय द्वारा विवेकाधिकार का प्रयोग करते हुए उचित समझी गयी दर से स्वीकृत वाद कालीन ब्याज न्यायसंगत होगा । (यूको बैंक वि. मे. शंकर इंटरप्राइजेस) ...2157

सिविल प्रक्रिया संहिता (1908 का 5) – धारा 34 – ब्याज – ब्याज दर – अभिनिर्धारित– विधायिका ने यह प्रावधान किया है कि न्यायालय निर्णीत मूलधन पर वाद की दिनांक से डिकी पारित करने की दिनांक तक ऐसी दर से जैसा कि वह युक्तियुक्त समझे, ब्याज का भुगतान करने हेतु आदेश कर सकती है, ऐसे मूलधन पर निर्धारित/निर्णीत ब्याज के अतिरिक्त, वाद संस्थित होने के पूर्व किसी अवधि के लिये, अधिकतम 6 प्रतिशत प्रतिवर्ष की दर से ब्याज तथा धारा–34 का परन्तुक इस प्रकार की अत्यावश्यकताओं को पूरा करता है, जब किसी अनुबंध मे ब्याज की दर निर्दिष्ट हो अथवा न हो । (यूको बैंक वि. मे. शंकर इंटरप्राइजेस) ...2157

सिविल प्रक्रिया संहिता (1908 का 5) – धारा 34, आदेश 34 नियम 11–वादकालीन ब्याज की स्वीकृति–विचारण न्यायालय द्वारा 5 प्रतिशत वादकालीन ब्याज स्वीकृत – अभिनिर्धारित– अनुज्ञेयता– सिविल प्रक्रिया संहिता की धारा 34 एवं आदेश 34– ब्याज भुगतान की प्रणाली जैसी की सि0प्र0सं0 की धारा 34 एवं आदेश 34 मे परिलक्षित ब्याज भुगतान की प्रणाली ब्याज भुगतान हेतु 6 प्रतिशत ब्याज दर की अधिकतम सीमा का प्रावधान करती है– यह नहीं माना जा सकता कि विचारण न्यायालय ने मूलधन की राशि पर 5 प्रतिशत की दर से ब्याज भुगतान स्वीकृत करके त्रुटि की है । (यूको बैंक वि. मे. शंकर इंटरप्राइजेस) ...2157

सिविल प्रक्रिया संहिता (1908 का 5), धाराएँ 94, 151 आदेश 39 नियम 1 एंव 2 – निषेधाज्ञा देना – न्यायालय का कर्तव्य – अभिनिर्धारित – न्यायालय किसी एक पक्षकार के पक्ष में आदेश पारित करते समय विरोधी पक्षकार के अधिकारों को नजर अंदाज नहीं करेगा तथा इस बात का समान रूप से ध्यान रखेगी कि उसका आदेश यद्यपि आवेदक को सहायता पहुँचाता है परंतु साथ ही साथ विशेष परिस्थितियों में विरोधी पक्षकार के हित का ध्यान रखेगी – निषेधाज्ञा का आदेश पारित करते समय न्यायालय सदैव उस बात का ध्यान रखेगी कि विरोधी पक्षकार को अनावश्यक हानि न पहुँचे। (तिलक प्रधान वि. श्रीमति रंजना प्रधान) ---*39

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100, स्थान नियंत्रण अधिनियम, म.प्र. 1961, धाराएँ 12(1)(सी), 12(1)(एफ) व 12(1)(जी) –किसी मामले में तथ्य के समवर्ती निष्कर्षो को बिना अभिवचन या आधार के संपूर्णतः नया मामला बनाकर द्वितीय अपील में उलटा नहीं जा सकता – विचारण न्यायालय का निर्णय तथा आदेश, जैसा कि प्रथम अपीलीय न्यायालय द्वारा पुष्ट किया गया है, पुनःस्थापित किया गया – अपील मंजूर। (समीर कुमार पाल वि. शेख अकबर) SC---2271

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100, स्थान नियंत्रण अधिनियम,म.प्र. 1961, धारा 12(1)(एफ) – तथ्यों के समवर्ती निष्कर्ष – हस्तक्षेप – अनुज्ञेयता – अभिनिर्धारित – अधिनियम की धारा 12 (1)(ई) एवं (एफ) में वर्णित वास्तविक आवश्यकताओं के

being based on appreciation of evidence is finding of facts, the same could not be interfered u/s 100 of CPC. [Ashok Kumar v. Smt. Meena] ...*24

Civil Procedure Code (5 of 1908), Section 100 - *Scope of interference - Concurrent findings of the courts below on the question of adverse possession based on appreciation of evidence being finding of fact could not be interfered.* [Gaya Prasad v. Pradumn Prasad] ...2343

Civil Procedure Code (5 of 1908), Section 100 - See - *Accommodation Control Act, M.P., 1961, Section 12(1)(a) & (c)* [Sona Bai (Smt.) v. Anand Kumar] ...*54

Civil Procedure Code (5 of 1908), Section 115 - *Powers of High Court - Held - If the order passed by the Trial Court is in the interest of justice, the High Court can refuse to interfere u/s 115 of CPC even if the order suffers from material irregularity or illegality, unless grave injustice or hardship would result from failure to do so.* [Bansidhar Goyanka v. Alok Kumar] ...*59

Civil Procedure Code (5 of 1908), Section 148 - *Enlargement of time - Appellant did get a bank draft prepared and dispatched to the address of the respondent - This may not have been a strict compliance with the direction issued by the High Court regarding the deposit before the Trial Court but this certainly establishes the bonafides of the appellant, which is a weighty consideration while examining the request for extension of time - Appellant has made out a case for extension.* [D.V. Paul v. Manisha Lalwani]...*78

Civil Procedure Code (5 of 1908), Section 148 - *Enlargement of time - When any period or time is granted by the Court for doing any act, the Court has the discretion from time to time to enlarge such period even if the time originally fixed or granted by the Court has expired.* [D.V. Paul v. Manisha Lalwani] ...*78

Civil Procedure Code (5 of 1908), Section 151, Order 39 Rule 4 - *Order of injunction may be discharged, varied or set aside - What amounts to - Plaintiff claiming 1/3rd share in the suit property - Order of temporary injunction restraining the defendant from alienation has attained finality - One of defendants being patient of heart disease, diabetes and blood-pressure required substantial money for medical treatment and survival - Held - In such a situation, S. 151 CPC may be invoked and plaintiff may be directed to choose the best 1/3rd for protection of his interest so as to enable him to reap the fruits of the decree in case of success - This will not amount to discharge, variance or setting aside of the order of temporary injunction because the same is protected in letter and spirit.* [Tilak Pradhan v. Smt. Ranjana Pradhan] ...*39

Civil Procedure Code (5 of 1908), Order 1 Rule 10 - *Application for impleadment during pendency of Second Appeal - Suit for declaration of*

आधार पर समवर्ती निष्कर्ष, साक्ष्य मूल्यांकन पर आधारित होकर तथ्य का निष्कर्ष है, सि.प्र.सं. की धारा 100 के तहत उसमें हस्तक्षेप नहीं किया जा सकता। (अशोक कुमार वि. श्रीमति मीना)---*24

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – हस्तक्षेप का विस्तार – प्रतिकूल कब्जे के प्रश्न पर पर निचले न्यायालयों के समवर्ती निष्कर्ष, साक्ष्य के मूल्यांकन पर आधारित तथ्य के निष्कर्ष होने से हस्तक्षेप नहीं किया जा सकता। (गया प्रसाद वि. प्रद्युमन प्रसाद) ...2343

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – देखें – स्थान नियंत्रण अधिनियम, म.प्र., 1961, धारा 12(1)(ए) व (सी), (सोना बाई (श्रीमति) वि. आनंद कुमार) ---*54

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 – उच्च न्यायालय की शक्तियाँ – अभिनिर्धारित – यदि विचारण न्यायालय द्वारा पारित आदेश न्यायहित में है, तो आदेश तात्विक अनियमिता एवं अवैधता से ग्रस्त होने पर भी, उच्च न्यायालय सि.प्र.सं. की धारा 115 के अन्तर्गत हस्तक्षेप करने से इनकार कर सकता है, जब तक कि ऐसा करने में असफलता से गंभीर अन्याय अथवा कठिनाई न हो। (बंशीधर गोयंका वि अलोक कुमार) ---*54

सिविल प्रक्रिया संहिता (1908 का 5), धारा 148 – समय का बढ़ाया जाना – अपीलार्थी ने एक बैंक ड्राट तैयार कराया और प्रत्यर्थी के पते पर प्रेषित किया – यह उच्च न्यायालय द्वारा विचारण न्यायालय के समक्ष जमा किये जाने के सम्बन्ध में जारी निदेश का पूर्ण पालन नहीं हो सकता था, किन्तु यह निश्चित तौर पर अपीलार्थी के सद्भाव को सिद्ध करता है, जो समय बढ़ाये जाने की प्रार्थना की जाँच करने के लिये महत्वपूर्ण विचार है – अपीलार्थी ने समय वृद्धि हेतु प्रकरण स्थापित किया। (डी.व्ही. पॉल वि. मनीषा लालवानी) ---*78

सिविल प्रक्रिया संहिता (1908 का 5), धारा 148 – समय का बढ़ाया जाना – जब न्यायालय द्वारा किसी कार्य को करने के लिए कोई अवधि अथवा समय अनुदत्त किया जाता है, तब न्यायालय को समय–समय पर ऐसी अवधि को बढ़ाने का विवेकाधिकार है, भले ही न्यायालय द्वारा मूलतः नियत या प्रदत्त समय व्यतीत हो गया हो। (डी.व्ही. पॉल वि. मनीषा लालवानी) ---*78

सिविल प्रक्रिया संहिता (1908 का 5), धारा 151, आदेश 39 नियम 4 – निषेधाज्ञा के आदेश को उन्मोचित, परिवर्तित अथवा निरस्त किया जा सकता है – जो समतुल्य है – वादी वाद सम्पत्ति में एक तिहाई हिस्से का दावा करता है – प्रतिवादी को सम्पत्ति के अन्य सक्रांमण से विरत रहने हेतु पारित अस्थाई निषेधाज्ञा अन्तिमतता प्राप्त कर चुकी है–एक प्रतिवादी को हृदय रोग, मधुमेह तथा रक्तचाप का रोगी होने के कारण चिकित्सा तथा जीवन यापन हेतु पर्याप्त धन की आवश्यकता है – अभिनिर्धारित–ऐसी स्थिति में धारा 151 सि.प्र.सं. पर अवलम्ब लिया जा सकता है तथा वादी को अपने हित सुरक्षित रखने के लिये 1/3 का चुनाव करने के लिये निर्देशित किया जा सकता है जिससे कि वह प्रकरण में उसके पक्ष में पारित डिक्री के परिणाम का लाभ उठा सके – यह अस्थाई निषेधाज्ञा के आदेश के उन्मोंचन, परिवर्तन या निरस्त करने की कोटी में नहीं आयेगा क्योंकि वह लेटर एवं स्पिरिट से सुरक्षित है। (तिलक प्रधान वि. श्रीमति रंजना प्रधान) ---*39

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – द्वितीय अपील के लंबित होने के दौरान पक्षकार बनाने के लिये आवेदन – राज्य के विरूद्ध तालाब के हक की घोषणा के

title of pond against State - Applicants claiming customary rights to take water from pond - Separate suit filed by applicants is also pending - Application for impleadment already rejected by the trial Court and rejection order of trial Court attained finality - Held - Applicants claiming independent right and issue raised is foreign to present controversy in appeal - Application can not be allowed, hence rejected. [State of M.P. Through Collector, Dhar v. Vinayak Rao] ...2154

Civil Procedure Code (5 of 1908), Order 1 Rule 10 - *Impleadment of party - Defendant / Petitioner raised the objection about non-joinder of necessary party and issue framed on that basis was decided in favour of plaintiff - Subsequent application by plaintiff for impleadment of same party - Held - The prayer could not be allowed without considering the effect of earlier order deciding the preliminary issue.* [Mankunwarbai v. Vinod Kumar] ...*83

Civil Procedure Code (5 of 1908), Order 6 Rule 17 - *Amendment - Once the trial is commenced, no application for amendment can be allowed unless the Court comes to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.* [Mankunwarbai v. Vinod Kumar] ...*83

Civil Procedure Code (5 of 1908), Order 6 Rule 17 - ***Amendment of pleadings - Permissibility*** - *Plaintiff had not filed evidence on affidavit and filed application for amendment - Held - Proviso to Order 6 Rule 17 CPC will not come into play, if the trial, is not commenced.* [Jaspreet Kaur (Smt.) v. Ramkrishna] ...1939

Civil Procedure Code (5 of 1908), Order 6 Rule 17 - *Petition challenging the order of amendment permitting plaintiff to amend relief clause by inserting relief of vacant possession of plot after demolition of construction - Held - The amendment necessary for the just decision of this case - By inserting amendment, nature of the suit is not changed - On the contrary, relief clause has become very specific by allowing such amendment - Petition dismissed with costs.* [Ratna Shrivastav (Smt.) v. Mr. M.M. Bhargava]...2132

Civil Procedure Code (5 of 1908), Order 6 Rule 17 & Order 41 Rule 27 - *Plaintiffs intending to probe an enquiry as regards the sale deed for proving the title - Held - When the relationship between landlord and tenant has been proved on the basis of documents and receipts - An extensive enquiry in respect of title in favour of a person other than a person named in the sale deed cannot be permitted - Eviction suit cannot be permitted to be converted into a title suit - Applications rightly dismissed.* [Satya Prakash v. Bhagwan Das] ...2603

Civil Procedure Code (5 of 1908), Order 9 Rule 7 - *Ex parte order - Setting aside of - The trial Court ought to have taken a lenient view in the matter in setting aside the ex parte order as the object of Order 9 CPC is not penal in nature.* [Ujjwal Kesari v. Shri Krishna Gupta] ...2538

लिये वाद – आवेदक तालाब से पानी लेने के रूढ़िगत अधिकार का दावा कर रहे हैं – आवेदकों द्वारा प्रस्तुत पृथक वाद भी लंबित है – विचारण न्यायालय द्वारा पक्षकार बनाने का आवेदन पहले ही नामंजूर कर दिया गया और विचारण न्यायालय का नामंजूरी आदेश अंतिम हो गया – अभिनिर्धारित – आवेदकों ने स्वतंत्र अधिकार का दावा किया और उठाया गया विवाद्यक अपील में वर्तमान विवाद के लिये असंगत है – आवेदन मंजूर नहीं किया जा सकता, इसलिए नामंजूर किया गया। (म.प्र. राज्य द्वारा कलेक्टर, धार वि. विनायक राव) ...2154

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – पक्षकार बनाना – प्रतिवादी/याची ने आवश्यक पक्षकार के असंयोजन के बारे में आक्षेप किया और उस आधार पर विरचित विवाद्यक वादी के पक्ष में विनिश्चित किया गया – उसी पक्षकार के संयोजन हेतु वादी द्वारा पश्चात्वर्ती आवेदन – अभिनिर्धारित – प्रारंभिक विवाद्यक का विनिश्चय करने वाले पूर्ववर्ती आदेश के प्रभाव पर विचार किये बिना प्रार्थना मंजूर नहीं की जा सकती। (मानकुँवरबाई वि. विनोद कुमार) ---*83

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – संशोधन – जब एक बार विचारण प्रारम्भ हो जाता है, तब संशोधन के लिए कोई आवेदन तब तक मंजूर नहीं किया जा सकता जब तक कि न्यायालय इस निष्कर्ष पर न पहुँचे कि सम्यक् तत्परता के बावजूद भी पक्षकार विचारण प्रारम्भ होने के पूर्व मामले को नहीं उठा सकते थे। (मानकुँवरबाई वि. विनोद कुमार)---*83

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – अभिवचनों का संशोधन – अनुज्ञेयता – वादी ने शपथपत्र पर साक्ष्य प्रस्तुत नही की और संशोधन का आवेदन प्रस्तुत किया – अभिनिर्धारित – आदेश 6 नियम 17 सि.प्र.सं. का परन्तुक लागू नहीं होगा यदि विचारण आरंभ नहीं हुआ है। (जसप्रीत कोर (श्रीमति) वि. रामकृष्ण) ...1939

सिविल प्रक्रिया संहिता (1908 का 5) – आदेश 6, नियम 17 – निर्माण के भंजित किये जाने के पश्चात वादी को प्लाट के खाली कब्जे के अनुतोष की समाविष्टि द्वारा अनुतोष खंड मे संशोधन की अनुमति देने वाले संशोधन के आदेश को याचिका मे चुनौती– अभिनिर्धारित – इस मामले के न्यायोचित निराकरण के लिये संशोधन आवश्यक संशोधन के समावेशन से वाद का स्वरूप नही बदला है – इसके विपरीत, ऐसा संशोधन मंजूर करने से अनुतोष खंड अधिक विनिर्दिष्ट बन गया है – याचिका व्यय के साथ खारिज । (रत्ना श्रीवास्तव (श्रीमती) वि. मिस्टर एम.एम. भार्गव) ...2132

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 व आदेश 41 नियम 27 – वादियों का स्वत्व को सिद्ध करने के लिए विक्रय पत्र के सम्बन्ध में जाँच करना आशयित – अभिनिर्धारित – जब दस्तावेजों एवं रसीदों के आधार पर भूस्वामी एवं किरायेदार के मध्य सम्बन्ध साबित हो चुका है – तब विक्रय विलेख में वर्णित व्यक्ति के अलावा किसी अन्य व्यक्ति के पक्ष में स्वत्व के सम्बन्ध में व्यापक जाँच की अनुमति नहीं दी जा सकती – बेदखली के वाद को स्वत्व वाद में परिवर्तित करने की अनुज्ञा नहीं दी जा सकती – आवेदन खारिज होना सही। (सत्य प्रकाश वि. भगवान दास) ...2603

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 7 – एकपक्षीय आदेश – का अपास्त किया जाना – विचारण न्यायालय को एकपक्षीय आदेश को अपास्त करने में मामले में उदार दृष्टिकोण रखना चाहिए क्योंकि सि.प्र.सं. के आदेश 9 के उद्देश्य की प्र.ति शास्तिक नहीं है। (उज्जवल केसरी वि. श्रीकृष्ण गुप्ता) ...2538

Civil Procedure Code (5 of 1908), Order 9 Rule 9 & Order 43, Motor Vehicles Act, 1988, Section 104, Motor Vehicles Rules, M.P. 1994, Rule 240 - *Application for restoration under Order 9 Rule 9 CPC rejected by the MACT - No appeal would lie under Order 43.* [Sharad Kumar Mishra v. Shriram Transport Finance Company Ltd.] ...2170

Civil Procedure Code, (5 of 1908), Order 9 Rule 13 - See - *Limitation Act, 1963, Section 5, Article 123* [Bhagmal v. Kunwar Lal] SC...2252

Civil Procedure Code (5 of 1908), Order 12 Rule 2 - *Admission of document - Stage at which it is permitted - Held - The admission of a document may be made by the parties at any stage, if permitted by the Court.* [Mohd. Yunus v. Devjani] ...2105

Civil Procedure Code (5 of 1908), Order 12 Rules 2, 2A, 3A & 4 - ***Admissions of facts and documents*** - *Stage at which it is permitted - Held - For admission of facts, the period has been specified, while for admission of the documents no such period has been specified either under Order 12 Rule 2 or 3A of CPC or in the Civil Courts Rules and Orders.* [Mohd. Yunus v. Devjani] ...2105

Civil Procedure Code (5 of 1908), Order 21 Rules 89 & 90, Limitation Act, 1963, Section 5, Article 127 - *Commencement of period of limitation for the said purpose is the date of sale - S. 5 of Limitation Act has no application.* [ACME Papers Ltd. (M/s.) v. M.P. Financial Corporation]...*56

Civil Procedure Code (5 of 1908), Order 39 Rules 1 & 2 - *Temporary injunction - While deciding the application under Order 39 Rules 1 & 2 CPC the registered Will and codicil cannot be ignored only because it is unprobated.* [Rupindersingh Anand v. Smt. Gajinder Pal Kaur] ...*50

Civil Procedure Code (5 of 1908), Order 39 Rules 1 & 2, Transfer of Property Act, 1882, Section 44 - *Agreement to sale with delivery of possession by one co-owner (who later died) in favour of plaintiff - Other co-owners sold out the property to the defendant - Plaintiff filed a suit for specific performance - Upon application of plaintiff for temporary injunction, the Court directed that the land in question was not to be sold to any person - Against the order the M.A. is filed - Held - Since the document/agreement is only notarized and not registered and without consent of other co-owners, it is doubtful that the plaintiff will have even a prima facie case in his favour for enforcing such an agreement - The suit itself was filed after 3 years of the agreement & death of executor - Thus, the right of purchaser can not be restricted in any manner for an indefinite period-Order passed by trial Court granting injunction set aside - Appeal allowed.* [Girish Shrivastava v. N.K. Pateria] ...2165

Civil Procedure Code (5 of 1908), Order 41 Rules 1 & 22 - *A Cross-objection, in an appeal against an order appealable under Order 43 Rule 1 CPC, can be made.* [Rupindersingh Anand v. Smt. Gajinder Pal Kaur] ...*50

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 व नियम 9 एवं आदेश 43, मोटर यान अधिनियम 1988, धारा 104, मोटर यान नियम, म.प्र. 1994, नियम 240 – सि.प्र. सं. के आदेश 9 नियम 9 के अंतर्गत पुनर्स्थापन का आवेदन मोटर दुर्घटना दावा अधिकरण द्वारा अस्वीकृत किया गया – आदेश 43 के अंतर्गत कोई अपील नहीं होगी। (शरद कुमार मिश्रा वि. श्रीराम ट्रांसपोर्ट फाइनेंस कम्पनी लि.) ...2170

सिविल प्रक्रिया संहिता, (1908 का 5), आदेश 9, नियम 13 – देखें – परिसीमा अधिनियम, 1963, धारा 5, अनुच्छेद 123 (भागमल वि. कुँवरलाल) SC---2252

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 12 नियम 2 – दस्तावेजों की स्वीकृति हेतु अनुज्ञात अवस्था – अभिनिर्धारित – यदि न्यायालय द्वारा अनुमत हो तो, पक्षकारों द्वारा दस्तावेजों की स्वीकृत किसी भी अवस्था में की जा सकती है। (मो. युनुस वि. देवजानी) ...2105

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 12 नियम 2, 2ए, 3ए व 4 – तथ्यों एवं प्रलेखों की स्वीकृति – अनुज्ञात किये जाने की अवस्था – अभिनिर्धारित – तथ्यों की स्वीकृति हेतु अवधि विनिर्दिष्ट की गयी है, जबकि दस्तावेजों की स्वीकृति हेतु ऐसी अवधि न तो सिविल प्रक्रिया संहिता के आदेश 12 नियम 2 में और न तो 3ए में अथवा न ही दीवानी न्यायालय नियम एवं आदेश मे विनिर्दिष्ट है। (मो. युनुस वि. देवजानी) ...2105

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 89 व 90, परिसीमा अधिनियम, 1963, धारा 5, अनुच्छेद 127 – उक्त प्रयोजन हेतु परिसीमा की कालावधि विक्रय दिनांक से प्रारम्भ होती है – परिसीमा अधिनियम की धारा 5 प्रयुक्त नहीं है। (एसीएमई पेपर्स लि. (मे.) वि. एम.पी. फाइनेन्शियल कारपोरेशन) ---*56

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 – अस्थायी व्यादेश – सि.प्र.सं. के आदेश 39 नियम 1 व 2 के अंतर्गत आवेदन का विनिश्चय करते समय रजिस्ट्रीकृत वसीयत और कोडपत्र को केवल इसलिए नजर अंदाज नहीं किया जा सकता कि उसका प्रोबेट जारी नहीं किया गया है। (रूपिन्दरसिंह आनंद वि. श्रीमती गजिंदर पाल कौर) ---*50

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2, सम्पत्ति अन्तरण अधिनियम, 1882, धारा 44 – वादी के पक्ष में एक सहस्वामी (जिसकी बाद में मृत्यु हो गयी) द्वारा कब्जे के परिदान के साथ विक्रय करार – अन्य सहस्वामियों द्वारा सम्पत्ति का विक्रय प्रतिवादी को किया – वादी ने विनिर्दिष्ट पालन का वाद प्रस्तुत किया – अस्थायी व्यादेश के लिए वादी के आवेदन पर न्यायालय द्वारा यह निदेश दिया गया कि प्रश्नगत भूमि को अन्य व्यक्ति को विक्रय न किया जावे – इस आदेश के विरुद्ध विविध अपील प्रस्तुत की गयी – अभिनिर्धारित – चूंकि दस्तावेज/करार मात्र नोटरीकृत है न कि रजिस्ट्रीकृत और यह अन्य सहस्वामियों की बिना स्वीकृति के है, अतः यह शंकास्पद है कि वादी अपने पक्ष में ऐसे करार को प्रवर्तित कराने के लिए प्रथम दृष्ट्या प्रकरण रखते हैं – वाद स्वयं भी करार एवं निष्पादक की मृत्यु के 3 वर्ष वाद प्रस्तुत किया गया – इस प्रकार क्रेता के अधिकार को किसी भी प्रकार अनिश्चित काल के लिए निर्बंधित नहीं किया जा सकता – विचारण न्यायालय द्वारा व्यादेश जारी किये जाने संबंधी आदेश अपास्त – अपील मंजूर। (गिरीश श्रीवास्तव वि. एन.के. पटेरिया) ...2165

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 1 व 22 – सि.प्र.सं. के आदेश 43 नियम 1 के अंतर्गत अपील योग्य आदेश के विरूद्ध अपील में प्रत्याक्षेप प्रस्तुत किया जा सकता है। (रूपिन्दरसिंह आनंद वि. श्रीमति गजिंदर पाल कौर) ---*50

Civil Procedure Code (5 of 1908), Order 41 Rule 23A - *Remand* - *Plaintiff orally making statement of not pressing certain issues, though pleaded in plaint - Trial Court after recording such statement left the issues undecided - Held - No illegality committed by trial Court - Defendant failed to show any prejudice caused - Order of remand directing trial Court to decide such issues, is illegal and unwarranted - Appeal allowed.* [Reg. Vidhichand Dharamshala Trust v. Shyam Singh] ...*49

Civil Procedure Code (5 of 1908), Order 41 Rule 27 - *Application made by Registrar Public Trust to Court sought to file as additional evidence - Held - The application would not help the Court to decide controversy as finding of the Court on the application has not been submitted - Application rejected.* [Reg. Vidhichand Dharamshala Trust v. Shyam Singh] ...*49

Civil Procedure Code (5 of 1908), Order 47 Rule 1 - See - *Accommodation Control Act, M.P., 1961, Section 13(6)* [Ganesh Prasad v. Asadulla Usmani] ...2528

Civil Procedure Code (5 of 1908), Order 47 Rules 1, 4, 7 & 8 - *Review - Proper remedy in case review application is allowed or dismissed - Held - When a Court hearing the review application rejects the same then the order shall not be appealable but if an order granting review application is allowed then the party aggrieved may object to it at once by an appeal from the order grating the application - Such an appeal is to be filed under Order 43 Rule 1(w) CPC while the order can also be challenged after final judgment/decree or order is passed in the main proceedings.* [Anandi Prasad Dwivedi v. State of M.P.] ...1904

Civil Procedure Code (5 of 1908), Order 47 Rules 1 & 8 - *Review - Procedure when the application for review is granted - Stated.* [Anandi Prasad Dwivedi v. State of M.P.] ...1904

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rules 9(1)(a), 9(2)(a) - *Distinction between - Under Rule 9(1) a Govt. servant. may be placed under suspension where a disciplinary proceeding is contemplated or is pending against him or where a case against him in respect of any criminal offence is under investigation, inquiry or trial - Under Rule 9(2)(a) makes it clear that a Govt. Servant shall be deemed to have been placed under suspension by an order of the appointing authority from the date of his detention, if he is detained in custody for a period exceeding forty-eight hours.* [Rajesh Singh v. State of M.P.] ...*35

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rules 9(1)(a), 9(2-a) - *The employee/petitioner placed under suspension on account of Rule 9(2-a) and not under Rule 9(1)(a) - Issuance of charge-sheet beyond 45 days would have no effect or impact on his order of*

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 23ए – प्रतिप्रेषण – वादी का कतिपय विवाद्यकों पर बल न देने का मौखिक कथन, यद्यपि वादपत्र में अभिवचन किया गया – विचारण न्यायालय ने ऐसा कथन अभिलिखित करने के पश्चात् विवाद्यकों को अनिर्णीत छोड़ दिया – अभिनिर्धारित – विचारण न्यायालय द्वारा कोई अवैधता कारित नही की गई – प्रतिवादी कोई प्रतिकूल प्रभाव कारित होना दर्शाने में विफल रहा – विचारण न्यायालय को ऐसे विवाद्यकों का विनिश्चय करने के लिए निदेशित करने वाला प्रतिप्रेषण का आदेश अवैध तथा अनधिकृत है – अपील मंजूर। (पंजी. विधिचंद धर्मशाला ट्रस्ट वि. श्याम सिंह) ---*49

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 27 – अतिरिक्त साक्ष्य प्रस्तुत करने हेतु पंजीयक लोक न्यास द्वारा आवेदन किया गया – अभिनिर्धारित – विवाद का निपटारा करने के लिए आवेदन न्यायालय की सहायता नहीं करेगा क्योंकि आवेदन पर न्यायालय का निष्कर्ष प्रस्तुत नहीं किया गया है – आवेदन नामंजूर। (पंजी. विधिचंद धर्मशाला ट्रस्ट वि. श्याम सिंह) ---*49

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 1 – देखें – स्थान नियंत्रण अधिनियम, म.प्र., 1961, धारा 13(6) (गनेश प्रसाद वि. असदउल्ला उस्मानी) ...2528

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 1, 4, 7 व 8 – पुनर्विलोकन – उचित उपचार, जब पुनर्विलोकन आवेदन मंजूर या खारिज किया जाता है – अभिनिर्धारित – जब पुनर्विलोकन आवेदन की सुनवाई करने वाला न्यायालय उसे अस्वीकार करता है तब आदेश अपील योग्य नहीं होगा परन्तु यदि पुनर्विलोकन आवेदन प्रदान करने वाला आदेश मंजूर होता है तब व्यथित पक्ष आवेदन मंजूरी के आदेश के तुरंत बाद अपील द्वारा उसका विरोध कर सकता है – ऐसी अपील सि.प्र.सं. के आदेश 43 नियम 1(डब्ल्यू) अंतर्गत दाखिल करनी होगी जबकि मुख्य कार्यवाहियों में पारित अंतिम निर्णय/डिक्री अथवा आदेश हो जाने के पश्चात् भी आदेश को चुनौती दी जा सकती है। (अनंदी प्रसाद द्विवेदी वि. म.प्र. राज्य) ...1904

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 1 व 8– पुनर्विलोकन – प्रक्रिया जब पुनर्विलोकन के लिये आवेदन मंजूर किया जाता है – विवरण दिया गया। (अनंदी प्रसाद द्विवेदी वि. म.प्र. राज्य) ...1904

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9(1)(ए), 9(2)(ए) – दोनों के मध्य विभेद – नियम 9(1) के अंतर्गत शासकीय सेवक को निलंबन के अधीन रखा जा सकता है जहाँ उसके विरूद्ध अनुशासनात्मक कार्यवाही अनुध्यात की जाती है अथवा लंबित है अथवा जहाँ उसके विरूद्ध किसी अपराध से संबंधित कोई मामला अन्वेषण, जाँच या विचारण के अधीन है – नियम 9(2)(ए) के अंतर्गत यह स्पष्ट है कि शासकीय सेवक को निरोध के दिनांक से नियोक्ता प्राधिकारी के आदेश द्वारा निलंबन के अधीन माना जावेगा यदि उसे अड़तालीस घण्टों से अधिक की कालावधि के लिए निरोध मे रखा जाता है। (राजेश सिंह वि. म.प्र. राज्य) ---*35

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9(1)(ए), 9(2)(ए) – कर्मचारी/याची को नियम 9;2.एद्ध के अंतर्गत निलंबन के अधीन रखा गया न कि नियम 9(1)(ए) के अंतर्गत – 45 दिनों के बाद आरोप पत्र जारी किये जाने का उसके निलंबन

suspension which would continue until modified or revoked by the competent authority. [Rajesh Singh v. State of M.P.] ...*35

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14(8) - See - *Service Law* [Dinesh Chandra Pandey v. High Court of M.P.] SC...2007

Civil Services (Pension) Rules, M.P. 1976, Rule 9(b)(2) - See - *Service Law* [Ramesh Chandra Gupta v. State of M.P.] ...2506

Civil Services (Pension) Rules, M.P. 1976, Rule 42(1)(a) - See - *Service Law* [Ganpatlal Vyas v. State of M.P.] ...1900

Civil Services (Pension) Rules, M.P. 1976, Rule 65 - See - *Service Law* [Ramesh Chandra Gupta v. State of M.P.] ...2506

Civil Services (Promotion) Rules, M.P. 2002 - See - *Service Law* [Fuljencia Kujur (Smt.) v. State of M.P.] ...2504

Commercial Tax Act, M.P. 1994 (5 of 1995) - *Circular issued by Sales Tax Authority contrary to statutory provisions - Can not override statutory provision.* [Pawan Kumar Jain (M/s) v. The Commercial Tax Officer] ...2049

Commercial Tax Act, M.P. 1994 (5 of 1995) - *Petitioner preferred appeals before the M.P. Commercial Tax Appellate Board - Final arguments were heared by the Bench on 22.12.2007 and the appeals were closed for orders - The order is purported to have been passed on 02.08.2008 but at the behest of the Chairman, the order passed by the Bench not communicated and the matter was referred to the larger Bench by the order of the Chairman in terms of sub-rule (8) of Rule 4 of the Rules, 1995 - Action challenged by the petitioner that such a course/reference is without jurisdiction - Held - There was nothing wrong in the course of action adopted in the facts and circumstances of the case - Mere passing of an order alone was not sufficient until it was pronounced or delivered.* [Emami Ltd. (M/s.) v. Registrar, M.P. Commercial Tax] ...2497

Commercial Tax Act, M.P. 1994 (5 of 1995), Sections 2(t)(ii) & 9-B - *Value Added Tax on material consumed in process of works contract - Sale includes transfer of property in goods "Whether as goods or in some other form" - Transfer of goods in any form involved in the execution of works contract is a case of resale and tax has to be paid.* [Pawan Kumar Jain (M/s) v. The Commercial Tax Officer] ...2049

Companies Act (1 of 1956) - *Act of oppression or mis- management - Challenge - Delay - Held - When a case of mis-management or apprehension of oppression' and mis-management of a company u/s 397/398 is alleged, the same would be a continuous act, which may continue up to the date of presentation of a petition or till the damage caused by the act of oppression or mis- management is not rectified or made good.* [H.L. Taneja (Deceased) Through L.Rs. v. Jitendra Mohan Khungar] ...*27

के आदेश पर कोई प्रभाव अथवा समाघात नहीं होगा जो सक्षम प्राधिकारी द्वारा परिवर्तित अथवा वापस लिये जाने तक जारी रहेगा। (राजेश सिंह वि. म.प्र. राज्य) ---*35

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14(8) – देखें – सेवा विधि (दिनेश चन्द्र पाण्डे वि. हाई कोर्ट ऑफ एम.पी.) SC---2007

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9(बी)(2) – देखें – सेवा विधि (रमेश चंद्र गुप्ता वि. म.प्र. राज्य) ...2506

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42(1)(ए) – देखें – सेवा विधि (गनपतलाल व्यास वि. म.प्र. राज्य) ...1900

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 65 – देखें – सेवा विधि (रमेश चंद्र गुप्ता वि. म.प्र. राज्य) ...2506

सिविल सेवा (पदोन्नति) नियम, म.प्र. 2002 – देखें – सेवा विधि (फुलजेन्सिया कुजूर (श्रीमति) वि. म.प्र. राज्य) ...2504

वाणिज्यिक कर अधिनियम, म.प्र., 1994 (1995 का 5) – विक्रय कर प्राधिकारी द्वारा जारी किया गया परिपत्र कानूनी उपबंधों के प्रतिकूल है – कानूनी उपबंधों पर अध्यारोही नहीं हो सकता। (पवन कुमार जैन (मे.) वि. द कमर्शियल टैक्स ऑफिसर) ...2049

वाणिज्यिक कर अधिनियम, म.प्र., 1994 (1995 का 5) – याची ने म.प्र. वाणिज्यिक कर अपीलीय बोर्ड के समक्ष अपीलें पेश कीं – न्यायपीठ द्वारा अंतिम तर्क 22.12.2007 को सुने गये और अपीलें आदेशों के लिए रोक दी गयीं – आदेश 02.08.2008 को पारित किया जाना तात्पर्यित है किन्तु चेयरमेन के आदेश पर न्यायपीठ द्वारा पारित आदेश संसूचित नहीं किया गया और मामला नियम, 1995 के नियम 4 के उपनियम (8) के निबंधनानुसार चेयरमेन के आदेश से बड़ी न्यायपीठ को निर्देशित किया गया – याची द्वारा कार्यवाही को चुनौती दी गयी कि ऐसा रीति/निर्देश अधिकारिता के बिना है – अभिनिर्धारित – मामले के तथ्यों और परिस्थितियों में अपनायी गयी कार्यवाही में कुछ गलत नहीं था – केवल आदेश का पारित किया जाना ही पर्याप्त नहीं था जब तक यह घोषित या सुनाया नहीं गया हो। (इमामी लि. (मे.) वि. रजिस्ट्रार, एम.पी. कमर्शियल टैक्स) ...2497

वाणिज्यिक कर अधिनियम, म.प्र., 1994 (1995 का 5), धारा 2(t)(ii) व 9–बी – संकर्म संविदा की प्रक्रिया में प्रयोग की गयी सामग्री पर मूल्य वर्धित कर – विक्रय के अंतर्गत संपत्ति माल का अंतरण सम्मिलित है "या तो माल के रूप में या किसी और स्वरूप में" – संकर्म संविदा के निष्पादन में अंतर्ग्रस्त किसी भी स्वरूप में माल का अंतरण, पुनः विक्रय का मामला है और कर का भुगतान करना होगा। (पवन कुमार जैन (मे.) वि. द कमर्शियल टैक्स ऑफिसर) ...2049

कम्पनी अधिनियम (1956 का 1) – उत्पीड़न कृत्य अथवा कुप्रबधंन – चुनौती – विलम्ब – अभिनिर्धारित – धारा 397/398 के तहत जब किसी कम्पनी द्वारा कुप्रबंधंन अथवा उत्पीड़न का अंदेशा तथा कम्पनी में कुप्रबंधन अभिकथित हो, वह निरन्तर कृत्य होगा, जो कि याचिका दायर करने की तारीख अथवा जबतक कि उत्पीड़क अथवा कुप्रबधंकीय कृत्य से कारित क्षति की पूर्ति होने तक रहेगा। (एच.एल. तनेजा (मृतक) द्वारा विधिक प्रतिनिधि वि. जितेन्द्र मोहन खुंगार)---*27

Companies Act (1 of 1956) - ***Applicability of Limitation Act before Company Law Board - Held*** - *The Company Law Board is a quasi-judicial authority and, therefore, the provisions of S. 137 of the Limitation Act will not apply.* [H.L. Taneja (Deceased) Through L.Rs. v. Jitendra Mohan Khungar] ...*27

Companies Act (1 of 1956), Section 10 - ***Power of the High Court - Held*** - *While exercising limited jurisdiction in a proceeding u/s 10-F of the Act the High Court does not sit over the order of the Company Law Board, as if it is exercising appellate jurisdiction - The High Court is only required to consider substantial questions of law.* [H.L. Taneja (Deceased) Through L.Rs. v. Jitendra Mohan Khungar] ...*27

Companies Act (1 of 1956), Section 399 - Right to apply u/ss. 397 & 398 - ***Who can apply - Held*** - *In the case of a company having a share capital not less than 100 members of the company or not less than one-tenth of the total number of the members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company can institute the proceedings.* [H.L. Taneja (Deceased) Through L.Rs. v. Jitendra Mohan Khungar] ...*27

Constitution - ***Public Interest Litigation*** - *Is to be invoked sparingly and with rectitude and any order made in this situation must be reasonable.* [S.K. Dasgupta v. Vijay Singh Sengar] SC...2248

Constitution, Articles 14 and 16 - ***Public Appointments*** - *The equality of opportunity is held to be a hallmark in the matter of public appointment.*

When the advertisement issued is for appointment on adhoc or contract basis and if such appointee is regularized under the process of regularization the same stands vitiated as it deprives the constitutional right to equality in the matter of opportunity to seek public appointment to many prospective candidates who would have otherwise applied but for the manner in which the advertisement was issued. [Anil Kumar Purohit (Dr.) v. Dr. Hari Singh Gaur Vishwa Vidhyalaya, Sagar] ...2135

Constitution, Article 15(4) - ***Common Law Admission Test - Age relaxation*** - *No age relaxation given to OBC candidates - Held - A conscious decision has been taken by CLAT in public interest which cannot be said to be illegal or arbitrary or violating provisions of Article 15(4) of the Constitution.* [Smriti Patel v. State of M.P.] ...*37

Constitution, Article 19(1)(c) - ***Denial of recognition*** - *A registered trade union filed writ petition being aggrieved by order passed by Bank/ respondent, by which the petitioner union has been informed that it ceases to be a majority union and has lost the character of recognized union - Held - Since officers of the State Bank of Indore have switched over to another union and their option forms are also on record, therefore, no irregularity of*

कम्पनी अधिनियम (1956 का 1) – कम्पनी लॉ बोर्ड के समक्ष परिसीमा अधिनियम की प्रयोज्यता – अभिनिर्धारित – कम्पनी ला बोर्ड एक अर्धन्यायिक प्राधिकारी है अतएव, परिसीमा अधिनियम की धारा 137 के प्रावधान लागू नहीं होंगे। (एच.एल. तनेजा (मृतक) द्वारा विधिक प्रतिनिधि वि. जितेन्द्र मोहन खुंगार) ---*27

कम्पनी अधिनियम (1956 का 1), धारा 10 – उच्च न्यायालय की शक्ति – अभिनिर्धारित – अधिनियम की धारा 10–एफ के अन्तर्गत कार्यवाही के सम्बंध में सीमित अधिकारिता का प्रयोग करते हुये उच्च न्यायालय कम्पनी लॉ बोर्ड के आदेश पर अपने अपीलीय क्षेत्राधिकार/अधिकारिता का प्रयोग करते हुये निर्णय पारित करने का अधिकार नहीं रखता है – उच्च न्यायालय को केवल सारभूत विधिक प्रश्नों पर विचार करने की आवश्यकता है। (एच.एल. तनेजा (मृतक) द्वारा विधिक प्रतिनिधि वि. जितेन्द्र मोहन खुंगार) ---*27

कम्पनी अधिनियम (1956 का 1), धारा 399 – धारा 397 तथा 398 के अन्तर्गत आवेदन करने का अधिकार – कौन आवेदन कर सकता है – अभिनिर्धारित – किसी ऐसी कम्पनी जिसमें कम से कम 100 सदस्य अथवा कुल सदस्य संख्या के 1/10 सदस्यगण जो भी कम हो की अंश पूंजी हो, अथवा कोई सदस्य या सदस्यगण कम्पनी की जारी अंशपूंजी का कम से कम 1/10 हिस्सा धारण करते हों, कार्यवाही संस्थित कर सकते है। (एच.एल. तनेजा (मृतक) द्वारा विधिक प्रतिनिधि वि. जितेन्द्र मोहन खुंगार) ---*27

संविधान – जनहित याचिका – का अवलंब कभी कभार एवं सिधाई के साथ लिया जाना चाहिए और इस परिस्थिति में दिया गया आदेश युक्तियुक्त होना चाहिए। (एस.के. दासगुप्ता वि. विजय सिंह सेंगर) SC---2248

संविधान, अनुच्छेद 14 व 16 – लोक नियुक्तियॉं – लोक नियुक्ति के मामले में अवसर की समानता को प्रामाणिकता का मानक माना गया है।

जब जारी किया गया विज्ञापन तदर्थ अथवा संविदा आधार पर नियुक्ति के लिये होता है और यदि ऐसा नियुक्त व्यक्ति नियमितीकरण की प्रकिया के अंतर्गत नियमित किया जाता है, तब वह दूषित हो जाता है क्योंकि वह बहुत सारे संभावी अभ्यर्थियों को, जो अन्यथा आवेदन कर सकते थे, यदि उस प्रकार से विज्ञापन जारी न किया गया होता लोक नियुक्ति चाहने के लिए समानता का अवसर देने वाले संवैधानिक अधिकार से वंचित करता है। (अनिल कुमार पुरोहित (डॉ.) वि. डॉ. हरीसिंह गौर विश्वविद्यालय, सागर) ...2135

संविधान, अनुच्छेद 15(4) – सामान्य विधि प्रवेश परीक्षा – आयुसीमा में छूट – अन्य पिछड़ा वर्ग के अभ्यर्थियों को आयुसीमा में कोई छूट नहीं दी गयी – अभिनिर्धारित – सामान्य विधि प्रवेश परीक्षा द्वारा लोकहित में सावधानी पूर्वक सजग निर्णय लिया गया है जिसे अवैध या मनमाना अथवा संविधान के अनुच्छेद 15(4) के उपबंधों का उल्लघंन करने वाला नहीं कहा जा सकता। (स्मृति पटेल वि. म.प्र. राज्य) ---*37

संविधान, अनुच्छेद 19(1)(सी) – मान्यता से इनकारी – एक पंजी.त कार्मिक संघ ने बैंक/प्रत्यर्थी द्वारा पारित आदेश, जिसके द्वारा याची संघ को सूचना दी गयी कि वह बहुसंख्यक संघ नहीं रहा है और उसने मान्यता प्राप्त संघ का स्वरूप खो दिया है, से व्यथित होकर रिट याचिका प्रस्तुत की – अभिनिर्धारित – चूंकि स्टेट बैंक इंदौर के अधिकारियों ने संघ बदल लिया तथा उनके विकल्प फॉर्म भी अभिलेख पर हैं, अतएव प्रत्यर्थी बैंक द्वारा किसी प्रकार की कोई अनियमितता नहीं

any kind has been committed by the respondent Bank - No case for interference is made out - Writ petition dismissed. [All India State Bank of Indore Officers' Co-ordination Committee v. State Bank of Indore] ...*74

Constitution, Article 19(2) - ***Reasonable restriction - Determination*** *- Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interest of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration.* [Barwani Sugar v. Union of India] ...*40

Constitution, Article 51-A & 226, Medical and Dental Post Graduate Entrance Examination Rules, M.P. 2010, Rule 19(1)(c) - *In-service candidates, who have done Post Graduation in one subject will not be eligible for admission in other subject - The restriction is in consonance with requirement of medical field which requires expert of particular field - Striving towards the excellence in particulars field is the fundamental duty which is the underlying idea of Rule - Rule can not be said to be violative of any right of petitioner - Petition dismissed.* [Ashish Raj (Dr.) v. State of M.P.] ...2061

Constitution, Article 136 - ***Service Jurisprudence*** *- Departmental enquiry against judicial officer - Allegation of possession of disproportionate assets to known source of income - Appellant took incorrect defense contrary to his return and failed to discharge the onus placed upon him - Order of disciplinary authority can not be interfered - Appeal dismissed.* [Dinesh Chandra Pandey v. High Court of M.P.] SC...2007

Constitution, Article 141 - ***Practice and Procedure - Dismissal of SLP in limine - Effect*** *- The effect of such a non-speaking order of dismissal without anything more only means that Supreme Court has decided only that it is not a fit case where the special leave petition should be granted - The said order does not constitute law laid down by the Supreme Court for the purpose of Article 141 of the Constitution.* [Barwani Sugar v. Union of India]...*40

Constitution, Article 226 - ***Allotment of Government Land*** *- Petitioner, a consumer society applied for allotment of land free of premium and annual rent of Rs.1 for establishing laboratory and administrative block - Order issued by State Government postulates earmarking of areas for Housing Board, Bhopal Development Authority, Municipal Corporation and Government and Semi-Government Departments for residential purpose and for administrative offices - Held - There is no indefeasible right of the petitioner as well as respondent No.4 to have a land for its administrative office as a matter of right.* [Akhil Bhartiya Upbhokta Congress v. State of M.P.] ...2478

Constitution, Article 226 - ***Compassionate appointment*** *- Claimed to be adopted son - Adoption deed not registered - Consent of mother of petitioner for adoption not on record - Due to presence of natural son, adoption was not permissible - Adoption contrary to Ss. 5 & 11 of the Hindu*

की गयी – हस्तक्षेप के लिए कोई मामला नहीं बनता – रिट याचिका खारिज। (ऑल इंडिया स्टेट बैंक ऑफ इंदौर ऑफीसर्स को–ऑर्डिनेशन कमेटी वि. स्टेट बैंक ऑफ इंदौर) ---*74

संविधान, अनुच्छेद 19(2) – युक्तियुक्त निर्बन्धन – निर्धारण – निर्बन्धन की युक्तियुक्तता का निर्धारण समान्य लोगों के हित के दृष्टि कोण से वस्तुनिष्ठ रूप से करना होगा न कि संक्षिप्त विचार पर उन व्यक्तियों के हितों के दृष्टि कोण से जिन पर निर्बन्धन लगाये गये। (बरवानी शुगर वि. यूनियन ऑफ इंडिया) ---*40

संविधान, अनुच्छेद 51–ए व 226 – चिकित्सा और दंत स्नातकोत्तर प्रवेश परीक्षा नियम, म.प्र. 2010, नियम 19(1)(सी) – सेवारत अभ्यर्थी, जिन्होंने एक विषय में स्नातकोत्तर कर लिया है अन्य विषय में प्रवेश हेतु अर्ह नहीं होंगे – यह निर्बंधन चिकित्सा क्षेत्र की अपेक्षाओं के अनुरूप है जो किसी विशेष क्षेत्र के विशेषज्ञ की अपेक्षा करता है – किसी विशिष्ट क्षेत्र में उत्कृष्टता की ओर अग्रसर होना मौलिक कर्तव्य है जो नियम का अन्तर्निहित विचार है – नियम याची के किसी अधिकार का उल्लंघनकारी होना नहीं कहा जा सकता – याचिका खारिज। (आशीष राज (डॉ0) वि. म.प्र. राज्य) ...2061

संविधान, अनुच्छेद 136 – सेवा विधि शास्त्र – न्यायिक अधिकारी के विरूद्ध विभागीय जाँच – ज्ञात स्त्रोतों से आय से अधिक सम्पत्ति रखने का आरोप – अपीलार्थी ने अपने विवरण के विपरीत त्रुटिपूर्ण बचाव लिया तथा अपने उत्तरदायित्व का निर्वहन करने में असफल रहा – अनुशासनिक अधिकारी के आदेश में हस्तक्षेप नहीं किया जा सकता – अपील खारिज। (दिनेश चन्द्र पाण्डे वि. हाई कोर्ट ऑफ एम.पी.) SC---2007

संविधान, अनुच्छेद 141 – पद्धति और प्रक्रिया – विशेष इजाजत याचिका का आरंभ में ही खारिज किया जाना – प्रभाव – बिना कारण दिये खारिजी के ऐसे आदेश के प्रभाव का अर्थ बिना और कुछ केवल यह है कि उच्चतम न्यायालय ने केवल यह विनिश्चित किया है कि वह मामला विशेष इजाजत याचिका मंजूर किये जा सकने वाला उचित मामला नहीं है – उक्त आदेश संविधान के अनुच्छेद 141 के प्रयोजन हेतु उच्चतम न्यायालय द्वारा अधिकथित विधि स्थापित नहीं करता। (बरवानी शुगर वि. यूनियन ऑफ इंडिया) ---*40

संविधान, अनुच्छेद 226 – शासकीय भूमि का आवंटन – याची, एक उपभोक्ता सोसायटी ने प्रयोगशाला और प्रशासनिक खण्ड स्थापित करने के लिए अधिशुल्क रहित एवं 1 रूपये वार्षिक किराये पर भूमि के आवंटन के लिए आवेदन किया – राज्य सरकार द्वारा जारी आदेश नैवासिक प्रयोजन और प्रशासनिक कार्यालयों के लिए गृह निर्माण मण्डल, भोपाल विकास प्राधिकरण, नगरपालिक निगम और शासकीय एवं अर्धशासकीय विभागों के लिए क्षेत्रों का निर्धारण करता है – अभिनिर्धारित – याची का एवं प्रत्यर्थी क्र. 4 का अपने प्रशासनिक कार्यालय के लिये भूमि को साधिकार प्राप्त करने का कोई अत्याज्य अधिकार नहीं है। (अखिल भारतीय उपभोक्ता कांग्रेस वि. म. प्र. राज्य) ...2478

संविधान, अनुच्छेद 226 – अनुकम्पा नियुक्ति – दत्तक पुत्र होने का दावा – दत्तक विलेख पंजीकृत नहीं – दत्तक ग्रहण के लिए याची की माँ की सहमति अभिलेख पर नहीं – नैसर्गिक पुत्र की उपस्थिति के कारण दत्तक ग्रहण अनुज्ञेय नहीं था – दत्तक ग्रहण, दत्तक एवं भरण–पोषण

Adoption and Maintenance Act, 1956 - Petitioner not entitled for compassionate appointment - Petition dismissed. [Ashish Kumar Shrivastava v. Western Coal Fields Ltd.] ...2094

Constitution, Article 226 - *Contracts - Blacklisting of a Contractor - Natural Justice - Held - Registration and cancellation of the registration acquires great importance, as it incur civil consequences and in that situation the principle of 'audi alteram partem', requires to be necessarily complied with by the department.* [Bhupendra Singh Kushwah v. State of M.P.] ...2482

Constitution, Article 226 - *Contracts - Judicial review - Action of the State expected - Held - When the State deals with the individuals in the matters of contract and construction, it becomes necessary for the State to act bonafidely and without any bias, while complying with the mandatory provisions of law including the cardinal principle of natural justice.* [Bhupendra Singh Kushwah v. State of M.P.] ...2482

Constitution, Article 226, Fundamental Rules 110 - *Petitioner an employee of Forest Department - Sent on deputation to Rajya Laghu Vanopaj Sangh without consent - Held - M.P. Laghu Vanopaj Sangh is under control of Forest Department - Fundamental Rules empowers the State Government to transfer service of government servant to body incorporated or not which is wholly or substantially owned and controlled by Government without seeking his consent - No interference in impugned order called for - Petition dismissed.* [Rajaram Pal v. State of M.P.] ...2299

Constitution, Article 226, M.P. Revenue Book Circular, Rule 31, Section IV, Sr.No.1 - Allotment of Nazul Plot - *Condition of allotment prohibiting alienation and forfeiture of property in breach of condition - Subsequent lease agreement does not contain term prohibition alienation and terms provided for assignment by transfer - Order of cancellation of allotment and direction for cancellation of lease due to transfer by lessee - Held - Specific terms prohibiting alienation being not incorporated in the later covenant will not be binding on the parties to agreement - Allotment can not be cancelled - Orders quashed - Petition allowed.* [Kuldeep Singh Punjabi v. State of M.P.] ...2068

Constitution, Article 226 - *Public Interest Litigation - Closure of Railway Crossing Gate challenged on the ground of inconvenience to the residents - Over bridge has already been constructed just one kilometer away and tenders are also called for constructing Foot Over Bridge near Railway Crossing Gate - Held - Keeping in view that (i) no mala fides alleged against respondents regarding closing of Railway Crossing Gate (ii) the convenience of inhabitants of area have already been taken care and given alternative mode and further, (iii) for improvement in Railway development in town and broader public utility area, people are also required to do little sacrifice,*

अधिनियम, 1956 की धारा 5 एवं 11 के प्रतिकूल – याची अनुकम्पा नियुक्ति के लिए हकदार नहीं – याचिका खारिज। (आशीष कुमार श्रीवास्तव वि. वेस्टर्न कोल फील्डस् लि.) ...2094

संविधान, अनुच्छेद 226 – संविदा – किसी ठेकेदार का वर्ज्यसूची में डाला जाना – नैसर्गिक न्याय – अभिनिर्धारित – पंजीकरण एवं पंजीकरण का रद्दकरण अत्यंत महत्वपूर्ण है क्योंकि इससे सिविल परिणाम उपगत होते हैं तथा उस स्थिति में विभाग द्वारा 'दूसरे पक्ष को भी सुनो' के सिद्धांत का पालन अनिवार्य रूप से किया जाना आवश्यक है। (भूपेन्द्र सिंह कुशवाह वि. म.प्र. राज्य) ...2482

संविधान, अनुच्छेद 226 – संविदा – न्यायिक पुनर्विलोकन – राज्य का कार्य प्रत्याशित – अभिनिर्धारित – जब राज्य संविदा एवं निर्माण कार्य के मामलों में व्यक्तियों के साथ व्यवहार करता है, तो राज्य के लिये विधि के आज्ञापक प्रावधानों एवं नैसर्गिक न्याय के मूल सिद्धांतों का पालन करते समय सद्भाविक रूप से एवं पक्षपात रहित कार्य करना आवश्यक हो जाता है। (भूपेन्द्र सिंह कुशवाह वि. म.प्र. राज्य) ...2482

संविधान, अनुच्छेद 226, मूलभूत नियम 110 – याची वन विभाग का एक कर्मचारी – बिना सहमति के राज्य,लघु वनोपज संघ मे प्रतिनियुक्ति पर भेजा गया – अभिनिर्धारित – म.प्र. लघु वनोपज संघ, वन विभाग के नियंत्रणाधीन है – मूलभूत नियम राज्य सरकार को सरकारी कर्मचारी की सेवा उसकी सहमति माँगे बिना पूर्णतः या सारतः सरकार के स्वामित्व और नियंत्रण वाले निगमित या अन्यथा निकाय में अंतरित करने की शक्ति देते हैं – आक्षेपित आदेश में किसी हस्तक्षेप की माँग नहीं की जा सकती – याचिका खारिज। (राजाराम पाल वि. म.प्र. राज्य) ...2299

संविधान, अनुच्छेद 226, म.प्र. राजस्व पुस्तक परिपत्र, नियम 31, धारा IV अनु. क्र. 1 – नजूल प्लाट का आवंटन – अन्य संक्रामण पर प्रतिबंध, आवंटन की शर्त और शर्त के उल्लंघन पर सम्पत्ति का समपहरण – पश्चात्वर्ती पट्टा (लीज) करार मे प्रतिबंध, अन्य संक्रामण शब्द समाविष्ट नहीं और अंतरण द्वारा समनुदेशन के लिये शर्तों में उपबंध – आवंटन के रद्दकरण का आदेश तथा पट्टाधारक द्वारा अंतरण किये जाने के कारण पट्टे (लीज) के रद्दकरण के निर्देश – अभिनिर्धारित – बाद की प्रसंविदा में अन्यसंक्रामण पर प्रतिबंध की विनिर्दिष्ट शर्तों के समाविष्ट न होने से, करार के पक्षों पर बंधनकारी नहीं होगी – आवंटन रद्द नहीं किया जा सकता – आदेश अभिखंडित – याचिका मंजूर। (कुलदीप सिंह पंजाबी वि. म.प्र. राज्य) ...2068

संविधान, अनुच्छेद 226 – लोकहित वाद – रेलवे फाटक को बंद किये जाने को निवासियों को असुविधा के आधार पर चुनौती दी गयी – मात्र एक किलोमीटर दूर ऊपरी पुल का निर्माण किया जा चुका है और रेलवे फाटक के पास ऊपरी पैदल पुल के निर्माण के लिए निविदाएँ भी बुलायी गयी हैं – अभिनिर्धारित – इस बात को दृष्टि में रखते हुए कि (i) रेलवे फाटक को बंद करने के सम्बन्ध में प्रत्यर्थियों के विरुद्ध किसी असद्भाव का अभिकथन नहीं किया गया है, (ii) क्षेत्र के निवासियों की असुविधा का ध्यान रखा गया है और वैकल्पिक उपाय दिया गया है और इसके अतिरिक्त (iii) नगर और व्यापक लोक उपयोगी क्षेत्र में रेलवे विकास में अभिवृद्धि के लिए लोगों को भी थोड़ा त्याग करना आवश्यक है, इस प्रत्याशा के साथ याचिका का निपटारा किया गया कि

petition disposed of expecting that respondents would seriously take this matter for construction of F.O.B. as early as possible. [Mubarik Khan v. UOI] ...*84

Constitution, Article 226 - ***Public Interest Litigation*** - *Fixing of outer limit for construction of foot over bridge prayed for - Held - Since the construction work is being done by joint venture of State of M.P. & Railway department, it would not be just & proper to Court to fix any period.* [Mubarik Khan v. UOI] ...*84

Constitution, Article 226 - ***Public Interest Litigation - What does not amounts to*** - *Municipal Corporation decided to sell houses in open auction - Petitioners claimed that houses be sold to them by extending the facility of payment of price in instalments as they are in possession of houses as tenants - Held - Pleadings made by petitioners and reliefs sought by them, by no stretch of imagination, can be said that public or the community at large has some pecuniary interest or some interest by which their legal rights or liabilities are affected - Instant writ petition cannot be entertained as public interest litigation - Writ petition dismissed.* [Abhimanyu Singh v. State of M.P.]...2518

Constitution, Article 226 - ***Public policy - Judicial review - Held -*** *It is neither the domain of the Court nor within the scope of judicial review to embark upon an enquiry whether a particular public policy is wise or a better public policy can be evolved - The Courts would not be inclined to strike down the policy at the behest of the petitioner merely because it has been urged that another policy would have been fairer, wiser or more scientific or logical.* [Radheshyam v. Union of India] ...*34

Constitution, Article 226 - ***Public policy - Judicial review - Held -*** *It is not open for the Courts to interfere into the conditions of policy - What condition of the policy would be best suited is not for the Courts to decide but it is in the domain and prerogative of the State to fix and to change its policies from time to time in changing circumstances.* [Radheshyam v. Union of India] ...*34

Constitution, Article 226 - ***Public policy - Judicial review - Held -*** *The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizen or is opposed to the provisions of Constitution or any statutory provision or manifestly, arbitrary Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available.* [Radheshyam v. Union of India] ...*34

Constitution, Article 226, Revenue Book Circular, Section 18 - *Interference by the High Court against the order of the original authority, which is based on factual details, is not warranted under writ jurisdiction - When the ultimate order of Nazul Officer can be canvassed before Collector, the High Court ought not to have exercised its extraordinary jurisdiction*

प्रत्यर्थी ऊपरी पैदल पुल के यथासंभव शीघ्र निर्माण के लिए इस मामले को गंभीरता से लेंगे। (मुबारिक खान वि. यू.ओ.आई.) ---*84

संविधान, अनुच्छेद 226 – लोकहित वाद – ऊपरी पैदल पुल के निर्माण के लिए बाह्य सीमा नियत करने की प्रार्थना – अभिनिर्धारित – चूंकि निर्माण कार्य म.प्र. राज्य और रेल विभाग के संयुक्त उद्यम द्वारा किया जा रहा है, इसलिए न्यायालय के लिए यह न्यायसंगत और उचित नहीं होगा कि कोई कालावधि नियत की जाए। (मुबारिक खान वि. यू.ओ.आई.) ---*84

संविधान, अनुच्छेद 226 – लोकहित वाद – की कोटि में क्या नहीं आता – नगरपालिक निगम ने खुली नीलामी में मकानों को विक्रय करने का निर्णय किया – याचियों ने दावा किया कि मूल्य का संदाय किस्तों में करने की सुविधा देकर मकान उन्हें विक्रय किये जाएँ क्योंकि वे किरायेदार के रूप में मकानों के कब्जे में हैं – अभिनिर्धारित – याचियों द्वारा किये गये अभिवचन और उनके द्वारा चाहे गये अनुतोषों से, कल्पना से परे यह नहीं कहा जा सकता कि लोक अथवा जन समुदाय का कोई धन संबंधी हित है अथवा ऐसा कोई हित है जिसके द्वारा उनके विधिक अधिकार या दायित्व प्रभावित होते हैं – प्रस्तुत रिट याचिका लोकहित वाद के रूप में ग्रहण नहीं की जा सकती – रिट याचिका खारिज। (अभिमन्यु सिंह वि. म.प्र. राज्य) ...2518

संविधान, अनुच्छेद 226 – लोकनीति – न्यायिक पुनर्विलोकन – अभिनिर्धारित – यह न्यायालय के न तो अधिकार क्षेत्र मे है और न ही न्यायिक पुनर्विलोकन की परिधि मे कि वह कोई जांच आरंभ करे कि क्या कोई विशिष्ट लोक नीति विवेकपूर्ण है अथवा बेहतर लोकनीति विकसित की जा सकती है – याची के लिए न्यायालय नीति खंडित करना नही चाहेगा मात्र इसलिए कि यह अनुरोध किया गया है कि अन्य नीति ज्यादा निष्पक्ष, विवेकपूर्ण या अधिक वैज्ञानिक अथवा तर्कपूर्ण हो सकता था। (राधेश्याम वि. यूनियन ऑफ इंडिया) ---*34

संविधान, अनुच्छेद 226 – लोकनीति – न्यायिक पुनर्विलोकन – अभिनिर्धारित – नीति की शर्तो मे न्यायालय हस्तक्षेप नहीं कर सकते हैं – नीति की कौन सी शर्त सबसे उचित होगी यह न्यायालय निर्धारित नहीं करेगा परन्तु बदलती परिस्थितियों मे समय समय पर नीतियां निश्चित करना और बदलना राज्य के अधिकारी क्षेत्र तथा परमाधिकार मे है। (राधेश्याम वि. यूनियन ऑफ इंडिया) ---*34

संविधान, अनुच्छेद 226 – लोकनीति – न्यायिक पुनर्विलोकन – अभिनिर्धारित – सरकार की नीति का परीक्षण करते समय न्यायिक पुनर्विलोकन की विषय सीमा यह जांच करने की है कि क्या यह नागरिक के मूल अधिकारों का उल्लंघन करती है अथवा संविधान या किसी परिनियम के प्रावधानों के विरूद्ध है अथवा न्यायालय स्पष्टतः मनमानेपूर्ण तरीके से नीति में हस्तक्षेप नहीं करेगी इस आधार पर कि यह त्रुटिपूर्ण है अथवा एक बेहतर, उचित या विवेकपूर्ण विकल्प उपलब्ध है। (राधेश्याम वि. यूनियन ऑफ इंडिया) ---*34

संविधान, अनुच्छेद 226, राजस्व पुस्तक परिपत्र, धारा 18 – मूल प्राधिकारी के आदेश, जो तथ्यपूर्ण वर्णन पर आधारित है, के विरूद्ध उच्च न्यायालय द्वारा रिट अधिकारिता के अंतर्गत हस्तक्षेप न्यायसंगत नहीं है – जब नजुल अधिकारी के अंतिम आदेश की संयाचना कलेक्टर के समक्ष की जा सकती है, तब पहुंचे गये तथ्य के निष्कर्ष पर उच्च न्यायालय को अपीलीय न्यायालय

under Art. 226 as an appellate court over the finding of fact arrived at. [State of M.P. v. Nerbudda Valley Refrigerated Products Company Pvt. Ltd.] SC...1858

Constitution, Article 226, Right to Information Act (22 of 2005), Section 20 - *Petition for imposing penalty against appellate authority - Held - Section provides for imposition of penalties only in respect of Central Information Officer or State Public Information Officer but not in respect of appellate authority - Moreover, M.P. State Information Commission has arrived at a conclusion that no action is required in respect of imposition of penalty upon Public Information Officer and order has not been challenged - No order imposing penalty could be passed - Petition dismissed.* [Lajjaram Pandey v. M.P. State Information Commission] ...2064

Constitution, Article 226 - See - *Service Law* [Jinendra Kumar Jain v. State of M.P.] ...1910

Constitution, Article 226 - See - *Service Law* [Pramod Kumar Gupta v. State of M.P.] ...2074

Constitution, Article 226 - *Service Law - Claim for arrears of salary - Petitioner worked as In-charge Principal by order of Government - Subsequently, juniors were promoted prior to his promotion - Held - Petitioner is entitled to get arrears of salary for period commencing from date of promotion of juniors to his promotion - Principle of 'no work no pay' not applicable - Petition allowed.* [Anil Kumar Markhedkar v. State of M.P.]...2307

Constitution, Article 226, Wakf Act (43 of 1995), Sections 54 & 55 - *Public Interest Litigation - Writ petition seeking issuance of writ of mandamus for directing removal of encroachment from Maszid, filed - Held - The writ petition as PIL declined to be entertained in view of Ss. 54 & 55 of the Wakf Act providing an adequate and efficacious remedy to an aggrieved person.* [Maszid Chandal Bhata Prabandh Committee v. Secretary, Local Self Department] ...1952

Constitution, Article 226 - *When a matter is remitted to the original authority to decide the issue, the said authority must be allowed to take a decision one way or the other in accordance with the statutory provisions, rules and regulations applicable to the same - There cannot be any restriction to pass an order in such a way de hors to the statutory provisions or regulations / instructions applicable to the case in particular.* [State of M.P. v. Nerbudda Valley Refrigerated Products Company Pvt. Ltd.] SC...1858

Constitution, Article 226 - ***Writ of mandamus*** - *High Court cannot sit over the decision of the employer as if it exercises appellate jurisdiction - Respondent having refused to enter into a contract of service with the petitioner for the reasons not arbitrary or illegal, a writ of mandamus cannot compel respondent to enter into a contract, contrary to their wishes.* [Ashutosh Sharma (Dr.) v. School of Planning and Architecture, Bhopal] ...*75

के रूप में अनुच्छेद 226 के अंतर्गत अपनी असाधारण अधिकारिता का प्रयोग नहीं करना चाहिए था। (म.प्र. राज्य वि. नर्बदा वैली रेफ्रिजिरेटेड प्रोडक्टस् कंपनी प्रा.लि.) SC---1858

संविधान, अनुच्छेद 226, सूचना का अधिकार अधिनियम (2005 का 22) धारा 20 – अपीलीय प्राधिकारी के विरुद्ध शास्ति अधिरोपित करने हेतु याचिका – अभिनिर्धारित – धारा केवल केन्द्रीय सूचना अधिकारी या राज्य लोक सूचना अधिकारी के सम्बंध में शास्ति अधिरोपित करने का उपबंध करती है न कि अपीलीय प्राधिकारी के सम्बन्ध में – इसके अतिरिक्त, म.प्र. राज्य सूचना आयोग इस निष्कर्ष पर पहुँचा है कि लोक सूचना अधिकारी पर शास्ति अधिरोपित किये जाने के सम्बन्ध में कोई कार्यवाही किये जाने की आवश्यकता नहीं है तथा आदेश को चुनौती नहीं दी गयी है – शास्ति अधिरोपित किये जाने का कोई आदेश पारित नहीं किया जा सकता – याचिका खारिज। (लज्जाराम पाण्डे वि. एम.पी. स्टेट इन्फॉमेशन कमीशन) ...2064

संविधान, अनुच्छेद 226 – देखें – सेवा विधि (जिनेन्द्र कुमार जैन वि. म.प्र. राज्य) ...1910

संविधान, अनुच्छेद 226 – देखें – सेवा विधि (प्रमोद कुमार गुप्ता वि. म.प्र. राज्य) ...2074

संविधान, अनुच्छेद 226 – सेवा विधि – वेतन के बकाया के लिये दावा – सरकार के आदेशानुसार, याची ने भारसाधक प्राचार्य के रूप में कार्य किया – तत्पश्चात्, उसकी पदोन्नति के पूर्व कनिष्ठों को पदोन्नत किया गया – अभिनिर्धारित – याची, कनिष्ठों की पदोन्नति के दिनांक से उसकी पदोन्नति तक की अवधि के लिये वेतन के बकाया प्राप्त करने का हकदार है – 'काम नहीं तो वेतन नहीं' का सिद्धांत लागू नहीं होता – याचिका मंजूर। (अनिल कुमार मारखेडकर वि. म.प्र. राज्य) ...2307

संविधान, अनुच्छेद 226, वक्फ अधिनियम (1995 का 43), धाराएँ 54 व 55 – लोक हित वाद – मस्जिद से अतिक्रमण हटाने के निदेश के लिए परमादेश रिट जारी करने की माँग करते हुए रिट याचिका दाखिल की गयी – अभिनिर्धारित – वक्फ अधिनियम की धारा 54 एवं 55, जो व्यथित व्यक्ति को पर्याप्त और प्रभावकारी उपचार उपबंधित करती है, को दृष्टिगत रखते हुए लोक हित वाद के रूप में रिट याचिका ग्रहण करने से इंकार किया गया। (मस्जिद चंडाल भाटा प्रबंध कमेटी वि. सेक्रेटरी, लोकल सेल्फ डिपार्टमेन्ट) ...1952

संविधान, अनुच्छेद 226 – जब मामला विवाद्यक के विनिश्चय के लिए मूल प्राधिकारी को प्रतिप्रेषित किया जाता है तब उक्त प्राधिकारी को उसे लागू कानूनी उपबंधों, नियमों तथा विनियमनों के अनुसार एक या अन्य प्रकार से निर्णय लेने की अनुमति देनी होगी – ऐसा आदेश पारित करने के लिए, जो मामले मे विशिष्टतया लागू होने वाले कानूनी उपबंधों अथवा विनियमनों/अनुदेशों से असंबद्ध है, कोई निर्बंधन नही हो सकता। (म.प्र. राज्य वि. नर्बदा वैली रेफ्रिजिरेटेड प्रोडक्टस् कंपनी प्रा.लि.) SC---1858

संविधान, अनुच्छेद 226 – परमादेश रिट – उच्च न्यायालय अपनी अपीलीय अधिकारिता का प्रयोग करने के जैसे नियोजक के निर्णय पर निर्णय नहीं दे सकता – प्रत्यर्थी द्वारा किसी मनमाने या अवैध कारण के बिना याची को सेवा में नियोजित करने की संविदा से इंकार, परमादेश की रिट प्रत्यर्थी को उसकी इच्छा के विरुद्ध संविदा करने हेतु विवश नहीं कर सकती। (आशुतोष शर्मा (डॉ.) वि. स्कूल ऑफ प्लानिंग एण्ड आर्किटेक्चर, भोपाल) ---*75

Constitution Article 226 - ***Writ of Mandamus*** - *Regularization of appointment - Petitioners, appointed as samvida (Contract) Teacher, were later on considered fit for regularization by Executive council of University on 01.05.2008 and their matter was sent for approval of State Government - In the meantime the University was converted into Central University - Central University took a decision on 22.08.2009 to refer the case to H.R.D. Ministry, Govt. of India for considering the question of their regularization - The petitioners Challenged the resolution (dated 22.08.2009) and sought Mandamus to the University for enforcing the resolution dated 01.05.2008. - Held - The appointment of petitioners was made by a selection committee which was inferior to the one as is required u/s 49 of M.P. Vishwavidhyalaya Adhiniyam 1973. - As the appointment made, falls within the category of "illegal appointment" as held by the Supreme Court in the case of Uamdevi (Supra), Illegal appointments cannot be regularized by issuing Writ of Mandmus.* [Anil Kumar Purohit (Dr.) v. Dr. Hari Singh Gaur Vishwa Vidhyalaya, Sagar] ...2135

Constitution, Article 226 - ***Writ of Mandamus*** - *The directions given in W.P. No.1820/2001 (M/s Narmada Enterprised Vs. State of M.P. & others) made applicable and incumbent upon the State of M.P. and its functionaries, mutatis mutandis in the entire State of M.P..* [Shiva Corporation v. State of M.P.] ...2289

Constitution, Articles 226 & 227 - ***Disciplinary enquiry*** - *Charge framed and petitioner placed under suspension - Petitioner sought quashment of, on the ground that it amount to intimidation and victimization - Held - The charges levelled against petitioner are regarding filing of false complaint, bringing disrepute to the establishment and showing disrespect for higher authorities - The petitioner also has an alternative remedy of filing an appeal against placing her under suspension - No ground for interference - Petition dismissed.* [Deepa Dubey (Mrs.) v. Union of India] ...2054

Constitution, Article 226 & 227 - ***Writ of Mandamus*** - *Petitioners working as teachers in school managed by Western Coalfields Limited Educational Society (WCLES) sought Mandamus to SECL for granting various allowances at par with State Govt. teachers and/or benefits given to coalfields employee under National Coal Wage Agreement (NCWA), on the grounds that the effective control of the Society (WCLES) vests with WCL and 100% grant is given to society by SECL and some other teachers are also being given the benefit - Held - (1) There being no deep pervasive control of the WCL/SECL in the management of the Society which is an independent entity, which is the necessary corollary to claim for grant of wages and other allowances as per NCWA, (2) The petitioners have failed to establish that they are the employees of the erstwhile Associated Cement Company, to get the succour u/s 14 of Nationalization Act, (3) The petitioners are shown to be temporary teachers and no material is brought on record to show that any regular procedure*

संविधान, अनुच्छेद 226 –परमादेश रिट– नियुक्ति का नियमितीकरण – याची संविदा शिक्षक के रूप में नियुक्त किये गये, बाद में विश्वविद्यालय की कार्य.परिषद द्वारा 01.05.2008 को उन्हें नियमितीकरण के लिये उपयुक्त समझा गया और उनका मामला अनुमोदन के लिये राज्य सरकार को भेजा गया – इसी बीच विश्वविद्यालय, केंद्रीय विश्वविद्यालय मे संपरिवर्तित किया गया – उनके नियमितीकरण के प्रश्न पर विचार करने के लिये केन्द्रीय विश्वविद्यालय ने मामला मानव संसाधन विकास मंत्रालय को भेजने का निर्णय 22.08.2009 को लिया – याचियों ने दिनांक 22.08. 2009 के निर्णय/संकल्प को चुनौती दी और दिनांक 01.05.2008 के संकल्प को लागू करने के लिये विश्वविद्यालय को परमादेश चाहा – अभिनिर्धारित – याचियों की नियुक्ति चयन समिति द्वारा की गयी थी जो कि म0 प्र0 विश्वविद्यालय अधिनियम 1973 की धारा 49 के अंतर्गत अपेक्षित से निम्नतर है – चूंकि की गयी नियुक्ति, "अवैध नियुक्ति" की श्रेणी में आती है जैसा कि उच्चतम न्यायालय द्वारा उमादेवी के मामले में अभिनिर्धारित किया गया है, परमादेश रिट जारी कर अवैध नियुक्तियॉं नियमित नहीं की जा सकती। (अनिल कुमार पुरोहित (डॉ.) वि. डॉ. हरीसिंह गौर विश्वविद्यालय, सागर) ...2135

संविधान, अनुच्छेद 226 – परमादेश याचिका – रिट याचिका क्र. 1820/2001 (मेसर्स नर्मदा इंटरप्राइजेज वि. म.प्र. राज्य व अन्य) में दिये गये निर्देशों को सम्पूर्ण म.प्र. राज्य में, म.प्र. राज्य एवं इसके कार्यकारी/कर्मचारियों को यथाआवश्यक परिवर्तन सहित प्रयोज्य एवं आवश्यक बनाया गया। (शिवा कारपोरेशन वि. म.प्र. राज्य) ...2289

संविधान, अनुच्छेद 226 व 227 – अनुशासनात्मक जांच – आरोप विरचित किये गये और याची को निलंबन् के अधीन रखा गया – याची ने अभिखंडन चाहा, इस आधार पर कि यह अभित्रास तथा सताये जाने के समान है – अभिनिर्धारित – याची के विरूद्ध लगाये गये आरोप, झूठी शिकायत प्रस्तुत करने, स्थापना को कलंकित करने तथा उच्च प्राधिकारियों के प्रति अनादर दर्शाने के संबंध में है – याची के पास उसे निलंबन के अधीन रखने के विरूद्ध अपील प्रस्तुत करने का वैकल्पिक उपचार भी उपलब्ध है – हस्तक्षेप का कोई आधार नहीं – याचिका खारिज। (दीपा दुबे (श्रीमती) वि. यूनियन ऑफ इंडिया) ...2054

संविधान, अनुच्छेद 226 व 227 – परमादेश रिट – वेस्टर्न कोलफील्डस् लिमिटेड शिक्षा सोसाइटी (डब्ल्यू.सी.एल.ई.एस.) द्वारा संचालित विद्यालय में अध्यापकों के रूप में कार्यरत याचियों ने राज्य सरकार के अध्यापकों के समतुल्य विभिन्न भत्ते और/या नेशनल कोल वेज ऐग्रीमेंट (एन.सी.डब्ल्यू.ए.) के अधीन कोलफील्डस् कर्मचारी को दिये गये लाभों को प्रदान करने लिये एस. ई.सी.एल. को परमादेश इस आधार पर चाहा कि सोसाइटी (डब्ल्यू.सी.एल.ई.एस.) का प्रभावी नियंत्रण डब्ल्यू.सी.एल के साथ निहित है और सोसाइटी को एस.ई.सी.एल. द्वारा 100 प्रतिशत अनुदान दिया जाता है और कुछ अन्य अध्यापकों को भी लाभ दिया जा रहा है – अभिनिर्धारित – (1) सोसाइटी जिसका अपना स्वतंत्र अस्तित्व है, के प्रबंधन में डब्ल्यू.सी.एल./एस.ई.सी.एल. का कोई गहरा व्यापक नियंत्रण नहीं है जो कि एन.सी.डब्ल्यू.ए. के समतुल्य वेतन तथा अन्य भत्ते प्रदान करने का दावा करने लिये आवश्यक अनुमान है, (2) याची राष्ट्रीयकरण अधिनियम की धारा 14 के अंतर्गत सहायता प्राप्त करने के लिये यह स्थापित करने में असफल रहे कि वे भूतपूर्व एसोसियेटेड सीमेंट कम्पनी के कर्मचारी हैं, (3) याचियों को अस्थायी अध्यापक दर्शाया गया है और अभिलेख पर यह दर्शाने वाली कोई सामग्री नहीं लायी गयी है कि याचियों को अध्यापकों के रूप में नियोजित करते समय विधिज्ञात किसी

known to law was adhere at while engaging the petitioners as teachers - The petitioners, therefore, cannot as a matter of right claim parity with regular teachers in respect of pay and allowances. [Mahmood Hasan v. South Eastern Coalfields Ltd.] ...*63

Constitution, Articles 343 & 344, Official Languages Act, 1963, Section 3(4) - *Circular dated 4th August, 2006 of the respondent Bank in so far as it insists on 35% pass marks in English to qualify for promotion in the case of persons like the petitioner who are proficient in Hindi, is not ultra vires.* [Raghvendra Prasad Gautam v. Union Bank of India] FB...2275

Court Fees Act (7 of 1870), S. 7 (iv) C and Art. 17 Schedule II - *If plaintiff makes an allegation that the instrument is void and hence not binding upon him, then ad valorem court- fee is not payable and he can claim declaration simplicitor for which court-fee under Article 17(iii)of Schedule-II would be sufficient.* [Sunil Radhelia v. Awadh Narayan] FB...2454

Criminal Procedure Code, 1973 (2 of 1974), Sections 2(d) & 195 - See - *Penal Code, 1860, Sections 177 & 181* [Meena Rathore (Smt.) v. CBI, ACB, Bhopal] ...*30

Criminal Procedure Code, 1973 (2 of 1974), Section 24, Legal Remembrance Manual, Rule 18 - *Extension of terms of Government Pleaders and Additional Government Pleaders - Extension granted on the basis of recommendation by District Magistrate having approved by District & Sessions Judge - Held - S. 24 of the Code does not speak about extension or renewal of terms of person so appointed - Same procedure, as provided u/s 24(4) has to be followed for extension - No panel of names prepared by District Magistrate - No effective consultation between District Magistrate and Sessions Judge - Provisions not complied - Appointment quashed - Petition allowed.* [Anita Khare (Smt.) v. State of M.P.] ...*57

Criminal Procedure Code, 1973 (2 of 1974), Sections 24, 378(1) & 378(3) - *State of Maharashtra filed an appeal against acquittal passed by Sessions Judge, and application seeking permission/leave to file the appeal was also filed by Special Public Prosecutor of State of Maharashtra - Maintainability of appeal was challenged by non-applicants on the ground that there was no valid appointment of Public Prosecutor - Held - It is only the State of M.P., who can appoint and direct Public Prosecutor or a Special Public Prosecutor to file the appeal u/s 378(1) of the Code against the impugned judgment of acquittal passed by the Sessions Judge, Chhindwara - The appeal/application for grant of leave to appeal filed by the State of Maharashtra is therefore not maintainable.* [State of Maharashtra v. Nandlal Dewani] ...*71

Criminal Procedure Code, 1973 (2 of 1974)-Sections 53, 53-A -

नियमित प्रक्रिया का दृढ़ता से पालन किया गया – इसलिए, याची वेतन एवं भत्तों के संबंध मे नियमित अध्यापकों के साथ समता का दावा अधिकार के रूप में नहीं कर सकते। (महमूद हसन वि. साउथ ईर्स्टन कोलफील्डस् लि.) ---*63

संविधान, अनुच्छेद 343 व 344, राजभाषा अधिनियम, 1963, धारा 3(4) – प्रत्यर्थी बैंक का परिपत्र तारीख 4 अगस्त 2006, जहाँ तक कि यह याची जैसे हिन्दी में प्रवीण व्यक्तियों की पदोन्नति के मामले में, अंग्रेजी में 35 प्रतिशत उत्तीर्णांक की योग्यता पर जोर देता है, अधिकारातीत नहीं है। (राघवेन्द्र प्रसाद गौतम वि. यूनियन बैंक ऑफ इंडिया) FB---2275

न्यायालय फीस अधिनियम (1870 का 7), धारा 7(iv) स एवं अनुसूची–दो अनुच्छेद 17 – यदि वादी यह अभिकथन करता है कि लिखतम शून्य है और इस प्रकार उस पर बाध्यकारी नहीं है तब मूल्यानुसार न्यायशुल्क देय नहीं होगी एंव वह केवल घोषणा का दावा कर सकेगा, जिसके लिये द्वितीय अनुसूची के अनुच्छेद 17 (iii) के अन्तर्गत न्याय शुल्क पर्याप्त होगी। (सुनील राधेलिया वि. अवध नारायण) FB---2454

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 2(डी) व 195 – देखें – दण्ड संहिता, 1860, धाराएँ 177 व 181, (मीना राठौर (श्रीमति) वि. सी.बी.आई., ए.सी.बी., भोपाल)---*30

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 24, विधि परामर्श निर्देशिका, नियम 18 – सरकारी अधिवक्ताओं तथा अतिरिक्त सरकारी अधिवक्ताओं के कार्यकाल में विस्तार – जिला एवं सेशन न्यायाधीश द्वारा अनुमोदित किये जाने पर, जिला मजिस्ट्रेट की सिफारिश के आधार पर विस्तार प्रदान किया गया – अभिनिर्धारित – इस प्रकार से नियुक्त व्यक्ति के कार्यकाल के विस्तार या नवीकरण के संबंध में संहिता की धारा 24 मौन है – विस्तार के लिये उसी प्रक्रिया का अनुसरण करना होगा जैसा कि धारा 24(4) के अंतर्गत उपबंधित है – जिला मजिस्ट्रेट द्वारा नामों का कोई पैनल तैयार नहीं किया गया – जिला मजिस्ट्रेट और सेशन न्यायाधीश के बीच कोई प्रभावकारी परामर्श नहीं हुआ – उपबंधों का अनुपालन नहीं किया – नियुक्ति अभिखंडित – याचिका मंजूर। (अनीता खरे (श्रीमति) वि. म.प्र. राज्य) ---*57

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 24, 378(1) व 378(3) – महाराष्ट्र राज्य ने सेशन न्यायाधीश द्वारा पारित दोषमुक्ति के विरूद्ध अपील फाइल की और महाराष्ट्र राज्य के विशेष लोक अभियोजक द्वारा अपील फाइल करने की अनुमति हेतु आवेदन पत्र भी प्रस्तुत किया गया – अनावेदकों द्वारा अपील की पोषणीयता को इस आधार पर चुनौती दी गयी कि लोक अभियोजक की कोई विधिमान्य नियुक्ति नहीं थी – अभिनिर्धारित – केवल म.प्र. राज्य ही सेशन न्यायाधीश छिन्दवाड़ा द्वारा पारित दोषमुक्ति के आक्षेपित निर्णय के विरुद्ध संहिता की धारा 378(1) के अन्तर्गत अपील फाइल करने हेतु लोक अभियोजक या विशेष लोक अभियोजक को नियुक्त और निदेशित कर सकता है – अतः महाराष्ट्र राज्य द्वारा फाइल की गयी अपील/अपील की अनुमति प्रदान करने का आवेदन पोषणीय नहीं है। (स्टेट ऑफ महाराष्ट्र वि. नंदलाल देवानी) ---*71

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) धारा 53, 53–A– 15 वर्ष के अनुभव रखने वाले प्रयोगशाला तकनीकज्ञ द्वारा जिला अस्पताल के पैथालॉजिस्ट के निर्देश पर रक्त का नमूना

Blood sample collected by Lab Technician of 15 years experience on the direction of pathologist of District Hospital, can not be said to be not taken by Medical Practitioner. There was no illegality in collecting the blood sample. [In Reference v. Rahul] ...2206

Criminal Procedure Code, 1973 (2 of 1974), Section 85(3) - *Restoration of attached property - Requirements and procedure stated - Appeal allowed.* [Murarilal Sharma v. State of M.P.] ...2395

Criminal Procedure Code, 1973 (2 of 1974), Section 125 - *Maintenance - Adultery - Allegation by husband that wife is living in adultery - This must necessarily be proved by husband by cogent and reliable evidence - Mere friendship with a man does not amount to living in adultery.* [Santosh Tomar (Smt.) v. Rajesh Singh Tomar] ...2647

Criminal Procedure Code, 1973 (2 of 1974), Section 125 - *Maintenance sought by wife & child on ground of cruelty and desertion - Petition opposed by husband on ground that the wife is living in adultery - The Family Court after holding summary inquiry dismissed the petition - Held - The presumption of legitimacy is presumption of law - When a child is born out of a wedlock, there is a presumption in favour of his legitimacy and presumption of legitimacy largely depends on the presumed fact that the parties to a marriage have necessary access to each other - Where the legitimacy of a child is questioned, it is the duty of the Court to examine the evidence with a view that the evidence adduced is enough to rebut the presumption - Revision allowed.* [Chanda (Smt.) v. Sanjay Chouhan] ...2224

Criminal Procedure Code, 1973 (2 of 1974), Section 145 - *During pendency of civil suit an order u/s 145 Cr.P.C. was passed by S.D.M. directing applicant not to interfere over the land in question - Order challenged by applicant on ground that parallel proceeding should not be permitted to continue - Held - Mere pendency of the Civil suit will not ipso-facto operate bar to the proceedings u/s. 145 of Cr.P.C.* [Santosh v. State of M.P.] ...2233

Criminal Procedure Code, 1973 (2 of 1974), Section 154 - *FIR* - ***Delay in lodging*** - *In the backdrop of threat and intimidation caused by the appellant to the prosecutrix, which resulted in delay in lodging the FIR by twenty five days, her testimony cannot be viewed with suspicion, particularly when there are no cogent reasons for false implication.* [Girish Kumar v. State of M.P.] ...2373

Criminal Procedure Code, 1973 (2 of 1974), Section 154 - *FIR* - *FIR is not a substantive piece of evidence and can only be used for corroboration and contradiction to the statements of its author given in Court, but at the same time, its importance cannot be lost sight of because it brings the investigating agency into movement for the purpose of investigation and*

एकत्र किया गया, यह चिकित्सा व्यवसायी द्वारा नहीं लिया गया ऐसा नहीं माना जा सकता । रक्त नमूना लेने मे कोई अवैधता नहीं है । (इन रेफरेन्स वि. राहुल) ...2206

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 85(3) – कुर्क संपत्ति का प्रत्यावर्तन – अपेक्षाएँ एवं प्रक्रिया अभिकथित – अपील मंजूर। (मुरारीलाल शर्मा वि. म.प्र. राज्य) ...2395

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – भरण–पोषण – जारता – पति द्वारा अभिकथन कि पत्नी जारता की अवस्था में रह रही है – यह पति द्वारा अकाट्य और विश्वसनीय साक्ष्य से आवश्यक रूप से साबित करना चाहिए – किसी पुरुष से मित्रता मात्र जारता की अवस्था में रहने की कोटि में नहीं आता है। (संतोष तोमर (श्रीमति) वि. राजेश सिंह तोमर) ...2647

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – क्रूरता और अभित्यजन के आधार पर पत्नी एवं बालक द्वारा भरण पोषण चाहा गया – पति द्वारा याचिका पर आक्षेप इस आधार पर कि पत्नी व्यभिचारी जीवन जी रही है – कुटुंब न्यायालय ने संक्षिप्त जांच कराने के पश्चात याचिका खारिज की – अभिनिर्धारित – धर्मज की उपधारणा, विधि की उपधारणा है – जब शादी के बंधन से शिशु का जन्म होता है, तब उसके धर्मज होने के पक्ष में उपधारणा होती है और धर्मज की उपधारणा मुख्यतः इस उपधारित तथ्य पर निर्भर होगी कि शादी के पक्षों की एक दूसरे तक आवश्यक पहुंच हो – जहां बालक के धर्मज पर प्रश्न किया गया, यह न्यायालय का कर्तव्य होगा कि साक्ष्य का परीक्षण इस दृष्टि से करे कि पेश की गई साक्ष्य, उपधारणा का खंडन करने के लिये पर्याप्त है – पुनरीक्षण मंजूर। (चंदा (श्रीमती) वि. संजय चौहान) ...2224

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 145 – सिविल वाद के लम्बित रहने के दौरान एस.डी.एम. द्वारा दं.प्र.सं. की धारा 145 के अंतर्गत आदेश पारित किया गया जिसके द्वारा आवेदक को प्रश्नगत भूमि में हस्तक्षेप न करने का निर्देश किया – आवेदक द्वारा आदेश को इस आधार पर चुनौती दी गयी कि समान्तर कार्यवाहियों को जारी रखने की अनुज्ञा नहीं होनी चाहिये – अभिनिर्धारित– केवल सिविल वाद का लंबन स्वयंमेव ही धारा 145 द0प्र0स0 की कार्यवाहियों में वर्जन होना प्रवर्तित नहीं करता है। (संतोष वि. म.प्र. राज्य) ...2233

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – प्रथम सूचना रिपोर्ट – दर्ज कराने मे विलम्ब – अपीलार्थी द्वारा अभियोक्त्री को कारित धमकी और अभित्रास की पृष्ठभूमि में, जिसके परिणामस्वरूप प्रथम सूचना रिपोर्ट दर्ज कराने में 25 दिनों का विलम्ब हुआ, उसकी साक्ष्य को संदेह की दृष्टि से नहीं देखा जा सकता, विशेषतः तब जब कि झूठा फंसाये जाने का कोई प्रत्यायक हेतु नहीं है। (गिरीश कुमार वि. म.प्र. राज्य) ...2373

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – प्रथम सूचना रिपोर्ट – प्रथम सूचना रिपोर्ट साक्ष्य का सारभूत हिस्सा नहीं है और उसका उपयोग केवल न्यायालय में दिये गये कथनकार के बयानों की संपुष्टि और खंडन करने के लिये किया जा सकता है, परंतु उसी समय उसके महत्व को अनदेखा नहीं किया जा सकता क्योंकि अन्वेषण के प्रयोजन हेतु वह अन्वेषण ऐजेंसी को संचलित करता है और यदि यह पाया जाता है कि प्रथम सूचना रिपोर्ट कूटरचित साक्ष्य है और

if it is found that the FIR is a concocted piece of evidence and brought into existence after due deliberation and consultation then further prosecution story becomes suspicious and the Court is required to be very careful in appreciating the evidence of prosecution witnesses. [Champalal v. State of M.P.] ...*25

Criminal Procedure Code, 1973 (2 of 1974), Section 154 - *Wrong mention of time in FIR or merg inquest report by slip of pen or human error can not be viewed with suspicion - FIR can not be said or suspected ante-dated or ante-timed.* [State of M.P. v. Paramlal] ...2357

Criminal Procedure Code, 1973 (2 of 1974), Sections 154 & 157 - *Non-complaince of S. 157 could not be said to be fatal to prosecution so as to throw its case, particularly when the investigation had soon started.* [State of M.P. v. Paramlal] ...2357

Criminal Procedure Code, 1973 (2 of 1974), Sections 156(3), 173(2) & 190(1)(a) - *After sending a case for investigation on a private complaint to the police u/s 156(3) Cr.P.C. and on submission of the police report, the case cannot be treated as instituted upon police report because cognizance of the offence has already been taken on the basis of complaint filed by the complainant - The report submitted u/s 156(3) Cr.P.C. cannot be treated as Police Report u/s 173(2) Cr.P.C. - Revision allowed.* [Anita Pawar v. Dharmendra Sikarwar] ...2422

Criminal Procedure Code, 1973 (2 of 1974), Sections 173(2), 173(4), 173(8) & 401(2) - *CJM accepted/allowed the closure report after taking statement of complainant - Later on, the police filed application for further investigation, which was, though rejected by CJM but allowed by revisional Court - Order of revisional Court challenged by applicant/accused on ground that no notice was given to him - Held - At the stage when the police want to investigate the matter further in terms of S. 173(8) of the Code, question of issuance of notice to the applicant would not arise - At the stage of investigation the principle of audi alteram partem do not apply - Revision dismissed.* [Rajendra Singh v. State of M.P.] ...*68

Criminal Procedure Code, 1973 (2 of 1974), Section 178(d), Negotiable Instruments Act, 1881, Section 138 - *Cheque drawn at Bank of Kota (Rajasthan) - Presented by complainant at Bank of Datia (M.P.) as he is having account in that Bank - Cheque stood dishonoured at Datia - Thereafter, notice was issued from Datia - Held - Petitioner's application that Datia Court is not having territorial jurisdiction has been rightly dismissed by trial Court - Petition dismissed.* [Murli Dhar v. Ishwar Dayal Girdhani] ...2230

Criminal Procedure Code, 1973 (2 of 1974), Sections 204 & 397 - *Interlocutory order - Order of issuance of process and taking cognizance cannot be treated as interlocutory order and hence, no bar of sub-section (2) of S. 397 is applicable.* [Yashwant Singh v. Smt. Sita Singh] ...2650

उसे सम्यक विचार विमर्श तथा परामर्श के पश्चात् अस्तित्व में लाया गया है तब आगे अभियोजन कथा संशयास्पद हो जाती है और न्यायालय से अपेक्षित है कि अभियोजन साक्षियों की साक्ष्य का अधिमूल्यन बहुत सावधानी से करे। (चंपालाल वि. म.प्र. राज्य) ---*25

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – प्रथम सूचना रिपोर्ट अथवा मर्ग मृत्युसमीक्षा रिपोर्ट में कलम फिसलने या मानवीय त्रुटि से गलत समय का उल्लेख हो जाना संदेह की दृष्टि से नहीं देखा जा सकता – प्रथम सूचना रिपोर्ट को पूर्व दिनांक अथवा पूर्व समय का नहीं कहा जा सकता अथवा संदेह नहीं किया जा सकता। (म.प्र. राज्य वि. परमलाल) ...2357

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 154 व 157 – धारा 157 का अपालन अभियोजन के लिये हानिकारक नहीं कहा जा सकता कि इसका प्रकरण व्यर्थ हो जावे विशेषतः जब अन्वेषण अविलम्ब प्रारंभ कर दिया गया हो। (म.प्र. राज्य वि. परमलाल) ...2357

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 156(3), 173(2) व 190(1)(ए) – व्यक्तिगत परिवाद पर द.प्र.सं. की धारा 156(3) के अंतर्गत अन्वेषण के लिए मामला पुलिस को भेजने के बाद एवं पुलिस द्वारा रिपोर्ट प्रस्तुत करने पर, मामला पुलिस रिपोर्ट पर संस्थित नहीं माना जा सकता, क्योंकि अपराध का संज्ञान परिवादी द्वारा फाइल किये गये परिवाद के आधार पर पूर्व में ही लिया जा चुका है – द.प्र.सं. की धारा 156(3) के अन्तर्गत प्रस्तुत रिपोर्ट द.प्र.सं. की धारा 173(2) के अंतर्गत पुलिस रिपोर्ट नहीं मानी जा सकती – पुनरीक्षण मंजूर। (अनीता पवार वि. धर्मेन्द्र सिकरवार) ...2422

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 173(2), 173(4), 173(8) व 401(2) – मुख्य न्यायिक मजिस्ट्रेट ने परिवादी का कथन अभिलिखित करने के पश्चात् समापन प्रतिवेदन स्वीकार किया – बाद में, पुलिस ने अतिरिक्त अन्वेषण करने के लिए आवेदन पेश किया, जिसे यद्यपि मुख्य न्यायिक मजिस्ट्रेट द्वारा नामंजूर किया गया लेकिन पुनरीक्षण न्यायालय द्वारा स्वीकृत किया गया – आवेदक/अभियुक्त द्वारा पुनरीक्षण न्यायालय के आदेश को इस आधार पर चुनौती दी गयी कि उसे कोई सूचना नहीं दी गयी – अभिनिर्धारित – इस प्रक्रम पर जब कि पुलिस संहिता की धारा 173(8) के निबंधनों के अनुसार मामले में अतिरिक्त अन्वेषण करना चाहती है, आवेदक को सूचना दिये जाने का प्रश्न ही नहीं उठता – अन्वेषण के प्रक्रम पर दूसरे पक्ष को भी सुनो का सिद्धांत लागू नहीं होता – पुनरीक्षण खारिज । (राजेन्द्र सिंह वि. म.प्र. राज्य) ---*68

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 178(डी), परक्राम्य लिखत अधिनियम, 1881, धारा 138 – बैंक ऑफ कोटा (राजस्थान) पर आहरित धनादेश – शिकायतकर्ता द्वारा बैंक ऑफ दतिया के समक्ष प्रस्तुत किया गया क्योंकि उस बैंक मे उसका खाता था – दतिया में धनादेश का अनादरण – उसके बाद दतिया से नोटिस जारी किया गया – अभिनिर्धारित – विचारण न्यायालय द्वारा याचिकाकर्ता का आवेदन कि दतिया न्यायालय को क्षेत्राधिकार नहीं है सही तौर पर खारिज किया गया – याचिका खारिज। (मुरलीधर वि. ईश्वर दयाल गिरधानी) ...2230

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 204 व 397 – वादकालीन आदेश – आदेशिका जारी करने और संज्ञान लेने का आदेश अन्तवर्ती आदेश नहीं माना जा सकता और इसलिए धारा 397 की उपधारा (2) का कोई वर्जन लागू नहीं होता। (यशवंत सिंह वि. श्रीमति सीता सिंह) ...2650

Criminal Procedure Code, 1973 (2 of 1974), Sections 233 & 311 - *A witness already examined as a prosecution witness cannot be later on permitted to be cited as a defence witness.* [Sonu v. State of M.P.] ...2418

Criminal Procedure Code, 1973 (2 of 1974), Section 256 - *On single default of appearance of the complainant and his advocate, the Court dismissed the complaint and discharged the accused/respondent - Held - The action taken by the Court was more harsh and strict - The case ought to have been adjourned for the evidence of the parties, the Court should not dismiss the complaint - The appellant was represented through counsel, then the Court should have adjourned the hearing of the case for some other day instead of dismissing the complaint - Order set aside and complaint restored to its original number.* [Vijay Singh v. Surendra Singh] ...2346

Criminal Procedure Code, 1973 (2 of 1974), Section 265, Official Language Act, M.P. 1957, Section 3 - *The accused can not be held prejudiced by filing of charge sheet and other documents in English language and not providing Hindi translation where he is well represented by the counsel, who is well versed in English - Petition dismissed.* [Mohd. Aslam v. State of M.P.]...2428

Criminal Procedure Code, 1973 (2 of 1974), Section 313 - *When an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances.* [In Reference v. Mohammad Shafiq @ Munna @ Shafi] ...2405

Criminal Procedure Code, 1973 (2 of 1974), Section 319 - *Evidence - Evidence contemplates that evidence of witnesses given in Court - Statement of witness recorded u/s 161 of Cr.P.C. cannot be taken into consideration.* [Shankar Yadav v. Basanti Bai] ...*89

Criminal Procedure Code, 1973 (2 of 1974), Section 319 - *Exercise of power - It should appear to Court that some other person who is not arraigned as accused in that case has committed an offence for which he could be tried together - Some doubt about involvement of another person is not enough - It is discretion and power conferred upon the Court which should be exercised only to achieve justice.* [Shankar Yadav v. Basanti Bai]...*89

Criminal Procedure Code, 1973 (2 of 1974), Section 319 - *Plea of alibi - Application u/s 319 cannot be rejected on the ground that plea of alibi raised by applicants was investigated by police personnel and on his satisfying about substance in plea of accused about their non-involvement, directed the omission of their names - Although the names of applicants were deleted from array of accused, but their names were found in FIR and statements of witnesses - Revision rejected.* [Shankar Yadav v. Basanti Bai]...*89

Criminal Procedure Code, 1973 (2 of 1974), Section 319 - *Successive*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) – धाराएँ 233 व 311 – अभियोजन साक्षी के रूप में पूर्व से ही परीक्षित किसी साक्षी को बाद में प्रतिरक्षा साक्षी के रूप में प्रस्तुत करने की अनुज्ञा नहीं दी जा सकती। (सोनू वि. म.प्र. राज्य) ...2418

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 256 – परिवादी और उसके अधिवक्ता की उपस्थिति के एकल व्यतिक्रम पर न्यायालय ने परिवाद खारिज किया और अभियुक्त/प्रत्यर्थी को उन्मोचित किया – अभिनिर्धारित – न्यायालय द्वारा की गयी कार्यवाही अत्यधिक कठोर और सख्त थी – मामला पक्षकारों की साक्ष्य हेतु स्थगित किया जाना चाहिए था, न्यायालय को परिवाद खारिज नहीं करना चाहिए – अपीलार्थी का प्रतिनिधित्व अधिवक्ता द्वारा किया गया, तब न्यायालय को परिवाद को खारिज करने के बजाय मामले की सुनवाई किसी अन्य दिन के लिए स्थगित करनी चाहिए थी – आदेश अपास्त और परिवाद उसके मूल क्रमांक पर पुनःस्थापित। (विजय सिंह वि. सुरेन्द्र सिंह) ...2346

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 265, राजभाषा अधिनियम, म.प्र. 1957, धारा 3 – आरोप पत्र एवं दस्तावेज अंग्रेजी भाषा में प्रस्तुत किये जाने से एवं उनका हिन्दी अनुवाद उपलब्ध न कराने से अभियुक्त पर विपरीत प्रभाव पड़ना अवधारित नहीं किया जा सकता, जहाँ कि उसका प्रतिनिधित्व ऐसे अधिवक्ता द्वारा किया गया हो जो अंग्रेजी में सुविज्ञ है – याचिका खारिज। (मो. असलम वि. म.प्र. राज्य) ...2428

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 – जब अभियुक्त के समक्ष उस पर दोषारोपण करने वाली कोई परिस्थिति रखी जाती है और वह अभियुक्त या तो कोई स्पष्टीकरण नहीं देता या ऐसा स्पष्टीकरण देता है जो असत्य पाया जाता है, तब यह परिस्थितियों की श्रृंखला में एक अतिरिक्त कड़ी हो जाता है। (इन रेफरेन्स वि. मोहम्मद शफीक उर्फ मुन्ना उर्फ शफी)...2405

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – साक्ष्य – साक्ष्य अनुध्यात करती है कि साक्षियों की साक्ष्य न्यायालय में दी जाये – द.प्र.सं. की धारा 161 के अन्तर्गत अभिलिखित साक्षी के कथन को विचार में नहीं लिया जा सकता। (शंकर यादव वि. बसंती बाई) ---*89

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – शक्ति का प्रयोग – न्यायालय को यह प्रतीत होना चाहिये कि किसी अन्य व्यक्ति ने, जिस पर उस मामले में आरोप नहीं लगाया गया है, कोई अपराध किया है जिसके लिये उसका साथ–साथ विचारण किया जा सकता है – अन्य व्यक्ति के अन्तर्ग्रस्त होने सबंधी किंचित संदेह ही पर्याप्त नहीं है – यह न्यायालय को प्रदत्त विवेकाधिकार एवं शक्ति है जिसे केवल न्याय करने हेतु प्रयोग करना चाहिये। (शंकर यादव वि. बसंती बाई) ---*89

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – अन्यत्र उपस्थित होने का अभिवाक् – धारा 319 के अन्तर्गत प्रस्तुत आवेदन इस आधार पर निरस्त नहीं किया जा सकता कि आवेदकों द्वारा किये गये अन्यत्र उपस्थित होने के अभिवाक् का पुलिस द्वारा अन्वेषण किया गया और अभियुक्तों के उनके अन्तर्ग्रस्त न होने के अभिवाक् में सार के बारे में संतुष्ट होने पर उनके नाम हटाने हेतु निर्देशित किया था – यद्यपि आवेदकों के नाम अभियुक्तों की सूची में से हटा दिये गये, लेकिन उनके नाम प्रथम सूचना रिपोर्ट एवं साक्षियों के कथनों में पाये गये – पुनरीक्षण नामंजूर। (शंकर यादव वि. बसंती बाई) ---*89

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – आनुक्रमिक आवेदन –

application - Maintainability - 1st application withdrawn - Evidence of witnesses recorded thereafter - 2nd application u/s 319 cannot be said to be barred on the ground of public policy. [Shankar Yadav v. Basanti Bai] ...*89

Criminal Procedure Code, 1973 (2 of 1974), Section 340 - *Launch of prosecution - When not warranted - Held - An inadvertent statement with no ill motive is not sufficient and cannot form the basis for launching a prosecution u/s 340 of Cr.P.C.* [Durga Prasad v. State of M.P.] ...2089

Criminal Procedure Code, 1973 (2 of 1974), Section 366 - *Death sentence - The accused brutally committed the murders of his wife and two innocent minor daughters - He also attempted to cause death of two other minor daughters while all the victims were sleeping in the room - He did not appear remorseful at any stage after commission of the crime - He killed his wife when she was carrying a full term pregnancy - He committed the offence with extreme brutality against all the female members of his family at the time when his three sons were away - Can not be impressed by the submission that on account of extreme poverty, the offence was committed - Case comes within the category of 'rarest of rare case' - Death sentence affirmed.* [In Reference v. Mohammad Shafiq @ Munna @ Shafi] ...2405

Criminal Procedure Code, 1973 (2 of 1974), Section 378(4) - *Appeal against acquittal - Findings of fact which are well based should not be interfered with - Even if two views were possible the one in favour of accused had indeed been taken.* [Patiram v. State of M.P.] SC...1842

Criminal Procedure Code, 1973 (2 of 1974), Section 438 - *Anticipatory bail - While considering the prayer for grant of anticipatory bail, it would not be desirable to enter into merits of the question as to whether the charge of the offence under offence would be made out - Suffice it to notice the principle that ingredients of the offence require proximity and nexus between the conduct and behaviour of the accused and the offence.* [Vinay Kumar Kedia v. State of M.P.] ...*94

Criminal Procedure Code, 1973 (2 of 1974), Section 438, Juvenile Justice (Care and Protection of Children) Act, 2000, Section 12, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 18 - *Provisions of S. 12 of the Act, 2000 can not be held to have any overriding effect over the provision of S. 18 of the Act, 1989, as the scope of the application of both the provisions is different.* [Kapil Durgwani v. State of M.P.] ...2003

Criminal Procedure Code, 1973 (2 of 1974), Section 441, Rules and Orders (Criminal), Rules 382 & 383 - *Trial Judge while declining to accept the bail bond furnished by surety referred the question of his solvency to Tahsildar - Held - The order directing inquiry into solvency of the surety by the Tahsildar does not have any legal sanction.* [Laxmi Sahu v. State of M.P.] ...2397

पोषणीयता – प्रथम आवेदन वापस लिया गया – उसके पश्चात् साक्षियों की साक्ष्य अभिलिखित – धारा 319 के अन्तर्गत दूसरा आवेदन लोक नीति के आधार पर वर्जित होना नहीं कहा जा सकता। (शंकर यादव वि. बसंती बाई) ---*89

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 340 – अभियोजन का प्रारम्भ – कब न्याय संगत नहीं – अभिनिर्धारित – असावधानी पूर्वक किया गया कथन – जो किसी दुराशय से नहीं किया गया वह द.प्र.सं. की धारा 340 के अंतर्गत पर्याप्त नहीं है एवं अभियोजन प्रारम्भ किये जाने का आधार नहीं बन सकता है। (दुर्गा प्रसाद वि. म.प्र. राज्य) ...2089

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 366 – मृत्यु दण्डादेश – अभियुक्त ने नृशंसतापूर्वक अपनी पत्नी और दो अबोध अप्राप्तवय पुत्रियों की हत्या की – उसने दो अन्य अप्राप्तवय पुत्रियों की मृत्यु कारित करने का प्रयत्न भी किया जब सभी पीड़ित कमरे में सो रहे थे – उसने अपराध करने के बाद किसी भी प्रक्रम पर पश्चाताप प्रकट नहीं किया – उसने अपनी पत्नी की हत्या तब की जब वह पूर्ण अवधि की गर्भावस्था धारण किये हुए थी – उसने अपने परिवार की सभी महिला सदस्यों के विरुद्ध अति निर्दयता से अपराध उस समय किया जब उसके तीन पुत्र बाहर थे – इस निवेदन से प्रभावित नहीं हुआ जा सकता कि अति गरीबी के कारण अपराध किया गया – मामला 'विरलतम से विरल मामले' की कोटि में आता है – मृत्यु दण्डादेश की पुष्टि की गयी। (इन रेफरेन्स वि. मोहम्मद शफीक उर्फ मुन्ना उर्फ शफी) ...2405

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 378(4) – दोषमुक्ति के विरुद्ध अपील – तथ्य के निष्कर्ष जो सुआधारित हों, में हस्तक्षेप नहीं किया जाना चाहिए – यद्यपि दो विचार संभव थे तो भी एक जो अभियुक्त के पक्ष में रहा अवश्य ही लिया गया था। (पतिराम वि. म.प्र. राज्य)SC---1842

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत – अग्रिम जमानत प्रदान करने के लिए प्रार्थना पर विचार करते समय यह वांछनीय नहीं होगा कि इस प्रश्न के गुणावगुण को देखा जाए कि क्या अपराध के अन्तर्गत अपराध का आरोप साबित होगा – सिद्धांत कि अपराध के तत्व/घटक, अभियुक्त के व्यवहार एवं आचरण तथा अपराध के मध्य निकटता एवं संबंध अपेक्षित करते हैं, देखा जाना ही पर्याप्त होगा। (विनय कुमार केडिया वि. म.प्र. राज्य)---*94

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438, किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, 2000, धारा 12, अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989, धारा 18 – अधिनियम, 2000 की धारा 12 के उपबंध अधिनियम, 1989 की धारा 18 के उपबंध पर कोई अध्यारोही प्रभाव रखने वाले नहीं ठहराये जा सकते क्योंकि दोनों उपबंधों के लागू होने का विषयक्षेत्र भिन्न–भिन्न है। (कपिल दुर्गवानी वि. म.प्र. राज्य) ...2003

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 441, नियम और आदेश (दाण्डिक), नियम 382 व 383 – विचारण न्यायाधीश ने प्रतिभू द्वारा जमानत पत्र प्रस्तुत किये जाने पर उसकी शोध क्षमता के प्रश्न को तहसीलदार को निर्दिष्ट किया – अभिनिर्धारित – प्रतिभू की शोध क्षमता की जाँच तहसीलदार को निर्देशित करने संबंधी आदेश को विधिक मंजूरी नहीं है। (लक्ष्मी साहू वि. म.प्र. राज्य) ...2397

Criminal Procedure Code, 1973 (2 of 1974), Section 451 - *Application by complainant for Supurdgi of gun subject matter of robbery, dismissed by CJM holding that the gun is subject matter of evidence during trial - Revision also dismissed by ASJ - Held - Where stolen or looted articles are seized by police it should be released on Supuradnama to the person who prima facie establish his possession over the articles - Petition allowed.* [Om Prakash Chaturvedi v. State of M.P.] ...1998

Criminal Procedure Code, 1973 (2 of 1974), Sections 451 & 457 - ***Release of vehicle*** - *Vehicle seized in offence u/ss. 379, 408, 420 IPC r/w S. 3/7 of Essential Commodities Act - Held - No prolific purpose would be served by letting the vehicle idle in the Police Station for such a long period - Directed to be released on interim Supurdgi - Revision allowed.* [Mewalal Sharma v. State of M.P.] ...2645

Criminal Procedure Code, 1973 (2 of 1974), Section 464 - *Appellant charged simplicitor for offence u/s 376 IPC - Section 376(2)(g) IPC and also ingredients of gang rape not mentioned in the charge - The conviction of appellant u/s 376(2)(g) altered to S. 376 of IPC - Appeal partly allowed.* [Shesh Upadhyaya @ Sheshmani v. State of M.P.] ...*91

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - ***Quashing of complaint*** - *Where a statute provide a thing to be done in particular manner for a particular remedy, then appropriate action should be taken thereunder - If AICTE is of opinion that affidavit is false, it should have taken action for cancellation of approval of the year 2009 - Registration of offence by CBI unwarranted.* [Meena Rathore (Smt.) v. CBI, ACB, Bhopal] ...*30

Criminal Procedure Code, 1973 (2 of 1974), Chapter VII-A (Sections 105-A to 105-L) - *The whole chapter is specific chapter relating to the specified offences therein and has nothing to do with the local offences or the properties earned out of those.* [State of M.P. v. Balram Mihani]SC...2243

Criminal Trial - ***Counter Cases - Same Public Prosecutor / Additional Public Prosecutor appearing in both the cases - Held*** - *Same Public Prosecutor cannot appear in both the cases from the side of the prosecution, which are the cross cases of each other - District Magistrate is directed to appoint separate Public Prosecutor in both the sessions trial.* [Balaram v. State of M.P.] ...2438

Dakaiti Aur Vyapharan Prabhavit Ksheshtra Adhiniyam, M.P. 1981, Sections 11 & 13 - See - *Penal Code, 1860, Section 216-A* [State of M.P. v. Veeru @ Veer Singh] ...2187

Doctrine of merger - *Where the appeal against original order of assessment was on limited point and the appellate authority without touching any other ground though set-aside the order of assessment but the remand*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 451 – लूट की विषय वस्तु बंदूक की सुपुर्दगी के लिए परिवादी द्वारा प्रस्तुत आवेदन मुख्य न्यायिक मजिस्ट्रेट द्वारा खारिज किया गया यह मानते हुए कि बंदूक विचारण के दौरान साक्ष्य की विषय वस्तु है – पुनरीक्षण को भी अतिरिक्त सेशन न्यायाधीश द्वारा खारिज किया गया – अभिनिर्धारित – जहाँ चोरी की गई अथवा लूटी गई वस्तुएँ पुलिस द्वारा अभिग्रहीत की जाती हैं तो उसे सुपुर्दनामे पर उस व्यक्ति को दे देना चाहिए जो उन वस्तुओं पर प्रथम दृष्टया अपना कब्जा साबित करता है – याचिका मंजूर। (ओम प्रकाश चतुर्वेदी वि. म.प्र. राज्य) ...1998

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 451 व 457 – वाहन का छोड़ा जाना – वाहन धारा 379, 408, 420 भा.द.सं. सहपठित धारा 3/7 आवश्यक वस्तु अधिनियम के अन्तर्गत अपराध में अभिग्रहीत किया गया – अभिनिर्धारित – वाहन को इतनी लम्बी अवधि के लिए पुलिस थाने में बेकार रोककर कोई लाभदायक प्रयोजन पूरा नहीं होगा – अंतरिम सुपुर्दगी पर छोड़ने का निदेश दिया गया – पुनरीक्षण मंजूर। (मेवालाल शर्मा वि. म.प्र. राज्य) ...2645

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 464 – अपीलार्थी पर भा.द.सं. की धारा 376 का आरोप लगाया गया – भा.द.सं. की धारा 376(2)(जी) एवं सामूहिक बलात्संग के संघटक आरोप में वर्णित नहीं – भा.द.सं. की धारा 376(2)(जी) के अंतर्गत की गयी अपीलार्थी की दोषसिद्धि धारा 376 में परिवर्तित – अपील अंशतः मंजूर। (शेष उपाध्याय उर्फ शेषमनी वि. म.प्र. राज्य)---*91

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – परिवाद अभिखंडित करना – जहाँ कोई कानून उपबंधित करता है कि किसी विशिष्ट उपचार के लिये कोई कार्य किसी विशिष्ट ढंग से किया जाए, तब उसके अधीन उचित कार्यवाही करनी चाहिये – यदि एआईसीटीई का यह मत है कि शपथपत्र मिथ्या है तो उसे वर्ष 2009 के अनुमोदन के रद्दकरण की कार्यवाही करनी चाहिये थी – सीबीआई द्वारा अपराध दर्ज करना अनुचित। (मीना राठौर (श्रीमति) वि. सी.बी.आई., ए.सी.बी., भोपाल) ---*30

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), अध्याय सात–क (धाराएँ 105–क से धारा 105–ढ) – यह सम्पूर्ण अध्याय इसमें विर्निदिष्ट अपराधों के लिये विर्निदिष्ट अध्याय है एवं यह स्थानीय अपराधों या उनसे अर्जित संपत्ति के लिये प्रयोज्य नहीं है। (म.प्र. राज्य वि. बलराम मिहानी) SC---2243

दांडिक विचारण – प्रतीप (काउंटर) प्रकरण – वही लोक अभियोजक/ अतिरिक्त लोक अभियोजक दोनों प्रकरणों में उपस्थित हुआ – अभिनिर्धारित – अभियोजन की ओर से ऐसे दोनों प्रकरणों में जो कि परस्पर काउंटर/प्रतीप प्रकरणों के रूप में है वही लोक अभियोजक उपस्थित नहीं हो सकता – जिला मजिस्ट्रेट को दोंनों सत्र प्रकरणों में पृथक लोक अभियोजक नियुक्त करने का निदेश दिया गया। (बालाराम वि. म.प्र. राज्य) ...2438

डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. 1981, धाराएँ 11 व 13 – देखें – दण्ड संहिता, 1860, धारा 216–ए (म.प्र. राज्य वि. वीरू उर्फ वीर सिंह) ...2187

विलयन का सिद्धांत – जहाँ कर निर्धारण के मूल आदेश के विरुद्ध अपील सीमित बिन्दु पर थी तथा अपीलीय प्राधिकारी ने किसी अन्य आधार से परे यद्यपि कर निर्धारण का आदेश अपास्त कर दिया, लेकिन प्रतिप्रेषण अपीलार्थी को फार्म 'बी' एवं परिशिष्ट घोषणा प्रस्तुत करने एवं पुनः

was confined to give opportunity to appellant to file Form B and appendix declaration and to pass a fresh appropriate assessment order, the entire assessment order is not merged in the assessment order which passed after remand. [Vikram Cement v. Commissioner of Commercial Tax] FB...2443

Entry of name in Municipal Record - *Effect* - *Record of Municipal Corporation does not confer any right or title in the property - Such record is maintained by the local authority only for fiscal purpose to pay the taxes - It is just like the revenue record.* [Gaya Prasad v. Pradumn Prasad] ...2343

Entry Tax Act, M.P. (52 of 1976), Section 3(1)(b) - *Manufacture* - *The process of taking out of the chicks amounts to process of manufacture.* [Phoenix Poultry (M/s.) v. State of M.P.] ...2301

Entry Tax Act, M.P. (52 of 1976), Section 3(1)(b) - *Petitioner, running hatchery, purchased poultry ingredients from various dealers for feeding of parental mother birds and not for feeding new born one day chicks - Challenged liability of Rs.3809198/- as entry tax on plant & machinery and poultry feed ingredients - Held - Since, poultry feeds is being used for survival of parental flocks which are instrumental and for upbringing of layer birds, cockerel and culled birds, petitioner has been rightly saddled with liability to make the payment of entry tax.* [Phoenix Poultry (M/s.) v. State of M.P.] ...2301

Essential Commodities Act (10 of 1955), Section 3(3D) & (3E), Sugar (Control) Order, 1966, Clause 4 & 5 - *Levy Sugar* - *Restriction imposed on sale of Sugar to the extent of 20% - Permissibility - Held - The restriction has been imposed to ensure that the consumer get adequate sugar throughout the year at fair price and the cane growers who provide sugar cane also get fair price - It has been applied uniformly to all the sugar mills in the country in public interest, is a reasonable restrictions.* [Barwani Sugar v. Union of India] ...*40

Essential Commodities Act (10 of 1955), Section 3/7, Food Stuffs (Civil Supply & Distribution) Scheme, M.P. 1991, Clause 9(1) & 9(2) - *Appellants, the salesmen of fair price shop failed to maintain and produce the distribution register for inspection before the Food Inspector - Being a matter covered u/s 3(2) Clause (h)(i) of E.C. Act is liable to be convicted u/s 7(1)(a)(i), and not u/s 3/7 of the E.C. Act - Conviction modified to that extent.* [Ravindra Kumar v. State of M.P.] ...2176

Essential Commodities Act (10 of 1955), Section 3/7, Food Stuffs (Civil Supply & Distribution) Scheme, M.P. 1991, Clause 9(1) & 9(2) - *Scheme of 1991 was formulated and is a part of Food Stuff Distribution Control Order, 1960, made u/s 3 r/w S.5 of the Act and so breach of any condition of scheme is punishable under the Act.* [Ravindra Kumar v. State of M.P.] ...2176

समुचित कर निर्धारण आदेश पारित करने तक सीमित था, सम्पूर्ण कर निर्धारण आदेश का प्रतिप्रेषण के बाद पारित कर निर्धारण आदेश में विलय नहीं होता है। (विक्रम सीमेंट वि. कमिश्नर ऑफ कमर्शियल टैक्स) FB...2443

नगरपालिका अभिलेख में नाम की प्रविष्टि – प्रभाव – नगरपालिक निगम का अभिलेख सम्पत्ति में कोई अधिकार या स्वत्व प्रदान नहीं करता है – स्थानीय प्राधिकारी द्वारा ऐसा अभिलेख केवल करों के भुगतान के कर संबंधी प्रयोजन के लिए रखा जाता है – यह मात्र राजस्व अभिलेख के समान है। (गया प्रसाद वि. प्रद्युमन प्रसाद) ...2343

प्रवेश कर अधिनियम, म.प्र. (1976 का 52), धारा 3(1)(बी) – विनिर्माण – मुर्गी के बच्चे निकालने की प्रक्रिया, विनिर्माण प्रक्रिया की कोटि में आती है। (फोनिक्स पोल्ट्री (मे.) वि. म.प्र. राज्य) ...2301

प्रवेश कर अधिनियम, म.प्र. (1976 का 52), धारा 3(1)(बी) – याची, जो अण्ड–प्रजनन–स्थान चलाती थी, ने माता पक्षियों के पोषण हेतु न कि एक दिन के नवजात मुर्गी के बच्चे के पोषण के लिए, विभिन्न व्यापारियों से कुक्कुट सामग्री क्रय की – संयंत्र व मशीनरी और कुक्कुट खाद्य घटकों पर प्रवेश कर के रूप में रूपये 3809198/– के दायित्व को चुनौती दी गयी – अभिनिर्धारित – चूंकि, कुक्कुट खाद्य पैतृक पक्षियों को जीवित रखने के लिये उपयोग में लाया जा रहा है जो साधक है और अंडे देने वाली मुर्गियों, मुर्ग पट्ठा तथा कटने वाली मुर्गियों के लालन पालन के लिये है, याची पर प्रवेश कर अदा करने का दायित्व उचित रूप से डाला गया है। (फोनिक्स पोल्ट्री (मे.) वि. म.प्र. राज्य) ...2301

आवश्यक वस्तु अधिनियम (1955 का 10), धारा 3 (3डी) व (3ई), चीनी (नियंत्रण) आदेश, 1966, खण्ड 4 व 5 – उद्ग्रहित चीनी – 20% की सीमा तक चीनी के विक्रय पर निर्बन्धन लगाया गया – अनुज्ञेयता – अभिनिर्धारित – यह सुनिश्चित करने के लिए निर्बन्धन लगाया गया कि उपभोक्ता को उचित मूल्य पर पूरे वर्ष पर्याप्त चीनी मिल सके और गन्ना उत्पादक जो गन्ना उपलब्ध कराते हैं उन्हें भी उचित मूल्य मिल सके – उसे जनहित में देश की सभी चीनी कारखानों को समानता से लागू किया गया, वह युक्तियुक्त निर्बन्धन है। (बरवानी शुगर वि. यूनियन ऑफ इंडिया) ---*40

आवश्यक वस्तु अधिनियम (1955 का 10), धारा 3/7, खाद्य पदार्थ (नागरिक पूर्ति एवं वितरण) स्कीम, म.प्र. 1991, खण्ड 9(1) व 9(2) – अपीलार्थी जो उचित मूल्य की दुकान के विक्रीकर्ता हैं विवरण रजिस्टर बनाये रखने और खाद्य निरीक्षक के समक्ष प्रस्तुत करने मे असफल रहे – आवश्यक वस्तु अधिनियम की धारा 3(2) खण्ड (एच)(i) के अंतर्गत मामला सम्मिलित होने से, दोषसिद्धि आवश्यक वस्तु अधिनियम की धारा 7(1)(ए)(i) के अंतर्गत होनी चाहिए और न कि धारा 3/7 के अंतर्गत – दोषसिद्धि उस सीमा तक उपांतरित की गयी। (रवीन्द्र कुमार वि. म.प्र. राज्य) ...2176

आवश्यक वस्तु अधिनियम (1955 का 10), धारा 3/7, खाद्य पदार्थ (नागरिक पूर्ति एवं वितरण) स्कीम, म.प्र. 1991, खण्ड 9(1) व 9(2) – 1991 की स्कीम का विनिर्माण किया गया और वह खाद्य पदार्थ वितरण नियंत्रण आदेश, 1960 का भाग है जो अधिनियम की धारा 3 सहपठित धारा 5 के अधीन बनया गया है और इसलिए स्कीम की किसी शर्त का उल्लंघन अधिनियम के अंतर्गत दंडनीय है। (रवीन्द्र कुमार वि. म.प्र. राज्य) ...2176

Evidence Act (1 of 1872), Section 3 - *Appreciation of evidence -Eye witnesses saw the appellant adjusting his trouser with the prosecutrix in half-naked condition, in the bushes near temple - Mobile phone of appellant was recovered by police from the spot - Defence of appellant/accused that he was falsely implicated, found improbable - Held - The trial Court did not commit any illegality in holding that the appellant was found with the prosecutrix in semi naked condition, in bushes.* [Prakash Dabar v. State of M.P.] ...2349

Evidence Act (1 of 1872), Section 3 - *Appreciation of evidence - It has to be borne in mind that the intention of the accused is gathered from the nature of the weapon used, the part of the body chosen for assault and other attending circumstances.* [Ramesh Kumar v. State of M.P.] SC...1843

Evidence Act (1 of 1872), Section 3 - *Appreciation of evidence - The duty of the Judge is to consider the evidence objectively and dispassionately, examine it in the light of probabilities and decide which way the truth lies - The impression formed by the Judge about the character of evidence will ultimately determine the conclusion which he reaches.* [D.K. Shrivastava v. State of M.P.] SC...1865

Evidence Act (1 of 1872), Section 3 - *Appreciation of evidence - The evidence of the witnesses must be read as a whole and the cases are to be considered in totality of the circumstances and while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution case, should not be taken into consideration as they cannot form grounds to reject the evidence as a whole.* [Vijay @ Chinee v. State of M.P.] SC...2257

Evidence Act (1 of 1872), Section 3 - *Appreciation of evidence - The trial Court based its judgment of acquittal on facts that (i) oral dying declaration given to witnesses and not supported by doctor, is doubtful, (ii) the FIR is belated and not forwarded to the Magistrate promptly, (iii) the evidence of sole eye-witness is not believable and natural - In appeal, the High Court reversed the acquittal - Held - It is now well settled that if the trial court's judgment is well based on the evidence and the conclusion drawn in favour of the accused was possible thereof, the High Court would not be justified in interfering on the premise that a different view could also be taken and though the High Court was entitled to reappraise the evidence there should be substantial and compelling reasons for setting aside an acquittal order and making one of conviction.* [Gopal Singh v. State of M.P.] SC...1847

Evidence Act (1 of 1872), Section 3 - *Circumstantial evidence - Case based on - Conviction u/s 302 & 201 of IPC - Held, - Doctor did not depose positively that injuries of deceased were homicidal in nature - The evidence*

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य का अधिमूल्यन – प्रत्यक्षदर्शी साक्षियों ने मंदिर के पास झाड़ियों मे अपीलार्थी को अभियोक्त्री के साथ अर्धनग्न अवस्था में अपनी पतलून ठीक करते हुए देखा – पुलिस द्वारा अपीलार्थी का मोबाईल फोन घटनास्थल से बरामद किया गया – अपीलार्थी/अभियुक्त का यह बचाव कि उसे झूठा फंसाया गया, असंभाव्य पाया गया – अभिनिर्धारित – विचारण न्यायालय ने यह अभिनिर्धारित करने में कोई अवैधता नहीं की कि अपीलार्थी अर्धनग्न अवस्था में अभियोक्त्री के साथ झाड़ियों में पाया गया। (प्रकाश डाबर वि. म.प्र. राज्य) ...2349

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य का अधिमूल्यन – यह ध्यान मे रखना चाहिए कि अभियुक्त का आशय, प्रयोग किये गये आयुध की प्रकृति, हमले के लिये चुने गय शरीर के अंग तथा अन्य विद्यमान परिस्थितियों से एकत्र होता हो। (रमेश कुमार वि. म. प्र. राज्य) SC---1843

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य का अधिमूल्यन – न्यायाधीश का यह कर्तव्य है कि साक्ष्य का वस्तुपरक रूप से तथा निष्पक्षता से विचार करे, अधिसंभाव्यताओं के प्रकाश में उसका परीक्षण करे और यह विनिश्चित करे कि किस मार्ग पर सत्य पोषित होता है – साक्ष्य के स्वरूप के बारे मे बनी न्यायाधीश की धारणा अंततः उस निष्कर्ष को निर्धारित करेगी जिस पर वह पहुँचता है। (डी.के श्रीवास्तव वि. म.प्र. राज्य) SC---1865

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य का अधिमूल्यन – साक्षियों की साक्ष्य को सम्पूर्णता से पढ़ना चाहिए तथा मामलों की परिस्थितियों पर समग्रता से विचार करना चाहिए और किसी साक्षी की साक्ष्य का अधिमूल्यन करते समय तुच्छ विषयों पर गौण असंगतियाँ, जो अभियोजन मामले को गहराई से प्रभावित नहीं करतीं, उन्हें विचार में नहीं लेना चाहिए क्योंकि वे सम्पूर्ण साक्ष्य को अस्वीकार करने के आधार नहीं बना सकतीं। (विजय उर्फ चीनी वि. म.प्र. राज्य) SC---2257

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य का अधिमूल्यन – विचारण न्यायालय ने दोषमुक्ति का उसका निर्णय इन तथ्यों पर आधारित किया कि (i) मौखिक मृत्युकालिक कथन, साक्षियों को दिया गया तथा चिकित्सक द्वारा समर्थन नहीं किया गया, शंकास्पद है (ii) प्रथम सूचना रिपोर्ट विलंबित है तथा मजिस्ट्रेट को तत्परता से अग्रेषित नहीं की गई, (iii) एकमात्र प्रत्यक्षदर्शी साक्षी की साक्ष्य विश्वसनीय एवं प्राकृतिक नहीं है – अपील में उच्च न्यायालय ने दोषमुक्ति को उलट दिया – अभिनिर्धारित – यह अब सुस्थापित है कि यदि विचारण न्यायालय का निर्णय साक्ष्य पर सुआधारित है और अभियुक्त के पक्ष मे निकाला गया निष्कर्ष उससे संभव था, उच्च न्यायालय का इस आधार पर हस्तक्षेप न्यायोचित नहीं होगा कि अलग दृष्टिकोण भी लिया जा सकता था और यद्यपि उच्च न्यायालय साक्ष्य का पुनःमूल्यांकन करने के लिए हकदार था, दोषमुक्ति का आदेश अपास्त करने तथा दोषसिद्धि का आदेश पारित करने के लिए सारवान एवं अप्रतिरोध्य कारण होने चाहिए। (गोपाल सिंह वि. म.प्र. राज्य) SC---1847

साक्ष्य अधिनियम (1872 का 1), धारा 3 – परिस्थितिजन्य साक्ष्य – मामले का आधार – भा.द.सं. की धारा 302 व 201 के अंतर्गत दोषसिद्धि – अभिनिर्धारित, – चिकित्सक ने सकारात्मक रूप से अभिसाक्ष्य नहीं दिया कि मृतक की क्षतियों की प्रकृति मानव वध संबंधी थी – कथित

of alleged extra-judicial confession was doubtful and also inadmissible in evidence - Fact that appellant was last seen in company of deceased also not established beyond periphery of doubt - Injuries on person of appellant did not necessarily rise to inference that these injuries were sustained in assaulting the deceased - The conviction recorded by the trial Court set aside. [Gendaua (Smt.) v. State of M.P.] ...1973

Evidence Act (1 of 1872), Section 3, Penal Code, 1860, Sections 302 & 201 - *Appreciation of evidence - Murder - Deceased the wife of accused/appellant was last seen in company of the accused on same day- Accused Previously maltreated the deceased- The car used by accused was got washed, its seat covers were changed and car repaired by denting & painting soon after occurrence- Medical evidence confirmed that death by gun shot injury and bullet recovered from the spot could be fired by gun recovered at the instance of accused- All the circumstances proved by prosecution had clear tendency to indicate that it was accused/ appellant who had committed the offence. Conviction & sentence passed by trial court affirmed- Appeal dismissed.* [Suryakant Singh v. State of M.P.] ...*55

Evidence Act (1 of 1872), Section 3, Penal Code 1860 - Sections 302, 376 - *Rape and murder - Case based on circumstancial evidence- Held - Accused was seen going towards place of incident - T-Shirt recovered on instance of accused, found having blood stains of more than one person - Similar male D.N.A. profile in the blood sample of accused, nail clipping of accused and vaginal smear slide of deceased, - Accused was also injured and an abrasion was found by doctor- It is well established that it was the appellant who only and non else committed murder and rape. Conviction u/s 376 & 302 of I.P.C. is affirmed.* [In Reference v. Rahul] ...2206

Evidence Act (1 of 1872), Section 3, Penal Code, 1860, Sections 302, 392, 397, 411, 413 & 414 - *Circumstantial evidence - Conviction for robbery and murder based on (1) Deceased allegedly seen with accused in jeep on relevant date by three witnesses, (2) On instance of one accused parts of stolen jeep were recovered from other accused, (3) One accused was identified by witnesses during T.I. Parade - Held - Witnesses not previously known to the accused and they had also seen the accused in police station and C.I.D. office prior to T.I. Parade - The parts of jeep recovered had no identification, forming part of stolen jeep - Conviction & sentence set aside.* [Ramesh Chandra v. State of M.P.] ...2368

**Evidence Act (1 of 1872), Section 3, Penal Code, 1860, Sections 307, 148, 302 & 326 r/w 149 - *Appreciation of evidence - FIR recorded after consultation with complainant party and mentioning maximum persons belonging to opposite faction - Number of injuries (3) on person of deceased would be more if 12 persons/accused would have assaulted - Place of incident*

न्यायिकेतर संस्वीकृति का साक्ष्य संदेहास्पद था और साक्ष्य मे अग्राह्य भी था – तथ्य, कि अपीलार्थी को अंतिम बार मृतक के साथ देखा गया, भी शंका की परिधि से परे साबित नहीं हुआ – अपीलार्थी के शरीर पर की क्षतियों से आवश्यक रूप से यह निष्कर्ष नहीं निकलता कि ये क्षतियाँ मृतक पर हमला करने में हुईं – विचारण न्यायालय द्वारा अभिलिखित दोषसिद्धि अपास्त। (गेंदौआ (श्रीमति) वि. म.प्र. राज्य) ...1973

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता, 1860, धाराएँ 302 व 201 – साक्ष्य का अधिमूल्यन – हत्या – मृतिका आरोपी की पत्नि को उसी दिनांक को आखिरी बार अभियुक्त/अपीलार्थी के साथ देखा गया – पूर्व मे अभियुक्त ने मृतका के साथ दुर्व्यवहार किया – अभियुक्त द्वारा इस्तेमाल की गयी कार को घटना के तत्काल बाद धुलवा दिया गया, इसके सीट कवर को बदलवा दिया गया, एवं कार की डेन्टिंग पेंटिंग कर मरम्मत करवा दी गयी – चिकित्सीय साक्ष्य द्वारा गोली लगने के कारण मृत्यु तथा घटना स्थल से बरामद गोली अभियुक्त द्वारा बरामद करवाई गयी बन्दूक से दागे जा सकने की पुष्टि अभियोजन द्वारा साबित की गयी परिस्थितियां अभियुक्त/अपीलार्थी द्वारा अपराध कारित किये जाने का स्पष्ट संकेत है – विचारण न्यायालय द्वारा पारित दोषसिद्धि एवं दण्डादेश की पुष्टि – अपील खारिज। (सूर्यकांत सिंह वि. म.प्र. राज्य) ---*55

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता,1860 धारा 302, 376 – बलात्कार एवं हत्या– प्रकरण परिस्थितिजन्य साक्ष्य पर आधारित– अभिनिर्धारित– अभियुक्त को घटना स्थल की तरफ जाते हुए देखा गया– अभियुक्त के बयान पर बरामद टी–शर्ट पर एक से अधिक व्यक्तियों के खून के धब्बे पाये गये– अभियुक्त के खून, नाखूनों की कतरन एवं मृतिका के योनिस्त्राव की स्लाइड की नर D.N.A. रूपरेखा समान– अभियुक्त को भी चोटें आयीं थी तथा चिकित्सक ने एक खरोंच पायी थी– यह भलीभांति सुस्थापित है कि सिर्फ अपीलार्थी ने ही हत्या एवं बलात्कार किया है किसी और ने नहीं – भा0दं0सं0 की धारा 376 एवं 302 के अंतर्गत की गयी दोषसिद्धि की पुष्टि । (इन रेफरेन्स वि. राहुल) ...2206

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता, 1860, धाराएँ 302, 392, 397, 411, 413 व 414 – परिस्थितिजन्य साक्ष्य – लूट एवं हत्या के लिए दोषसिद्धि (1) सुसंगत तारीख को तीन साक्षियों द्वारा मृतक को कथित रूप से अभियुक्त के साथ जीप पर देखे जाने, (2) एक अभियुक्त की प्रेरणा पर चुराई गई जीप के पुर्जे अन्य अभियुक्त से बरामद होने, (3) साक्षियों द्वारा शिनाख्त परेड के दौरान एक अभियुक्त की शिनाख्त करने, पर आधारित – अभिनिर्धारित – साक्षी अभियुक्त को पहले से नहीं जानते थे तथा उन्होंने अभियुक्त को थाने एवं सी.आई.डी. कार्यालय में शिनाख्त परेड के पूर्व देखा था – बरामद किये गये जीप के पुर्जे, चोरी की गयी जीप के होने की कोई पहचान नहीं – दोषसिद्धि एवं दण्डादेश अपास्त। (रमेश चंद्र वि. म.प्र. राज्य) ...2368

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता, 1860 धाराएं 307, 148, 302 व 326 सहपठित 149 – साक्ष्य का अधिमूल्यन – शिकायतकर्ता पक्ष के साथ परामर्श के पश्चात् प्रथम सूचना रिपोर्ट अभिलिखित की गई और विरूद्ध पक्ष के अधिकतम व्यक्तियों को उल्लिखित किया गया – मृतक के शरीर पर चोटों की संख्या (3), अधिक होती यदि 12 व्यक्तियों/अभियुक्तों ने हमला किया होता – घटना का स्थान स्पष्ट नहीं – प्रत्यक्षदर्शी साक्षी जो

not clear - Eye-witnesses who are partisan & close relatives of deceased - Witnesses changed the prosecution story time to time - Injuries of 3 accused not explained by prosecution witnesses - Conviction and sentence set aside by giving benefit of doubt - Appeal allowed. [Champalal v. State of M.P.]...*25

Evidence Act (1 of 1872), Section 3, Penal Code, 1860, Section 376(1) - *Accused convicted upon basis of sole testimony of prosecutrix and conviction affirmed by the High Court - Held - In the case the accused/ appellant had received 6 injuries including one grievous injury, the witnesses who were allegedly reached at spot soon after did not support the prosecutrix and declared hostile, the prosecution story that the appellant a young man of 31 years had been overpowered by a much older woman is rather difficult to believe, the I.O. did not verify the defence of accused that he had gone to prosecutrix house to recover his cow and in a quarrel that followed both had received injuries, the husband of prosecutrix who had accompanied her to police station did not come to witness box and doctor was also unable to confirm the factum of rape, makes the case rather unusual one.*

There can be no quarrel with the proposition that the evidence of prosecutrix is liable to be believed save in exceptional circumstances. But on the other hand a prosecutrix must be believed irrespective of the improbabilities in her story, is an argument that can never be accepted. The test always is as to whether the given story prima facie inspires confidence - Conviction set aside. [Dinesh Jaiswal v. State of M.P.] SC...1839

Evidence Act (1 of 1872), Section 3 - See - *Penal Code, 1860, Section 302* [Ram Bhadra Tiwari v. State of M.P.] ...2625

Evidence Act (1 of 1872), Section 3 - See - *Penal Code, 1860, Sections 363 & 366* [Ghanshyam @ Ghanshu v. State of M.P.] ...*42

Evidence Act (1 of 1872), Section 3 - See - *Penal Code, 1860, Sections 363, 366, 376(2)(f) & 302,* [Haricharan v. State of M.P.] ...2201

Evidence Act (1 of 1872), Sections 3 & 32, Penal Code, 1860, Section 302 - ***Appeal against conviction based on dying declaration*** - *Deceased made two dying declarations, one to doctor implicating the accused and her mother and another to Executive Magistrate implicating the accused/ appellant only - Very close relation of deceased viz. mother-in-law and husband who met the deceased first, did not say that deceased disclosed to them that it was the accused who set fire to her - The evidence of dying declaration is not wholly reliable - Conviction and sentence set aside.* [Shabana Bi (Smt.) v. State of M.P.] ...*52

Evidence Act (1 of 1872), Sections 3 & 113-B - See - *Penal Code, 1860, Sections 304-B & 498-A,* [Durga Prasad v. State of M.P.] SC... 1853

Evidence Act (1 of 1872), Section 9 - ***Test Identification Parade*** - *It*

मृतक के साथी तथा नजदीकी रिश्तेदार हैं – साक्षियों ने अभियोजन कथा को समय–समय पर बदला है – तीन अभियुक्तों की चोंटों को अभियोजन साक्षियों द्वारा स्पष्ट नहीं किया गया–शंका का लाभ देते हुए दोषसिद्धी और दण्डादेश अपास्त – अपील मंजूर। (चंपालाल वि. म.प्र. राज्य) ---*25

साक्ष्य अधिनियम (1872 का 1), धारा 3, दण्ड संहिता, 1860, धारा 376(1) – अभियुक्त को अभियोक्त्री की एकमात्र साक्ष्य के आधार पर दोषसिद्ध किया गया और उच्च न्यायालय द्वारा दोषसिद्धि की पुष्टि की गई – अभिनिर्धारित – मामले में अभियुक्त/अपीलार्थी को एक गंभीर चोट सहित 6 चोटें आईं, साक्षी जो कथित रूप से मौके पर तुरंत पहुँचे थे, ने अभियोक्त्री का समर्थन नहीं किया और उन्हें पक्षद्रोही घोषित किया गया, अभियोजन कथा कि अपीलार्थी एक 31 वर्षीय युवक को काफी वृद्ध महिला द्वारा काबू किये जाने की बात पर विश्वास करना कठिन है, अन्वेषण अधिकारी ने अभियुक्त के इस बचाव का सत्यापन नहीं किया कि वह अभियोक्त्री के घर अपनी गाय बरामद करने गया था और उसके बाद हुए झगड़े में दोनों को चोटें आईं, अभियोक्त्री का पति, जो उसके साथ पुलिस थाना गया था, कठघरे में नहीं आया और चिकित्सक भी बलात्संग के तथ्य की पुष्टि करने में अक्षम रहा, मामले को एक असामान्य मामला बनाता है।

इस सुझाव के साथ कोई विवाद नही हो सकता है कि अभियोक्त्री की साक्ष्य आपवादिक परिस्थितियों को छोड़कर विश्वास किये जाने योग्य है। परन्तु दूसरी ओर अभियोक्त्री पर उसकी कहानी में आयी अनधिसंभाव्यताओं को विचार में लिये बिना विश्वास करना ही चाहिये, यह एक ऐसा तर्क है जिसे कभी स्वीकार नही किया जा सकता – परीक्षण सदैव इसका होता है कि क्या प्रस्तुत कहानी प्रथम दृष्टया विश्वास पैदा करती है – दोषसिद्धि अपास्त। (दिनेश जायसवाल वि. म.प्र. राज्य) SC---1839

साक्ष्य अधिनियम (1872 का 1), धारा 3 – देखें – दण्ड संहिता, 1860, धारा 302 (राम भद्र तिवारी वि. म.प्र. राज्य) ...2625

साक्ष्य अधिनियम (1872 का 1), धारा 3 – देखें – दण्ड संहिता, 1860, धाराएँ 363 व 366, (घनश्याम उर्फ घन्सू वि. म.प्र. राज्य) ---*42

साक्ष्य अधिनियम (1872 का 1), धारा 3 – देखें – दण्ड संहिता, 1860, धाराएँ 363, 366, 376(2)(एफ) व 302, (हरिचरण वि. म.प्र. राज्य) ...2201

साक्ष्य अधिनियम (1872 का 1), धाराएँ 3 व 32, दण्ड संहिता, 1860, धारा 302 – मृत्युकालिक कथन पर आधारित दोषसिद्धि के विरुद्ध अपील – मृतक ने दो मृत्युकालिक कथन किये, एक चिकित्सक को, अभियुक्त और उसकी माँ को आलिप्त करते हुए और दूसरा कार्यपालक मजिस्ट्रेट को, केवल अभियुक्त/अपीलार्थी को आलिप्त करते हुए – मृतक के अत्यंत नजदीकी रिश्तेदार अर्थात सास एवं पति जो मृतक से पहले मिले उन्होंने यह नहीं कहा कि मृतक ने उनको यह प्रकट किया कि वह अभियुक्त था जिसने उसे आग लगायी – मृत्युकालिक कथनों की साक्ष्य पूर्णतः विश्वसनीय नहीं – दोषसिद्धि एवं दण्डादेश अपास्त। (शबाना बी (श्रीमती) वि. म.प्र. राज्य) ---*52

साक्ष्य अधिनियम (1872 का 1), धाराएँ 3 व 113–बी – देखें – दण्ड संहिता, 1860, धाराएं 304–बी व 498–ए, (दुर्गा प्रसाद वि. म.प्र. राज्य) SC---1853

साक्ष्य अधिनियम (1872 का 1), धारा 9 – शिनाख्त परेड – इसका उपयोग केवल

is used only to corroborate the evidence recorded in the Court - Therefore, it is not substantive evidence - The actual evidence is what is given by the witnesses in the Court. [Vijay @ Chinee v. State of M.P.] SC...2257

Evidence Act (1 of 1872), Section 32 - *A statement given by deceased (the wife) to the D.I.G. (Police) in a previous enquiry may be treated as a dying declaration against accused (husband).* [Sulabh Jain v. State of M.P.]...2433

Evidence Act (1 of 1872), Section 32 - ***Dying declaration*** - *An oral dying declaration made to a person who had very serious enmity with the accused should be accepted with a little hesitation and reservation.* [Gopal Singh v. State of M.P.] SC...1847

Evidence Act (1 of 1872), Section 32 - ***Dying declaration*** - *Evidentiary value of - Though, it cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated, yet the rule requiring corroboration is a rule of prudence.* [Shabana Bi (Smt.) v. State of M.P.] ...*52

Evidence Act (1 of 1872), Section 32, Penal Code, 1860, Section 302 - *Appellant convicted for murder of his wife/deceased (died due to burn injuries) on ground of her second dying declaration, rejecting the first one - Conviction challenged on ground that the first dying declaration, which was recorded by Executive Magistrate, should have been accepted as compared to second, recorded by ASI unauthorisedly - Held - The trial Court and the High Court rightly discarded the first dying declaration in view that the deceased was taken to hospital by her father-in-law & mother-in-law and the medical report does not support her first dying declaraion, on the contrary the second dying declaration fully stands corroborated not only by the medical evidence but oral dying declarations made by the deceased to her parents also and she was not in a precarious condition - Appeal dismissed.* [Lakhan v. State of M.P.] SC...2018

Evidence Act (1 of 1872), Sections 63 & 65 - *The question of admissibility, reliability and the probative value of its evidence can be judged by the trial Court subsequently at appropriate stage - Shutting out of relevant evidence would serve no purpose.*

Trial Court allowed the application and permitted the complainant to produce a copy of the cassette subject to condition that the admissibility and the probative value of the cassette shall depend upon the proof of requisite conditions as provided in the provisions. Order challenged by petitioner on grounds that (1) it was not established by the complainant that the original cassette had been destroyed or lost, therefore, no secondary evidence by way of producing another copy of cassette can be made, (2) Since it was not established that the cassette contained the voice of accused and the

न्यायालय में अभिलिखित साक्ष्य की संपुष्टि के लिये किया जाता है – इसलिए, यह तात्विक साक्ष्य नहीं है – वास्तविक साक्ष्य वह है जो साक्षियों द्वारा न्यायालय में दी जाती है। (विजय उर्फ चीनी वि. म.प्र. राज्य) SC---2257

साक्ष्य अधिनियम (1872 का 1), धारा 32 – मृतक (पत्नि) द्वारा पूर्ववर्ती जाँच में उप महानिरीक्षक (पुलिस) को दिया गया कथन अभियुक्त (पति) के विरुद्ध मृत्युकालिक कथन के रूप में माना जा सकता है। (सुलभ जैन वि. म.प्र. राज्य) ...2433

साक्ष्य अधिनियम (1872 का 1), धारा 32 – मृत्युकालिक कथन – मौखिक मृत्युकालिक कथन जो उस व्यक्ति को किया गया जिसकी अभियुक्त से बहुत गंभीर वैमनस्यता थी, कुछ संकोच तथा शर्तों के साथ स्वीकार करना चाहिए। (गोपाल सिंह वि. म.प्र. राज्य)SC---1847

साक्ष्य अधिनियम (1872 का 1), धारा 32 – मृत्युकालिक कथन – साक्षिक मूल्य – यद्यपि इसे विधि का अत्यांतिक नियम नहीं माना जा सकता कि जब तक कि संपुष्टि न हो मृत्युकालिक कथन दोषसिद्धि का एक मात्र आधार नहीं बन सकता, तब भी संपुष्टि की आवश्यकता का नियम, प्रज्ञा का नियम है। (शबाना बी (श्रीमती) वि. म.प्र. राज्य) ---*52

साक्ष्य अधिनियम (1872 का 1), धारा 32, दण्ड संहिता, 1860, धारा 302 – अपीलार्थी को उसकी पत्नि/मृतक (जलने की चोटों के कारण मौत हुई) के प्रथम मृत्युकालिक कथन को अस्वीकार करते हुए, उसके द्वितीय मृत्युकालिक कथन के आधार पर दोषसिद्ध किया गया – दोषसिद्धि को इस आधार पर चुनौती दी गयी कि प्रथम मृत्युकालिक कथन जिसे कार्यपालक मजिस्ट्रेट द्वारा अभिलिखित किया गया था उसे स्वीकार किया जाना चाहिए था दूसरे की तुलना मे जिसे ए. एस.आई. द्वारा अनाधिकृत रूप से अभिलिखित किया गया था – अभिनिर्धारित – विचारण न्यायालय तथा उच्च न्यायालय ने उचित रूप से प्रथम मृत्युकालिक कथन को नामंजूर किया इस दृष्टिकोण से कि मृतक को उसके ससुर व सास द्वारा अस्पताल ले जाया गया था और चिकित्सीय प्रतिवेदन उसके प्रथम मृत्युकालिक कथन को सहायता प्रदान नहीं करता, इसके विपरीत द्वितीय मृत्युकालिक कथन पूर्णतः संपुष्ट होता है न केवल चिकित्सीय साक्ष्य द्वारा परंतु मृतक द्वारा उसके माता–पिता को दिये मौखिक मृत्युकालिक कथन से भी तथा वह दैवाधीन स्थिति मे नहीं थी – अपील खारिज। (लखन वि. म.प्र. राज्य) SC---2018

साक्ष्य अधिनियम (1872 का 1), धाराएँ 63 व 65 – उसकी साक्ष्य की ग्राह्यता, विश्वसनीयता और प्रमाण देने वाले मान का विचारण न्यायालय द्वारा पश्चातवर्ती उचित प्रक्रम पर मूल्यांकन किया जा सकता है – सुसंगत साक्ष्य अलग करने से किसी प्रयोजन की पूर्ति नहीं होगी।

विचारण न्यायालय ने आवेदन मंजूर किया और परिवादी को कॅसेट की कॉपी प्रस्तुत करने की अनुमति दी, इस शर्त पर कि कॅसेट की ग्राह्यता और प्रमाण देने वाले उसके मान उपबंधों मे दी गयी आवश्यक शर्तो को साबित होने के उपर निर्भर करेगा। याची द्वारा आदेश को इस आधार पर चुनौती दी गयी कि (1) परिवादी द्वारा यह स्थापित नहीं किया गया कि मूल कॅसेट नष्ट की गयी अथवा खो गयी, इसलिए, अन्य प्रति को प्रस्तुत कर कोई द्वितीयिक साक्ष्य नहीं दी जा सकती, (2) चूंकि यह स्थापित नहीं किया गया कि कॅसेट मे अभियुक्त तथा परिवादी की आवाजे थी और चूंकि उसे उचित अभिरक्षा मे अविकल नहीं रखा गया, कथित घटना के लगभग सात वर्ष पश्चात उसे साक्ष्य में प्रस्तुत करने की अनुमति प्रदान नहीं की जा सकती, (3) अभिलेख पर यह दर्शाने वाला कुछ नहीं था कि कॅसेट जिसे द्वितीय साक्ष्य के रूप में प्रस्तुत करने के लिये कहा गया है वह लोकायुक्त विभाग

complainant, and since it was not kept intact in any proper custody, the permission to produce the same in evidence can not be granted after about seven years of the alleged occurrence, (3) There was nothing on record to indicate that the cassette sought to be produced by way of secondary evidence was prepared from the original cassette on the directions of officers of Lokayukta Department. In these circumstances, the possibility that the cassette might have been tampered, could not be ruled out.

Held *- The question of admissibility, reliability and the probative value of its evidence can be judged by the trial Court subsequently at appropriate stage. Shutting out of relevant evidence would serve no purpose. The trial Court kept in mind all the necessary precautions and permitted the complainant to produce the copy of the cassette in evidence, therefore, no interference is called for in the said order. Petition dismissed.* [Suresh Kumar Singh v. State of M.P.] ...2237

Evidence Act (1 of 1872), Sections 91 & 92 - ***Admissibility of evidence*** *- Whenever anything is in writing between the parties and such document in original is neither produced nor proved by admissible evidence then mere on the basis of pleadings or oral evidence no inference could be drawn regarding the veracity of such document.* [Golman v. Muniya Bai]...2588

Evidence Act (1 of 1872), Section 101 - ***Burden of proof - When not necessary - Held*** *- Any rule of burden of proof is irrelevant when the parties have led evidence and that evidence has been considered.* [Hiralal v. Mangilal] ...1960

Evidence Act (1 of 1872), Section 113-B - See - *Penal Code, 1860, Sections 304-B & 498-A* [Ram Bhadra Tiwari v. State of M.P.] ...2625

Evidence Act (1 of 1872), Section 118 - ***Child witnesses*** *- Witnesses aged 11 & 4 years (the daughters of the accused), who got injured in the same incident and admittedly present in the single room house of accused can be relied - Especially when the presence of accused at the scene of occurrence is not challenged and the evidence of these two witnesses is supported by medical and other evidence.* [In Reference v. Mohammad Shafiq @ Munna @ Shafi] ...2405

Evidence Act (1 of 1872), Section 118, Mental Health Act, 1994, Section 23(1)(a)(b) - *After evaluating the extent of the disorder, evidence of a mentally retarded witness can be recorded with the help of an expert in the field or the person with whom he or she is able to communicate by words or by way of gestures.* [Prakash Dabar v. State of M.P.] ...2349

Evidence Act (1 of 1872), Sections 137 & 138 - *Charge u/ss. 452, 327 & 506-B of IPC framed, and after evidence, case was fixed for judgment - Later on, additional charge of Ss. 325/34 & 323/34 of IPC were framed and witnesses were recalled for further cross-examination - Out of them, two witnesses could not be produced - It was contended on behalf of State that the*

के अधिकारियों के निर्देशन पर मूल कॅसेट से तैयार की गयी थी इन परिस्थितियों में, कॅसेट के साथ छेडछाड होने की संभावना से इनकार नहीं किया जा सकता।

अभिनिर्धारित – उसकी साक्ष्य की ग्राह्यता, विश्वसनीयता और प्रमाण देने वाले मान का विचारण न्यायालय द्वारा पश्चातवर्ती उचित प्रक्रम पर मूल्यांकन किया जा सकता है – सुसंगत साक्ष्य अलग करने से किसी प्रयोजन की पूर्ति नहीं होगी। विचारण न्यायालय ने सभी आवश्यक सावधानियों को ध्यान मे रखा और परिवादी को साक्ष्य में कॅसेट की प्रति प्रस्तुत करने की अनुमति दी, इसलिए उक्त आदेश में हस्तक्षेप का कोई प्रयोजन नहीं बनता। याचिका खारिज। (सुरेश कुमार सिंह वि. म.प्र. राज्य) ...2237

साक्ष्य अधिनियम (1872 का 1) धारा 91 एवं 92 – साक्ष्य की ग्राह्यता – जब पक्षकारों के मध्य कुछ लिखित में है एवं ऐसा दस्तावेज मूलतः न तो प्रस्तुत किया जाता है और न ही ग्राह्य साक्ष्य द्वारा साबित किया जाता है तब मात्र अभिवचनों या मौखिक साक्ष्य के आधार पर ऐसे दस्तावेज की सत्यता के सम्बन्ध में कोई अनुमान नहीं निकाला जा सकता। (गोलमन वि. मुनिया बाई) ...2588

साक्ष्य अधिनियम (1872 का 1), धारा 101 – साबित करने का भार – कब आवश्यक नहीं – अभिनिर्धारित – साबित करने का भार का नियम अप्रासंगिक है जब पक्षकारों ने साक्ष्य प्रस्तुत की है तथा साक्ष्य पर विचार किया गया है। (हीरालाल वि. मांगीलाल) ...1960

साक्ष्य अधिनियम (1872 का 1), धारा 113–बी – देखें – दण्ड संहिता, 1860, धारा 304–बी व 498–ए, (राम भद्र तिवारी वि. म.प्र. राज्य) ...2625

साक्ष्य अधिनियम (1872 का 1), धारा 118 – बालक साक्षी – 11 और 4 वर्ष के साक्षियों (अभियुक्त की पुत्रियाँ), जिन्हें उसी घटना में क्षतियाँ आयीं और स्वी.त रूप से अभियुक्त के एक कमरे के मकान में उपस्थित थीं, पर विश्वास किया जा सकता है – विशेषकर जब घटनास्थल पर अभियुक्त की उपस्थिति को चुनौती नहीं दी गयी हो और इन दोनों साक्षियों के साक्ष्य का चिकित्सीय एवं अन्य साक्ष्य से समर्थन होता हो। (इन रेफरेन्स वि. मोहम्मद शफीक उर्फ मुन्ना उर्फ शफी) ...2405

साक्ष्य अधिनियम (1872 का 1), धारा 118, मानसिक स्वास्थ्य अधिनियम, 1994, धारा 23(1)(ए)(बी) – किसी मानसिक रूप से विक्षिप्त/अविकसित साक्षी की साक्ष्य उसके मानसिक विकार की सीमा को परखने के उपरान्त उस क्षेत्र के विशेषज्ञ की अथवा किसी ऐसे व्यक्ति, जिसे वह शब्दों से अथवा संकेतों द्वारा अपनी बात समझा सके, की सहायता से अभिलिखित की जा सकती है। (प्रकाश डाबर वि. म.प्र. राज्य) ...2349

साक्ष्य अधिनियम (1872 का 1), धाराएँ 137 व 138 – भा.द.सं. की धारा 452, 327 एवं 506–बी के अंतर्गत आरोप विरचित किये गये और साक्ष्य के उपरांत मामला निर्णय के लिए नियत किया गया – बाद में भा.द.सं. की धारा 325/34 एवं 323/34 के अतिरिक्त आरोप विरचित किये गये तथा साक्षियों को अतिरिक्त प्रतिपरीक्षा के लिए पुनः बुलाया गया – जिनमें से दो गवाह उपस्थित

Court should have considered the evidence of these two witnesses for charge u/ss. 452, 327 & 506-B IPC as the cross-examination was already over - Held - As per settled proposition of law the deposition of witnesses could not be taken into consideration if the same is not complete in accordance with the provision of Ss. 137 & 138 - Appeal against acquitted dismissed. [State of M.P. v. Pappoo @ Saleem] ...2383

Evidence Act (1 of 1872), Section 157 - *Statement of injured, recorded by doctor as dying declaration, is not inadmissible and it can be used as a former statement to corroborate the testimony of its maker.* [In Reference v. Mohammad Shafiq @ Munna @ Shafi] ...2405

Excellent Player Certificate - ***Cancellation - Permissibility*** - *Excellent Player Certificate granted to the petitioner cancelled for the alleged irregularity in the selection process - Action challenged - Held - Merely on the basis of the finding of certain irregularities in the procedure whereunder the players had no role to play, extreme steps were taken by cancelling the entire selection not warranted - Order quashed.* [Ashit Verma v. State of M.P.] ...*58

Explosive Substances Act (6 of 1908), Section 5 - *Appellant convicted for keeping explosive substance in his temporary house - Seizure witnesses interested and not of locality - Discrepancy in evidence of seizure officer and witnesses - No evidence that seized articles were sealed at spot, impression seal was affixed at the draft memo to FSL or sealed articles were kept in safe custody in the Maalkhana - The evidence not collected to the effect that house was in exclusive possession of appellant - No evidence to show that the appellant was having explosive substance for unlawful object - Held - Essential ingredient to prove the offence is lacking - Conviction and sentence of appellant set aside.* [Kishori Lal v. State of M.P.] ...2172

Financial Code, M.P. (Vol. I), Rules 22 & 23 - *Amount deposited before the trial Court by the tenant, not deposited in treasury and defalcated by Nazir -The petitioner/landlord when applied for withdrawal, he was declined to payment - Held - In case of defalcation or misappropriation of the amount, such amount has to be paid by the State by debiting it to the Head "S-Special Advance" and thereafter the aforesaid amount shall be recovered and deposited in the said head by the said Governement officials - The person who is entitled for the refund of the amount cannot be directed to file a civil suit for the recovery of the aforesaid amount from the estate of such employee, as explained by State Government vide circulars Nos. E-3/2/89/C-IV Dt. 30.12.1995 and M.P.F.D. Memo No.1220/IV-B-6/72 dt. 2.11.1972 - Petition allowed.* [Mehmooda Bai (Smt.) v. Central Bank of India] ...2310

Food Stuffs (Civil Supply & Distribution) Scheme, M.P. 1991, Clause 9(1) & 9(2) - See - *Essential Commodities Act, 1955, Section 3/7* [Ravindra Kumar v. State of M.P.] ...2176

नहीं किये जा सके – राज्य की ओर से अभिकथन किया गया कि न्यायालय को भा.द.सं. की धारा 452, 327 एवं 506–बी के अन्तर्गत आरोप के लिये इन दो साक्षियों की साक्ष्य पर विचार किया जाना चाहिये था क्योंकि प्रतिपरीक्षा पहले ही समाप्त हो गयी थी – अभिनिर्धारित – विधि की स्थापित प्रतिपादनाओं के अनुसार यदि साक्षियों का अभिसाक्ष्य धारा 137 एवं 138 के उपबंधानुसार पूर्ण नहीं है तो उसे विचार में नहीं लिया जा सकता – दोषमुक्ति के विरूद्ध अपील खारिज। (म.प्र. राज्य वि. पप्पू उर्फ सलीम) ...2383

साक्ष्य अधिनियम (1872 का 1), धारा 157 – चिकित्सक द्वारा मृत्युकालिक कथन के रूप में अभिलिखित क्षतिग्रस्त का कथन अग्राह्य नहीं है और उसे करने वाले के परिसाक्ष्य की सम्पुष्टि करने के लिए पूर्ववर्ती कथन के रूप में उसका उपयोग किया जा सकता है। (इन रेफरेन्स वि. मोहम्मद शफीक उर्फ मुन्ना उर्फ शफी) ...2405

उत्कृष्ट खिलाड़ी प्रमाण पत्र – रद्दकरण – अनुज्ञेयता – याची को प्रदत्त उत्कृष्ट खिलाड़ी प्रमाण पत्र, चयन प्रक्रिया में कथित अनियमितता के कारण रद्द किया गया – कार्यवाही को चुनौती दी गई – अभिनिर्धारित – मात्र प्रक्रिया में कुछ अनियमितताओं के पाये जाने के आधार पर, जहां खिलाड़ी कोई भूमिका नहीं रखते थे, संपूर्ण चयन को रद्द करके आत्यंतिक कदम उठाये गये, जो समर्थनीय नहीं हैं – आदेश अभिखंडित। (अशित वर्मा वि. म.प्र. राज्य) ---*58

विस्फोटक पदार्थ अधिनियम (1908 का 6), धारा 5 – अपने अस्थायी मकान मे विस्फोटक पदार्थ रखने के लिये अपीलार्थी की दोषसिद्धि – जप्ती के साक्षी हितबद्ध है और परिक्षेत्र के निवासी नहीं है – जप्ती अधिकारी एवं साक्षियों की साक्ष्य मे अंतर है – कोई साक्ष्य नहीं कि जप्त वस्तुएं मौके पर सील की गई थी, एफ.एस.एल. को ड्राफ्ट मेमो पर छापित सील लगाई गयी थी अथवा जप्त वस्तुओं को मालखाने मे सुरक्षित अभिरक्षा मे रखा गया था – इस परिणाम की कोई साक्ष्य एकत्रित नहीं की गयी कि मकान अपीलार्थी के अनन्य अधिपत्य मे था – यह दर्शाने वाली कोई साक्ष्य नही कि अपीलार्थी अपने पास विस्फोटक पदार्थ गैर कानूनी उद्देश्य के लिये रखा था – अभिनिर्धारित – अपराध साबित करने के लिए आवश्यक घटक का अभाव है – अपीलार्थी की दोषसिद्धि एवं दंडादेश अपास्त । (किशोरी लाल वि. म.प्र. राज्य) ...2172

वित्त संहिता, म.प्र. (खण्ड–एक) नियम 22 व 23 – भाड़ेदार द्वारा न्यायालय के समक्ष जमा की गई राशि, खजाने में जमा नहीं की गयी और नाजिर द्वारा गबन की गई – याची/भू–स्वामी ने जब निकालने के लिये आवेदन किया, उसे भुगतान से इंकार किया गया – अभिनिर्धारित – राशि के गबन अथवा दुर्विनियोजन होने के मामले में ऐसी राशि "एस–स्पेशल एडवांस" शीर्ष के नाम जमा करके राज्य द्वारा अदा करनी होगी और उसके पश्चात् उपरोक्त राशि को उक्त सरकारी कर्मचारियों द्वारा वसूला जायेगा तथा उक्त शीर्ष मे जमा किया जायेगा – जो व्यक्ति राशि के प्रतिदाय का हकदार है उसे ऐसे कर्मचारी की सम्पदा से उपरोक्त राशि की वसूली के लिये सिविल वाद प्रस्तुत करने का निर्देश नहीं दिया जा सकता, जैसा कि राज्य सरकार द्वारा परिपत्र क्र. ई–3/2/89/सी–चार, दिनांक 30.12.1995 और म.प्र. वित्त विभाग के ज्ञापन क्र. 1220/चार–बी–6/72, दिनांक 2.11.1972 द्वारा स्पष्ट किया गया है – याचिका मंजूर। (महमूदा बाई (श्रीमति) वि. सेन्ट्रल बैंक ऑफ इंडिया) ...2310

खाद्य पदार्थ (नागरिक पूर्ति एवं वितरण) स्कीम, म.प्र. 1991, खण्ड 9(1) व 9(2) – देखें – आवश्यक वस्तु अधिनियम, 1955, धारा 3/7(रवीन्द्र कुमार वि. म.प्र. राज्य) ...2176

Forest Act (16 of 1927), Section 2(4), Forest Produce (Conservation of Biodiversity and Sustainable Harvesting) Rules, M.P. 2005, Rule 5 - *Forest Produce - Salai Gum - Held - Salai Gum is a Forest Produce and a notification in respect of it can be issued under Rule 5.* [Hargovind Nagaich v. State of M.P.] ...1916

Forest Produce (Conservation of Biodiversity and Sustainable Harvesting) Rules, M.P. 2005, Rule 5 - *Power to declare Closed Area -Divisional Forest Officer issuing a notification prohibiting of extraction of Salai Gum for more than singular area - Held - It is mandatory under the Rule to specify the area, but to say that composite area cannot be included, is not the object of Rule 5 - The notification issued for entire Protected and Reserved Forest is in consonance to Rule 5.* [Hargovind Nagaich v. State of M.P.] ...1916

Forest Produce (Conservation of Biodiversity and Sustainable Harvesting) Rules, M.P. 2005, Rule 5 - *Power to declare Closed Area - Divisional Forest Officer issuing a notification prohibiting of extraction of Salai Gum - Notification challenged on the ground that DFO has no jurisdiction to issue notification - Held - It is thus within the powers of the DFO posted in a territorial Forest Division, being an official authorized under Rules, 2005 to issue notification u/r 5.* [Hargovind Nagaich v. State of M.P.] ...1916

General Clauses Act (10 of 1897), Section 3(31) - See - *Land Acquisition Act, 1894, Section 6 Proviso,* [Vineet Kabra v. State of M.P.]...2533

General Sales Tax Act, M.P. 1958 (2 of 1959), Section 19(1) - *Where the entire assessment order (dt. 19.03.1991) was not merged in the assessment order (dt. 26.10.1994) which was passed after remand, the initiation of proceedings u/s 19(1) of the Act (dt. 23.09.1997) for re-opening of the alleged escaped assessment of the items regarding which no appeal was filed could not have been ordered being barred by limitation.* [Vikram Cement v. Commissioner of Commercial Tax] FB...2443

High Court of Madhya Pradesh Rules, 2008, Rules 15 & 22 - *Non-obstante clause in Rule 22 of Chapter IV of the High Court of M.P. Rules, 2008 does not overrides the guideline, as incorporated in Rule 15 of the same Chapter, for listing of a subsequent application for suspension of sentence/grant of bail.* [Ram Pratap v. State of M.P.] FB...1896

Hindu Law - *Coparceners property - Right of coparceners - Whereas the ancestral property is inherited by the Karta or member of any branch of such family in his name even then the other male member of his branch the sons being coparcner and if they are / he is predeceased then their/his natural heirs has their vested right in such property and on arising the occasion the same be partitioned between them according to their share as coparceners of such family.* [Golman v. Muniya Bai] ...2588

वन अधिनियम (1927 का 16), धारा 2(4), वन उपज (जैव विविधता का संरक्षण एवं पोषणीय कटाई) नियम, म.प्र. 2005, नियम 5 – वन उपज – सलाई गम – अभिनिर्धारित – सलाई गम वन उपज है तथा उसके संबंध मे नियम 5 के अंतर्गत अधिसूचना जारी की जा सकती है। (हरगोविंद नगाइच वि. म.प्र. राज्य) ...1916

वन उपज (जैव विविधता का संरक्षण एवं पोषणीय कटाई) नियम, म.प्र. 2005, नियम 5 – निषिद्ध क्षेत्र घोषित करने की शक्ति – एक से अधिक क्षेत्र के लिए सलाई गम निकालने से प्रतिबंधित करने वाली प्रभागीय वन अधिकारी द्वारा जारी अधिसूचना अभिनिर्धारित क्षेत्र विनिर्दिष्ट करना नियम के अंतर्गत बाध्यकारी है परंतु यह कहना कि संयुक्त क्षेत्र सम्मिलित नही किया जा सकता, यह नियम 5 का उद्देश्य नही है – संपूर्ण संरक्षित तथा आरक्षित वन के लिए जारी की गयी अधिसूचना नियम 5 के अनुरूप है । (हरगोविंद नगाइच वि. म.प्र. राज्य) ...1916

वन उपज (जैव विविधता का संरक्षण एवं पोषणीय कटाई) नियम, म.प्र. 2005, नियम 5 – निषिद्ध क्षेत्र घोषित करने की शक्ति – प्रभागीय वन अधिकारी द्वारा जारी सलाई गम निकालने से प्रतिबंधित करने वाली अधिसूचना – अधिसूचना को इस आधार पर चुनौती कि प्रभागीय वन अधिकारी को अधिसूचना जारी करने की अधिकारिता नही – अभिनिर्धारित – क्षेत्रीय वन प्रभाग मे पदस्थ प्रभागीय वन अधिकारी नियम, 2005 के अधीन प्राधिकृत होते हुए, नियम 5 के अधीन अधिसूचना जारी करना उसकी शक्तियों के भीतर है। (हरगोविंद नगाइच वि. म.प्र. राज्य)...1916

साधारण खण्ड अधिनियम (1897 का 10), धारा 3(31) – देखें – भूमि अर्जन अधिनियम, 1894, धारा 6 परन्तुक, (विनीत काबरा वि. म.प्र. राज्य) ...2533

साधारण विक्रय–कर अधिनियम, म.प्र. 1958 (1959 का 2), धारा 19(1) – जहाँ प्रतिप्रेषण के उपरान्त पारित कर निर्धारण आदेश (तारीख 26.10.1994) में सम्पूर्ण कर निर्धारण आदेश (तारीख 19.03.1991) का विलय नहीं किया गया, वहाँ तथाकथित निर्धारण से छूट जाने वाली मदों, जिनके सम्बन्ध में कोई अपील प्रस्तुत नहीं की गयी, का निर्धारण पुनः चालू करने के लिए अधिनियम की धारा 19(1) के अन्तर्गत कार्यवाही का आरम्भ (तारीख 23.09.1997) परिसीमा द्वारा बाधित होने के कारण आदेशित नहीं किया जा सकता। (विक्रम सीमेंट वि. कमिशनर ऑफ कमर्शियल टैक्स)FB---2443

मध्यप्रदेश उच्च न्यायालय नियम, 2008, नियम 15 व 22 – दण्डादेश के निलंबन/जमानत के अनुदान के लिए पश्चात्वर्ती आवेदन को सूचीबद्ध करने के लिए म.प्र. उच्च न्यायालय नियम, 2008 के अध्याय IV के नियम 22 में सर्वोपरि खण्ड इसी अध्याय के नियम 15 में सम्मिलित मार्गदर्शक सिद्धांत के अभिभावी नहीं होता। (राम प्रताप वि. म.प्र. राज्य) FB---1896

हिन्दू विधि – सहदायिक सम्पत्ति – सहदायिक का अधिकार – जबकि पैतृक सम्पत्ति, कर्ता या ऐसे परिवार की किसी शाखा के सदस्य द्वारा उसके नाम से विरासत में प्राप्त की जाती है तब भी उसकी शाखा के अन्य पुरूष सदस्य पुत्रगण सहदायिक होने के नाते एवं यदि वे/वह पूर्वमृत हों तब उनके/उसके नैसर्गिक वारिस ऐसी सम्पत्ति में निहित अधिकार रखते हैं और अवसर आने पर उसे ऐसे परिवार के सहदायिक के रूप में उनके हिस्से के अनुसार उनमें विभाजित किया जा सकता है। (गोलमन वि. मुनिया बाई) ...2588

Hindu Marriage Act (25 of 1955), Section 13 - *Desertion - Burden is always upon petitioner spouse to prove beyond any reasonable doubt that non-petitioner abandoned him without reasonable cause and there was no bona fide attempt on non-petitioner's part throughout the statutory period of two years.* [Manju Rajak (Smt.) v. Parvinder Singh] ...*44

Hindu Marriage Act (25 of 1955), Sections 13 & 13-B - *Irretrievable break down of marriage - No decree for divorce can be granted on that ground by Family Court.* [Manju Rajak (Smt.) v. Parvinder Singh] ...*44

Income Tax Act (43 of 1961), Section 142(2-A) - *Order of assessment and bill of special auditor challenged - The wrong and improper posting made the account complex, thus, it was considered necessary to resort to special audit - It can not be said that provision has been violated in any manner - Petition dismissed.* [Jabalpur Co-operative Milk Producers Union Ltd. v. Union of India] ...*60

Income Tax Act (43 of 1961), Section 148 - ***Reopening of assessment - Condition precedent - Held** - Two conditions must exist; (1) the Income Tax Officer has reason to believe that income, chargeable to Income Tax had been under-assessed; and (2) that he has also reason to believe that such "under assessment" had occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income (ii) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year.* [Satish Vishwakarma v. Asstt. Commissioner of Income Tax Circle 1(1), Bhopal] ...*51

Income Tax Act (43 of 1961), Section 148 - ***Reopening of assessment - Power of Assessing Officer** - The Assessing Officer has power to reopen, provided there is "tangilble material" to come to the conclusion that there is escapement of income from assessment.* [Satish Vishwakarma v. Asstt. Commissioner of Income Tax Circle 1(1), Bhopal] ...*51

Income Tax Act (43 of 1961), Section 148 - ***Reopening of assessment** - When not permissible - If an Income Tax Officer draws an inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessment.* [Satish Vishwakarma v. Asstt. Commissioner of Income Tax Circle 1(1), Bhopal] ...*51

Industrial Disputes Act (14 of 1947), Sections 14 & 15, Industrial Disputes (Central) Rules, 1957, Rule 10B(9) - *Reference of dispute by appropriate Government to Labour Court - Dismissal on the ground of non-appearance passing "no dispute award" - Application for setting aside also dismissed - Held - Labour Court has no power to dismiss the reference in defaults - Petition allowed.* [Satendra Singh Gujar v. Bank of India] ...2321

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13 – अभित्यजन – युक्तियुक्त शंका से परे यह साबित करने का भार सदा ही याची पति या पत्नी पर होगा कि प्रत्यर्थी ने बिना किसी समुचित कारण के उसका परित्याग कर दिया है और प्रत्यर्थी की ओर से दो वर्ष की वैधानिक कालावधि के दौरान कोई सद्भाविक प्रयास नहीं किया गया। (मंजू रजक (श्रीमती) वि. परविन्दर सिंह) ---*44

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13 व 13–बी – विवाह का असुधार्य भंग – इस आधार पर कुटुम्ब न्यायालय द्वारा विवाह विच्छेद की कोई डिक्री पारित नहीं की जा सकती। (मंजू रजक (श्रीमती) वि. परविन्दर सिंह) ---*44

आयकर अधिनियम (1961 का 43), धारा 142(2–ए) – कर निर्धारण के आदेश एवं विशेष लेखापरीक्षक के बिल को चुनौती – त्रुटिपूर्ण एवं अनुचित प्रविष्टियों के कारण खातों में जटिलता उत्पन्न हो गयी, इस प्रकार विशेष लेखापरीक्षा कराना आवश्यक समझा गया – यह नहीं कहा जा सकता कि उपबंध का किसी प्रकार से उल्लंघन किया गया है – याचिका खारिज । (जबलपुर को–ऑपरेटिव मिल्क प्रोडयूसर्स यूनियन लि. वि. यूनियन ऑफ इंडिया) ---*60

आयकर अधिनियम (1961 का 43), धारा 148 – निर्धारण फिर से करना – पुरोभाव्य शर्त – अभिनिर्धारित – दो शर्तें अस्तित्व में होनी चाहिए – (1) आयकर अधिकारी के पास कारण हो यह मानने का कि आयकर के लिए प्रभार्य आय को अवनिर्धारित किया गया था; और (2) यह कि उसके पास यह मानने का भी कारण हो कि ऐसा अवनिर्धारण कारित हुआ या तो (i) आय की विवरणियां देने में निर्धारिती की ओर से लोप अथवा चूक होने से या (ii) उस वर्ष के निर्धारण के लिए आवश्यक सारवान तथ्यों को पूर्णतः और सही रूप में प्रकट करने में लोप या चूक होने के कारण। (सतीश विश्वकर्मा वि. असिस्टेन्ट कमिश्नर ऑफ इनकम टैक्स सर्कल 1(1), भोपाल) ---*51

आयकर अधिनियम (1961 का 43), धारा 148 – निर्धारण फिर से करना – निर्धारण अधिकारी की शक्ति – निर्धारण अधिकारी को फिर से करने की शक्ति है, परन्तु यह तब जबकि मूर्त सामग्री है इस निष्कर्ष पर पहुँचने के लिए कि आय को निर्धारण से बचाया गया है। (सतीश विश्वकर्मा वि. असिस्टेन्ट कमिश्नर ऑफ इनकम टैक्स सर्कल 1(1), भोपाल) ---*51

आयकर अधिनियम (1961 का 43), धारा 148 – निर्धारण फिर से करना – कब अनुज्ञेय नहीं है – यदि आयकर अधिकारी ऐसा अनुमान लगाता है जो बाद में त्रुटिपूर्ण प्रतीत होता है, मात्र उस अनुमान संबधी राय के बदल जाने से निर्धारण फिर से करने की कार्यवाही आरंभ करना न्यायोचित नहीं है। (सतीश विश्वकर्मा वि. असिस्टेन्ट कमिश्नर ऑफ इनकम टैक्स सर्कल 1(1), भोपाल). ---*51

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 14 व 15, औद्योगिक विवाद (केन्द्रीय) नियम, 1957, नियम 10बी(9) – समुचित सरकार द्वारा श्रम न्यायालय को विवाद का निर्देश – हाजिर न होने के आधार पर खारिजी "कोई विवाद नहीं अवार्ड" पारित करते हुए – अपास्त करने का आवेदन भी खारिज – अभिनिर्धारित – श्रम न्यायालय को व्यतिक्रम के लिए निर्देश खारिज करने की कोई शक्ति नहीं है – याचिका मंजूर। (सतेन्द्र सिंह गूजर वि. बैंक ऑफ इंडिया)...2321

Industrial Disputes (Central) Rules, 1957, Rule 10B(9) - See - *Industrial Disputes Act, 1947, Sections 14 & 15* [Satendra Singh Gujar v. Bank of India] ...2321

Industrial Disputes Rules, M.P. 1957, Rule 10-B(6) - *The examination of witness in every case is not mandatory - The Rule is applicable only when the tribunal decides to examine a witness.* [M.P. Hasta Shilpa Hathkargha Vikash Nigam Maryadit v. Om Prakash Kori] ...2562

Industrial Training (Gazetted) Services Recruitment Rules, M.P. 2008, Rule 8 - See - *Service Law* [Sanjeev Kumar Batham v. State of M.P.] ...1931

Interpretation of Statute - *Once the validity of a provision or statute is challenged, all the grounds ought to have been raised and it would be presumed that all grounds which could validly be raised were raised and considered by the Court. A litigant or a party cannot be permitted to challenge the validity or vires of the provision on the plea that the ground being raised was not decided or a particular aspect was not expressly considered in the earlier proceeding.* [Bhopal Citizen's Forum v. State of M.P.] ...2111

Judicial restraint - *All judicial minds may not react in the same way to the said evidence and it is not unusual that evidence which appears to be respectable and trustworthy to one Judge may not appear to be respectable and trustworthy to another Judge - That explains why in some cases Courts of Appeal reverse conclusions of facts recorded by the trial court on its appreciation of oral evidence - The knowledge that another view is possible on the evidence adduced in present case should have acted as a sobering factor and led to learned Judges of the appellate court to the use of temperate language in recording judicial conclusions.* [D.K. Shrivastava v. State of M.P.] SC...1865

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 12 - See - *Criminal Procedure Code, 1973, Section 438* [Kapil Durgwani v. State of M.P.] ...2003

Kashtha Chiran (Viniyam) Adhiniyam, M.P. (13 of 1984) - ***Renewal of license - Denial - When not proper -*** *It is evident that the Apex Court has not issued any order or direction to that effect that existing license should not be renewed and, therefore, the respondents cannot reject the case of the petitioner for grant of renewal on the ground that his name was not included in the list forwarded to the Apex Court.* [Kanshiram Kushwaha v. Chief Conservator of Forest] ...*28

Kashtha Chiran (Viniyam) Adhiniyam, M.P. (13 of 1984) - ***Renewal of license - Denial - When not proper -*** *The petitioner's licence was not renewed for the reason that his name was not included in the list sent to the Apex Court in the case of T.N. Godawarman - The petitioner was very much having a licence when the order was passed by the Apex Court and,*

औद्योगिक विवाद (केन्द्रीय) नियम, 1957, नियम 10बी(9) – देखें – औद्योगिक विवाद अधिनियम, 1947, धारा 14 व 15 (सतेन्द्र सिंह गूजर वि. बैंक ऑफ इंडिया) ...2321

औद्योगिक विवाद नियम, म.प्र. 1957, नियम 10–बी(6) – प्रत्येक मामले में साक्षी की परीक्षा आज्ञापक नहीं है – नियम केवल तब लागू होता है जब अधिकरण किसी साक्षी की परीक्षा करने का विनिश्चय करता है। (म.प्र. हस्त शिल्प हाथकरघा विकास निगम मर्यादित वि. ओमप्रकाश कोरी)...2562

औद्योगिक प्रशिक्षण (राजपत्रित) सेवा भर्ती नियम, म.प्र. 2008, नियम 8 – देखें – सेवा विधि (संजीव कुमार बाथम वि. म.प्र. राज्य) ...1931

परिनियम का निर्वचन– जब किसी उपबंध या परिनियम की विधिमान्यता को चुनौती दी गई है, सभी आधारों को उठाना चाहिये था और यह उपधारित किया जायेगा कि, वैध रूप से उठाये जा सकने वाले सभी आधार, उठाये गये थे तथा उनपर न्यायालय द्वारा विचार किया गया था । किसी वादी अथवा किसी पक्ष को, इस अभिवचन पर कि उठाये गये आधार का विनिश्चय नहीं किया गया अथवा पूर्वतर कार्यवाही मे किसी विशिष्ट पहलू पर स्पष्ट रूप से विचार नहीं किया गया, उपबंध की विधिमान्यता अथवा शक्तिमत्ता को चुनौती देने की अनुमति नहीं दी जा सकती । (भोपाल सिटीजनस् फोरम वि. म.प्र. राज्य) ...2111

न्यायिक अवरोध – सभी न्यायिक मस्तिष्कों की उक्त साक्ष्य के प्रति समान प्रतिकिया नहीं हो सकती और यह असामान्य नहीं है कि साक्ष्य जो एक न्यायाधीश को महत्वपूर्ण एवं विश्वसनीय प्रतीत होती है वह दूसरे न्यायाधीश को महत्वपूर्ण एवं विश्वसनीय प्रतीत न हो – इससे स्पष्ट होता है कि क्यों कुछ मामलों मे अपीली न्यायालय, मौखिक साक्ष्य के मूल्यांकन पर विचारण न्यायालय द्वारा अभिलिखित तथ्यों के निष्कर्षो को पलट देता है – यह ज्ञान कि वर्तमान मामले मे प्रस्तुत साक्ष्य पर अन्य दृष्टिकोण संभव है इसका प्रभाव संयमी तत्व के रूप मे पड़ा होगा और अपीलीय न्यायालय के विद्वान न्यायाधीश न्यायिक निष्कर्षो को अभिलिखित करने मे संयमी भाषा का प्रयोग करने के लिए अग्रसर हुए। (डी.के. श्रीवास्तव वि. म.प्र. राज्य) SC---1865

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 12 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 438 (कपिल दुर्गवानी वि. म.प्र. राज्य) ...2003

काष्ठ चिरान (विनियम) अधिनियम, म.प्र. (1984 का 13) – लाइसेंस का नवीनीकरण – अस्वीकार – कब उचित नहीं – यह स्पष्ट है कि शीर्ष न्यायालय ने इस आशय के कोई आदेश या निर्देश नहीं जारी किये कि वर्तमान लाइसेंस का नवीनीकरण न किया जाय अतएव, प्रत्यर्थी याचिकाकर्ता द्वारा लाइसेंस नवीनीकरण हेतु प्रस्तुत प्रकरण को इस आधार पर कि उसका नाम शीर्ष न्यायालय को प्रेषित सूची में सम्मिलित नहीं है, निरस्त नहीं किया जा सकता है। (कांशीराम कुशवाहा वि. चीफ कंजरवेटर ऑफ फॉरेस्ट) ---*28

काष्ठ चिरान (विनियम) अधिनियम, म.प्र. (1984 का 13) – लाइसेंस का नवीनीकरण – अस्वीकार – कब उचित नहीं – याचिकाकर्ता का लाइसेंस इस कारण से नवीनीकृत नहीं किया गया क्योंकि उसका नाम, टी.एन. गोदावर्मन के प्रकरण के सम्बंध में उच्चतम न्यायालय को प्रेषित की गयी सूची में वर्णित नहीं था – जब शीर्ष न्यायालय द्वारा आदेश पारित किया गया उस समय याचिकाकर्ता लाइसेंस धारण करता था, माननीय उच्चतम न्यायालय द्वारा पारित

therefore, mistake was on the part of the officers in not forwarding the name of the petitioner pursuant to order passed by the Hon'ble Supreme Court - Petitioner cannot be victimised for a mistake/lapses committed by the D.F.O. or by the Conservator of Forest. [Kanshiram Kushwaha v. Chief Conservator of Forest] ...*28

**Kashtha Chiran (Viniyaman) Adhiniyam, M.P. (13 of 1984), Section 6 - *Grant of license to run saw mill* - *Application for licence to run saw mill rejected for the reason that saw mill was purchased during the ban period as per the interim order in T.N. Godavarman case and there was no renewal of licence to run the saw mill nor any return was submitted - Held - Doctrine of English Law of feeding the estoppel, which means that when a person sells a property of which he is not the owner or has no right to sell but later becomes the owner or competent to sell and the sale in the interim period is not rescinded, the transferee acquires a good title - In India also this principle is enacted in S. 43 of the Transfer of Property Act - Orders quashed - Matter remanded to appellate authority for reconsideration.* [Ravendra Prasad Verma v. State of M.P.] ...2525

**(Khadya Padarth) Sarwajanik Nagrik Purti Vitran Scheme, M.P. 1991, Clause 13(4) - *Penalty* - *Suspension of fair price shop - Natural Justice - Held - The impugned order by which fair price shop has been placed under suspension has been passed without affording an opportunity of hearing to the petitioner, the same deserves to be quashed as suspension is one form of penalty contemplated in sub-clause (1) of clause 13 of the Scheme.* [Navjyoti Sakh Sahkari Samiti Mydt., Khandwa v. State of M.P.] ...2295

**Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Section 19 - *Power to levy market fee* - *Held* - *If the goods are used for manufacturing purpose as raw material, therefore, the question of passing on the tax liability to the consumer would not arise.* [Krishi Upaj Mandi Samiti v. M/s. Agro Solvent Products (P) Ltd.] ...*29

**Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Section 19 - *Power to levy market fee* - *Unjust enrichment* - *Learned Single Judge held that goods which are being used as raw material for manufacturing purpose would not be liable to pay market fees but declined refund of the tax already levied on the principle of unjust enrichment - Held - The principle of doctrine of unjust enrichment is not applicable where the goods are used as raw material for manufacturing and the company is liable for refund of the money collected as Mandi fee by the Mandi.* [Krishi Upaj Mandi Samiti v. M/s. Agro Solvent Products (P) Ltd.] ...*29

Krishi Upaj Mandi (Mandi Nidhi Lekha Tatha Rajya Vipnan Sewa Ka Gathan Ki Riti Tatha Anya Vishay) Niyam, M.P. 1980, Rule 83 - *The decision of the Committee constituted u/R 83 will only have prospective effect*

आदेश के संदर्भ में याचिकाकर्ता का नाम न भेजना, अधिकारियों की त्रुटि थी – संभागीय वन अधिकारी अथवा वन संरक्षक द्वारा की गयी त्रुटियों की वजह से याचिकाकर्ता को नुकसान नहीं पहुँचाया जा सकता। (कांशीराम कुशवाहा वि. चीफ कंजरवेटर ऑफ फॉरेस्ट) ---*28

काष्ठ चिरान (विनियमन) अधिनियम, म.प्र. (1984 का 13), धारा 6 – आरा मिल चलाने के लायसेंस का अनुदान – आरा मिल चलाने के लायसेंस के लिए आवेदन इस कारण नामंजूर किया गया कि टी.एन. गोदावर्मन के मामले में अंतरिम आदेश के अनुसार पाबंदी की अवधि के दौरान आरा मिल क्रय की गयी थी और आरा मिल चलाने के लायसेंस का कोई नवीकरण नहीं था और न ही कोई विवरणी प्रस्तुत की गयी थी – अभिनिर्धारित – विबंध के पोषण का अंग्रेजी विधि का सिद्धांत जिसका अर्थ है कि जब कोई व्यक्ति कोई संपत्ति विक्रय करता है जिसका वह स्वामी नहीं है अथवा विक्रय करने का उसे कोई अधिकार नहीं है परन्तु बाद मे स्वामी हो जाता है अथवा विक्रय करने के लिये सक्षम हो जाता है और अंतरिम अवधि में विक्रय विखंडित नहीं किया जाता है, तो अंतरिती अच्छा हक अर्जित कर लेता है – भारत में भी इस सिद्धांत को सम्पत्ति अंतरण अधिनियम की धारा 43 में अधिनियमित किया गया है – आदेश अभिखंडित – मामला पुनर्विचार के लिए अपीलीय प्राधिकारी को प्रतिप्रेषित। (रावेन्द्र प्रसाद वर्मा वि. म.प्र. राज्य) ...2525

(खाद्य पदार्थ) सार्वजनिक नागरिक पूर्ति वितरण योजना, म.प्र. 1991, खण्ड 13(4) – अर्थदण्ड – उचित मूल्य की दुकान का निलम्बन – नैसर्गिक न्याय – अभिनिर्धारित – आक्षेपित आदेश जिसके द्वारा उचित मूल्य की दुकान को निलंबित किया गया वह आदेश याची को सुनवाई का अवसर दिये बिना पारित किया गया है, जो कि अपास्त किये जाने योग्य है क्योंकि निलंबन योजना के खण्ड 13 के उपखण्ड (1) के अन्तर्गत अनुध्यात अर्थदण्ड का एक स्वरूप है। (नवज्योति साख सहकारी समीति मर्या., खंडवा वि. म.प्र. राज्य) ...2295

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धारा 19 – मण्डी शुल्क उद्ग्रहीत करने की शक्ति – अभिनिर्धारित – यदि वस्तुओं का उपयोग निर्माण हेतु कच्चे माल के रूप मे होता है, इसलिए कर दायित्व उपभोक्ता पर डाले जाने का प्रश्न नहीं उठता। (कृषि उपज मंडी समीति वि. मे. एग्रो सॉल्वेंट प्रोडक्टस् (प्रा.) लि.) ---*29

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धारा 19 – मण्डी शुल्क उद्ग्रहीत करने की शक्ति – अनुचित संवृद्धि – विद्वान एकल न्यायाधीश ने यह अभिनिर्धारित किया कि वस्तुएँ, जिनका उपयोग निर्माण के प्रयोजन हेतु कच्चे माल के रूप मे किया जा रहा है, मण्डी शुल्क का भुगतान करने के लिए दायी नहीं होंगी, लेकिन पूर्व मे लगाये गये कर की वापसी अनुचित संवृद्धि के सिद्धांत के आधार पर मनाही की – अभिनिर्धारित – अनुचित संवृद्धि का सिद्धांत वहाँ लागू नहीं होता है, जहां वस्तुओं का उपयोग निर्माण हेतु कच्चे माल के रूप मे होता है तथा कम्पनी मण्डी द्वारा मण्डी शुल्क के रूप मे प्राप्त धन की वापसी के लिए दायी है। (कृषि उपज मंडी समीति वि. मे. एग्रो सॉल्वेंट प्रोडक्टस् (प्रा.) लि.) ---*29

कृषि उपज मण्डी (मण्डी निधि लेखा तथा राज्य विपणन सेवा का गठन की रीति तथा अन्य विषय) नियम, म.प्र. 1980, नियम 83 – नियम 83 के अन्तर्गत गठित समिति के

and the action in granting retrospective seniority to the employees working in a lower cadre post is wholly impermissible. [Umakant Mudgal v. State of M.P.] ...2552

Land Acquisition Act (1 of 1894), Sections 4 & 6 - *Public purpose - Acquisition for Corporation/Company owned by Government and purpose of acquisition clearly for public purpose - Non-mention of fact that acquisition is for Company, not prejudicial to the petitioner - Petition & Writ Appeal dismissed.* [Ramdin v. State of M.P.] ...*86

Land Acquisition Act (1 of 1894), Sections 4 & 6 - *Public purpose - Acquisition to setup power plant - Notification not published in official gazette -Held - No fund provided by Government, therefore, the acquisition is not for public purpose - Acquisition proceedings and declaration u/s 6 quashed - Petition allowed.* [Vineet Kabra v. State of M.P.] ...2533

Land Acquisition Act (1 of 1894), Sections 4, 6 & 17 - *Declaration u/s 6(1) was published on the same date when the notification u/s 4(1) was published - The same is in clear violation of S. 17(4) of the Act and as such cannot be sustained - Notification quashed.* [Tukaram v. State of M.P.]...*72

Land Acquisition Act (1 of 1894), Section 6 Proviso, General Clauses Act, 1897, Section 3(31) - *Local authority - Entire cost of acquisition deposited by company kept in separate account of treasury exclusively controlled and managed by Land Acquisition Officer - Collector and Land Acquisition Officer are not local authority as provided in proviso of S. 6.* [Vineet Kabra v. State of M.P.] ...2533

Land Revenue Code, M.P. (20 of 1959), Sections 22 & 104(2) - See - *Service Law* [Ravindra Kumar Gupta v. State of M.P.] ...2511

Land Revenue Code, M.P. (20 of 1959), Sections 57(2) & 257 - See - *Civil Procedure Code, 1908, Section 9* [State of M.P. Through Collector, Dhar v. Ratan Das] ...2336

Land Revenue Code, M.P. (20 of 1959), Section 110 - *Mutation - Delay in challenge in civil suit - Suit land mutated in the name of defendant - The plaintiff not a party to mutation proceedings - Held - Plaintiff in possession is not required to approach the Court unless disturbance is caused into his possession - He is not required to sue due to adverse mutation order because mutation by itself does not confer title.* [Jaspreet Kaur (Smt.) v. Ramkrishna] ...1939

Land Revenue Code, M.P. (20 of 1959), Section 241 and Rules published by notification No.218-6477-VI-N-(Rules) dated 06.01.1960 in the M.P. Rajpatra dated 22.01.1960 framed in exercise of powers u/s 241 of the Code - *Held - (1) The reminder communication incorporated in Rule 4 need not be filed immediately on the lapse of the first three months from the*

निर्णय का मात्र भावी प्रभाव होगा तथा निम्न संवर्ग पद में कार्यरत कर्मचारियों को भूतलक्षी वरिष्ठता प्रदत्त करने की कार्यवाही पूर्णतः अननुज्ञेय है। (उमाकांत मुदगल वि. म.प्र. राज्य) ...2552

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 4 व 6 – लोक प्रयोजन – अर्जन सरकार के स्वामित्वाधीन निगम/कम्पनी के लिए और अर्जन का प्रयोजन स्पष्टतः लोक प्रयोजन – इस तथ्य का उल्लेख न होना कि अर्जन कम्पनी के लिए है, याची के प्रतिकूल नहीं – याचिका और रिट अपील खारिज। (रामदीन वि. म.प्र. राज्य) ---*86

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 4 व 6 – लोक प्रयोजन – पावर प्लांट स्थापित करने के लिए अर्जन – शासकीय राजपत्र में अधिसूचना प्रकाशित नहीं – अभिनिर्धारित – सरकार द्वारा कोई निधि प्रदत्त नहीं, इसलिए अर्जन लोक प्रयोजन हेतु नहीं है – अर्जन कार्यवाही एवं धारा 6 के अन्तर्गत घोषणा अपास्त – याचिका खारिज। (विनीत काबरा वि. म.प्र. राज्य)...2533

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 4, 6 व 17 – धारा 6(1) के अंतर्गत घोषणा उसी दिन प्रकाशित हुई जब कि धारा 4(1) के अंन्तर्गत अधिसूचना का प्रकाशन हुआ – यह अधिनियम की धारा 17(4) का स्पष्ट उल्लंघन है और इसे स्थिर नहीं रखा जा सकता – अधिसूचना अभिखंडित की गई। (तुकाराम वि. म.प्र. राज्य) ---*72

भूमि अर्जन अधिनियम (1894 का 1), धारा 6 परन्तुक, साधारण खण्ड अधिनियम, 1897, धारा 3(31) – स्थानीय प्राधिकारी – कम्पनी द्वारा जमा की गयी अर्जन की सम्पूर्ण लागत भूमि अर्जन अधिकारी द्वारा अनन्य रूप से नियंत्रित एवं प्रबंधित कोषालय के पृथक खाते में रखी गयी – कलेक्टर और भूमि अर्जन अधिकारी धारा 6 के परन्तुक में यथा उपबंधित स्थानीय प्राधिकारी नही हैं। (विनीत काबरा वि. म.प्र. राज्य) ...2533

भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 22 व 104(2) – देखें – सेवा विधि (रवीन्द्र कुमार गुप्ता वि. म.प्र. राज्य) ...2511

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 57(2) एवं 257 – देखें – सिविल प्रक्रिया संहिता, 1908, धारा 9 (म.प्र. राज्य द्वारा कलेक्टर, धार वि. रतन दास) ...2336

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 110 – नामांतरण – सिविल वाद मे चुनौती देने मे विलंब – वाद भूमि प्रतिवादी के नाम से नामांतरित – नामांतरण कार्यवाहियों मे वादी पक्षकार नहीं – अभिनिर्धारित – कब्जा धारक वादी को न्यायालय के पास जाना अपेक्षित नहीं जब तक कि उसके कब्जे मे बाधा कारित नहीं होती – विपरीत नामान्तरण के आदेश के कारण वाद लाना उससे अपेक्षित नहीं है क्योंकि नामान्तरण अपने आप मे हक प्रदान नहीं करता । (जसप्रीस कोर (श्रीमति) वि. रामकृष्ण) ...1939

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 241 और संहिता की धारा 241 के अंतर्गत शक्तियों के प्रयोग में विरचित नियम जिन्हें म.प्र. राजपत्र दिनांक 22.01.1960 में अधिसूचना क्रमांक 218–6477–VI-N-(नियम) दिनांक 06.01.1960 द्वारा प्रकाशित किया गया – अभिनिर्धारित – (1) मूल आवेदन की प्रस्तुति के दिनांक से, पहले तीन महीनों के समाप्त होने के तुरंत बाद नियम 4 मे सम्मिलित अनुस्मारक संसूचना प्रस्तुत करना आवश्यक नहीं

date of filing the original application, (2) The provision of Rule 4 does not envisage filing of repeated or more than one reminder, (3) The deemed permission stipulated in Rule 4 comes into operation only on the lapse of three months from the date of filing the one and only reminder/communication, (4) In case a reply is communicated to the petitioner by the Collector then the running of time of three months on the lapse of which the deemed communication comes into operation is arrested and in such cases the Collector has the power and authority to take his time in deciding the application, (5) The permission or the deemed permission granted under Rule 4 is limited to and remains alive only till the end of the calendar year in which it has been granted, (6) The judgement in the case of Raghuvir Singh Vs. Board of Revenue & ors. [1984 RN 382] is hereby over-ruled not being good law. [Raju Bai (Smt.) (Dead) Through L.R.-Dimak Chand v. Collector, Balaghat] FB...2031

Law of Torts - *Malicious Prosecution* - *The person at whose instance the machinery is put to action and if law is put to action, then the person as such, who is responsible to put the machinery in action, shall be liable for the malicious prosecution.* [R.R. Sonver v. Mukhtyar Singh] ...*67

Legal Remembrance Manual, Rule 18 - See - *Criminal Procedure Code, 1973, Section 24* [Anita Khare (Smt.) v. State of M.P.] ...*57

Limitation Act (36 of 1963), Section 5, Article 123, Civil Procedure Code, 1908, Order 9 Rule 13 - *Suit decreed ex parte on 19.04.1985 against the appellant, who filed application for setting aside decree on 08.07.1988 alleging that he could only know about the decree when execution notice was served and without filing any application for condonation of delay - Held - The limitation must be deemed to have started from the date when the appellants/defendants came to know about the decree on 22.06.1988 - An application under Order 9 Rule 13 was filed within 30 days from that date and therefore, it is clear that it was within time - At any rate, even if it held that the limitation started from the date of decree, there was a satisfactory explanation of the delay if any.* [Bhagmal v. Kunwar Lal] SC...2252

Limitation Act (36 of 1963), Section 5 - *Condonation of delay* - *Applicability for State & individual litigant - Held - The Law of Limitation makes no distinction amongst the State and the citizens of this country - The State has to approach the Court well within the prescribed period of limitation - When the "State" as an abstract entity prays for condonation of delay, the requirement of strict proof sometimes leads to miscarriage of justice.* [Pyarelal v. State of M.P.] ...*33

Limitation Act (36 of 1963), Section 5 - *Condonation of delay* - *No element of fraud or negligence of State Officials - Proper course - Held - Even when there exist no material to find that there was either a fraud played*

है, (2) पुनरावृत्त अथवा एक से ज्यादा अनुस्मारक प्रस्तुत करना नियम 4 का उपबंध परिकल्पित नहीं करता, (3) नियम 4 मे अनुबंधित समझी गयी अनुज्ञा, केवल एक व एकमात्र अनुस्मारक/संसूचना प्रस्तुति के दिनांक से तीन महिने की समाप्ति पर ही प्रवर्तनीय होगी, (4) यदि कलेक्टर द्वारा याची को जवाब संसूचित किया गया है तब तीन महीनों का चालू समय जिसके समाप्त होने पर समझी गयी संसूचना प्रवर्तित होगी वह रूक जायेगा और ऐसी स्थिति मे आवेदन का निर्धारण करने मे अपना समय लेने की कलेक्टर को शक्ति एवं प्राधिकार है, (5) नियम 4 के अंतर्गत प्रदान की गयी अनुज्ञा अथवा समझी गयी अनुज्ञा केवल उस कलेण्डर वर्ष की समाप्ति तक सीमित तथा जीवित रहती है जिस वर्ष उसे प्रदान किया गया है, (6) एतद्द्वारा रघुवीर सिंह विरुद्ध राजस्व मंडल व अन्य [1984 RN 382] मान्य विधि नहीं होने से उलट दिया गया। (राजू बाई (श्रीमती) (मृतक) द्वारा विधिक प्रतिनिधि दीमक चन्द वि. कलेक्टर, बालाघाट) FB---2031

अपकृत्य विधि – **विद्वेषपूर्ण अभियोजन** – वह व्यक्ति जिसके अनुरोध पर तंत्र को क्रियाशील किया गया और यदि विधि को क्रियाशील किया गया तब वह व्यक्ति जो कि तंत्र को क्रियाशील करने के लिये जिम्मेदार है, विद्वेषपूर्ण अभियोजन के लिये दायी होगा। (आर.आर.सोनवर वि. मुखत्यार सिंह) ---*67

विधि परामर्श निर्देशिका, नियम 18 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 24 (अनीता खरे (श्रीमति) वि. म.प्र. राज्य) ---*57

परिसीमा अधिनियम (1963 का 36), धारा 5, अनुच्छेद 123, सिविल प्रक्रिया संहिता, 1908, आदेश 9, नियम 13 – वाद, अपीलार्थी के विरूद्ध 19.04.1985 को एक पक्षीय डिक्रीत किया गया, जिसने डिक्री अपास्त करने के लिये 08.07.1988 को आवेदन, इस अभिकथन के साथ कि उसे डिक्री के संबंध मे केवल तब ज्ञात हुआ जब निष्पादन नोटिस तामील किया गया, और विलंब की माफी के लिये कोई आवेदन प्रस्तुत किये बिना, प्रस्तुत किया – अभिनिर्धारित – परिसीमा का आरम्भ उस तारीख से माना जायेगा जब अपीलार्थी/प्रतिवादियों को 22.06.1988 को डिक्री के संबंध मे पता चला – आदेश 9 नियम 13 के अंतर्गत आवेदन उस तारीख से 30 दिनों के भीतर प्रस्तुत किया गया था और इसलिए, यह स्पष्ट है कि वह समय के भीतर था – किसी भी हालत मे, यदि यह भी माना जाये कि परिसीमा डिक्री की तारीख से आरम्भ हुई थी, तब भी विलंब, यदि कोई हो, उसका संतोषजनक स्पष्टीकरण वहाँ पर मौजूद था। (भागमल वि. कुँवरलाल) SC---2252

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिए माफी – राज्य एवं व्यक्तिगत वादी के लिये प्रयोज्यता – अभिनिर्धारित – परिसीमा की विधि राज्य और इस राष्ट्र के नागरिकों के मध्य कोई विभेद नहीं करती – परिसीमा की विहित अवधि के भीतर राज्य को न्यायालय के पास जाना चाहिए – जब "राज्य" अमुर्त हस्ती के तौर पर विलंब के लिये माफी की प्रार्थना करता है तब कड़े सबूत की मांग के परिणामस्वरूप कभी कभी न्यायहानि होती है। (प्यारे लाल वि. म.प्र. राज्य) ---*33

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिए माफी – राज्य कर्मचारियों का कपट अथवा उपेक्षा का कोई तत्व नहीं – उचित प्रक्रिया – अभिनिर्धारित – तब भी जब कोई तत्व अस्तित्व में नहीं यह मानने के लिये कि विलंब कारित करने में या तो कपट खेला

or with the connivance of the State Officials a fraud was committed in causing delay, due to deliberate negligence or as a result of master-craftsmanship of some employees of Government - A decision on merits could be arrived at only after condoning the delay and hearing the appeal on merits. [Pyarelal v. State of M.P.] ...*33

Limitation Act (36 of 1963), Section 5 - ***Condonation of delay - No Question of law involved - Proper course - Held*** - *The Court has to concentrate on the importance of the question of law involved in a matter, while considering the prayer for grant of condonation of delay because when the State approaches the Court after a long lapse of delay without there being any important question of law involved in the matter, no fruitful purpose could be served in condoning the delay.* [Pyarelal v. State of M.P.] ...*33

Limitation Act (36 of 1963), Section 5 - ***Condonation of delay - Powers of the Court - Held*** - *The matter of condonation of delay is in the discretion of the Court.* [Bansidhar Goyanka v. Alok Kumar] ...*59

Limitation Act (36 of 1963), Section 5 - ***Condonation of delay - Sufficient cause - Duty of the Court - Held*** - *Every Court should remain cautious at the time of deciding an application seeking condonation of delay for ascertaining as to whether the delay was caused as a result of skillful management of some individuals, with a view to commit public mischief, for capturing the public property and when the Court feels satisfied, then it can ascertain the sufficiency of the cause, by ignoring the length of the delay and condone it, in peculiar circumstance of each case.* [Pyarelal v. State of M.P.] ...*33

Limitation Act (36 of 1963), Section 14 - *Requirement of section is that the said proceedings were chosen and were taken up with due diligence - Mere prosecution of remedy by itself would be sufficient to ignore the period of limitation spent in prosecuting the remedy before a wrong forum.* [ACME Papers Ltd. (M/s.) v. M.P. Financial Corporation] ...*56

M.P. Revenue Book Circular, Rule 31, Section IV, Sr.No.1 - **See** - *Constitution, Article 226* [Kuldeep Singh Punjabi v. State of M.P.] ...2068

Medical and Dental Post Graduate Entrance Examination Rules, M.P. 2010, Medical and Dental Post Graduate Entrance Examination Rules, M.P. 2009 - *Petitioner, an in-service category candidate, who is already having diploma/degree of P.G., restricted from choosing another discipline - The Rules were challenged as violative of Article 14 of Constitution and illegal restriction has been made - Held - The Rules cannot be said to be putting total embargo on the choice of the petitioners but it has the effect of streamlining their choice - The Rules have also not been shown to be repugnant to any directive issued by the Medical Council of India - Petition dismissed.* [Geeta Bakade (Dr.) v. State of M.P.] ...*41

गया अथवा राज्य कर्मचारियों की मौनानुमति से कपट क़रित किया गया, जानबूझकर उपेक्षा के कारण अथवा सरकार के कुछ कर्मचारियों के विशेषज्ञ कला कौशल के परिणामस्वरूप – केवल विलंब के लिये माफी देने और अपील की गुणदोषों पर सुनवाई के पश्चात् ही गुणदोषों पर निर्णय तक पहुँचा जा सकता है। (प्यारे लाल वि. म.प्र. राज्य) ---*33

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिए माफी – विधि का कोई प्रश्न अंतर्ग्रस्त नहीं – उचित प्रक्रिया – अभिनिर्धारित – विलंब के लिए माफी प्रदान करने की प्रार्थना पर विचार करते समय मामले में अंतर्ग्रस्त विधि के प्रश्न के महत्व पर न्यायालय को ध्यान केन्द्रित करना होगा क्योंकि जब विधि के किसी महत्वपूर्ण प्रश्न के अंतर्ग्रस्त न होते हुये, विलंब की लंबी समयावधि के पश्चात् जब राज्य न्यायालय के पास आता है तब विलंब के लिये माफी देने से कोई सफलतापूर्ण प्रयोजन नहीं निकलेगा। (प्यारे लाल वि. म.प्र. राज्य) ---*33

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलम्ब की माफी – न्यायालय की शक्तियाँ – अधिनिर्धारित – विलम्ब की माफी न्यायालय का विवेकाधिकार है। (बंशीधर गोयंका वि अलोक कुमार) ---*59

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिय माफी – पर्याप्त कारण – न्यायालय का कर्तव्य – अभिनिर्धारित – विलंब के लिये माफी के आवेदन का निराकरण करते समय प्रत्येक न्यायालय को सतर्क रहना चाहिये यह निश्चित करने की क्या लोक संपत्ति हस्तगत करने हेतु लोक रिष्टि कारित करने के लिए कुछ व्यक्तियों के कुशल प्रबंध के परिणामस्वरूप विलंब कारित हुआ है और जब न्यायालय की संतुष्टि होती है तब प्रत्येक मामले की विशिष्ट परिस्थितियों में विलंब की समयावधि की ओर ध्यान दिये बिना और उसे माफी देकर, वह कारणों की पर्याप्तता निश्चित कर सकता है। (प्यारे लाल वि. म.प्र. राज्य) ---*33

परिसीमा अधिनियम (1963 का 36), धारा 14 – इस धारा की आवश्यकता यह है कि उक्त कार्यवाही का चुनाव एवं प्रारम्भ समुचित सावधानी से किया गया – उपचार हेतु अग्रसरण ही अपने आप में गलत न्यायालय के समक्ष उपचार को अग्रसर करने में व्यतीत परिसीमा की कालावधि छोड़ देने हेतु पर्याप्त है। (एसीएमई पेपर्स लि. (मे.) वि. एम.पी. फाइनेन्शियल कारपोरेशन)---*56

म.प्र. राजस्व पुस्तक परिपत्र, नियम 31, धारा IV अनु.क्र. 1 – देखें – संविधान, अनुच्छेद 226 (कुलदीप सिंह पंजाबी वि. म.प्र. राज्य) ...2068

चिकित्सा और दंत स्नातकोत्तर प्रवेश परीक्षा नियम, म.प्र. 2010, चिकित्सा और दंत स्नातकोत्तर प्रवेश परीक्षा नियम, म.प्र. 2009 – याची सेवारत श्रेणी का अभ्यर्थी, जिसके पास पहले से ही स्नातकोत्तर डिप्लोमा/डिग्री है, उसे अन्य शाखा चुनने से निर्बन्धित किया गया – नियमों को संविधान के अनुच्छेद 14 के उल्लंघनकारी होने तथा अवैध निर्बन्धन लगाये जाने को चुनौती दी गयी – अभिनिर्धारित – नियम याचियों की पसंद पर पूरी तरह से प्रतिबंध लगाने वाला नहीं कहा जा सकता है, परन्तु यह उनकी पसंद को सुप्रवाहित करने का प्रभाव रखता है – नियम भारतीय चिकित्सा परिषद् द्वारा जारी किसी निदेश के विरुद्ध होना भी दर्शाया नहीं गया है – याचिका खारिज। (गीता बकाडे (डॉ.) वि. म.प्र. राज्य) ---*41

Medical and Dental Post Graduate Entrance Examination Rules, M.P. 2010, Rule 19(1)(c) - See - *Constitution, Article 51-A & 226* [Ashish Raj (Dr.) v. State of M.P.] ...2061

Mental Health Act, 1994, Section 23(1)(a)(b) - See - *Evidence Act, 1872, Section 118* [Prakash Dabar v. State of M.P.] ...2349

Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006, Rules 3 & 18 - *Appellants, who were found transporting coal without transit pass, were imposed with a penalty of Rs.25,000/- - Challenged by them on the ground that the appellants are only traders and have valid licence for purchase and sale of coal, therefore, no transit pass is obtained and no transit pass is prescribed under the Rules - Held - Rule 3 manifestly casts an obligation on a person who intends to transport mineral/ minerals or its products from the place of raising or from one place to another place, to obtain a valid transit pass - Appellants were admittedly found transporting coal from one place to another place without obtaining a valid transit pass, and as such they are liable for prosecution and for payment of penalty - Appeal dismissed.* [Maa Jalpa Enterprises (M/s) vs. State of M.P.]...2284

Motor Vehicles Act (59 of 1988), Section 67 - ***Power to control road transport - Jurisdiction - Held*** - *Power to control road transport having regard to the advantages offered to the public and desirability of preventing uneconomic competition among holders of permit is vested only in the State Government and the State Government may issue directions in this regard from time to time by notification in the official gazette to the Regional Transport Authority.* [Pursottamlal Sahu v. State of M.P.] ...1948

Motor Vehicles Act (59 of 1988), Section 72 - *Regional Transport Authority passing a general resolution for public convenience and to stop competition amongst the transporters - Held - S. 72 does not confer power on the Regional Transport Authority to either pass a resolution or a general order for the purposes of controlling road transport - The resolution which is in the form of general order has apparently been passed by the Regional Transport Authority without any power and authority under law.* [Pursottamlal Sahu v. State of M.P.] ...1948

Motor Vehicles Act (59 of 1988), Section 104 - See - *Civil Procedure Code, 1908, Order 9 Rule 9 & Order 43* [Sharad Kumar Mishra v. Shriram Transport Finance Company Ltd.] ...2170

Motor Vehicles Act (59 of 1988), Sections 140, 166, 163-A & 163-B - *Application for change of claim u/s 166 to 163-A - Permissibility - Held - Since, the claim was filed u/s 166 and the claimant also claimed that on the basis of no fault liability claim may also be considered u/s 140 - Then under such circumstances, S. 163-B of the Act would come into operation - Therefore, application cannot be accepted because the claimant has already exercised*

चिकित्सा और दंत स्नातकोत्तर प्रवेश परीक्षा नियम, म.प्र. 2010, नियम 19(1)(सी) – देखें – संविधान, अनुच्छेद 51–ए व 226 (आशीष राज (डॉ0) वि. म.प्र. राज्य) ...2061

मानसिक स्वास्थ्य अधिनियम, 1994, धारा 23(1)(ए)(बी) – देखें – साक्ष्य अधिनियम, 1872, धारा 118 (प्रकाश डाबर वि. म.प्र. राज्य) ...2349

खनिज (अवैध खनन, परिवहन तथा भण्डारण निवारण) नियम, म.प्र. 2006, नियम 18 – अपीलार्थी, जिन्हें पारगमन पास के बिना कोयले का परिवहन करते हुए पाया गया, पर 25,000/– रूपये की शास्ति अधिरोपित की गयी – जिसे उनके द्वारा इस आधार पर चुनौती दी गयी कि अपीलार्थी केवल व्यापारी हैं और उनके पास कोयला खरीदने एवं बेचने का वैध लायसेंस है, इसलिए कोई पारगमन पास प्राप्त नहीं किया गया तथा नियमों के अन्तर्गत कोई पारगमन पास विहित नहीं है – अभिनिर्धारित – नियम 3 ऐसे व्यक्ति पर, जो खनिज/खनिजों अथवा इसके उत्पादों को निर्माण स्थान से या एक स्थान से दूसरे स्थान पर परिवहन करना चाहता है, प्रत्यक्षतः वैध पारगमन पास प्राप्त करने का दायित्व डालता है – अपीलार्थियों को स्वीकृत रूप से वैध पारगमन पास प्राप्त किये बिना एक स्थान से दूसरे स्थान पर कोयले का परिवहन करते हुए पाया गया और इस प्रकार वे अभियोजन एवं शास्ति का भुगतान करने के लिए दायी हैं – अपील खारिज। (मॉ जालपा इंटरप्राइजेस (मे.) वि. म.प्र. राज्य) ...2284

मोटर यान अधिनियम (1988 का 59), धारा 67 – सड़क परिवहन पर नियंत्रण की शक्ति – अधिकारिता – अभिनिर्धारित – लोगों को प्रस्तावित की गयी सुविधाओं को तथा परमिट धारकों में अलाभकर स्पर्धा को रोकने की वांछनीयता को ध्यान में रखते हुए सड़क परिवहन पर नियंत्रण की शक्ति केवल राज्य सरकार को निहित की गई है और इस सबंध में समय समय पर राज्य सरकार शासकीय राजपत्र में अधिसूचना द्वारा क्षेत्रीय परिवहन प्राधिकारी को निर्देश जारी कर सकती है। (पुरषोत्तमलाल साहू वि. म.प्र. राज्य) ...1948

मोटर यान अधिनियम (1988 का 59), धारा 72 – क्षेत्रीय परिवहन प्राधिकारी ने लोक सुविधा के लिये तथा परिवाहकों में स्पर्धा रोकने के लिये सामान्य संकल्प पारित कियां – अभिनिर्धारित – धारा 72 सड़क परिवहन नियंत्रित करने के प्रयोजन हेतु क्षेत्रीय परिवहन प्राधिकारी को न तो संकल्प और न ही सामान्य आदेश पारित करने की शक्ति प्रदान करती है – संकल्प जो समान्य आदेश के स्वरूप में है, प्रकट रूप से क्षेत्रीय परिवहन प्राधिकारी द्वारा विधि के आधीन बिना किसी शक्ति एंव प्राधिकार के पारित किया गया है। (पुरषोत्तमलाल साहू वि. मं.प्र. राज्य) ...1948

मोटर यान अधिनियम (1988 का 59), धारा 104 – देखें – सिविल प्रक्रिया संहिता, 1908, आदेश 9 व नियम 9 एवं आदेश 43 (शरद कुमार मिश्रा वि. श्रीराम ट्रांसपोर्ट फाइनेंस कम्पनी लि.) ...2170

मोटर यान अधिनियम (1988 का 59), धाराएँ 140, 166, 163–ए व 163–बी – दावे के धारा 166 से धारा 163–ए में परिवर्तन हेतु आवेदन – अनुज्ञेयता – अभिनिर्धारित – चूंकि दावे को धारा 166 के अन्तर्गत प्रस्तुत किया गया और दावेदार ने यह भी दावा किया कि बिना दोष दायित्व के आधार पर भी धारा 140 के अन्तर्गत दावा विचार में लिया जावे – तब इन परिस्थितियों में अधिनियम की धारा 163–बी प्रवर्तन में आ जाती है – अतः आवेदन स्वीकार नहीं किया जा सकता

her option u/s 140 - Application dismissed as not maintainable. [Sahnaz Bee v. Nirmala Road Lines] ...2326

Motor Vehicles Act (59 of 1988), Section 147 - *Liability of Insurance Company - Deceased travelling as a passenger in the goods vehicle - He was not travelling with or for the safety of his goods - Insurance Company would be absolved from liability to pay compensation - Appeal dismissed.* [ICICI Lombard General Insurance Co. Ltd. v. Haroon Bi] ...2601

Motor Vehicles Act (59 of 1988), Section 147 - *Liability of insurer - Claimant got injured, when travelling, as part of band being transported to the wedding party in the tractor trolley, insured for use for agricultural purposes only - Held - Insurance Company exonerated from liability.* [National Insurance Co. Ltd., Indore v. Mangilal] ...2575

Motor Vehicles Act (59 of 1988), Section 147 - *Liability of insurer - No liability can be mulcted on the Insurance Company when the negligence on the part of the driver is not established or the fact that the passengers were gratuitous passengers in a goods vehicle.* [Sahnaz Bee v. Nirmala Road Lines] ...2326

Motor Vehicles Act (59 of 1988), Section 166 - *Claimant, the neice of deceased, used to stay with deceased to look after him - Her fees etc. was paid by deceased - She may also get compensation.* [Gangaram v. Mangilal] ...*80

Motor Vehicles Act (59 of 1988), Section 166 - *Compensation - Liability of the Insurance Company - The tribunal giving a finding that there was no negligence of the Driver in causing accident - The tribunal holding the owner and Insurance Company jointly and severally liable - Held - The tribunal has returned a categorical finding that there was no negligence on the part of the driver driving the vehicle i.e. jeep which met with an accident resulting in his death - Insurance Company cannot be held liable to indemnify the insured - Insurance Company exonerated from the liability.* [United India Insurance Co. Ltd. v. Smt. Vandana] ...*93

Motor Vehicles Act (59 of 1988), Section 166 - *Compensation - Quantum - Deceased aged about 35 years of age - No proof of his income - Held - Notional income fixed to Rs.24,000/- p.a. - Applying a multiplier of 16 the dependency awarded as Rs.3,84,000/- and Rs.16,000/- funeral expenses and loss of consortium - Compensation computed to Rs.4,00,000/- along with interest @ 6% p.a.* [Nisha Patel v. Syed Mustaq] ...2565

Motor Vehicles Act (59 of 1988), Section 166 - *Evidence - FIR can be used as a piece of evidence when relied on by both the parties.* [National Insurance Co. Ltd., Indore v. Mangilal] ...2575

Motor Vehicles Act (59 of 1988), Section 166 - *FIR was in respect of Santro Car bearing registration No. MP20F2002 whereas it was the Maruti*

क्योंकि दावेदार ने धारा 140 के अन्तर्गत अपने विकल्प का पहले ही प्रयोग कर लिया है – आवेदन अपोषणीय होने से खारिज। (शहनाज बी वि. निर्मला रोड लाइन्स) ...2326

मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमा कम्पनी का दायित्व – मृतक माल वाहन में यात्री के रूप में यात्रारत था – वह अपने माल के साथ या उसकी सुरक्षा हेतु यात्रा नहीं कर रहा था – बीमा कम्पनी प्रतिकर अदा करने के दायित्व से मुक्त रहेगी – अपील खारिज। (आई.सी.आई.सी.आई. लोम्बार्ड जनरल इंश्योरेन्स कं. लि. वि. हारून बी) ...2601

मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमाकर्ता का दायित्व – दावेदार वैवाहिक समारोह में ले जाये जा रहे दल के भाग रूप में ट्रेक्टर ट्रॉली, जो केवल कृषि प्रयोजनों के लिए उपयोग हेतु बीमित थी, में यात्रा करने के दौरान घायल हो गया – अभिनिर्धारित – बीमा कम्पनी को दायित्व से मुक्त किया गया। (नेशनल इंश्योरेन्स कं.लि., इंदौर वि. मांगीलाल) ...2575

मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमाकर्ता का दायित्व – बीमा कम्पनी पर कोई उत्तरदायित्व नहीं डाला जा सकता जब कि चालक के भाग पर उपेक्षा अथवा यह तथ्य स्थापित न हुआ हो कि यात्री माल वाहन में आनुग्रहिक यात्री के रूप में थे। (शहनाज बी वि. निर्मला रोड लाइन्स) ...2326

मोटर यान अधिनियम (1988 का 59), धारा 166 – दावेदार, मृतक की भतीजी, मृतक की देखभाल के लिये उसके साथ रहती थी – उसकी फीस इत्यादि का भुगतान मृतक द्वारा किया जाता था – वह भी प्रतिकर प्राप्त कर सकती है। (गंगाराम वि. मांगीलाल) ---*80

मोटरयान अधिनियम (1988 का 59), धारा 166 – प्रतिकर – बीमा कम्पनी का दायित्व – अधिकरण ने निष्कर्ष दिया कि दुर्घटना कारित करने में चालक की कोई उपेक्षा नहीं थी – अधिकरण ने मालिक एवं बीमा कम्पनी को संयुक्ततः एवं पृथकतः दायी ठहराया – अभिनिर्धारित – अधिकरण ने स्पष्ट निष्कर्ष दिया कि चालक की ओर से वाहन अर्थात् जीप जो दुर्घटनाग्रस्त हुयी और जिसमें उसकी मृत्यु हो गयी, को चलाने में कोई उपेक्षा नहीं थी –, बीमा कम्पनी को बीमाकृत की क्षतिपूर्ति करने के लिये दायी नहीं ठहराया जा सकता – बीमा कम्पनी को दायित्व से मुक्त किया गया। (यूनाईटेड इंडिया इंश्योरेन्स कं. लि. वि. श्रीमति वन्दना) ---*93

मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिकर – परिमाण – मृतक की आयु लगभग 35 वर्ष – उसकी आय का कोई प्रमाण नहीं – अभिनिर्धारित – काल्पनिक आय 24,000/– रुपये प्रतिवर्ष नियत की गयी – 16 का गुणक लागू करते हुए आश्रितता 3,84,000/– रुपये अधिनिर्णीत की गयी तथा 16,000/– रुपये अन्तिम संस्कार व्यय एवं सहजीवन की हानि अधिनिर्णीत की गयी – प्रतिकर की गणना 4,00,000/– रुपये 6% प्रतिवर्ष ब्याज सहित की गयी। (निशा पटेल वि. सैयद मुश्ताक) ...2565

मोटर यान अधिनियम (1988 का 59), धारा 166 – साक्ष्य – जब प्रथम सूचना प्रतिवेदन पर दोनों पक्षों द्वारा अवलम्ब किया जाता है तब उसे साक्ष्य के भाग के रूप में उपयोग किया जा सकता है। (नेशनल इंश्योरेन्स कं.लि., इंदौर वि. मांगीलाल) ...2575

मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रथम सूचना रिपोर्ट सेन्ट्रो कार पंजीयन क्र. एम.पी.20एफ2002 के सम्बन्ध में थी जबकि इस क्रमांक पर मारुति कार पंजीकृत थी –

Car which was registered on this number - The evidence of two witnesses whose name are given in FIR may be sufficient to prove that it was Maruti Car bearing registration No. MP20F2002 which caused accident. [Nisha Patel v. Syed Mustaq] ...2565

Motor Vehicles Act (59 of 1988), Section 166 - ***Legal representatives of claimant*** - *Claimant, father of deceased died during appeal - His legal representatives would get the amount of compensation, but limited to the share of claimant.* [Gangaram v. Mangilal] ...*80

Motor Vehicles Act (59 of 1988), Section 166 - ***Vicarious liability*** - *Deceased, an employee of appellant drove the motorcycle of employer and dashed against the tree, causing death of himself and one pillion rider - Held - In present case, it is not established that the deceased had gone on official work with permission of employer, hence liability cannot be imposed on the owner/employer - Appeal allowed.* [C.B. Awasthy, Senior Co-operative Inspector Prashasan Sahakari Vipnun Sanstha v. Ramnarayan] ...2569

Motor Vehicles Rules, M.P. 1994, Rule 240 - See - *Civil Procedure Code, 1908, Order 9 Rule 9 & Order 43* [Sharad Kumar Mishra v. Shriram Transport Finance Company Ltd.] ...2170

Municipalities Act, M.P. (37 of 1961), Sections 164 & 167 - ***Natural Justice*** - *Petitioner a sub-lessee dispossessed without affording opportunity of hearing as contemplated u/s 164 - Held - There is non-compliance of the provisions contained u/s 164(3) and thus, a denial of an opportunity to the petitioner to satisfy the Chief Municipal Officer in respect of the demand, if any, qua the shop - The action u/s 167 of the Act suffers from vice of illegality and arbitrariness - Petition allowed.* [Shyam Kishore Malviya v. State of M.P.] ...*53

Municipalities Act, M.P. (37 of 1961), Sections 307 & 308 - See - *Registration of Births and Deaths Act, 1969, Section 8,* [Shyam Murari Sharma v. Additional Commissioner, Sagar Division] ...*92

Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973) (As amended act No.22 of 2005), Section 23A - *Provision is intra vires.* [Bhopal Citizen's Forum v. State of M.P.] ...2111

Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973) (As amended by Act No. 22 of 2005) Section 23 - A (2) - *Mandatory provision of section 23-A(2) not complied with - all subsequent actions have to be held to be invalid and no sanctity can be attached to the draft modified plan.*

In present case - *(i) Notice with regard to draft modification plan was not published continuously for two consecutive days in two daily news papers. (ii)Draft modified plan was not affixed in a conspicuous place in the office of Collector, inviting objections and suggestions*

Held - *Draft modified plan has not been published in the manner*

दो साक्षियों, जिनके नाम प्रथम सूचना रिपोर्ट में दिये गये हैं, की साक्ष्य यह साबित करने हेतु पर्याप्त है कि वह पंजीयन क्र. एम.पी.20एफ2002 की मारुति कार थी जिसने दुर्घटना कारित की। (निशा पटेल वि. सैयद मुश्ताक) ...2565

मोटर यान अधिनियम (1988 का 59), धारा 166 – दावेदार के विधिक प्रतिनिधि – दावेदार, मृतक के पिता, की अपील के दौरान मृत्यु – उसके विधिक प्रतिनिधि दावेदार के हिस्से की सीमा तक प्रतिकर की राशि प्राप्त कर सकेंगे। (गंगाराम वि. मांगीलाल) ---*80

मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिनिधिक दायित्व – मृतक, जो कि अपीलार्थी का कर्मचारी था, ने नियोजक की मोटरसायकल चलाई और पेड़ से टकरा गया, जिससे उसकी एवं पिछली सीट पर बैठी एक सवारी की मृत्यु हो गयी – अभिनिर्धारित – वर्तमान मामले में यह सिद्ध नहीं है कि मृतक नियोजक की अनुमति से कार्यालयीन कार्य पर गया था, अतएव मालिक/नियोजक पर अर्थदण्ड का दायित्व आरोपित नहीं किया जा सकता – अपील मंजूर। (सी. बी. अवस्थी, सीनियर को.ऑप. इंस्पेक्टर, प्रशासन सहकारी विपणन संस्था वि. रामनारायण)...2569

मोटर यान नियम, म.प्र. 1994, नियम 240 – देखें – सिविल प्रक्रिया संहिता, 1908, आदेश 9 व नियम 9 एवं आदेश 43, (शरद कुमार मिश्रा वि. श्रीराम ट्रांसपोर्ट फाइनेंस कम्पनी लि.) ...2170

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धाराएँ 164 व 167 – नैसर्गिक न्याय – याची, एक उप–पट्टेदार को धारा 164 के अन्तर्गत अनुध्यात सुनवाई का अवसर दिये बिना बेदखल किया गया – अभिनिर्धारित – धारा 164(3) में अर्न्तविष्ट उपबंधों का अपालन हुआ है और इस प्रकार याची को दुकान के रूप में माँग, यदि कोई हो, के सम्बंध में मुख्य नगरपालिका अधिकारी को सन्तुष्ट करने का अवसर देने से इंकार किया गया – अधिनियम की धारा 167 के अन्तर्गत की गयी कार्यवाही अवैधता एवं मनमानेपन के दोष से ग्रसित है – याचिका मंजूर। (श्याम किशोर मालवीय वि. म.प्र. राज्य) ---*53

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धाराएँ 307 व 308 – देखें – जन्म और मृत्यु रजिस्ट्रीकरण अधिनियम, 1969, धारा 8 (श्याम मुरारी शर्मा वि. एडीशनल कमिश्नर, सागर डिवीजन) ---*92

नगर तथा ग्राम निवेश अधिनियम, मध्यप्रदेश (1973 का 23) (अधिनियम क्रं0 2005 का 22, द्वारा यथा संशोधित), धारा 23 A – उपबंध अधिकाराधीन है । (भोपाल सिटीजनस् फोरम वि. म.प्र. राज्य) ...2111

नगर तथा ग्राम निवेश अधिनियम, मध्यप्रदेश (1973 का 23) (अधिनियम क्रं0 2005 का 22 द्वारा यथा संशोधित), धारा 23 –A (2) – धारा 23–A(2)— आज्ञापक उपबंध का अनुपालन नहीं किया गया– सभी पश्चातवर्ती कार्यवाहियां अवैध मानी जानी होगी और परिवर्तित परियोजना प्रारूप से कोई मंजूरी संबंद्ध नहीं की जा सकती ।

प्रस्तुत मामले में –(i) परिवर्तित परियोजना के प्रारूप संबंधी नोटिस दो दैनिक समाचारपत्रों मे लगातार दो दिनों तक प्रकाशित नहीं की गई थी (ii) आक्षेप एवं सुझाव आमंत्रित करते हुए, परिवर्तित परियोजना का प्रारूप कलेक्टर के कार्यालय मे ध्यानाकर्षी स्थान पर नहीं लगाया गया था

अभिनिर्धारित–परिवर्तित परियोजना का प्रारूप विहित रीति से प्रकाशित नहीं किया गया है।

prescribed. Notification dated 14.03.2008 and 05.09.2007, quashed. [Bhopal Citizen's Forum v. State of M.P.] ...2111

Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973) (As amended by Act No.22 of 2005) Section 23-A (2)-*Manner of publication of notice of modification of development plan or Zoning plan by State Government in section 23-A(2) is mandatory in nature.* [Bhopal Citizen's Forum v. State of M.P.] ...2111

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/18 & 8/18/29 - *Independent witnesses were hostile - Bulk quantity of seized opium formula was not produced at the time of evidence - At the time of seizure of opium formula articles A, B, C, D were not marked on the samples - Similarly, on both bulk quantity packets no articles were marked - At the time of deposit of seized property in the Malkhana in the office of CBN, it was not resealed with the seal of Officer Incharge of Malkhana - Impression of seal and seal were not deposited in the Malkhana at the time of seizure - Local witnesses were not collected but the pocket witnesses were called on the spot by the raiding party - Samples were deposited in the Court after 1 year and 5 months with unexplained delay - Malkhana Incharge not examined - Preparation of the Panchanamas was doubtful and not reliable - Appellants are not liable to be convicted - Appeal allowed.* [Makhmad Khan v. CBN, Mandsaur] ...2633

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/18(b) - *Independent witnesses not supporting the prosecution case - The proceeding u/s 52-A of the Act was not proved - Search of the lady accused and the notice u/s 50 of the Act was defective - Seized property was not produced before Court during trial - The appellants were not liable to be convicted - Conviction set aside.* [Bansilal v. State of M.P.] ...*77

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/18(b) & 8/21(c) - *Proof - Independent witnesses not supporting prosecution case - Compliance of S. 52 not proved - House from where the contraband was seized, not proved to be in ownership and possession of accused - Seized property/contraband not produced before Court and only samples were produced - Held - Accused not liable to be convicted.* [Mulchand v. Union of India] ...*65

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8 & 20(b)(ii)(B) - *Appellant was held with 15.250 Kgs of Ganja - During trial the seized contraband 'Ganja' was not produced as article of evidence, before the Court - Held - Prosecutor-in-charge failed to request and trial judge failed to direct for production of the samples of contraband during trial as expected from them in wake of principle laid down in Zahira's case - Case remitted for getting the sample marked as articles of evidence*

अधिसूचना दिनांकित 14–3–2008 एवं 05–09–2007, अभिखंडित । (भोपाल सिटीजनस् फोरम वि. म.प्र. राज्य) ...2111

नगर तथा ग्राम निवेश अधिनियम, मध्यप्रदेश (1973 का 23) (अधिनियम क्रं0 2005 का 22 द्वारा यथा संशोधित), धारा 23 –A (2)– धारा 23–A (2) में राज्य सरकार द्वारा विकास परियोजना अथवा जोनिंग परियोजना के परिवर्तन की सूचना के प्रकाशन की रीति आज्ञापक स्वरूप की है । (भोपाल सिटीजनस् फोरम वि. म.प्र. राज्य) ...2111

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8/18 व 8/18/29 – स्वतंत्र साक्षी पक्षद्रोही हो गये – बड़ी मात्रा में अभिग्रहीत अफीम फार्मूला को साक्ष्य के समय प्रस्तुत नहीं किया गया – अफीम फार्मूला के अभिग्रहण के समय नमूनों पर अ, ब, स, द, वस्तु के रूप में चिन्हित नहीं किया गया – इसी प्रकार वृहद् परिमाण वाले दोनों पैकेटों पर वस्तु चिन्हित नहीं किया गया – अभिग्रहीत संपत्ति को सी.बी.एन. कार्यालय में मालखाना में जमा करते समय उसे मालखाने के प्रभारी अधिकारी की सील से पुनः सील नहीं किया गया – अभिग्रहण के समय सील की छाप एवं सील को मालखाना में जमा नहीं किया गया – स्थानीय साक्षियों को एकत्रित नहीं किया गया, बल्कि छापा दल द्वारा अपने गवाहों को मौके पर बुलाया गया – नमूनों को न्यायालय में 1 वर्ष 5 माह बाद अस्पष्टीकृत विलम्ब के साथ जमा किया गया – मालखाना प्रभारी की परीक्षा नहीं करायी गयी – पंचनामों को तैयार किया जाना संदेहपूर्ण और विश्वसनीय नहीं – अपीलार्थी दोषसिद्ध किये जाने के दायी नहीं हैं – अपील मंजूर। (मखमद खान वि. सी.बी.एन., मंदसौर) ...2633

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61) धारा 8/18(बी) – स्वतंत्र साक्षियों ने अभियोजन के मामले का समर्थन नहीं किया – अधिनियम की धारा 52–ए के अतंर्गत कार्यवाही सिद्ध नहीं हुई – महिला अभियुक्त की तलाशी तथा अधिनियम की धारा 50 के अन्तर्गत सूचना त्रुटिपूर्ण थी – अभिग्रहीत सम्पत्ति विचारण के दौरान न्यायालय में प्रस्तुत नहीं की गयी – अपीलार्थीगण दोषसिद्ध किये जाने योग्य नहीं थे – दोषसिद्धि अपास्त। (बंशीलाल वि. म.प्र. राज्य) ---*77

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8/18(बी) व 8/21(सी) – सबूत – स्वत्रंत साक्षियों ने अभियोजन का समर्थन नहीं किया – धारा 52 का अनुपालन साबित नहीं हुआ – घर, जहाँ से निषिद्ध पदार्थ अभिग्रहीत किया गया अभियुक्त के स्वामित्व और कब्जे का होना साबित नहीं हुआ – अभिग्रहीत सम्पत्ति/निषिद्ध पदार्थ न्यायालय के समक्ष पेश नहीं किया गया और केवल नमूने पेश किये गये – अभिनिर्धारित – अभियुक्त दोषसिद्ध किये जाने के लिए दायी नहीं। (मूलचंद वि. यूनियन ऑफ इंडिया) ---*65

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8 एवं 20(बी)(ii)(बी) – अपीलार्थी 15.250 किलोग्राम गांजे के साथ पकड़ा गया – विचारण के दौरान अभिग्रहीत विनिषिद्ध गांजा साक्ष्य की वस्तु के तौर पर न्यायालय के समक्ष प्रस्तुत नहीं किया गया – अभिनिर्धारित – भारसाधक अभियोजक निवेदन करने में विफल रहा और विचारण न्यायाधीश विचारण के दौरान विनिषिद्ध गांजे का नमूना प्रस्तुत करने के लिए निदेशित करने में असफल रहा जैसा कि जाहिरा के मामले में अधिकथित सिद्धांत के आलोक में उनसे अपेक्षित था – नमूना साक्ष्य

and also to the defence for challenging the identity thereof. [Nannu Sahu v. State of M.P.] ...2191

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/29(18b) & 8/29(21-c) - *Rs.1,57,000/- recovered from accused / appellant in persuance of statement of co-accused that he had given advance of Rs.1,60,000/- to accused - Held - The statement of co-accused is doubtful and not reliable, recovery of money from house of accused is not proved, and it has also not been proved that the accused had received that money from co-accused - Conviction and sentence can not be sustained.* [Mulchand v. Union of India] ...*65

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Narcotic Drugs and Psychotropic Substance Rules, 1985 - *Cancellation of license - Petitioner's license for cultivation of opium poppy cancelled as he was not eligible as per the General Conditions of Contract - Held - The general conditions for grant of license have got force of law and it govern the eligibility test for grant of license.* [Radheshyam v. Union of India] ...*34

Narcotic Drugs and Psychotropic Substance Rules, 1985 - See - *Narcotic Drugs and Psychotropic Substances Act, 1985,* [Radheshyam v. Union of India] ...*34

National Security Act (65 of 1980), Section 2 - ***Law & Order and Public Order - Distinguished - Held*** - *The true distinction between the areas of "law and order" and "public order" lies upon the degree and extent of the reach of an act upon the community or specified locality - The acts causing disturbance of public order need not necessarily differ in nature and quality, but must differ in the degree and extent of reach upon the community or public at large.* [Sayeed Mohd. v. Union of India] ...2500

National Security Act (65 of 1980), Section 2(3) - ***Detention - Public Order - What amounts to - Held*** - *Petitioner along with his associates and armed with swords, brutally murdered the Priest at the time of worship when others were present - Held - This crime was committed by detenu at a public place in the presence of number of people - It would have affect of disturbing the public tranquility and creating terror in the locality.* [Sayeed Mohd. v. Union of India] ...2500

National Security Act (65 of 1980), Section 3(2) - *Detention of a person already in detention - Whether the detaining authority was aware of the fact that the detenu on being suspected of having committed a serious offence, was already in jail - Held - There is nothing to indicate the awareness of the detaining authority that detenu was already in jail and yet the impugned detention order was made - This clearly exhibits non-application of mind - Order quashed.* [Chhenu @ Yunus v. State of M.P.] ...*26

की वस्तु के रूप में चिन्हित कराने और उसकी पहचान को चुनौती देने के लिए बचाव हेतु मामला प्रतिप्रेषित किया गया। (नन्नू साहू वि. म.प्र. राज्य) ...2191

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8/29(18–बी) व 8/29(21–सी) – सह–अभियुक्त के कथन, कि उसने 1,60,000/– रुपये का अग्रिम अभियुक्त को दिया था, के अनुसरण में अभियुक्त/अपीलार्थी से 1,57,000/– रुपये बरामद किये गये – अभिनिर्धारित – सह–अभियुक्त का कथन शंकास्पद है और विश्वसनीय नहीं है, अभियुक्त के घर से रुपये की बरामदगी साबित नहीं हुई है, और यह भी साबित नहीं हुआ है कि अभियुक्त ने वह रुपया सह–अभियुक्त से प्राप्त किया था – दोषसिद्धि और दण्डादेश कायम नहीं रखे जा सकते। (मूलचंद वि. यूनियन ऑफ इंडिया) ---*65

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61) – स्वापक औषधि और मनःप्रभावी पदार्थ नियम, 1985 – अनुज्ञप्ति का निरस्तीकरण – याची की अफीम की खेती करने की अनुज्ञप्ति निरस्त की गई क्योंकि वह संविदा की सामान्य शर्तों के अनुसार पात्र नहीं था – अभिनिर्धारित – अनुज्ञप्ति प्रदान करने के लिए सामान्य शर्तों को विधि की शक्ति प्राप्त है और अनुज्ञप्ति प्रदान करने के लिए वह पात्रता कसौटी को शासित करता है। (राधेश्याम वि. यूनियन ऑफ इंडिया) ---*34

स्वापक औषधि और मनःप्रभावी पदार्थ नियम, 1985 – देखें – स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 (राधेश्याम वि. यूनियन ऑफ इंडिया) ---*34

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 2 – कानून एवं व्यवस्था तथा लोक व्यवस्था – भेद किया गया – अभिनिर्धारित – "कानून एवं व्यवस्था" तथा "लोक व्यवस्था" के क्षेत्रों के मध्य सही विभेद समुदाय या विनिर्दिष्ट स्थानीयता पर किसी कृत्य की पहुँच की मात्रा एवं सीमा पर अवलंबित होता है – ऐसा आवश्यक नही है कि लोक व्यवस्था मे व्यवधान कारित करने वाले कृत्य के गुण एवं प्रकृति में आवश्यक रूप से भेद हो, किन्तु समुदाय अथवा जनता तक पहुँच की मात्रा एवं सीमा में भेद होना चाहिए। (सईद मोहम्मद वि. यूनियन ऑफ इंडिया) ...2500

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 2(3) – निरोध – लोक व्यवस्था – किस कोटि में आता है – अभिनिर्धारित – याची ने पूजा के समय जब अन्य लोग भी उपस्थित थे, अपने सहयोगियों के साथ तलवार से पुजारी की नृशंसतापूर्वक हत्या कर दी – अभिनिर्धारित – निरुद्ध व्यक्ति द्वारा यह अपराध लोक स्थान पर अनेक लोगों की उपस्थिति में किया गया – यह लोक शांति भंग करने तथा उस स्थान में आतंक उत्पन्न करने का प्रभाव रखता है। (सईद मोहम्मद वि. यूनियन ऑफ इंडिया) ...2500

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – पूर्व से निरुद्ध व्यक्ति का निरोध – क्या निरोध प्राधिकारी को इस बात का ज्ञान था कि निरुद्ध व्यक्ति किसी गम्भीर अपराध को किये जाने के संदेह पर पूर्व से जेल में था – अभिनिर्धारित – निरोध प्राधिकारी के इस ज्ञान को उपदर्शित करने के लिए कुछ नहीं है कि निरुद्ध व्यक्ति पहिले से जेल में था और फिर भी आक्षेपित निरोध का आदेश किया गया था – यह स्पष्टतः बुद्धि का उपयोग न किये जाने का द्योतक है – आदेश निरस्त। (चीनू उर्फ यूनुस वि. म.प्र. राज्य) ---*26

National Security Act (65 of 1980), Section 3(2) - *Detention of a person already in detention - Whether warranted - Held - A detention order can validly be passed if the authority is aware of the fact that he is actually in custody - If he has reason to believe on the basis of the reliable material that there is a possibility of his being released on bail and that on being so released, the detenu would in all probabilities indulge in prejudicial activities.* [Chhenu @ Yunus v. State of M.P.] ...*26

National Security Act (65 of 1980), Section 3(2) - *Where respondents have failed to point out even a single act relating to the public order proximate in point of time when the order of detention was passed and they have also failed to justify the need for passing the detention order when the petitioner is already in jail, the order of detention cannot be sustained - Order of detention set aside.* [Sanjay v. State of M.P.] ...*88

Negotiable Instruments Act (26 of 1881), Sections 7, 138 & 142 - *Cognizance - Cognizance of the matter can be taken upon complaint in writing by payee or holder in due course of cheque - Cheque was issued in favour of father of non-applicant - No where in complaint it is stated that payee has died and who are legal representatives - No where stated that how non-applicant is entitled for the cheque amount - The complaint is not maintainable - Petition allowed.* [Kishore Goyal v. Hanif Patel] ...1994

Negotiable Instruments Act (26 of 1881), Section 138 - *Dishonour of cheque on the ground of death of partner with intention to force the petitioner/accused for doing necessary formalities on the death of partner - Cannot make the petitioner liable for punishment u/s 138 of the Act.* [Yogendra Gupta v. Smt. Renu Agrawal] ...*96

Negotiable Instruments Act (26 of 1881), Section 138 - *Non-applicant issued a cheque on behalf of M/s Vaibhav Enterprises which was not arraigned as an accused - Held - The only fact that the non-applicant had issued the cheque, by itself, was not sufficient to attract penal liability for the offence u/s 138 as he was able to establish that his authority as the drawer had ceased to continue till the date it was presented for encashment - In other words, the applicant had failed to prove that the non-applicant had played some role at the time when the cheque was dishonoured - Acquittal upheld.* [Kamla Rusiya (Smt.) v. State of M.P.] ...2001

Negotiable Instruments Act (26 of 1881), Section 138 - See - *Criminal Procedure Code, 1973, Section 178(d)* [Murli Dhar v. Ishwar Dayal Girdhani] ...2230

Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, M.P. (21 of 2007), Admission (Reservation to NRI) Regulation, M.P. 2009, Regulation 3 & 5 - *Vires of - Challenged being repugnant to the provision of Chapter VIII of AICTE Regulations, 2010* -

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – पूर्व से निरुद्ध व्यक्ति का निरोध – क्या न्यायसगंत है – अभिनिर्धारित – निरुद्ध किये जाने का आदेश वैध रूप में तभी पारित किया जा सकता है जबकि प्राधिकारी को उसके वास्तव में अभिरक्षा में होने का तथ्य ज्ञात हो – यदि उसे यह विश्वास करने का कारण हो कि विश्वसनीय तथ्यों के आधार पर उसे जमानत पर छोड़े जाने की संभावना है तथा इस प्रकार रिहा होने पर बन्दी व्यक्ति के अवैध गतिविधियों में आलिप्त होने की सभी संभावनायें है। (चीनू उर्फ यूनुस वि. म.प्र. राज्य) ---*26

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – जहाँ प्रत्यर्थी उस समय बिन्दु के समीप जब निरोध का आदेश पारित किया गया, लोक व्यवस्था संबंधी किसी एक कार्य को बताने में असफल रहे हों एवं वे उस समय जब कि याची पूर्व से जेल में है, निरोध का आदेश पारित किये जाने का औचित्य बताने में भी असफल रहे हों, वहाँ निरोध का आदेश कायम नहीं रखा जा सकता है – निरोध का आदेश अपास्त। (संजय वि. म.प्र. राज्य) ---*88

परक्राम्य लिखत अधिनियम (1881 का 26), धाराएँ 7, 138 व 142 – संज्ञान – मामले का संज्ञान चैक के पाने वाले या सम्यक् अनुक्रम–धारक द्वारा लिखित परिवाद पर लिया जा सकता है – चैक अनावेदक के पिता के पक्ष में जारी किया गया – परिवाद में यह कहीं भी उल्लिखित नहीं है कि पाने वाले की मृत्यु हो गयी है और विधिक प्रतिनिधि कौन हैं – कहीं भी उल्लिखित नहीं कि अनावेदक किस प्रकार चैक की राशि का हकदार है – परिवाद पोषणीय नहीं है– याचिका मंजूर। (किशोर गोयल वि. हनीफ पटेल) ...1994

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – साझेदार के निधन के आधार पर याची/अभियुक्त को साझेदार के निधन पर आवश्यक औपचारिकताएँ करने के लिये विवश करने के आशय से चैक का अनादरण – याची को अधिनियम की धारा 138 के अन्तर्गत सजा के लिए दायी नहीं बना सकता। (योगेन्द्र गुप्ता वि. श्रीमति रेनू अग्रवाल) ---*96

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – अनावेदक ने मेसर्स वैभव एंटरप्राईजेज की ओर से चैक जारी किया जिसे अभियुक्त के तौर पर आरोपित नहीं किया गया – अभिनिर्धारित – केवल यह तथ्य कि अनावेदक ने चैक जारी किया था अपने आप में धारा 138 के अंतर्गत शास्तिक दायित्व को आकृष्ट करने के लिये पर्याप्त नहीं था क्योंकि वह यह साबित करने में सक्षम था कि लेखीवाल के तौर पर उसका प्राधिकार उस दिनांक तक समाप्त हो गया था जब उसे भुनाने के लिये प्रस्तुत किया गया था – अन्य शब्दों में आवेदक यह साबित करने में विफल रहा कि जब चैक का अनादरण हुआ था, उस समय अनावेदक ने कोई भूमिका निभाई थी – दोषमुक्ति की पुष्टि की गयी। (कमला रूसिया (श्रीमति) वि. म.प्र. राज्य) ...2001

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 178(डी) (मुरलीधर वि. ईश्वर दयाल गिरधानी) ...2230

निजी व्यावसायिक शिक्षण संस्था (प्रवेश का विनियमन एवं शुल्क का निर्धारण) अधिनियम, म.प्र. (2007 का 21), प्रवेश (अनिवासी भारतीय को आरक्षण) विनियम, म.प्र. 2009, विनियम 3 व 5 – की शक्तिमत्ता – एआईसीटीई विनियम, 2010 के अध्याय VIII के उपबंधों के प्रतिकूल होने के कारण चुनौती – अभिनिर्धारित – अधिनियम को न तो सद्भाविक

Held - Regulation cannot be said to be defeating the object with regard to a bona fide NRI nor it can be said to be violative of definition of NRI as contained in Regulation 2.19 of AICTE Regulation - No repugnancy found in AICTE Regulations and NRI Regulations 2009 framed by State Government. [Lalit Tongia v. State of M.P.] ...*81

**Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, M.P. (21 of 2007), Section 8, Private Medical and Dental Under Graduage Entrance Examination Rules, M.P. 2009, Rule 9 - *Vires of* - *Challenged on the grounds that (i) No provision has been made for reservation of freedom fighter category, while the State Government has issued rules for Pre-Engineering and Pharmacy Test (PEPT) 2009 making a provision for reservation to freedom fighter category students, (ii) State Government has not explained the reason for not making such reservation - Held - On the basis of framing of another Rule, the Rule of 2009 cannot be declared as ultra vires - Until and unless the rule is in contravention of constitutional provision or statutory provision, such Rule cannot be declared as ultra vires - Petition dismissed.* [Akanksha Pandey v. State of M.P.]...2541

**Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, M.P. (21 of 2007), Section 9 - *Held - Act of the Admission and Fees Regulatory Committee (AFRC) in determination of fee is quasi judicial in nature and it is obligatory on the part of AFRC to pass reasoned order after considering all the document and claimes submitted by the institution in accordance with regulation of 2008.* [Institute of Technology & Management v. Govt. of M.P.] ...*43

**Official Language Act, M.P., 1957 (5 of 1958), Section 3 - See - *Criminal Procedure Code, 1973, Section 265* [Mohd. Aslam v. State of M.P.] ...2428

**Official Languages Act (19 of 1963), Section 3(4) - See - *Constitution, Articles 343 & 344* [Raghvendra Prasad Gautam v. Union Bank of India]FB...2275

**Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994) - *Appointment of Panchayat Karmi - Scheme - Eligibility* - *Candidate should be 10th pass - Held - Selection should be decided on the basis of eligibility criteria - Acquisition of better qualification would not provide any further benefit - Order of appointment in favour of candidate having highest marks in 10th standard upheld - Petition dismissed.* [Bherulal v. State of M.P.]...1907

**Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 36 - *A person must incur the disqualifications as has been enumerated in sub-section (1) of S. 36 which is condition precedent for invoking sub-section (3) of S. 36 of the Adhiniyam.* [Raminder Singh Kalra v. Kanhaiya Tiwari] ...2468

**Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 85(1) - *Challenge of appointment of Panchayat Karmi by resolution*

अनिवासी भारतीय संबंधी उद्देश्य को निष्फल करने वाला कहा जा सकता और न ही इसे एआईसीटीई विनियम के विनियम 2.19 में समाविष्ट अनिवासी भारतीय की परिभाषा का उल्लंघनकारी कहा जा सकता है – एआईसीटीई विनियम और राज्य सरकार द्वारा विरचित अनिवासी भारतीय विनियम, 2009 में कोई प्रतिकूलता नहीं पायी गयी। (ललित टोंगिया वि. म.प्र. राज्य) ---*81

निजी व्यावसायिक शिक्षण संस्था (प्रवेश का विनियमन एवं शुल्क का निर्धारिण) अधिनियम, म.प्र. (2007 का 21), धारा 8, निजी चिकित्सा और दंत पूर्वस्नातक प्रवेश परीक्षा नियम, म.प्र. 2009, नियम 9 – की शक्तिमत्ता – को इन आधारों पर चुनौती दी गयी कि (i) स्वतंत्रता संग्राम सेनानी श्रेणी के आरक्षण के लिए कोई उपबंध नहीं किया गया है, जबकि राज्य सरकार ने स्वतंत्रता संग्राम सेनानी श्रेणी के विद्यार्थियों के लिए आरक्षण का उपबंध करते हुए पूर्व–अभियांत्रिकी और फार्मेसी परीक्षा (पीईपीटी) 2009 के लिए नियम जारी किये हैं, (ii) राज्य सरकार ने ऐसा आरक्षण न करने का कारण स्पष्ट नहीं किया है – अभिनिर्धारित – दूसरा नियम विरचित करने के आधार पर, नियम 2009 को अधिकारातीत घोषित नहीं किया जा सकता – जब तक नियम संवैधानिक उपबंध अथवा कानूनी उपबंध के उल्लंघन में न हों, ऐसे नियम को अधिकारातीत घोषित नहीं किया जा सकता है – याचिका खारिज। (आकांक्षा पांडे वि. म.प्र. राज्य) ...2541

निजी व्यावसायिक शिक्षण संस्था (प्रवेश का विनियमन एवं शुल्क का निर्धारिण) अधिनियम, म.प्र. (2007 का 21), धारा 9 – अभिनिर्धारित – शुल्क का निर्धारण करने की एडमीशन एण्ड फीस रेग्यूलेटरी कमेटी (ए.एफ.आर.सी.) की कार्यवाही न्यायिक कल्प प्रकृति की है और 2008 के विनियमन के अनुसार सभी दस्तावेज और दावों पर विचारोपरांत सकारण आदेश पारित करना ए.एफ.आर.सी. के लिये बाध्यकारी है। (इंस्टीट्यूट ऑफ टेक्नोलॉजी एण्ड मेनेजमेन्ट वि. गव्हरमेंट ऑफ एम.पी.) ---*43

राजभाषा अधिनियम, म.प्र., 1957 (1958 का 5), धारा 3 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 265 (मो. असलम वि. म.प्र. राज्य) ...2428

राजभाषा अधिनियम (1963 का 19), धारा 3(4) – देखें – संविधान, अनुच्छेद 343 व 344 (राघवेन्द्र प्रसाद गौतम वि. यूनियन बैंक ऑफ इंडिया) FB---2275

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1) – पंचायत कर्मी की नियुक्ति – स्कीम – पात्रता – अभ्यर्थी 10वीं उत्तीर्ण होना चाहिये – अभिनिर्धारित – चयन का विनिश्चय पात्रता मानदंड के आधार पर होना चाहिये – बेहतर अर्हता का अर्जन कोई अतिरिक्त लाभ प्रदान नहीं करेगा – 10वीं में उच्चतम अंक रखने वाले अभ्यर्थी के पक्ष में नियुक्ति के आदेश की पुष्टि की गयी – याचिका खारिज। (भेरूलाल वि. म.प्र. राज्य) ...1907

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 36 – किसी व्यक्ति का अधिनियम की धारा 36(1) में वर्णित निर्योग्यताओं में से किसी से ग्रस्त होनां आवश्यक है, जो धारा 36(3) के अवलंब के लिए पूर्ववर्ती शर्त है। (रामिन्दर सिंह कालरा वि. कन्हैया तिवारी) ...2468

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 85(1) – संकल्प द्वारा पंचायत कर्मी की नियुक्ति को चुनौती – नियुक्ति का आदेश एस.डी.ओ. को अपील

- *Order of appointment is appealable to SDO, however having fought the matter before various forums and having regard to the fact that the matter stood decided on merits also, the second respondent cannot be directed to go before the SDO for litigating the issue once again afresh.* [Mahesh v. State of M.P.] ...2057

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 85(1) - *Resolution - The scheme required that the marks obtained in the 10th Class shall decide the fate of the candidate then that only ought to have been done.* [Mahesh v. State of M.P.] ...2057

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 86(1) & 86(2) - *Power of State Government to issue order directing Panchayat for execution of work in certain cases - Appointment of Panchayat Karmi - When justified - Panchayat Karmi appointed u/s 86(1) of the Adhiniyam, but the Sarpanch of Gram Panchayat did not allow him to join - Held - Once an appointment was already made u/s 86(1) of the Adhiniyam, then there was no question of any appointment u/s 86(2) of the Adhiniyam, until & unless earlier appointment is set aside by a competent authority.* [Chitrarekha Saulakhe (Ku.) v. Suresh Saulakhe] ...1945

Penal Code (45 of 1860), Section 84 - ***Plea of insanity*** - *PWs admitted in cross-examination that appellant was insane and he also used to take treatment - Jailor's evidence and Doctor's certificate indicates that the appellant was treated for schizophrennia during 06.12.98 to 18.06.99 in mental hospital - But, no medical evidence on record to indicate that before or at the time of commission of offence, appellant was suffering from any mental disorder or insanity so as to be incapable of understanding the nature of his act - Plea of insanity found rightly rejected by trial Court.* [Kodulal @ Laxman v. State of M.P.] ...2181

Penal Code (45 of 1860), Sections 147 & 302/34 - ***Appeal against acquittal*** - *Trial Court acquitted the accused persons on grounds that the evidence not reliable and FIR ante-timed - Held - The trial Court recorded the acquittal on flimsy grounds and discarded the ocular evidence without any compelling and justifying reasons - Respondents convicted u/s 302/34 IPC and sentenced to imprisonment for life - Appeal allowed.* [State of M.P. v. Paramlal] ...2357

Penal Code (45 of 1860), Sections 148, 149 & 302 - *Eye witnesses' account is not duly corroborated by medical evidence - I.O. failed to assign any reason as to why these witnesses were examined after 4-5 days of the incident - Statement of witnesses regarding time of lodging of Dehati Nalishi, contradictory - Conviction and sentence passed by trial Court set aside - Appeal allowed.* [Radhiya @ Radheshyam v. State of M.P.] ...2379

योग्य है, तथापि विभिन्न फोरमों के समक्ष मामला लड़ने के बाद तथा इस तथ्य को ध्यान में रखते हुए कि मामला गुणदोषों पर भी विनिश्चित हुआ था, द्वितीय प्रत्यर्थी को विवाद का पुनः नये सिरे से वादकरण करने के लिए एस.डी.ओ. के समक्ष जाने के लिये निदेशित नहीं किया जा सकता। (महेश वि. म.प्र. राज्य) ...2057

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 85(1) – संकल्प – स्कीम की अपेक्षा है कि 10वीं कक्षा में प्राप्त अंक अभ्यर्थी के भाग्य का फैसला करेंगे, तब केवल वही करना चाहिए था। (महेश वि. म.प्र. राज्य) ...2057

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 86(1) व 86(2) – कतिपय मामलों में कार्य के निष्पादन के लिये पंचायत को निर्देशित करने का आदेश जारी करने की राज्य सरकार की शक्ति – पंचायत कर्मी की नियुक्ति – कब न्यायानुमत – पंचायत कर्मी की नियुक्ति अधिनियम की धारा 86(1) के अन्तर्गत की गई किन्तु ग्राम पंचायत के सरपंच ने उसे पदग्रहण करने नहीं दिया – अभिनिर्धारित – एक बार यदि अधिनियम की धारा 86(1) के अंतर्गत नियुक्ति की गई थी तब अधिनियम की धारा 86(2) के अंतर्गत किसी नियुक्ति का कोई प्रश्न नहीं था जब तक कि सक्षम प्राधिकारी द्वारा पूर्वतर नियुक्ति अपास्त न की गई हो। (चित्ररेखा साउलखे (कुमारी) वि. सुरेश साउलखे) ...1945

दण्ड संहिता (1860 का 45), धारा 84 – उन्मत्तता का अभिवाक् – अभियोजन साक्षियों ने प्रतिपरीक्षण में स्वीकार किया कि अपीलार्थी विक्षिप्त था और वह उपचार भी लेता था – जेलर की साक्ष्य तथा चिकित्सक के प्रमाण पत्र से प्रतीत होता है कि 6.12.98 से 18.6.99 तक अपीलार्थी का सीजोफ्रेनिया (पागलपन) के लिए मानसिक चिकित्सालय में उपचार किया गया – परन्तु अभिलेख पर यह उपदर्शित करने के लिए कोई चिकित्सीय साक्ष्य नहीं कि अपराध कारित करने से पूर्व या अपराध कारित करते समय अपीलार्थी किसी मानसिक विकार या उन्मत्तता से पीड़ित था जिससे वह अपने कार्य की प्रकृति को समझने में असमर्थ हो – उन्मत्तता का अभिवाक् विचारण न्यायालय द्वारा अस्वीकार किया जाना सही पाया गया। (कोडूलाल उर्फ लक्ष्मण वि. म.प्र. राज्य)...2181

दण्ड संहिता (1860 का 45), धाराएँ 147 व 302/34 – दोषमुक्ति के विरुद्ध अपील – विचारण न्यायालय ने अभियुक्त व्यक्तियों को इन आधारों पर दोषमुक्त किया कि साक्ष्य विश्वसनीय नहीं थी और प्रथम सूचना रिपोर्ट पूर्व समय की थी – अभिनिर्धारित – विचारण न्यायालय ने दोषमुक्ति तुच्छ आधारों पर अभिलिखित की तथा चक्षुदर्शी साक्ष्य को किसी बाध्यकारी या न्यायसंगत कारण बिना अमान्य कर दिया – प्रत्यर्थियों को भा.द.सं. की धारा 302/34 के अन्तर्गत दोषसिद्ध किया गया और आजीवन कारावास का दण्डादेश दिया गया – अपील मंजूर। (म.प्र. राज्य वि. परमलाल) ...2357

दण्ड संहिता (1860 का 45), धाराएँ 148, 149 व 302 – प्रत्यक्षदर्शी साक्षियों का विवरण चिकित्सीय साक्ष्य से भलीभांति सम्पुष्ट नहीं हुआ – अन्वेषण अधिकारी इस बात का कारण बताने मे विफल रहा कि इन साक्षियों का परीक्षण घटना के 4–5 दिन बाद क्यों किया गया – देहाती नालिशी दर्ज कराने के समय के संबंध मे साक्षियों के कथन परस्पर विरोधी – विचारण न्यायालय द्वारा पारित दोषसिद्धि एवं दण्डादेश अपास्त – अपील मंजूर। (रधिया उर्फ राधेश्याम वि. म.प्र. राज्य) ...2379

Penal Code (45 of 1860), Section 161 - See - *Prevention of Corruption Act, 1947, Section 5(1) r/w 5(2)* [State of M.P. v. Harishankar Bhagwan Pd. Tripathi] SC...2027

Penal Code (45 of 1860), Sections 177 & 181, Criminal Procedure Code, 1973, Sections 2(d) & 195 - *Complaint - Challan filed by CBI on some information of somebody in Court would not partake the character of a complaint as provided under S. 2(d) - Court cannot take cognizance of complaint filed by CBI, until and unless oral or written complaint by public servant of AICTE is made.* [Meena Rathore (Smt.) v. CBI, ACB, Bhopal]...*30

Penal Code (45 of 1860), Sections 177, 181 & 420 - *Cheating - Society is the owner of the land - At the time of submitting application for approval to AICTE application to obtain loan was submitted to Bank and loan was sanctioned to the extent of 7.5 cores for construction of building - In undertaking and affidavit, applicant did not disclose that the land is mortgaged with Bank - Held - Property can be mortgaged at a later date for the purposes of raising finance for development of technical institution - Affidavit loaded on web portal contrary to approval process - Intention of AICTE is not that land cannot be mortgaged - No offence u/s 420 made out as intention of dishonestly inducing the delivery of property with a view to cause damage or harm to that person in body, mind, reputation or property is missing.* [Meena Rathore (Smt.) v. CBI, ACB, Bhopal] ...*30

Penal Code (45 of 1860), Section 201 - See - *Prevention of Corruption Act, 1988, Sections 7, 13(1)(d), 13(2) & 20* [Ravindra Kumar Ganvir v. State of M.P.] ...*87

Penal Code (45 of 1860), Section 216-A, Dakaiti Aur Vyapharan Prabhavit Ksheshtra Adhiniyam, M.P. 1981 Sections 11 & 13, Arms Act, 1959 Sections 25(1-B)(a) & 30 - *Charges under - SDO(P) who remained active from stage of receiving information till arrest memo of respondent, not examined - There exists material contradiction in testimony of two witnesses - Entry of Roznamcha regarding movement & return of police party not produced - Gun licence was also found valid in name of father of respondent - No scope of interfering with the acquittal passed by Special Judge - Appeal dismissed.* [State of M.P. v. Veeru @ Veer Singh] ...2187

Penal Code (45 of 1860), Section 302 - *Death Sentence - The act of accused is heinous and requires to be condemned but at the same time it cannot be said that it is rarest of the rare case where accused requires to be eliminated from the society. Therefore, looking to the age (about 19 years) of the accused and antecedents, there appears no justifiable reason to impose the death Sentence on him. Sentence of death modified and commuted to imprisonment for life.* [In Reference v. Rahul] ...2206

Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Section

दण्ड संहिता (1860 का 45), धारा 161 – देखें – भ्रष्टाचार निवारण अधिनियम, 1947, धारा 5(1) सहपठित 5(2) (म.प्र. राज्य वि. हरिशंकर भगवान प्रसाद त्रिपाठी) SC---2027

दण्ड संहिता (1860 का 45), धाराएँ 177 व 181, दण्ड प्रक्रिया संहिता, 1973, धाराएँ 2(डी) व 195 – परिवाद – किसी व्यक्ति की सूचना पर सीबीआई द्वारा न्यायालय में प्रस्तुत किया गया चालान, परिवाद के लक्षणों में भाग नहीं लेगा जैसा कि धारा 2(डी) के अन्तर्गत उपबंधित है – न्यायालय सीबीआई द्वारा प्रस्तुत परिवाद का संज्ञान नहीं ले सकता जब तक कि एआईसीटीई के लोक सेवक द्वारा मौखिक अथवा लिखित परिवाद नहीं किया जाता। (मीना राठौर (श्रीमति) वि. सी.बी.आई., ए.सी.बी., भोपाल) ---*30

दण्ड संहिता (1860 का 45), धाराएँ 177, 181 व 420 – छल – सोसायटी भूमि की स्वामी है – अनुमोदन के लिए एआईसीटीई को आवेदन प्रस्तुत करते समय ऋण प्राप्त करने के लिए बैंक को आवेदन प्रस्तुत किया और भवन के निर्माण के लिए 7.5 करोड की सीमा तक ऋण मंजूर किया गया – परिवचन तथा शपथपत्र में आवेदक ने यह प्रकट नहीं किया कि भूमि बैंक को बंधक है – अभिनिर्धारित – तकनीकी संस्था के विकास के लिए वित्त जुटाने के प्रयोजनों के लिए संपत्ति को बाद के दिनांक को बंधक किया जा सकता है – वेब पोर्टल पर भरा गया शपथपत्र अनुमोदन प्रक्रिया के विपरीत है – एआईसीटीई का यह आशय नहीं है कि भूमि बंधक नहीं हो सकती – चूंकि उस व्यक्ति के शरीर, मन, मान या संपत्ति को क्षति अथवा हानि कारित करने के उद्देश्य से बेईमानी पूर्वक संपत्ति परिदत्त करने के लिए उत्प्रेरित करने का आशय अनुपस्थित है, धारा 420 के अंतर्गत कोई अपराध नहीं बनता। (मीना राठौर (श्रीमति) वि. सी.बी.आई., ए.सी.बी., भोपाल) ---*30

दण्ड संहिता (1860 का 45), धारा 201 – देखें – भ्रष्टाचार निवारण अधिनियम, 1988, धाराएँ 7, 13(1)(डी), 13(2) व 20, (रवीन्द्र कुमार गनवीर वि. म.प्र. राज्य) ---*87

दण्ड संहिता (1860 का 45), धारा 216–ए, डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. 1981, धाराएँ 11 व 13, आयुध अधिनियम, 1959 धाराएँ 25(1–बी)(ए) व 30 – के अंतर्गत आरोप – एस.डी.ओ. (पुलिस) जो सूचना प्राप्त करने के प्रक्रम से प्रत्यर्थी के गिरफ्तारी मेमो तक सक्रिय रहा है, उसका परीक्षण नहीं किया गया – दो साक्षियों की परिसाक्ष्य मे तात्विक विरोधाभास अस्तित्वमान – पुलिस पार्टी के संचलन एवं वापसी के संबंध मे रोजनामचे की प्रविष्टि प्रस्तुत नहीं की गयी – प्रत्यर्थी के पिता के नाम से बंदूक की अनुज्ञप्ति भी वैध पायी गयी – विशेष न्यायाधीश द्वारा पारित दोषमुक्ति के आदेश में हस्तक्षेप की कोई गुंजाइश नहीं – अपील खारिज। (म.प्र. राज्य वि. वीरू उर्फ वीर सिंह) ...2187

दण्ड संहिता (1860 का 45), धारा 302– मृत्युदण्ड – अभियुक्त का कृत्य घृणित एवं निंदनीय है किन्तु इसे विरल से विरलतम प्रकरण नहीं कहा जा सकता जहां अभियुक्त की समाज से मौजूदगी हटाने की आवश्यकता हो अतः अभियुक्त की आयु (19 वर्ष) एवं उसके पूर्ववृत को देखते हुए उस पर मृत्युदण्ड आरोपित किये जाने का कोई न्यायसंगत कारण प्रतीत नहीं होता, मृत्युदण्ड को आजीवन कारावास मे परिवर्तित किया गया । (इन रेफरेन्स वि. राहुल) ...2206

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872, धारा 3 – साक्ष्य

3 - *Appreciation of evidence - Death of deceased (wife) in house of accused (husband) due to head injury and others - The presence of accused on relevant time in the house is also proved - Accused failed to explain as to how the deceased received the injuries - Accused/husband is the only person who is responsible for commission of crime - Other family members (A-2) can not be held guilty on mere suspicion.* [Ram Bhadra Tiwari v. State of M.P.] ...2625

Penal Code (45 of 1860), Section 302 - See - *Evidence Act, 1872, Sections 3 & 32* [Shabana Bi (Smt.) v. State of M.P.] ...*52

Penal Code (45 of 1860), Section 302 - See - *Evidence Act, 1872, Section 32* [Lakhan v. State of M.P.] SC...2018

Penal Code (45 of 1860), Sections 302/34, 326/34 - *Assault by accused persons by "Lathi" and "Danda" resulting death of two persons - Injuries found on person of the deceased do not indicate so imminently dangerous that it must in all probability cause death or such bodily injury is likely to cause death - The part of body chosen cannot be said to be a vital part of the body - The injuries are contusions - The ingredients of the offence of murder is not made out - The conviction of appellants u/s 302/34 altered to S.326/34 IPC and sentenced to imprisonment for 7 years.* [Ramesh Kumar v. State of M.P.] SC...1843

Penal Code (45 of 1860), Sections 302 & 201 - See - *Evidence Act, 1872, Section 3* [Suryakant Singh v. State of M.P.] ...*55

Penal Code (45 of 1860), Sections 302 & 304 - *No evidence that there was a sudden fight between the appellant and his wife (the deceased) and the appellant acted in a heat of passion upon a sudden quarrel - Appellant himself has not stated anything in this regard in his examination u/s 313 Cr.P.C. - Repeated blows were wielded on the scalp of deceased with force caused 3 injuries, sufficient to cause death - The benefit of Exception 4 to S. 300 IPC can not be given to appellant - Conviction of appellant u/s 302 IPC upheld - Appeal dismissed.* [Pappu @ Kamod v. State of M.P.] ...*47

Penal Code (45 of 1860), Sections 302 & 304 Part-I - ***Murder or culpable homicide*** *- Deceased (wife) carrying pregnancy of 32-36 weeks received one fatal/head injury out of 4 injuries - No evidence to establish motive on part of accused to kill his wife - The accused is liable to be convicted u/s 304 Part-I and not u/s 302.* [Ram Bhadra Tiwari v. State of M.P.] ...2625

Penal Code (45 of 1860), Sections 302, 304-I - ***Murder or culpable homicide*** *- Incident took place all of a sudden, without premeditation - Due to anger and annoyance, appellant/accused caused burn injuries to deceased by pouring kerosene on his body and by lighting a matchstick, set him on fire - The appellant can be held guilty for the offence punishable u/s 304 Part-I and not u/s 302 of IPC - Appeal allowed.* [Shanti Bai v. State of M.P.] ...*69

का अधिमूल्यन – अभियुक्त के घर में मृतक (पत्नी) की सिर पर आयी चोटों एवं अन्य चोटों के कारण मृत्यु – सुसंगत समय पर अभियुक्त की घर पर मौजूदगी भी साबित – अभियुक्त मृतक को आयी चोटों के संबंध मे स्पष्टीकरण देने मे असफल रहा – अभियुक्त/पति ही वह व्यक्ति है जो अपराध करने के लिए उत्तरदायी है – परिवार के अन्य सदस्य (ए–2) को केवल संदेह पर दोषी नहीं ठहराया जा सकता। (राम भद्र तिवारी वि. म.प्र. राज्य) ...2625

दण्ड संहिता (1860 का 45), धारा 302 – देखें – साक्ष्य अधिनियम, 1872, धाराएँ 3 व 32 (शबाना बी (श्रीमती) वि. म.प्र. राज्य) ---*52

दण्ड संहिता (1860 का 45), धारा 302 – देखें – साक्ष्य अधिनियम, 1872, धारा 32 (लखन वि. म.प्र. राज्य) SC---2018

दण्ड संहिता (1860 का 45), धाराएँ 302/34, 326/34 – अभियुक्त व्यक्तियों द्वारा लाठी एवं डंडे से किये गये हमले के परिणामस्वरूप दो व्यक्तियों की मृत्यु हुई – मृतक के शरीर पर पाई गयीं क्षतियाँ आसन्न रूप से इतनी घातक प्रतीत नहीं होतीं कि वह सभी अधिसंभाव्यताओं में मृत्यु कारित करेगी अथवा ऐसी शारीरिक क्षति कारित करेगी जिससे मृत्यु कारित होना संभाव्य हो – चुना गया शरीर का अंग, शरीर का मार्मिक अंग नहीं कहा जा सकता है – क्षतियाँ, खरोंचें हैं – हत्या के अपराध के घटक नहीं बनते हैं – अपीलार्थियों की भा.द.सं. की धारा 302/34 के अंतर्गत दोषसिद्धि को धारा 326/34 मे परिवर्तित किया गया और 7 वर्ष के कारावास से दण्डादिष्ट किया गया। (रमेश कुमार वि. म.प्र. राज्य) SC---1843

दण्ड संहिता (1860 का 45), धाराएँ 302 व 201 – देखें – साक्ष्य अधिनियम, 1872, धारा 3 (सूर्यकांत सिंह वि. म.प्र. राज्य) ---*55

दण्ड संहिता (1860 का 45), धाराएँ 302 व 304 – कोई साक्ष्य नहीं कि अपीलार्थी तथा उसकी पत्नी (मृतक) के बीच अचानक लड़ाई हुई थी और अपीलार्थी ने अचानक हुई लड़ाई से क्रोध के आवेश में आकर कृत्य किया – अपीलार्थी ने द.प्र.सं. की धारा 313 के अंतर्गत अपने परीक्षण में स्वयं इस संबध में कुछ नहीं कहा है – मृतक के सिर पर कई शक्तिशाली आघात किये गये जिससे 3 क्षतियाँ कारित हुईं, जो मृत्यु कारित करने के लिये पर्याप्त थीं – अपीलार्थी को भा.द.सं. की धारा 300 के अपवाद 4 का लाभ नहीं दिया जा सकता – भा.द.सं. की धारा 302 के अंतर्गत अपीलार्थी की दोषसिद्धि की पुष्टि की गई – अपील खारिज। (पप्पू उर्फ कमोद वि. म.प्र. राज्य) ---*47

दण्ड संहिता (1860 का 45), धाराएँ 302 व 304 भाग–I – हत्या या आपराधिक मानव वध – मृतक (पत्नी) जो 32–36 सप्ताह का गर्भ धारण किये हुए थी को आयीं 4 चोटों में से एक घातक/सिर की चोट थी – अभियुक्त का अपनी पत्नी को मारने का हेतु साबित करने के लिए कोई साक्ष्य नहीं – अभियुक्त धारा 304 भाग–I के अन्तर्गत दोषसिद्ध किये जाने योग्य है न कि धारा 302 के अन्तर्गत। (राम भद्र तिवारी वि. म.प्र राज्य) ...2625

दण्ड संहिता (1860 का 45), धाराएँ 302, 304–I – हत्या या आपराधिक मानव वध – घटना पूर्वचिन्तन के बिना अकस्मात घटित हुई – क्रोध और क्षोभ के कारण अपीलार्थी/अभियुक्त ने मृतक के शरीर पर केरोसीन उड़ेलकर और माचिस की तीली जलाकर उसको आग लगाकर उसे जलने की क्षतियाँ कारित कीं – अपीलार्थी को भा.द.सं. की धारा 304 भाग–I के अन्तर्गत दण्डनीय अपराध के लिए दोषी ठहराया जा सकता है न कि धारा 302 के अन्तर्गत – अपील मंजूर। (शांति बाई वि. म.प्र. राज्य) ---*69

Penal Code (45 of 1860), Sections 302 & 304 Part-I - *Murder or culpable homicide - No previous enmity between the deceased and the appellant - Deceased remonstrated with appellant about his cattle entering the field of deceased and appellant inflicted stick injuries on the head of deceased resulting into fracture of two parietal bones - Deceased was an old man of 70 years of age - It can be readily inferred that he acted with the intention of causing such bodily injuries to deceased as were likely to cause death - Conviction of appellant u/s 302 of IPC not justified - However, he is liable to be convicted u/s 304 Part-I of IPC.* [Balla @ Baladeen v. State of M.P.] ...2620

Penal Code (45 of 1860), Sections 302, 304 Part I - *'Murder' or 'culpable homicide' - Some dispute occurred between appellant and his wife (the deceased), prior to occurrence - Later, the appellant, on getting late as his wife delaying in cooking food, was enraged and he assaulted his wife with a pestle on her head, resulting her death - The act of appellant, being in a heat of passion on the spur of moment without any premeditation and giving a solitary below comes within the purview of S. 304 Part I of IPC - Conviction altered.* [Kodulal @ Laxman v. State of M.P.] ...2181

Penal Code (45 of 1860), Sections 302, 304-I/149 & 148 - *Murder or culpable homicide - Neither any single injury found on the body was sufficient in the ordinary course of nature to cause death nor the injuries found on the body, cumulatively, were sufficient in the ordinary course of nature to cause death nor any injury was inflicted on any vital part of the body of deceased - In these circumstances, it could not be held that the injuries by the appellants were caused with the intention of causing death or causing such bodily injury as was likely to cause death of deceased - However, since the appellants wielded weapons like sword, axe, Farsa etc., it can safely be held that they had knowledge that it was likely to cause death of deceased - Conviction of appellants u/s 304-I, altered to one u/s 304 Part II.* [Purushottam Patel v. State of M.P.] ...*66

Penal Code (45 of 1860), Sections 302, 304 Part-II r/w 34 - *The incident occurred in a sudden quarrel in which accused caused such injury to deceased which resulted in his unfortunate death - The real genesis regarding occurrence is not placed on record, so, one cannot reach the conclusion as to who was the aggressor in the incident - Appellants/accused have not taken undue advantage or have acted in a cruel or unusual manner - In these circumstances, the offence committed by appellants in relation to deceased falls under exception 4 of S. 300 IPC and they are liable to be convicted for committing culpable homicide, not amounting to murder.* [Anusuiya Singh v. State of M.P.] ...1981

Penal Code (45 of 1860), Sections 302 & 307 - *Murder of wife and*

दण्ड संहिता (1860 का 45), धाराएँ 302 व 304 भाग–I – हत्या या आपराधिक मानव वध – अपीलार्थी और मृतक के बीच पूर्व से कोई वैमनस्यता नहीं – अपीलार्थी के मवेशी मृतक के खेत में घुसने के संबंध में मृतक ने अपीलार्थी के साथ प्रतिवाद किया और अपीलार्थी ने मृतक की सिर पर डंडे से चोटें पहुँचायीं जिसके परिणामस्वरूप दो पार्श्विक हड्डियाँ टूट गयीं – मृतक 70 वर्ष की आयु का एक वृद्ध व्यक्ति था – यह निष्कर्ष सुगमता से निकाला जा सकता है कि उसने मृतक को ऐसी शारीरिक क्षति कारित करने के आशय से कार्य किया जिससे मृत्यु कारित होना संभाव्य था – भा.द.सं. की धारा 302 के अन्तर्गत अपीलार्थी की दोषसिद्धि न्यायसंगत नहीं – तथापि वह भा. द.सं. की धारा 304 भाग–I के अन्तर्गत दोषसिद्ध किये जाने योग्य है। (बल्ला उर्फ बालादीन वि. म.प्र. राज्य) ...2620

दण्ड संहिता (1860 का 45), धाराएँ 302, 304 भाग I– 'हत्या' या 'आपराधिक मानव वध' – घटना से पूर्व अपीलार्थी और उसकी पत्नि (मृतक) के बीच कोई विवाद हुआ – बाद में खाना बनाने में उसकी पत्नि द्वारा विलंब के कारण देरी होने से अपीलार्थी क्रोधित हुआ और उसने अपनी पत्नि के सिर पर मूसर से हमला किया, जिसके परिणामस्वरूप उसकी मृत्यु हो गयी – अपीलार्थी का कृत्य अचानक क्रोध के आवेश में बिना किसी पूर्वचिन्तन के होने से और एकमात्र वार करना भा.द.सं. की धारा 304 भाग I के क्षेत्र के भीतर आता है – दोषसिद्धि परिवर्तित की गई। (कोडूलाल उर्फ लक्ष्मण वि. म.प्र. राज्य) ...2181

दण्ड संहिता (1860 का 45), धाराएँ 302, 304–I/149 व 148 – हत्या या आपराधिक मानव वध – न तो कोई एक क्षति शरीर पर पायी गई जो प्रकृति के सामान्य अनुक्रम में मृत्यु कारित करने के लिये पर्याप्त हो और न ही शरीर पर पायी गई क्षतियाँ संचयी तौर पर प्रकृति के सामान्य अनुक्रम में मृत्यु कारित करने के लिये पर्याप्त थीं और न ही मृतक के शरीर के किसी मर्मस्थल पर कोई क्षति पहुँचाई गयी – इन परिस्थितियों में यह नहीं माना जा सकता कि अपीलार्थियों द्वारा क्षतियाँ, मृत्यु कारित करने अथवा ऐसी शारीरिक क्षति जिससे मृतक की मृत्यु कारित होना संभाव्य था, कारित करने के आशय से कारित की गयीं थीं – तथापि, चूंकि अपीलार्थी तलवार, कुल्हाड़ी, फर्सा आदि जैसे आयुधों से सुसज्जित थे, यह सुरक्षित रूप से माना जा सकता है कि उन्हें ज्ञान था कि मृतक की मृत्यु कारित होना संभाव्य था – धारा 304–I के अंतर्गत अपीलार्थियों की दोषसिद्धि को धारा 304 भाग–II के अंतर्गत परिवर्तित किया गया। (पुरषोत्तम पटेल वि. म.प्र. राज्य) ---*66

दण्ड संहिता (1860 का 45), धाराएँ 302, 304 भाग–II सहपठित धारा 34 – घटना आकस्मिक झगड़े में घटित हुई जिसमें अभियुक्त ने मृतक को ऐसी क्षति कारित की जिसके परिणामस्वरूप उसकी दुर्भाग्यवश मृत्यु हुई – घटना के सम्बन्ध में वास्तविक उत्पत्ति अभिलेख पर नहीं रखी गयी, इसलिए कोई व्यक्ति इस निष्कर्ष पर नहीं पहुँच सकता कि घटना में आक्रमणकर्ता कौन था – अपीलार्थियों/अभियुक्तों ने अनुचित लाभ नहीं लिया है अथवा क्रूरतापूर्ण या असामान्य ढंग से कार्य नहीं किया है – इन परिस्थितियों में, अपीलार्थियों द्वारा मृतक के सम्बन्ध में किया गया अपराध भा.द.सं. की धारा 300 के अपवाद 4 के अन्तर्गत आता है और वे हत्या की कोटि में न आने वाला आपराधिक मानव वध करने के लिए दोषसिद्ध किये जाने योग्य हैं। (अनुसुईया सिंह वि. म.प्र. राज्य) ...1981

दण्ड संहिता (1860 का 45), धाराएँ 302 व 307 – पत्नी और पुत्री की हत्या और 2

daughter and attempt of murder of 2 daughters - Evidence of two injured daughters supported by medical evidence and other evidence - Presence of accused not challenged and the explanation of accused that some unknown person caused injuries to victim found not truthful - Held - The offence is proved. [In Reference v. Mohammad Shafiq @ Munna @ Shafi] ...2405

Penal Code (45 of 1860), Sections 302, 341 & 506-B - *Appeal against conviction of appellant on basis of sole evidence of wife of deceased - Held - In view of direct conflict between medical evidence and ocular account given by solitary eye witness, who has only deposed against appellant and acquitted co-accused, is not sufficient to base conviction of appellant - Conviction and sentence set aside.* [Shiv Charan v. State of M.P.] ...2198

Penal Code (45 of 1860), Sections 302, 364 & 201 - ***Kidnapping & murder of a boy of 10 years - Held*** - *The deceased child was last seen alive in the company of appellant and thereafter, his dead body was discovered from the forest on the information furnished by the appellant - The inevitable conclusion is that it was appellant only, who had kidnapped the child/deceased from the guardianship of his parents and committed his murder by throttling him, though the motive for commission of the crime remained shrouded in mystery.* [Sanjay Deevan v. State of M.P.] ...2389

Penal Code (45 of 1860) - Sections 302, 376 - See - *Evidence Act, 1872, Section 3.* [In Reference v. Rahul] ...2206

Penal Code (45 of 1860), Sections 302, 392, 397, 411, 413 & 414 - See - *Evidence Act, 1872, Section 3* [Ramesh Chandra v. State of M.P.] ...2368

Penal Code (45 of 1860), Section 304-A - *On highway, if pedestrian crosses the road without taking note of approaching bus, the driver cannot be held guilty in absence of reliable evidence regarding speed of offending vehicle and negligental act of driver.* [State of M.P. v. Kanhaiyalal] ...1971

Penal Code (45 of 1860), Sections 304-B & 498-A, Evidence Act, 1872, Sections 3 & 113-B - *Appreciation of evidence - Except for certain bald statements made by PWs.1 & 3 (mother & brother of deceased) alleging that the victim had been subjected to cruelty and harassment prior to her death, there is no other evidence to prove that the victim committed suicide on account of cruelty and harassment to which she was subjected just prior to her death, which, in fact, are the ingredients of the evidence to be led in respect of S. 113-B of the Act, 1872, in order to bring home the guilt against an accused.* [Durga Prasad v. State of M.P.] SC...1853

Penal Code (45 of 1860), Sections 304-B & 498-A, Evidence Act, 1872, Sections 3 & 113-B - *Appreciation of evidence - In order to bring home a conviction u/s 304-B IPC, it will not be sufficient to only lead evidence showing that cruelty or harassment had been meted out to the victim, but that such treatment was in connection with the demand for dowry - The prosecution*

पुत्रियों की हत्या का प्रयत्न – दो क्षतिग्रस्त पुत्रियों की साक्ष्य चिकित्सीय साक्ष्य व अन्य साक्ष्य से समर्थित – अभियुक्त की उपस्थिति को चुनौती नहीं दी गयी और अभियुक्त का स्पष्टीकरण कि किसी अज्ञात व्यक्ति ने पीड़ित को क्षतियाँ कारित कीं, सही नहीं पाया गया – अभिनिर्धारित – अपराध साबित होता है। (इन रेफरेन्स वि. मोहम्मद शफीक उर्फ मुन्ना उर्फ शफी) ...2405

दण्ड संहिता (1860 का 45), धाराएँ 302, 341 व 506–बी – मृतक की पत्नी की एकमात्र साक्ष्य के आधार पर अपीलार्थी की दोषसिद्धि के विरूद्ध अपील – अभिनिर्धारित – चिकित्सीय साक्ष्य तथा एकमात्र प्रत्यक्षदर्शी साक्षी के मौखिक वृतांत जिसने केवल अपीलार्थी के विरूद्ध वचन किया है और सह–अभियुक्त को दोषमुक्त किया है, के मध्य सीधे विरोधाभास की दृष्टि से, अपीलार्थी की दोषसिद्धि आधारित करना पर्याप्त नहीं है – दोषसिद्धि एवं दंडादेश अपास्त। (शिव चरण वि. म.प्र. राज्य) ...2198

दण्ड संहिता (1860 का 45) धाराएं 302, 364 व 201 – 10 वर्षीय बालक का व्यपहरण और हत्या – अभिनिर्धारित – मृत बालक को जीवित अवस्था में अंतिम बार अपीलार्थी के साथ देखा गया और उसके पश्चात्, उसका शव अपीलार्थी द्वारा दी गई सूचना पर जंगल से खोजा गया – अवश्यंभावी निष्कर्ष यह है कि वह केवल अपीलार्थी ही था जिसने बालक/मृतक का उसके माता–पिता की संरक्षता से व्यपहरण किया और उसका गला घोंटकर उसकी हत्या की, यद्यपि अपराध करने का हेतु रहस्यमय बना रहा। (संजय दीवान वि. म.प्र. राज्य) ...2389

दण्ड संहिता (1860 का 45) – धारा 302, 376 – देखें – साक्ष्य अधिनियम, 1872, धारा 3 (इन रेफरेन्स वि. राहुल) ...2206

दण्ड संहिता (1860 का 45), धाराएँ 302, 392, 397, 411, 413 व 414 – देखें – साक्ष्य अधिनियम, 1872, धारा 3 (रमेश चंद वि. म.प्र. राज्य) ...2368

दण्ड संहिता (1860 का 45), धारा 304–ए – राजमार्ग पर, यदि राहगीर बस के समीप आने को ध्यान में रखे बिना सड़क पार करता है, तो दोषी वाहन की गति और चालक के उपेक्षापूर्ण कृत्य के सम्बन्ध में विश्वसनीय साक्ष्य के अभाव में चालक को दोषी नहीं ठहराया जा सकता। (म.प्र. राज्य वि. कन्हैयालाल) ...1971

दण्ड संहिता (1860 का 45), धाराएं 304–बी व 498–ए, साक्ष्य अधिनियम, 1872, धाराएँ 3 व 113–बी – साक्ष्य का अधिमूल्यन – सिवाय अ.सा.–1 व 3 (मृतक की माँ और भाई) द्वारा किये गये कतिपय सपाट कथनों के जिनमें यह अभिकथन किया गया कि पीड़ित को उसकी मृत्यु से पूर्व क्रूरता और प्रताड़ना के अधीन रखा गया, यह साबित करने के लिए अन्य कोई साक्ष्य नही है कि पीड़ित ने क्रूरता और प्रताड़ना के कारण आत्महत्या की, जिसके अधीन उसे मृत्यु के ठीक पूर्व रखा गया, जो कि वस्तुतः, अभियुक्त के विरूद्ध दोष सिद्ध करने के लिये अधिनियम, 1872 की धारा 113–बी के संबंध में दी जाने वाली साक्ष्य के घटक हैं। (दुर्गा प्रसाद वि. म.प्र. राज्य)SC---1853

दण्ड संहिता (1860 का 45), धाराएँ 304–बी व 498–ए, साक्ष्य अधिनियम, 1872, धाराएँ 3 व 113–बी – साक्ष्य का अधिमूल्यन – भा.द.सं. की धारा 304–बी के अंतर्गत दोषसिद्धि सिद्ध करने के लिए केवल यह दर्शाने वाली साक्ष्य कराना पर्याप्त नहीं होगा कि पीड़िता को क्रूरता अथवा प्रताड़ना भुगताई गई, बल्कि यह कि ऐसा व्यवहार दहेज की मांग से संबंधित था

failed to fully satisfy the requirements of both S. 113-B of Act, 1872 and S. 304-B of IPC - Conviction set-aside. [Durga Prasad v. State of M.P.]SC...1853

Penal Code (45 of 1860), Sections 304-B & 498-A, Evidence Act, 1872, Section 113-B - *No nexus established between demand of scooter and the death of deceased - The presumption u/s 113-B of Evidence Act can not be made applicable and accused can not be convicted u/s 304-B of IPC - However, from prosecution evidence (evidence of brother and mother of deceased), it can be gathered that after the marriage, both the accused persons had harassed and subjected the deceased to cruelty to meet their unlawful demand of scooter - Therefore, their conviction u/s 498-A of IPC affirmed.* [Ram Bhadra Tiwari v. State of M.P.] ...2625

Penal Code (45 of 1860), Section 306 - *Abetment of suicide - If by suspicion at the character of husband, a wife commits suicide, the accused can not be liable - Particularly when the wife/deceased was living with her parents in her father's house, at the time of death.* [Bhawar Singh v. State of M.P.] ...2609

Penal Code (45 of 1860), Section 307/34 - *Common intention to commit attempt to murder - Mere presence of the appellant on the spot at the time of the incident will not make him liable under the common intention for the offence - Appeal allowed.* [Sheetal Agrawal v. State of M.P.] ...*90

Penal Code (45 of 1860), Section 307/34 - ***Sentence - Mitigating circumstance*** - *Factum of compromise entered into by victims, but permission to compound the offence was declined, being the offence u/s 307 IPC non-compoundable and other offence u/s 324 IPC intrinscically connected to form the same transaction - May not be a mitigating circumstance to reduce the term of sentence to 13 months, the period already undergone - Appeal partly allowed and sentence reduced from 7 years to 2 years.* [Rajeev Lochan v. State of M.P.] ...*85

Penal Code (45 of 1860), Sections 307, 148, 302 & 326 r/w 149 - **See** - *Evidence Act, 1872, Section 3* [Champalal v. State of M.P.] ...*25

Penal Code (45 of 1860), Sections 307 & 324 - *Prosecution evidence comprising of testimony of the injured persons, a promptly lodged FIR, supportive eye witness account and substantially consistent medical evidence may be considered as sufficient to bring home the charges.* [Rajeev Lochan v. State of M.P.] ...*85

Penal Code (45 of 1860), Section 309 - *Merely by the presence of injuries on the body of accused and his presence at the place where his family members were murdered, it could not be inferred that the accused inflicted injuries to himself also.* [In Reference v. Mohammad Shafiq @ Munna @ Shafi] ...2405

– अभियोजन अधिनियम 1872 की धारा 113–बी तथा भा.द.सं. की धारा 304–बी की अपेक्षाओं का पूर्णतः समाधान करने मे असफल रहा – दोषसिद्धि अपास्त। (दुर्गा प्रसाद वि. म.प्र. राज्य)SC---1853

दण्ड संहिता (1860 का 45), धारा 304–बी व 498–ए, साक्ष्य अधिनियम, 1872, धारा 113–बी – स्कूटर की मांग एवं मृतक की मृत्यु के मध्य संबंध स्थापित नहीं – साक्ष्य अधिनियम की धारा 113–बी के अन्तर्गत उपधारणा प्रयोज्य नहीं की जा सकती एवं अभियुक्त को भा. द.सं. की धारा 304–बी के अन्तर्गत दोषसिद्ध नहीं किया जा सकता – तथापि, अभियोजन साक्ष्य (मृतक के भाई एवं माँ की साक्ष्य) से यह निष्कर्ष निकाला जा सकता है कि विवाह के पश्चात् दोनों अभियुक्तों ने उनकी स्कूटर की अवैध मांग को पूरा करने के लिए मृतक को तंग किया था और क्रूरतापूर्वक बर्ताव किया था – अतः भा.द.सं. की धारा 498–ए के अन्तर्गत उनकी दोषसिद्धि की पुष्टि की गयी। (राम भद्र तिवारी वि. म.प्र. राज्य) ...2625

दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या का दुष्प्रेरण – यदि पति के चरित्र पर संदेह के कारण पत्नी आत्महत्या कर लेती है तो अभियुक्त दायी नहीं हो सकता है – विशेष रूप से जब पत्नी/मृतक मृत्यु के समय अपने पिता के घर में अपने माता–पिता के साथ रह रही हो। (भवर सिंह वि. म.प्र. राज्य) ...2609

दण्ड संहिता (1860 का 45), धारा 307/34 – हत्या का प्रयत्न करने का सामान्य आशय – घटना के समय घटनास्थल पर अपीलार्थी की उपस्थिति मात्र ही उसे अपराध के लिए सामान्य आशय के अन्तर्गत दायी नहीं बनायेगी – अपील मंजूर। (शीतल अग्रवाल वि. म.प्र. राज्य) ---*90

दण्ड संहिता (1860 का 45), धारा 307/34 – दण्डादेश – कम करने वाली परिस्थिति – पीड़ित के द्वारा राजीनामा किये जाने का तथ्य, लेकिन भा.द.सं की धारा 307 के अन्तर्गत अपराध शमनीय न होने तथा भा.द.सं. की धारा 324 के अन्तर्गत अपराध वस्तुतः एक ही संव्यवहार से सम्बद्ध होने के कारण अपराध का शमन करने की अनुज्ञा नहीं दी गयी – दण्ड की अवधि 13 माह, भुगती जा चुकी सजा अवधि, तक कम करने वाली परिस्थिति नहीं हो सकती – अपील अंशतः मंजूर एवं दण्डादेश 7 वर्ष से घटाकर 2 वर्ष किया गया। (राजीव लोचन वि. म.प्र. राज्य) ---*85

दण्ड संहिता (1860 का 45) धाराएं 307, 148, 302 व 326 सहपठित 149 – देखें – साक्ष्य अधिनियम, 1872, धारा 3, (चंपालाल वि. म.प्र. राज्य) ---*25

दण्ड संहिता (1860 का 45), धाराएँ 307 व 324 – अभियोजन साक्ष्य, जिसमें आहत व्यक्तियों की साक्ष्य, तत्काल दर्ज प्रथम सूचना रिपोर्ट, प्रत्यक्षदर्शी साक्षी की समर्थनकारी साक्ष्य तथा सारभूत रूप से संगत चिकित्सीय साक्ष्य समाविष्ट है, आरोपों को साबित करने हेतु पर्याप्त समझी जा सकती हैं। (राजीव लोचन वि. म.प्र. राज्य) ---*85

दण्ड संहिता (1860 का 45), धारा 309 – मात्र अभियुक्त के शरीर पर क्षतियों की मौजूदगी और उस स्थान पर, जहाँ उसके परिवार के सदस्यों की हत्या हुई, उसकी उपस्थिति से यह अनुमान नहीं निकाला जा सकता कि अभियुक्त ने स्वयं को भी क्षतियाँ पहुँचायी। (इन रेफरेन्स वि. मोहम्मद शफीक उर्फ मुन्ना उर्फ शफी) ...2405

Penal Code (45 of 1860), Section 363 - *Kidnapping - Prosecution did not examine the husband of the prosecutrix, his cousin and the woman, who could prove the facts relating to absence of the prosecutrix from her matrimonial home and her presence in the company of the appellant - Probabilities factors favoured the defence - Appellant was entitled to benefit of doubt.* [Ravi v. State of M.P.] ...2641

Penal Code (45 of 1860), Sections 363 & 366, Evidence Act, 1872, Section 3 - *Prosecutrix at her own instance came from her parental home and thereafter accompanied with the appellant went and visited to various places then, the offence either for taking her from the lawful custody without consent of her parents or of the kidnapping could not be deemed established against the appellant - On premises that later on appellant did not insist her to go back to her parental home and contrary to it, by facilitating he visited various places on her consent with her, the conviction is not sustainable - Appeal allowed - Appellant acquitted.* [Ghanshyam @ Ghanshu v. State of M.P.] ...*42

Penal Code (45 of 1860), Sections 363, 366, 376(2)(f) & 302, Evidence Act, 1872, Section 3 - ***Circumstantial evidence*** *- Three witnesses seen the appellant forcibly taking away the deceased (a minor girl) with him - Dead body found in a well after 3 days - Positive medical evidence regarding rape and death on relavant day - The chain of circumstances are so complete on which basis inference can be drawn against the appellant/accused that he is the person who committed the aforesaid offence of kidnapping, commission of rape on the deceased and also caused death of the deceased by throwing her into a well - Conviction and sentence affirmed.* [Haricharan v. State of M.P.] ...2201

Penal Code (45 of 1860), Section 376 - ***Rape*** *- Evidence of prosecutrix corroborated by her mother and further corroborated by FIR and FSL report - The possibility of false implication is also ruled out - The offence is proved beyond reasonable doubt.* [Shesh Upadhyaya @ Sheshmani v. State of M.P.]...*91

Penal Code (45 of 1860), Section 376 - ***Rape*** *- Merely because the victim was more than sixteen years of age, that cannot be a ground to hold that she was a consenting party - Also the mere fact that the prosecutrix was found habitual to sexual intercorse by Doctor, shall be no ground to suspect her testimony as against the appellant.* [Girish Kumar v. State of M.P.]...2373

Penal Code (45 of 1860), Section 376 - ***Rape*** *- Prosecutrix gave a materially different version in her sworn testimony - No medical or forensic evidence to support the specific allegation about rape - Probabilities factors favoured the defence - Appellant was entitled to benefit of doubt - Appeal allowed.* [Ravi v. State of M.P.] ...2641

Penal Code (45 of 1860), Section 376(1) - See - *Evidence Act, 1872, Section 3* [Dinesh Jaiswal v. State of M.P.] SC...1839

दण्ड संहिता (1860 का 45), धारा 363 – व्यपहरण – अभियोजन ने अभियोक्त्री के पति, उसके समभ्राता तथा उस स्त्री की, जो अभियोक्त्री के उसके वैवाहिक घर से अनुपस्थित होने एवं अपीलार्थी के साथ मौजूद होने संबंधी तथ्य को सिद्ध कर सकते थे, की परीक्षा नहीं करायी – अधिसंभाव्य कारक बचाव पक्ष का समर्थन करते हैं – अपीलार्थी संदेह के लाभ का हकदार था । (रवि वि. म.प्र. राज्य) ...2641

दण्ड संहिता (1860 का 45), धाराएँ 363 व 366, साक्ष्य अधिनियम, 1872, धारा 3 – अभियोक्त्री अपनी मर्जी से अपने माता–पिता के घर से आयी और तत्पश्चात अपीलार्थी के साथ विभिन्न स्थानों की यात्रा की, तब अपीलार्थी के विरूद्ध या तो उसे उसके माता–पिता की वैध अभिरक्षा से बिना सहमति ले जाने का या व्यपहरण का अपराध स्थापित होना नही माना जा सकता – इस आधार पर कि बाद मे अपीलार्थी ने उसे उसके माता–पिता के घर लौट जाने के लिये आग्रह नहीं किया और उसके विपरीत सुकर बनाकर वह उसकी सहमति से उसके साथ विभिन्न स्थानों पर गया, उसकी दोषसिद्धि बनाये रखने योग्य नहीं है – अपील मंजूर – अपीलार्थी दोषमुक्त। (घनश्याम उर्फ घन्सू वि. म.प्र. राज्य) ---*42

दण्ड संहिता (1860 का 45), धाराएँ 363, 366, 376(2)(एफ) व 302, साक्ष्य अधिनियम, 1872, धारा 3 – परिस्थितिक साक्ष्य – तीन साक्षियों ने मृतक (एक अवयस्क बालिका) को बलपूर्वक अपने साथ ले जाते हुए अपीलार्थी को देखा – तीन दिन पश्चात कुएं मे मृत शरीर पाया गया – सुसंगत दिन बलात्संग एवं मृत्यु के संबंध मे सकारात्मक चिकित्सीय साक्ष्य – परिस्थितियों की कड़ियां इतनी सम्पूर्ण हैं कि उसके आधार पर अपीलार्थी/अभियुक्त के विरूद्ध यह निष्कर्ष निकाला जा सकता है कि वही व्यक्ति है जिसने व्यपहरण का उक्त आरोप कारित किया, मृतक के साथ बलात्संग कारित किया और कुंए मे फेंककर मृतक की मृत्यु भी कारित की – दोषसिद्धि एवं दण्डादेश की पुष्टि की गयी। (हरिचरण वि. म.प्र. राज्य) ...2201

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – अभियोक्त्री की साक्ष्य उसकी माँ द्वारा एवं उसके अतिरिक्त एफ.आई.आर. एवं एफ.एस.एल. रिपोर्ट द्वारा संपुष्ट – झूठा फंसाये जाने की संभावना भी खत्म – अपराध युक्तियुक्त संदेह से परे साबित। (शेष उपाध्याय उर्फ शेषमनी वि. म.प्र. राज्य) ---*91

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – मात्र इसलिए कि पीड़ित की आयु 16 वर्ष से अधिक थी, वह यह अभिनिर्धारित करने का आधार नहीं हो सकती कि वह सहमत पक्षकार थी – मात्र यह तथ्य कि चिकित्सक द्वारा अभियोक्त्री को मैथुन का अभ्यस्त होना पाया गया, अपीलार्थी के विरुद्ध उसके साक्ष्य पर संदेह का कोई आधार नहीं होगा। (गिरीश कुमार वि. म.प्र. राज्य) ...2373

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – अभियोक्त्री ने अपने शपथ कथन में तात्विक रूप से भिन्न बयान दिया – बलात्संग के विनिर्दिष्ट अभिकथन के समर्थन में कोई चिकित्सीय या न्यायालयिक साक्ष्य नहीं – अधिसंभाव्य कारक बचाव पक्ष का समर्थन करते हैं – अपीलार्थी संदेह के लाभ का हकदार था – अपील मंजूर। (रवि वि. म.प्र. राज्य) ...2641

दण्ड संहिता (1860 का 45), धारा 376(1) – देखें – साक्ष्य अधिनियम, 1872, धारा 3 (दिनेश जायसवाल वि. म.प्र. राज्य) SC---1839

Penal Code (45 of 1860), Section 376/34 - *Rape - Accused & Co-accused were convicted for offence of rape on prosecutrix, an illiterate rustic village girl - Appeal against, by the appellant - Held - There is no dispute regarding incident and place of occurrence - Defence could not establish that it was a case of consent - FIR was lodged most promptly - Accused were arrested on next day - There is no reason for which prosecutrix would have enroped them falsly - Appeal dismissed.* [Vijay @ Chinee v. State of M.P.] SC...2257

Penal Code (45 of 1860), Section 376 or 354 - *Mere availability of seminal stains found on the trousers of the appellant, who was a married man, would not be sufficient to connect him with the offence of rape.* [Prakash Dabar v. State of M.P.] ...2349

Penal Code (45 of 1860), Sections 376, 506-I - *Rape - Testimony of the prosecutrix against the appellant if found to be clear, cogent and trustworthy and it inspires confidence, it can be acted upon without any corroboration.* [Girish Kumar v. State of M.P.] ...2373

Penal Code (45 of 1860), Section 420 - *Applicant was convicted for cheating the complainant by inducing and obtaining from him a sum for providing a job of peon in Tahsildar Office - Held - Alleged receipts and letter not proved to be written by the applicant - Sole testimony of complainant is contradictory from the averments of FIR lodged by him and also is inconsistent inter se - The complaint also not in position to identify the applicant - Such witness could not be relied on for holding conviction - Conviction and sentence set aside.* [Heeralal v. The State of M.P.] ...2220

Petroleum Rules, 2002, Rule 154(2) - *Appeal against any order of the District Authority - Sub-rule does not provide for an appeal when the District Authority refuses to cancel the no-objection certificate - Petition Allowed.* [Yogesh Kumar Gulati v. Satya Prakash Dhingra] ...2324

Practice and Procedure - ***Interim order - Whether binding - Held*** - *The interim order does not have a binding force.* [Barwani Sugar v. Union of India] ...*40

Practice & Procedure - ***Judgments - Judicial discipline - Held*** - *Decisions rendered on the same facts of law have to be followed and subsequently no authority, whether quasi-judicial or judicial, can generally be permitted to take a different view - However this mandate is subject to the usual gateways of distinguishing the earlier decisions or where the earlier decision is per incuriam.* [Ravindra Kumar Gupta v. State of M.P.] ...2511

Prevention of Corruption Act (2 of 1947), Section 5(1) r/w 5(2), Penal Code, 1860, Section 161 - *Acquittal of respondent that the sanction for prosecution was improper and given without application of mind, though the trap was found to have been proved - Held - While granting sanction the*

दण्ड संहिता (1860 का 45), धारा 376/34 – बलात्संग – अभियुक्त व सह–अभियुक्त को अभियोक्त्री, एक अशिक्षित देहाती गाँव की लड़की, के साथ बलात्संग के अपराध के लिये दोषसिद्ध किया गया – इसके विरूद्ध अपीलार्थी द्वारा अपील – अभिनिर्धारित – घटना एवं घटना स्थल के संबधं में कोई विवाद नहीं – बचाव पक्ष यह साबित नहीं कर सका कि यह सम्मति का मामला था – एफ.आई.आर. तत्परता से दर्ज कराई गयी – अगले दिन अभियुक्तों को गिरफ्तार कर लिया गया – कोई कारण नहीं है जिसके लिये अभियोक्त्री ने उन्हें झूठा फँसाया हो – अपील खारिज। (विजय उर्फ चीनी वि. म.प्र. राज्य) SC–2257

दण्ड संहिता (1860 का 45), धारा 376 या 354 – अपीलार्थी, जो कि विवाहित पुरूष था, की पतलून पर वीर्य के धब्बों की उपलब्धता मात्र ही उसे बलात्संग के अपराध से संयोजित करने हेतु पर्याप्त नही होगी। (प्रकाश डाबर वि. म.प्र. राज्य) ...2349

दण्ड संहिता (1860 का 45), धाराएँ 376, 506–I – बलात्संग – अभियोक्त्री की अपीलार्थी के विरुद्ध साक्ष्य यदि स्पष्ट, अकाट्य एवं विश्वसनीय होना पायी जाती है एवं विश्वास हेतु प्रेरित करती है तो उस पर बिना किसी सम्पुष्टि के अवलम्ब किया जा सकता है। (गिरीश कुमार वि. म.प्र. राज्य) ...2373

दण्ड संहिता (1860 का 45), धारा 420 – शिकायतकर्ता के साथ उत्प्रेरण द्वारा छल करने के लिये और तहसीलदार के कार्यालय में मृत्य का कार्य दिलवाने के लिये उससे रकम प्राप्त करने के लिये आवेदक को दोषसिद्ध किया गया – अभिनिर्धारित – कथित रसीद तथा पत्र आवेदक द्वारा लिखा गया होना साबित नही किया गया – शिकायतकर्ता की एकमात्र साक्ष्य, उसके द्वारा दर्ज कराई गयी प्रथम सूचना रिपोर्ट के प्रकथनों के विरोधात्मक है और एक दूसरे के मुकाबले असंगत भी है – शिकायतकर्ता आवेदक को पहचानने की स्थिति में भी नहीं है – दोषसिद्धि निर्धारित करने के लिये ऐसे साक्षी पर विश्वास नहीं किया जा सकता – दोषसिद्धि एवं दण्डादेश अपास्त। (हीरालाल वि. म.प्र. राज्य) ...2220

पेट्रोलियम नियम, 2002, नियम 154(2) – जिला प्राधिकारी के किसी आदेश के विरुद्ध अपील – उपनियम, जिला प्राधिकारी द्वारा अनापत्ति प्रमाण पत्र को रद्द करने से इनकार करने पर, अपील का उपबन्ध नहीं करता है – याचिका मंजूर। (योगेश कुमार गुलाटी वि. सत्यप्रकाश ढींगरा) ...2324

पद्धति और प्रक्रिया – अंतरिम आदेश – क्या बाध्यकारी है – अभिनिर्धारित – अंतरिम आदेश में बाध्यकारी शक्ति नहीं है। (बरवानी शुगर वि. यूनियन ऑफ इंडिया) ---*40

पद्धति और प्रक्रिया – निर्णय – न्यायिक अनुशासन – अभिनिर्धारित – विधि के समान तथ्यों पर दिये गये विनिश्चयों का अनुसरण करना होगा और तत्पश्चात् किसी प्राधिकारी को, चाहे न्यायिक–कल्प हो अथवा न्यायिक, अलग दृष्टिकोण लेने की सामान्यतः अनुमति नहीं दी जा सकती – तथापि, यह आदेश, पूर्वतर विनिश्चयों को सुभिन्न करनें के साधारण रास्तों के अधीन है अथवा जहां पूर्वतर विनिश्चय अनवधानता के कारण है। (रवीन्द्र कुमार गुप्ता वि. म.प्र. राज्य) ...2511

भ्रष्टाचार निवारण अधिनियम (1947 का 2), धारा 5(1) सहपठित 5(2), दण्ड संहिता, 1860, धारा 161 – प्रत्यर्थी की दोषमुक्ति की अभियोजन के लिये मंजूरी अनुचित थी और मस्तिष्क का उपयोग किये बिना ही दी गयी, यद्यपि ट्रैप को साबित किया जाना पाया गया – अभिनिर्धारित – मंजूरी प्रदान करते समय संबंधित अधिकारी से यह अपेक्षित नही कि यह दर्शाये कि

officer concerned is not required to indicate that he had personally scrutinized the file and had arrived at the satisfaction for granting sanction - The narration of events granting sanction for prosecution clearly indicates the case and the reason for grant of such sanction - Matter remitted for passing orders on the merits of case. [State of M.P. v. Harishankar Bhagwan Pd. Tripathi] SC...2027

Prevention of Corruption Act (49 of 1988), Section 7 - *Demand - Complainant changed his version every step and so his testimony is not reliable & acceptable - Younger brother of complainant, who accompanied him, not examined - Tape recorded conversation also not proved - Held - Apparently, there is no dependable evidence of any demand or acceptance of bribe by the appellant - Conviction and sentence set aside - Appeal allowed.* [Hareram Kaurav v. State of M.P.] ...2612

Prevention of Corruption Act (49 of 1988), Sections 7, 13(1)(d), 13(2) & 20, Penal Code, 1860, Section 201 - *Demand of bribe from complainant for getting the possession of shop delivered to him is proved - Conversation of complainant and accused/appellant was recorded in a cassette, also proved - Conversation at 12 O'clock of night at residence of appellant between complainant and appellant regarding matter of shop and when the bribe money was delivered was also recorded in cassette and proved - The hands of appellant when dipped into solution of sodium corbonate, its colour turned to light pink - Bribe money/currency notes were recovered from the sewage chamber connected to the house of appellant - The defence/explanation furnished by the appellant did not appear reliable - It stands established that the appellant demanded and accepted the bribe money by way of illegal gratification and also attempted to obtain further money as bribe for himself and also for SDM as a motive for showing favour to complainant in getting possession of the shop to him - Conviction affirmed.* [Ravindra Kumar Ganvir v. State of M.P.] ...*87

Prevention of Food Adulteration Act (37 of 1954), Section 16(1)(a)(i) - *Petitioners were prosecuted u/s 7/16 of the Act for violation of Rule 32(e) of the Food Adulteration Rules, 1955 - Violation of Rule 32(e) which has been declared to be ultra-vires; can not be said to be an offence - Conviction of petitioner for misbranding on account of violation of Rule 32(e) cannot be allowed to sustain.* [Manoj v. State of M.P.] ...1990

Prevention of Food Adulteration Act (37 of 1954), Section 16(1)(a)(ii) - *Documents filed by the prosecution itself, which goes to show that on the relevant date petitioner was possessing the license - Petitioner was possessing the license on the date of alleged offence, therefore, the conviction of the petitioner on that account also can not be allowed to sustain.* [Manoj v. State of M.P.] ...1990

Prisoners' Release on Probation Act, M.P. (16 of 1954) - *Petitioner was convicted u/s 302 of IPC - Application for release on probation on*

उसने व्यक्तिगत रूप से फाइल की संविक्षा की थी और मंजूरी प्रदान करने के लिये उसका समाधान हुआ था – अभियोजन के लिये मंजूरी प्रदान करने की दशाओं का वर्णन स्पष्ट रूप से, मामला तथा ऐसी मंजूरी प्रदान करने के लिये कारण दर्शाता है – मामले के गुणदोषों पर आदेश पारित करने के लिये मामला प्रतिप्रेषित किया गया। (म.प्र. राज्य वि. हरिशंकर भगवान प्रसाद त्रिपाठी) SC---2027

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 7 – माँग – परिवादी ने प्रत्येक प्रक्रम पर अपना कथन बदला, इसलिए उसकी साक्ष्य विश्वसनीय और स्वीकार योग्य नहीं है – परिवादी का छोटा भाई, जो उसके साथ था, की परीक्षा नहीं की गयी – टेप रिकार्ड की गई बातचीत भी साबित नहीं हुई – अभिनिर्धारित – प्रकट रूप से, अपीलार्थी द्वारा रिश्वत की कोई माँग या रिश्वत स्वीकार किये जाने संबंधी कोई विश्वसनीय साक्ष्य नहीं है – दोषसिद्धि एवं दण्डादेश अपास्त – अपील मंजूर। (हरेराम कौरव वि. म.प्र. राज्य) ...2612

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 7, 13(1)(डी), 13(2) व 20, दण्ड संहिता, 1860, धारा 201 – परिवादी को दुकान का कब्जा दिलाने के लिए उससे रिश्वत की मांग किया जाना साबित – परिवादी और अभियुक्त/अपीलार्थी का कैसेट में रिकॉर्ड किया गया वार्तालाप भी साबित – रात के 12 बजे अपीलार्थी के आवास पर अपीलार्थी एवं परिवादी के मध्य दुकान के विषय में वार्तालाप और जब रिश्वत का पैसा दिया गया उसकी भी कैसेट में रिकार्डिंग की गयी और साबित किया गया – जब अपीलार्थी के हाथों को सोडियम कार्बोनेट के घोल मे डुबोया गया, उसका रंग हल्का गुलाबी हो गया – रिश्वत का पैसा/करेंसी नोट अपीलार्थी के घर से जुड़े सीवेज चेंबर से बरामद किये गये – अपीलार्थी द्वारा प्रस्तुत बचाव/स्पष्टीकरण विश्वसनीय प्रतीत नहीं होता – यह सिद्ध है कि अपीलार्थी ने अवैध परितोषण के रूप में रिश्वत मांगी एवं ग्रहण की तथा परिवादी को दुकान का कब्जा दिलाने में सहायता करने के हेतु स्वरूप स्वयं के लिए एवं एस.डी.एम. के लिए भी रिश्वत के रूप में और अधिक रुपया प्राप्त करने का प्रयत्न किया – दोषसिद्धि की पुष्टि की गयी। (रवीन्द्र कुमार गनवीर वि. म.प्र. राज्य) ---*87

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 16(1)(ए)(i) – खाद्य अपमिश्रण नियम, 1955 के नियम 32(ई) के उल्लंघन के लिये याचियों को अधिनियम की धारा 7/16 के अंतर्गत अभियोजित किया गया – नियम 32(ई) जिसे अधिकारातीत घोषित किया गया है, का उल्लंघन अपराध नहीं कहा जा सकता – नियम 32(ई) के उल्लंघन के कारण मिथ्या छाप के लिये याची की दोषसिद्धि कायम नहीं रखी जा सकती है। (मनोज वि. म.प्र. राज्य) ...1990

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 16(1)(ए)(ii) – स्वयं अभियोजन द्वारा प्रस्तुत दस्तावेज यह दर्शाते हैं कि सुसंगत तारीख को याची के पास लायसेंस था – कथित अपराध की तारीख को याची के पास लायसेंस था, इसलिए इस कारण भी याची की दोषसिद्धि कायम रखने की इजाजत नहीं दी जा सकती है। (मनोज वि. म.प्र. राज्य) ...1990

बंदियों का परिवीक्षा पर छोड़ा जाना अधिनियम, म.प्र. (1954 का 16) – याची को भा.द.सं. की धारा 302 के अंतर्गत दोषसिद्ध किया गया – 11 वर्ष पूर्ण होने पर परिवीक्षा पर छोड़े

completion of 11 years - Held - Petitioner can not be released on probation prior to completion of 14 years as specified in notification - However, his case can be considered for release on probation even prior to completion of 14 years as he is in jail for more than 10 years - Manner of commission of crime is also relevant consideration for release on probation - State has dealt with the aspect while considering the case of petitioner - No irregularity of any kind has taken place while rejecting the case of petitioner for release on probation - Petition dismissed. [Pradeep Dantre v. State of M.P.] ...2045

Private Medical and Dental Under Graduage Entrance Examination Rules, M.P. 2009, Rule 9 - See - *Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, M.P., 2007, Section 8,* [Akanksha Pandey v. State of M.P.] ...2541

Promissory Estoppel - *Grant of license for cultivation of opium poppy - Petitioner alleged that once the license has been granted it cannot be cancelled on the principle of promissory Estoppel - Held - When the grant of license to the petitioner is illegal on the ground of their ineligibility under the law - The principle of promissory estoppel has no application in such cases.* [Radheshyam v. Union of India] ...*34

Protection of Human Rights Act, 1993 (10 of 1994), Sections 14 & 16 - *Whether the findings in a D.E. in respect of conduct of police personnel leading to breach of human rights of a citizen, will have a precedent over the findings of the Human Rights Commission recorded earlier - Held - On the basis of such enquiry the Commission returns a finding and directs the employer to take action - It will not be within the power of authorities to dilute the finding of the Commission in a domestic enquiry.* [M.P. Human Rights Commission v. State of M.P.] ...*45

Public Interest Litigation - *Alternative remedy - Petitioner sought direction to hold an enquiry against the respondent No.5 and to take suitable action regarding different Government construction works - Held - Since the provisions of the M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 are a complete Code in itself and provide a remedy to an aggrieved person, he should at the first instance resort to the remedy provided under the Act - In such a case the PIL should not be entertained.* [Abdul Naim v. State of M.P.] ...2486

Public Liability Insurance Act (6 of 1991), Section 3 - *Liability to give relief in certain cases on principle of no fault - The victim died due to electric shocks and the application by his legal representative u/s 6 of the Act rejected - Held - The death was due to 'handling' of hazardous substance being the proximate cause for death, sufficient it is for the person who claims through such deceased to maintain the claim for relief - On principle of no fault liability the Collector was not justified in rejecting the claim - Petition allowed.* [Mankunwar Bai (Smt.) v. Chairman] ...*82

जाने हेतु आवेदन – अभिनिर्धारित – जैसा कि अधिसूचना मे निर्दिष्ट है याची को 14 वर्ष की अवधि पूर्ण होने से पूर्व परिवीक्षा पर नहीं छोड़ा जा सकता – तथापि 14 वर्ष पूर्ण होने के पूर्व भी परिवीक्षा पर छोड़े जाने के उसके मामले पर विचार किया जा सकता है क्योंकि वह 10 वर्ष से अधिक समय से कारागार में है – परिवीक्षा पर छोड़े जाने हेतु अपराध करने का ढंग भी सुसंगत विचार है – याची के मामले पर विचार किये जाते समय राज्य ने इस पहलू पर कार्यवाही की – याची के परिवीक्षा पर छोड़े जाने के मामले को नामंजूर करते समय किसी प्रकार की कोई अनियमितता नहीं हुयी है – याचिका खारिज। (प्रदीप दान्त्रे वि. म.प्र. राज्य) ...2045

निजी चिकित्सा और दंत पूर्वस्नातक प्रवेश परीक्षा नियम, म.प्र. 2009, नियम 9 – देखें – निजी व्यावसायिक शिक्षण संस्था (प्रवेश का विनियमन एवं शुल्क का निर्धारण) अधिनियम, म.प्र., 2007, धारा 8, (आकांक्षा पाण्डे वि. म.प्र. राज्य) ...2541

वचन विबंध – अफीम की खेती करने के लिए अनुज्ञप्ति देना – याची का अभिकथन कि एक बार अनुज्ञप्ति प्रदान करने के बाद उसे वचन विबंध के सिद्धांत पर निरस्त नहीं किया जा सकता – अभिनिर्धारित – जब विधि के अधीन उनकी अपात्रता के आधार पर याचियों को अनुज्ञप्ति प्रदान करना अवैध है – वचन विबंध का सिद्धांत ऐसे मामलों मे लागू नहीं होगा। (राधेश्याम वि. यूनियन ऑफ इंडिया) ---*34

मानव अधिकार संरक्षण अधिनियम, 1993 (1994 का 10), धाराएँ 14 व 16 – क्या किसी पुलिस कर्मचारी के आचरण, जिसके द्वारा किसी नागरिक के मानव अधिकारों का उल्लघंन हुआ, के संबंध में किसी विभागीय जाँच के निष्कर्ष, मानवाधिकार आयोग के पूर्व में अभिलिखित निष्कर्षों के ऊपर पूर्वनिर्णय का प्रभाव रखेंगे – अभिनिर्धारित – ऐसी जाँच के आधार पर आयोग निष्कर्ष देता है और नियोक्ता को कार्यवाही करने के लिये निदेशित करता है – यह प्राधिकारियों की शक्ति के अंदर नहीं होगा कि आयोग के निष्कर्ष की शक्ति आंतरिक जाँच में कम करे। (एम.पी. ह्यूमन राईट्स कमीशन वि. म.प्र. राज्य) ---*45

लोकहित वाद – वैकल्पिक उपचार – याची ने विभिन्न शासकीय निर्माण कार्यों के सम्बन्ध में प्रत्यर्थी क्र. 5 के विरुद्ध जाँच करने और उपयुक्त कार्यवाही करने के लिए निदेश चाहा – अभिनिर्धारित – चूंकि म.प्र. लोकायुक्त एवं उप–लोकायुक्त अधिनियम, 1981 के उपबंध स्वमेव पूर्ण संहिता हैं और व्यथित व्यक्ति के लिए उपचार का उपबंध करते हैं, इसलिए उसे सर्वप्रथम अधिनियम के अन्तर्गत उपबंधित उपचार का आश्रय लेना चाहिए – ऐसी दशा में लोकहित वाद ग्रहण नहीं किया जाना चाहिए। (अब्दुल नईम वि. म.प्र. राज्य) ...2486

लोक दायित्व बीमा अधिनियम (1991 का 6), धारा 3 – कोई त्रुटि न होने के सिद्धांत पर कतिपय मामलों में अनुतोष देने का दायित्व – बिजली का झटका लगने के कारण पीड़ित की मृत्यु हुयी तथा उसके विधिक प्रतिनिधियों द्वारा अधिनियम की धारा 6 के अंतर्गत प्रस्तुत आवेदन नामंजूर किया गया – अभिनिर्धारित – मृत्यु किसी आसन्न मृत्यु वाले परिसंकटमय पदार्थ का उपयोग करने के कारण हुयी थी, यह किसी व्यक्ति के लिए, जो ऐसे मृतक के माध्यम से दावा करता है, अनुतोष हेतु दावा लाने के लिये पर्याप्त है – कोई त्रुटि दायित्व न होने के सिद्धांत पर कलेक्टर द्वारा दावा नामंजूर किया जाना न्यायसंगत नहीं था – याचिका मंजूर। (मानकुंवर बाई (श्रीमति) वि. चेयरमे) ---*82

Public Prosecution (Gazetted) Service Recruitment Rules, M.P. 1991, Rule 8(i)(a), Schedule III Column 3 - *Rule prescribes the minimum age limit for the post of ADPO to be 24 years - Vires of rule challenged on the ground that minimum age limit for Civil Judge Examination is 21 and mind has not been applied in fixing minimum age limit - Held - Fixation of minimum age limit is not illegal or arbitrary and the posts of Civil Judges are different than that of ADPOs - Petition dismissed.* [Bindu Patel (Ku.) v. State of M.P.] ...1956

Public Service (SC, ST & OBC) Reservation Act, M.P. (21 of 1994), Section 18 - *Reservation of seats - Common Law Admission Test - Age relaxation - No age relaxation given to OBC candidates - Held - S. 18 only deals with SC, ST and OBC shall have the same meaning assigned to them and it was open for the core committee of the university to lay down the age criterion for CLAT.* [Smriti Patel v. State of M.P.] ...*37

Public Trusts Act, M.P. (30 of 1951), Section 14 - *Trust property in dilapidated condition and not in any use - Alienation in any manner restricted in trust deed - Held - It will be beneficial for the object of the trust that trust property can be sold out and after obtaining entire sale proceeds, another property can be purchased in the name of trust so that by the income of that purchased property, the object of the trust can be fulfilled - Appeal allowed.* [Narayan Dharmshala v. Registrar, Public Trust] ...2463

Rajya Suraksha Adhiniyam, M.P. 1990 (4 of 1991), Section 5 - ***Externment*** *- Petitioner was indicted and externed for one year from the district - Held - Merely because in past the petitioner has admittedly paid fine in the cases under Public Gambling Act, 1867 and that cases u/ss. 107, 116(3) of Cr.P.C., registered against the petitioner the same cannot be the basis for drawing a nexus with the case which is registered against the petitioner - Petition allowed and externment order quashed.* [Balbir @ Bunty v. State of M.P.] ...*76

Rajya Suraksha Adhiniyam, M.P. 1990 (4 of 1991), Section 29 - ***Delegation of powers*** *- Competence to delegate - Externment - Held - The State Government alone can delegate the power as contemplated u/s 13 - Such delegation of power cannot be in favour of a person who is below the rank of a District Magistrate - If there is exercise of the delegated powers by the State Government the delegation of same cannot be to an officer below the rank of a District Magistrate - The District Magistrate cannot further delegate the power of passing order of externment - The order of externment passed by Additional District Magistrate quashed.* [Ratichand v. State of M.P.] ...1936

Registration Act (16 of 1908), Section 17 - *Where there is an oral partition of the ancestral property, a subsequent memorandum embodying the factum of partition would not require registration.* [Prahlad v. Shiv Nandan Kumari (Dead) Through L.Rs.] SC...2441

लोक अभियोजन (राजपत्रित) सेवा भर्ती नियम, म.प्र. 1991, नियम 8(i)(a), अनुसूची III कॉलम 3 – नियम सहायक जिला लोक अभियोजन अधिकारी के पद के लिए न्यूनतम आयु सीमा 24 वर्ष विहित करता है – नियम की शक्तिमत्ता को इस आधार पर चुनौती दी गयी कि सिविल न्यायाधीश परीक्षा के लिए न्यूनतम आयु सीमा 21 वर्ष है और न्यूनतम आयु सीमा निश्चित करने में मस्तिष्क का प्रयोग नहीं किया गया है – अभिनिर्धारित – न्यूनतम आयु सीमा का नियतन अवैध या मनमाना नहीं है और सिविल न्यायाधीशों के पद सहायक जिला लोक अभियोजन अधिकारियों के पदों से भिन्न हैं – याचिका खारिज। (बिन्दु पटेल (कुमारी) वि. म.प्र. राज्य)...1956

लोक सेवा (अनुसूचित जाति/जनजाति/अन्य पिछड़ावर्ग) आरक्षण अधिनियम, म.प्र. (1994 का 21) – धारा 18 – सीटों का आरक्षण – सामान्य विधि प्रवेश परीक्षा – आयुसीमा में छूट – अन्य पिछड़ा वर्ग के उम्मीदवारों को आयुसीमा में कोई छूट नहीं दी गयी – अभिनिर्धारित – धारा 18 केवल अनुसूचित जाति, अनुसूचित जनजाति एवं अन्य पिछड़ा वर्ग से सम्बंधित है, जिनका वही अर्थ होगा जो उन्हें समनुदिष्ट किया गया है और सामान्य विधि प्रवेश परीक्षा हेतु आयु के मापदण्ड निर्धारित करना विश्वविद्यालय की कोर समिति की स्वेच्छा पर होगा। (स्मृति पटेल वि. म.प्र. राज्य) ---*37

लोक न्यास अधिनियम, म.प्र. (1951 का 30), धारा 14 – न्यास सम्पत्ति जीर्णशीर्ण अवस्था में और किसी उपयोग में नहीं – किसी प्रकार से अन्य संक्रामण न्यास विलेख में निर्बन्धित – अभिनिर्धारित – न्यास के उद्देश्य के लिये यह लाभदायक होगा कि न्यास सम्पत्ति विक्रय की जा सकती है और संपूर्ण विक्रय आगम प्राप्त करने के पश्चात् न्यास के नाम से अन्य सम्पत्ति क्रय की जा सकती है ताकि उस क्रय की गयी सम्पत्ति की आय से न्यास का उद्देश्य पूरा किया जा सके – अपील मंजूर। (नारायण धर्मशाला वि. रजिस्ट्रार, पब्लिक ट्रस्ट) ...2463

राज्य सुरक्षा अधिनियम, म.प्र. 1990 (1991 का 4), धारा 5 – निष्कासन – याची को अभ्यारोपित किया गया और एक वर्ष के लिये जिले से निष्कासित किया गया – अभिनिर्धारित– मात्र इसलिये कि पूर्व में सार्वजनिक द्यूत अधिनियम, 1867 के अधीन मामलों में याची ने स्वीकृत रूप से जुर्माना अदा किया है तथा याची के विरुद्ध द.प्र.सं. की धारा 107, 116(3) के अंतर्गत मामले दर्ज किये गये हैं, वह उस मामले के साथ संबंध मानने का आधार नहीं बन सकता जो याची के विरूद्ध दर्ज किया गया है – याचिका मंजूर और निष्कासन आदेश अभिखंडित। (बलवीर उर्फ बन्टी वि. म.प्र. राज्य) ---*76

राज्य सुरक्षा अधिनियम, म.प्र., 1990 (1991 का 4), धारा 29 – शक्तियों का प्रत्यायोजन – प्रत्यायोजित करने की क्षमता – निष्कासन – अभिनिर्धारित – अकेले राज्य सरकार शक्ति को प्रत्यायोजित कर सकती है जैसा कि धारा 13 के अंतर्गत अनुध्यात है – शक्ति का ऐसा प्रत्यायोजन ऐसे व्यक्ति के पक्ष में नहीं किया जा सकता जो जिला मजिस्ट्रेट के दर्जे से नीचे का हो–यदि राज्य सरकार द्वारा प्रत्यायोजित शक्ति को प्रयुक्त किया गया हो तो उसका प्रत्यायोजन जिला मजिस्ट्रेट के दर्जे से नीचे के अधिकारी को नही किया जा सकता – निष्कासन का आदेश पारित करने की शक्ति को जिला मजिस्ट्रेट और आगे प्रत्यायोजित नहीं कर सकता – अतिरिक्त जिला मजिस्ट्रेट द्वारा पारित निष्कासन का आदेश अभिखंडित। (रतिचंद वि. म.प्र. राज्य) ...1936

रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 17 – जहाँ पैतृक सम्पत्ति का कोई मौखिक विभाजन हो, विभाजन के तथ्य को सन्निविष्ट करने वाले पश्चात्वर्ती ज्ञापन का रजिस्ट्रीकरण आवश्यक नहीं होगा। (प्रहलाद वि. शिवनन्दन कुमारी (मृतक) द्वारा विधिक प्रतिनिधि)SC---2441

Registration of Births and Deaths Act (18 of 1969), Section 8, Municipalities Act, M.P. 1961, Sections 307 & 308 - *Death Certificate - Appellate Authority - Additional Collector can not entertain an appeal against a death certificate issued in accordance with the Act of 1969 - The Additional Collector apparently exceeded his jurisdiction while entertaining an appeal against the issuance of death certificate.* [Shyam Murari Sharma v. Additional Commissioner, Sagar Division] ...*92

Representation of the People Act (43 of 1951), Section 100(1)(a) - *Grounds for declaring election to be void - 'Office of Profit' - Meaning - Explained - Held - If a profit does actually accrue from an office, it is an 'office of profit', no matter how it accrues - An office of profit is an office, which is capable of yielding a profit that means any pecuniary gain.* [Tarun Sharma v. Vishwas Sarang] ...*38

Revenue Book Circular, Section 18 - See - *Constitution, Article 226,* [State of M.P. v. Nerbudda Valley Refrigerated Products Company Pvt. Ltd.]SC... 1858

Right to Information Act (22 of 2005), Section 11 - ***Third party information*** - *Access to personal service books - Entitlement - Held - The respondents were right in declining the right of the petitioner to have access to certified copy of the service record and personal record of third party - Petition dismissed.* [Srikant Pandey v. State of M.P.] ...2473

Right to Information Act (22 of 2005), Section 20 - See - *Constitution, Article 226* [Lajjaram Pandey v. M.P. State Information Commission] ...2064

Rules of Legal Education, 2008, Rule 28 - ***Age on admission - Common Law Admission Test - Age relaxation*** - *No age relaxation given to OBC candidates - Held - CLAT has aimed high degree of professional commitment by catching the students immediately after passing 12th examination as normally the students clear the 12th exams at the age of 17-18 years and for maintaining the discipline in the college decision has been taken in public interest - It is not violative of Rule 28.* [Smriti Patel v. State of M.P.] ...*37

Rules of Legal Education, 2008, Rule 28 - ***Age on admission - Common Law Admission Test - Age relaxation*** - *No age relaxation given to OBC candidates - Held - The Bar Council of India has not intended to supersede the condition stipulated by the university aiming for high degree of professional commitment - It has prescribed the maximum age - Criterion laid down by the CLAT cannot be said to adversely impinged upon the standard prescribed by the Bar Council of India.* [Smriti Patel v. State of M.P.] ...*37

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 18 - See - *Criminal Procedure Code, 1973, Section 438* [Kapil Durgwani v. State of M.P.] ...2003

जन्म और मृत्यु रजिस्ट्रीकरण अधिनियम (1969 का 18), धारा 8, नगरपालिका अधिनियम, म.प्र. 1961, धाराएँ 307 व 308 – मृत्यु प्रमाण पत्र – अपीलीय प्राधिकारी – अपर कलेक्टर 1969 के अधिनियम के अनुसार जारी किये गये मृत्यु प्रमाण पत्र के विरूद्ध अपील ग्रहण नहीं कर सकता – अपर कलेक्टर ने मृत्यु प्रमाण पत्र जारी किये जाने के विरूद्ध अपील ग्रहण करने में प्रकट रूप से उसकी अधिकारिता का अतिलंघन किया। (श्याम मुरारी शर्मा वि. एडीशनल कमिश्नर, सागर डिवीजन) ---*92

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 100(1)(ए) – निर्वाचन को शून्य घोषित करने के आधार – 'लाभ का पद' – अर्थ – स्पष्ट किया गया – अभिनिर्धारित – यदि पद से वास्तवित रूप से लाभ प्रोद्भूत होता है, वह 'लाभ का पद' है, इससे कोई फर्क नहीं पड़ता कि वह कैसे प्रोद्भूत होता है – लाभ का पद ऐसा पद है जिसमें लाभ प्राप्त करने की अर्थात कोई आर्थिक अभिलाभ प्राप्त करने की क्षमता है। (तरूण शर्मा वि. विश्वास सारंग) ---*38

राजस्व पुस्तक परिपत्र, धारा 18 – देखें – संविधान, अनुच्छेद 226 (म.प्र. राज्य वि. नर्बदा वैली रेफ्रिजिरेटेड प्रोडक्टस् कंपनी प्रा.लि.) SC---1858

सूचना का अधिकार अधिनियम (2005 का 22), धारा 11 – पर–व्यक्ति सूचना – व्यक्तिगत सेवा पुस्तिका तक पहुँच – हकदारी – अभिनिर्धारित – प्रत्यर्थियों ने पर–व्यक्ति के सेवा अभिलेख एवं निजी अभिलेख की प्रमाणित प्रतिलिपि तक पहुँच रखने के याची के अधिकार से इनकार कर ठीक किया – याचिका खारिज। (श्रीकांत पाण्डे वि. म.प्र.राज्य) ...2473

सूचना का अधिकार अधिनियम (2005 का 22) धारा 20 – देखें –संविधान, अनुच्छेद 226 (लज्जाराम पाण्डे वि. एम.पी. स्टेट इन्फॉर्मेशन कमीशन) ...2064

विधिक शिक्षा नियम, 2008, नियम 28 – प्रवेश हेतु आयु – सामान्य विधि प्रवेश परीक्षा – आयुसीमा में छूट – अन्य पिछड़ा वर्ग के अभ्यर्थियों को आयुसीमा में कोई छूट नहीं दी गयी – अभिनिर्धारित – सा.वि.प्र.प. का लक्ष्य विद्यार्थियों को 12वीं परीक्षा उत्तीर्ण करने के तुरन्त बाद ग्रहण कर उच्च कोटि की वृत्तिक वचनवद्धता प्राप्त करना है क्योंकि सामान्यतया विद्यार्थी 17–18 वर्ष की आयु में 12वीं परीक्षा उत्तीर्ण कर लेते हैं और महाविद्यालय में अनुशासन बनाये रखने हेतु लोकहित में निर्णय लिया गया है – यह नियम 28 के उल्लंघनकारी नहीं है। (स्मृति पटेल वि. म.प्र. राज्य) ---*37

विधिक शिक्षा नियम, 2008, नियम 28 – प्रवेश हेतु आयु – सामान्य विधि प्रवेश परीक्षा – आयुसीमा में छूट – अन्य पिछड़ा वर्ग के अभ्यर्थियों को आयुसीमा में कोई छूट नहीं दी गयी – अभिनिर्धारित – भारतीय अधिवक्ता परिषद् का आशय उच्च कोटि की वृत्तिक वचनवद्धता के लक्ष्य की प्राप्ति हेतु विश्वविद्यालय द्वारा निर्धारित शर्त को निरस्त करना नहीं है – उसने अधिकतम आयुसीमा निर्धारित की है – सा.वि.प्र.प. द्वारा अधिकथित मापदण्ड भारतीय अधिवक्ता परिषद द्वारा विहित मानक को प्रतिकूल रूप से प्रभावित करने वाला नहीं कहा जा सकता। (स्मृति पटेल वि. म.प्र. राज्य) ---*37

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, (1989 का 33), धारा 18 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 438 (कपिल दुर्गवानी वि. म.प्र. राज्य) ...2003

Service Law - *Absorption - Maintenance of lien - Permissibility - Petitioners substantively appointed to a different post by OTL, due to their selection, their lien if any held in a different post with MPSEDC, previously, automatically comes to an end after their appointment and confirmation to a different post, substantive in nature with OTL.* [G.V.S. Shastri v. M.P. State Electronics Development Corporation Ltd., Bhopal] ...*79

Service Law - *A lower stage in the incremental scale - Meaning - Held - It cannot be given a restrictive meaning or be interpreted as "one lower stage in the incremental scale" - "A lower stage in incremental scale" can only mean any one of the lower stages in the incremental scale including the lowest and that is the only meaning that can be assigned to the rule.* [Gurudayal Gupta v. Satpura Narmada Kshetriya Gramin Bank, Chhindwara]...2101

Service Law - *Appeal - The order passed by appellate authority, which is bereft of any reason cannot be sustained in the eye of law - Order passed by appellate authority is quashed.* [G.P. Dewangon v. State of M.P.] ...2547

Service Law - *Appointment of Patwari - Petitioner not included in the select list for providing incorrect information - Held - When furnishing of the said information was only for the statistical purposes - Any bona fide mistake by the petitioner which was not with view to have some undue advantage could not have been made basis for not including the petitioner's name in the select list.* [Yogesh Tembhurne v. M.P. Professional Examination Board] ...2085

Service Law - *Appointment - The new employer is entitled to verify the previous antecedents of the person, who is being appointed and after being satisfied about his service record with the previous employer, can take a decision regarding his appointment.* [Ashutosh Sharma (Dr.) v. School of Planning and Architecture, Bhopal] ...*75

Service Law - *Averments of fact - If not denied the same is taken to be admitted.* [G.P. Dewangon v. State of M.P.] ...2547

Service Law - *Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14(8) - Departmental enquiry against judicial officer - Legal assistance during course of D.E. denied - Petitioner participated in entire departmental proceeding without challenging order rejecting application for assistance by legal practitioner - Petitioner himself was equally qualified and was trained as presenting officer and he could even ask for assistance for fellow colleague with similar experience and status as that of presenting officer which he choose not to do - Having given up the right, he can not now be permitted to turn back and raise a grievance in this respect.* [Dinesh Chandra Pandey v. High Court of M.P.] SC...2007

Service Law - *Civil Services (Classification, Control and Appeal)*

सेवा विधि – आमेलन – धारणाधिकार का बना रहना – अनुज्ञेयता – ओ.टी.एल. द्वारा भिन्न पद पर अधिष्ठायी रूप से नियुक्त याची, उनका चयन हो जाने के कारण, पूर्व में उनका एम.पी.एस.ई.डी.सी. के भिन्न पद पर धारणाधिकार ओ.टी.एल. में अधिष्ठायी रूप में भिन्न पद पर उनकी नियुक्ति एवं स्थायीकरण के उपरांत स्वतः ही समाप्त हो जाता है। (जी.व्ही.एस. शास्त्री वि. म.प्र. स्टेट इलेक्ट्रानिक्स डेव्हलपमेन्ट कारपोरेशन लि., भोपाल) ---*79

सेवा विधि – वेतनमान के निम्नतर प्रक्रम – अर्थ – अभिनिर्धारित – इसे संकुचित अर्थ नहीं दिया जा सकता अथवा "वेतनमान के एक निम्नतर प्रक्रम" के रूप में अर्थान्वयन नहीं किया जा सकता – वेतनमान के निम्नतर प्रक्रम का अर्थ वेतनमान के किसी भी निम्नतर प्रक्रम जिसमें निम्नतम प्रक्रम भी सम्मिलित है, से हो सकता है एवं इसका यही एकमात्र अर्थ नियम को दिया जा सकता है। (गुरूदयाल गुप्ता वि. सतपुड़ा नर्मदा क्षेत्रीय ग्रामीण बैंक, छिंदवाड़ा) ...2101

सेवा विधि – अपील – अपीलीय प्राधिकारी द्वारा पारित आदेश, जो कि बिना किसी कारण के है, विधि की दृष्टि से कायम नहीं रखा जा सकता – अपीलीय प्राधिकारी द्वारा पारित आदेश अभिखंडित। (जी.पी. देवांगन वि. म.प्र. राज्य) ...2547

सेवा विधि – पटवारी की नियुक्ति – याची द्वारा गलत जानकारी दिये जाने के कारण उसे चयन सूची मे सम्मिलित नहीं किया गया – अभिनिर्धारित – जब जानकारी प्रस्तुत किया जाना केवल सांख्यिकीय उद्देश्य के लिये था – याची द्वारा की गयी कोई सद्भाविक त्रुटि जो कि कोई अनुचित लाभ लेने के लिये नहीं की गयी थी तो ऐसी त्रुटि को उसका नाम चयन सूची में शामिल न करने का आधार नहीं बनाया जा सकता था। (योगेश टेम्भुरने वि. एम.पी. प्रोफेशनल एग्जामिनेशन बोर्ड) ...2085

सेवा विधि – नियुक्ति – नया नियोजक उस व्यक्ति के, जिसे नियुक्त किया जा रहा है, पूर्ववृत्त की जाँच करने का हकदार है और पूर्व नियोजक के पास उसके सेवा अभिलेख के संबंध में सन्तुष्ट होने के बाद उसकी नियुक्ति के संबंध में निर्णय ले सकता है। (आशुतोष शर्मा (डॉ.) वि. स्कूल ऑफ प्लानिंग एंड आर्किटेक्चर, भोपाल) ---*75

सेवा विधि – तथ्य के प्रकथन – यदि उनसे इनकार नहीं किया जाता तो उन्हें स्वीकृत होना मान लिया जाता है। (जी.पी. देवांगन वि. म.प्र. राज्य) ...2547

सेवा विधि – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14(8) – न्यायिक अधिकारी के विरूद्ध विभागीय जाँच – जाँच के दौरान कानूनी सहायता अस्वीकृत – इस हेतु प्रस्तुत आवेदन को निरस्त किये जाने संबंधी आदेश को चुनौती दिये बिना याची ने सम्पूर्ण विभागीय जांच कार्यवाही में भाग लिया – याची स्वयं भी प्रस्तुतकर्ता अधिकारी के समान योग्यता रखता था तथा वह प्रस्तुतकर्ता अधिकारी के समान पद एवं अनुभव वाले अपने किसी सहकर्मी की सहायता लेने हेतु निवेदन कर सकता था, उसने ऐसा नहीं किया – अपने इस अधिकार का त्याग करने के उपरांत, उसे वापस जाने की तथा इस संबंध में कोई आपत्ति करने की अनुमति नहीं दी जा सकती। (दिनेश चन्द्र पाण्डे वि. हाई कोर्ट ऑफ एम.पी.) SC---2007

सेवा विधि – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966,

Rules, M.P. 1966, Rule 14(8) - Expression 'may' would have to be construed as directory and not absolutely mandatory with reference to the facts & circumstance of a given case. [Dinesh Chandra Pandey v. High Court of M.P.] SC...2007

Service Law - *Civil Services (Pension) Rules, M.P. 1976, Rule 9(b)(2) - Withholding of Gratuity and GPF without obtaining sanction from the Governor - Held - Any outstanding amount against a retired employee can only be deducted or withheld after obtaining proper sanction/approval of the Governor - No such sanction/approval taken by the respondents before withholding retiral dues - The action of respondents seriously violates the mandate reflecting in the Pension Rules - Withholding of the retiral dues (GPF and Gratuity) would run counter to the Pension Rules.* [Ramesh Chandra Gupta v. State of M.P.] ...2506

Service Law - *Civil Services (Pension) Rules, M.P. 1976, Rule 42(1)(a) - Voluntary retirement - Petitioner working as peon - He applied on 07.11.2006 seeking voluntary retirement w.e.f 07.02.2007 - Application accepted on 09.11.2006 and communicated to petitioner on 07.02.2007 - Petitioner withdrew the said application on 02.12.2006 - Held - The application seeking withdrawal of the application for voluntary retirement much before the effective date of voluntary retirement and having regard to the reasons stated by him seeking withdrawal of the application for voluntary retirement the respondents ought to have allowed his prayer.* [Ganpatlal Vyas v. State of M.P.] ...1900

Service Law - *Civil Services (Pension) Rules, M.P. 1976, Rule 65 - Whether dues would include Miscellaneous Advance - Held - No - For applicability of Rule 65, firstly the amount should fall into the category of 'dues' and secondly such dues should be specified dues like house building or conveyance advance or arrears of rent or overpayment of salary or allowances as prescribed in the explanation appended to Rule 65, but it would not include, "Miscellaneous Advance" upon not falling into the category of 'dues' - Respondents are directed to release the entire amount of GPF and gratuity and all other retiral dues - Petition allowed.* [Ramesh Chandra Gupta v. State of M.P.] ...2506

Service Law - *Civil Services (Promotion) Rules, M.P. 2002 - Promotion - D.P.C. recommending the name of the petitioner for promotion but D.E.O. withholding the same - Action challenged - Held - When the candidature of the petitioner gets scrutinized by the D.P.C. and recommendation for promotion are made by D.P.C. for promoting the petitioner, it could not be subjected to further scrutiny at the hands of the D.E.O. - The benefit of promotion could not be denied on the ground of appearance or non-appearance of the employee before the authority competent to issue promotion order.* [Fuljencia Kujur (Smt.) v. State of M.P.] ...2504

धारा 14(8) – प्रस्तुत प्रकरण के तथ्य एवं परिस्थितियों के संदर्भ में शब्द 'सकना' का अर्थ एक निर्देश के रूप में न कि आज्ञा–सूचक रूप में निकाला जाना चाहिये था। (दिनेश चन्द्र पाण्डे वि. हाई कोर्ट ऑफ एम.पी.) SC---2007

सेवा विधि – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9(बी)(2) – राज्यपाल से मंजूरी प्राप्त किये बिना उपदान और सामान्य भविष्य निधि का रोका जाना – अभिनिर्धारित – केवल राज्यपाल की उचित मंजूरी/अनुमोदन प्राप्त करने के पश्चात् ही सेवानिवृत्त कर्मचारी के विरूद्ध किसी बकाया राशि की कटौती की जा सकती है अथवा रोकी जा सकती है – प्रत्यर्थियों द्वारा सेवानिवृत्ति बकाया रोकने के पूर्व ऐसी कोई मंजूरी/अनुमोदन नहीं लिया गया – प्रत्यर्थियों का कार्य पेंशन नियमों में दिये आदेश का गम्भीर रूप से उल्लंघन करता है – सेवानिवृत्ति बकाया (जी.पी.एफ. एवं उपदान) का रोका जाना पेंशन नियमों के विरुद्ध होगा। (रमेश चंद्र गुप्ता वि. म.प्र. राज्य) ...2506

सेवा विधि – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42(1)(ए) – स्वैच्छिक सेवानिवृत्ति – याची भृत्य के रूप में कार्यरत – उसने 07.02.2007 से स्वैच्छिक सेवानिवृत्ति चाहते हुए 07.11.2006 को आवेदन किया – आवेदन 09.11.2006 को स्वीकार किया गया और याची को उसकी सूचना 07.02.2007 को दी गयी – याची ने 02.12.2006 को उक्त आवेदन वापस लिया – अभिनिर्धारित – स्वैच्छिक सेवानिवृत्ति के आवेदन की वापसी चाहने वाला आवेदन स्वैच्छिक सेवानिवृत्ति की प्रभावी तारीख से काफी पूर्व था और उसके द्वारा स्वैच्छिक सेवानिवृत्ति के आवेदन की वापसी चाहने वाले आवेदन में कथित कारणों को ध्यान में रखते हुए प्रत्यर्थियों को उसकी प्रार्थना स्वीकार करनी चाहिए थी। (गनपतलाल व्यास वि. म.प्र. राज्य) ...1900

सेवा विधि – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 65 – क्या देयक मे विविध अग्रिम सम्मिलित होगा – अभिनिर्धारित – नहीं – नियम 65 की प्रयोज्यता के लिये, प्रथमतः राशि 'देयकों' की श्रेणी मे आनी चाहिए और द्वितीयतः ऐसे देयक विनिर्दिष्ट देयक होने चाहिये जैसे कि मकान बनाना या अग्रिम वाहन भत्ता या भाड़े का बकाया या वेतन अथवा भत्ते का अधिक भुगतान जैसा कि नियम 65 से संलग्न स्पष्टीकरण में विहित है, परंतु उसमें "विविध अग्रिम" जो "देयक" की श्रेणी में नहीं आते, सम्मिलित नहीं होंगे – सामान्य भविष्य निधि एवं उपदान तथा सभी अन्य सेवानिवृत्ति देयों की संपूर्ण राशि को मुक्त करने के लिये प्रत्यार्थियों को निर्देशित किया गया – याचिका मंजूर। (रमेश चंद्र गुप्ता वि. म.प्र. राज्य) ...2506

सेवा विधि – सिविल सेवा (पदोन्नति) नियम, म.प्र. 2002 – पदोन्नति – विभागीय पदोन्नति समिति (डी.पी.सी.) ने पदोन्नति के लिये याची के नाम की अभिशंसा की परन्तु जिला शिक्षा अधिकारी ने उसे रोक लिया – कार्यवाही को चुनौती दी गयी – अभिनिर्धारित – जब याची की पदोन्नति के लिये याची की अभ्यर्थिता का डी.पी.सी. द्वारा संवीक्षण कर लिया गया और डी.पी.सी. द्वारा पदोन्नति की अभिसंशा की गयी, तब उसे जिला शिक्षा अधिकारी के हाथों और आगे संवीक्षा के अध्यधीन नहीं रखा जा सकता – पदोन्नति जारी करने के लिये सक्षम प्राधिकारी के समक्ष कर्मचारी की उपस्थिति या अनुपस्थिति के आधार पर पदोन्नति के लाभ से वंचित नहीं किया जा सकता। (फुलजेन्सिया कुजूर (श्रीमति) वि. म.प्र. राज्य) ...2504

Service Law - *Compassionate appointment - It would be the obligation of the employer to deal with the application with immediacy and promptitude so that the grievance of a family in distress gets a fair treatment in accordance with law.* [Bank of Maharashtra v. Manoj Kumar Deharia] FB...1876

Service Law - *Compassionate appointment - Policy - When the employer or the Government is at liberty to evolve a scheme for granting such appointment from time to time, then the consideration for appointment has to be made in accordance with the Scheme or Policy that is in existence.* [Bank of Maharashtra v. Manoj Kumar Deharia] FB...1876

Service Law - *Compassionate appointment - The grant of compassionate appointment is not a vested legal right - It is only benefit granted in certain circumstances de hors the normal rule of appointment and when the employer has a right to evolve an appropriate policy after considering various factors for granting such a benefit, the considerations have to be made in accordance with the policy that is prevailing at that time.* [Bank of Maharashtra v. Manoj Kumar Deharia] FB...1876

Service Law - *Constitution, Article 226 - Departmental Enquiry - Inordinate delay of 10 years in initiation of D.E. and 4½ years of delay in continuation of said enquiry not convincingly explained - Continuation of enquiry may severely prejudice promotion prospects of petitioner - Charge sheet and D.E. liable to be quashed - Respondents directed to pass appropriate orders in the matter of grant of senior selection list to petitioner and if found fit, to extend benefit at par to the incumbent juniors - Petition allowed.* [Pramod Kumar Gupta v. State of M.P.] ...2074

Service Law - *Constitution, Article 226 - Selection - M.P.P.S.C. Examination - Names of petitioners appeared in waiting list - During validity period of waiting list some posts fell vacant due to either non-joining of selected candidates or resignation of selected candidates after joining - Held - As vacancy arose is same vacancy for which advertisements were issued and the selection process took place, the same will go to the candidates in waiting list so long as the waiting list is within the validity period and alive - Petition allowed.* [Jinendra Kumar Jain v. State of M.P.] ...1910

Service Law - *Counting of previous service - Petitioner, rendering service with Allahabad University, subsequently selected and appointed as Professor in Awdhesh Pratap Singh University - After retirement when he applied for pensionary benefits, his previous service and probation period was not calculated for the benefit on the ground that the petitioner's lien continued to be at two places - Held - Merely because lien is terminated with the previous employer subsequently after the date of employment with the new employer, does not mean that services rendered by the petitioner with the present employer shall be ignored - The services of the petitioner, rendered with the earlier employer, have to be counted.* [Radhakant Verma (Dr.) v. State of M.P.] ...2558

सेवा विधि – अनुकंपा नियुक्ति – यह नियोक्ता की बाध्यता होगी कि आवेदन पर अविलंब और तत्परता से कार्यवाही करे ताकि व्यथित कुटुम्ब की शिकायत के साथ विधिनुसार उचित व्यवहार हो सके। (बैंक ऑफ महाराष्ट्र वि. मनोज कुमार डेहरिया) FB...1876

सेवा विधि – अनुकंपा नियुक्ति – नीति – जब नियोक्ता अथवा शासन समय समय पर ऐसी नियुक्ति प्रदान करने हेतु स्कीम विकसित करने के लिए स्वतंत्र होते हैं तब नियुक्ति के लिये विचार, स्कीम या नीति जो अस्तित्व में है, के अनुसार करना होगा। (बैंक ऑफ महाराष्ट्र वि. मनोज कुमार डेहरिया) FB...1876

सेवा विधि – अनुकंपा नियुक्ति – अनुकंपा नियुक्ति का अनुदान निहित विधिक अधिकार नहीं है – यह केवल ऐसा लाभ है जिसे नियुक्ति के सामान्य नियम से असंबद्ध कतिपय परिस्थितियों में प्रदान किया जाता है और जब ऐसा लाभ प्रदान करने के लिये विभिन्न कारकों पर विचार करने के पश्चात् नियोक्ता को उचित नीति विकसित करने का अधिकार हो तब नीति जो उस समय विद्यमान हों उसके अनुसार विचार किया जाना चाहिए। (बैंक ऑफ महाराष्ट्र वि. मनोज कुमार डेहरिया)FB...1876

सेवा विधि – संविधान, अनुच्छेद 226 – विभागीय जाँच – विभागीय जाँच प्रारम्भ करने मे 10 वर्ष का असाधारण विलम्ब तथा विभागीय जाँच 4–1/2 वर्ष तक चलते रहने के बावद् विश्वासोत्पादक स्पष्टीकरण नहीं दिया गया – जाँच लंबित होने से प्रार्थी की पदोन्नति संभावना गंभीर रूप से प्रभावित हो सकती है – आरोप पत्र एवं विभागीय जाँच अपास्त किये जाने योग्य है – प्रत्यर्थियों को प्रार्थी के ज्येष्ठ चयन वेतनमान के प्रकरण में उचित आदेश पारित करने एवं उसे योग्य पाये जाने पर उसे उससे कनिष्ठ पदधारकों के समान लाभ प्रदान करने का निदेश दिया –. याचिका मंजूर। (प्रमोद कुमार गुप्ता वि. म.प्र. राज्य) ...2074

सेवा विधि – संविधान, अनुच्छेद 226 – चयन – एम.पी.पी.एस.सी. परीक्षा – प्रतीक्षा सूची मे याचियों के नाम आये – प्रतीक्षा सूची की विधिमान्यता की कालावधि के दौरान, या तो चयनित अभ्यर्थियों के पद ग्रहण न करने के कारण अथवा चयनित अभ्यर्थियों के पद ग्रहण करने के पश्चात त्याग पत्र देने के कारण कुछ पद रिक्त हुए – अभिनिर्धारित – चूंकि उन्ही रिक्तियों मे से रिक्ति उत्पन्न हुई जिनके लिए विज्ञापन जारी किये गये थे और चयन प्रक्रिया हुई थी, वह रिक्ति प्रतीक्षा सूची के अभ्यर्थियों को जाएगी जब तक कि प्रतीक्षा सूची विधिमान्यता की कालावधि के भीतर तथा जीवित है – याचिका मंजूर । (जिनेन्द्र कुमार जैन वि. म.प्र. राज्य) ...1910

सेवा विधि – पूर्ववर्ती सेवा की गणना – याची इलाहाबाद विश्वविद्यालय में सेवारत था बाद में अवधेश प्रताप सिंह विश्वविद्यालय में प्राध्यापक के रूप में चयनित एवं नियुक्त हुआ – सेवानिवृत्ति के बाद जब उसने पेंशन संबंधी लाभों के लिए आवेदन किया, उसकी पूर्ववर्ती सेवा एवं परिवीक्षा अवधि की गणना लाभ हेतु इस आधार पर नहीं की गयी कि याची का धारणाधिकार दो स्थानों पर बना रहा था – अभिनिर्धारित – मात्र इस कारण कि पूर्व नियोजक के पास धारणाधिकार बाद में नये नियोजक के पास नियोजित होने की दिनांक से समाप्त हो जाता है, उसका यह तात्पर्य नहीं है कि याची द्वारा वर्तमान नियोजक को दी गयी सेवाओं की अवहेलना की जायेगी – याची द्वारा पूर्व नियोजक को दी गयी सेवाओं की गणना की जावेगी। (राधाकांत वर्मा (डॉ.) वि. म.प्र. राज्य)...2558

Service Law - *Daily wages employee - Challenged his disengagement on attaining the age of 60 years - Held - The petitioner's services are not governed by any rules which prescribe an age of superannuation - He cannot claim continuance in service as of right up to the age of 62 years - Petition dismissed.* [Mathura Prasad Yadav v. State of M.P.] ...1950

Service Law - ***Departmental Enquiry - Natural Justice*** - *Departmental enquiry concluded and petitioner, eventually was punished with order of compulsory retirement - Order challenged on grounds that without any justification after the delay of 15 years, D.E. was completed ex parte without affording proper opportunity of hearing to petitioner - Held - It is not a case of petitioner that he did not have the notice of departmental enquiries - Respondent's version in the return that the petitioner was served with notice and he did not participate in the departmental enquiries proceedings, so he was proceeded ex parte, has not been disputed by the petitioner by filing the rejoinder - Petitioner failed to show that prejudice has been caused to him on account of violation of principles of natural justice - No fault can be found with the order passed by the Disciplinary Authority.* [G.P. Dewangon v. State of M.P.] ...2547

Service Law - ***Deputation - Permissibility*** - *Petitioner was sent on deputation from Forest Department to Narmada Valley Development Department, which is another department of State Government, without his consent - Held - Deputation without consent of an employee not permissible - Petition allowed.* [K.P. Bhalse v. State of M.P.] ...2292

Service Law - ***Disciplinary Enquiry*** - *Misconduct of the Bank Officer - What amounts to? - Held - It is no defence available to say that there was no loss or profit resulted in the case when the officer employed acted without authority - The very discipline of an organization more particularly a Bank is dependent upon each of its offices and officers acting and operating within their allotted sphere - Acting beyond once authority is by itself a breach of discipline and a misconduct.* [Satyapal G. Purswani v. Central Bank of India]...*36

Service law - ***Disciplinary Enquiry*** - *Quantum of punishment - Scope of interference - Held - The scope of judicial review is limited to the deficiency in the decision making process and not the decision unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court there is no scope for interference and if the Court comes to the conclusion that the punishment is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed or it may make an exception in rare case and impose appropriate punishment with cogent reasons in support thereof.* [Satyapal G. Purswani v. Central Bank of India] ...*36

Service Law - ***Disciplinary Enquiry - Scope of judicial review - Held***

सेवा विधि – दैनिक वेतन कर्मचारी – 60 वर्ष की आयु पूर्ण होने पर उसके वियोजन को चुनौती – अभिनिर्धारित – याची की सेवाएँ ऐसे किसी नियम से शासित नहीं होती है जो अधिवार्षिकी की आयु विहित करता हो – वह अधिकार के तौर पर 62 वर्ष की आयु तक सेवा में बने रहने का दावा नहीं कर सकता – याचिका खारिज। (मथुरा प्रसाद यादव वि. म.प्र. राज्य) ...1950

सेवा विधि – विभागीय जाँच – नैसर्गिक न्याय – विभागीय जाँच समाप्त की गई और अंततः याची को अनिवार्य सेवानिवृत्ति के आदेश से दण्डित किया गया – आदेश को इन आधारों पर चुनौती दी गयी कि बिना किसी न्यायोचित्य के, 15 वर्ष के विलंब के पश्चात् याची को सुनवाई का उचित अवसर दिये बिना विभागीय जाँच एक पक्षीय पूर्ण की गयी – अभिनिर्धारित – याची का मामला यह नहीं है कि उसे विभागीय जाँचों की सूचना नहीं थी – परिलेख में प्रत्यर्थी के इस विवरण को कि याची को सूचना तामील की गयी थी और उसने विभागीय जाँच की कार्यवाहियों में भाग नहीं लिया इसलिए उसे एकपक्षीय किया गया, याची द्वारा प्रत्युत्तर प्रस्तुत कर विवादित नहीं किया गया – याची यह दर्शाने में असफल रहा कि नैसर्गिक न्याय के सिद्धांतों के उल्लंघन के कारण उसके साथ पक्षपात कारित हुआ है – अनुशासनात्मक प्राधिकारी द्वारा पारित आदेश में कोई त्रुटि नहीं पायी गई। (जी. पी. देवांगन वि. म.प्र. राज्य) ...2547

सेवा विधि – प्रतिनियुक्ति – अनुज्ञेयता – याची को उसकी सहमति के बिना वन विभाग से नर्मदा घाटी विकास विभाग में प्रतिनियुक्ति पर भेजा गया, जो कि राज्य सरकार का अन्य विभाग है – अभिनिर्धारित – बिना सहमति के कर्मचारी की प्रतिनियुक्ति अनुज्ञेय नहीं – याचिका मंजूर। (के. पी. माल्से वि. म.प्र. राज्य) ...2292

सेवा विधि – अनुशासनात्मक जाँच – बैंक अधिकारी का अवचार – किससे बनता है ? – अभिनिर्धारित – यह कहने का कोई बचाव उपलब्ध नहीं है कि जब नियुक्त अधिकारी ने बिना प्राधिकार कार्य किया तब उसके परिणामस्वरूप मामले में कोई हानि या लाभ नहीं हुआ – किसी संगठन और विशेष रूप से बैंक का अनुशासन उसके प्रत्येक कार्यालय एवं अधिकारियों पर निर्भर करता है जो उनके आवंटित कार्यक्षेत्र में कार्यरत और संचालित हैं – अपने प्राधिकार के परे कार्य करना अपने आप में अनुशासन का भंग और अवचार है। (सत्यपाल जी. पुरसवानी वि. सेन्ट्रल बैंक ऑफ इंडिया) ---*36

सेवा विधि – अनुशासनात्मक जाँच – दण्ड की मात्रा – हस्तक्षेप की व्याप्ति – अभिनिर्धारित – न्यायिक पुनर्विलोकन की व्याप्ति निर्णयन प्रक्रिया में कमी तक सीमित है न कि निर्णय तक, जब तक कि अनुशासनात्मक प्राधिकारी या अपीलीय प्राधिकारी द्वारा अधिरोपित दण्ड न्यायालय की अंतश्चेतना को आघात न करता हो, हस्तक्षेप की कोई गुंजाईश नहीं है और यदि न्यायालय इस निष्कर्ष पर पहुँचता है कि दण्ड घातक रूप से अनुपातहीन है, यह समुचित होगा कि अनुशासनात्मक प्राधिकारी या अपीलीय प्राधिकारी को निदेशित किया जाए कि अधिरोपित दण्ड पर पुनर्विचार करे या विरल मामले में अपवाद करके तर्कपूर्ण कारणों के साथ उचित दण्ड दे सकता है। (सत्यपाल जी. पुरसवानी वि. सेन्ट्रल बैंक ऑफ इंडिया)---*36

सेवा विधि – अनुशासनात्मक जाँच – न्यायिक पुनर्विलोकन की व्याप्ति –

- *Power of judicial review available to the Court under the Constitution takes in its stride domestic enquiry as well and it can interfere with the conclusions reached therein if there is no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.* [Satyapal G. Purswani v. Central Bank of India] ...*36

Service Law - ***Family Pension - Delay in claim - Held*** - *Even if there exist some delay in approaching the Court, the same would not come in the way of Widow Petitioner, who is claiming Family Pension.* [Shanti Devi (Smt.) v. State of M.P.] ...2316

Service Law - ***Family Pension*** - *Respondents not disputing the widow to be the legally wedded wife of the deceased who was getting pension until his death - The petitioner would be fully competent and eligible to obtain the benefit of disbursement of Family Pension - Petition allowed.* [Shanti Devi (Smt.) v. State of M.P.] ...2316

Service Law - *Guest Faculty for giving lectures required to swear in affidavit that he/she is not involved in teaching in other institution - Purpose - Held - A close scrutiny and comparative analysis of Clause (8) and Condition No.10(4) clearly reveal that the purpose of seeking such an affidavit from a candidate, is to secure an undertaking that the Guest Faculty shall devote his/her optimum time, effort and energy in preparing and delivering good lectures to the students and shall not treat the assignment to be a multiple engagement with multiple educational institutions, with a solitary objective of earning more and more honorarium.* [Manish Gupta v. State of M.P.]...*64

Service Law - *Industrial Training (Gazetted) Services Recruitment Rules, M.P. 2008, Rule 8 - Appointment of Principal Class I & II - Eligibility - The candidature of the petitioner rejected for the reason that they were holding B.E. Degree in Computer Science and executive instructions provided that B.E Degree with Civil, Mechanical, Electrical and Electronics are only eligible - The recruitment rules provided B.E. in any discipline - Held - The executive instructions issued by the State Government to the Public Commission cannot supersede the Statutory Recruitment Rules in the matter of recruitment for the post of Principal Class I and Class II i.e. the M.P. Industrial Training (Gazetted) Services Recruitment Rules, 2008.* [Sanjeev Kumar Batham v. State of M.P.] ...1931

Service Law - ***Land Revenue Code, M.P. (20 of 1959), Sections 22 & 104(2) - Termination of Patwari - Held*** - *The Sub Divisional Officer has the authority to exercise powers of the Collector u/s 104(2) of the Code regarding appointment of Patwaris - The Sub Divisional Officer has the power to appoint and dismiss Patwari.* [Ravindra Kumar Gupta v. State of M.P.] ...2511

Service Law - *Mala fide transfer - Person against whom allegations*

अभिनिर्धारित – संविधान के अन्तर्गत न्यायालय को उपलब्ध न्यायिक पुनर्विलोकन की शक्ति के साथ आन्तरिक जाँच की भी शक्ति है और वह उसमें दिये निष्कर्षों में हस्तक्षेप कर सकता है यदि निष्कर्षों का समर्थन करने के लिए कोई साक्ष्य न हो या अभिलिखित निष्कर्ष ऐसे थे जिन पर सामान्य प्रज्ञा वाले व्यक्ति द्वारा नहीं पहुँचा जा सकता था या निष्कर्ष विपर्यस्त थे या वरिष्ठ प्राधिकारी के आदेश पर किये गये थे। (सत्यपाल जी. पुरसवानी वि. सेन्ट्रल बैंक ऑफ इंडिया) ---*36

सेवा विधि – परिवार पेंशन – दावे में विलम्ब – अभिनिर्धारित – यद्यपि न्यायालय पहुँचने में कुछ विलम्ब हुआ है, तथापि वह विधवा याची, जो परिवार पेंशन का दावा कर रही है, के मार्ग में बाधक नहीं होगा। (शांति देवी (श्रीमति) वि. म.प्र. राज्य) ...2316

सेवा विधि – परिवार पेंशन – प्रत्यर्थी ने विधवा को, मृतक की, जो उसकी मृत्यु होने तक पेंशन प्राप्त कर रहा था, वैध विवाहिता होना विवादित नहीं किया – याची परिवार पेंशन संवितरण का लाभ प्राप्त करने के लिए पूर्णतः सक्षम एवं पात्र होगी – याचिका मंजूर। (शांति देवी (श्रीमति) वि. म.प्र. राज्य) ...2316

सेवा विधि – अतिथि विद्वानों द्वारा व्याख्यान देने के लिये शपथपत्र पर शपथ लेना आवश्यक है कि वह अन्य संस्था में अध्यापन कार्य में शामिल नही है – प्रयोजन – अभिनिर्धारित – खंड (8) व शर्त क्र. 10(4) की सूक्ष्म जाँच तथा तुलनात्मक विश्लेषण से यह स्पष्ट रूप से प्रकट होता है कि अभ्यर्थी से ऐसा शपथ पत्र चाहने का प्रयोजन यह वचन सुनिश्चित करना है कि अतिथि विद्वान अच्छे व्याख्यान तैयार करने तथा विद्यार्थियों को देने में अपना सर्वोत्तम समय, प्रयास एवं उर्जा समर्पित करेगा/करेगी और कर्तव्य भार को ज्यादा से ज्यादा मानदेय प्राप्त करने के एकमात्र उद्देश्य के साथ विविध शैक्षणिक संस्थाओं के साथ बहुविध नियोजन के रूप मे नहीं लेगा। (मनीष गुप्ता वि. म.प्र. राज्य) ---*64

सेवा विधि – औद्योगिक प्रशिक्षण (राजपत्रित) सेवा भर्ती नियम, म.प्र. 2008, नियम 8 – प्रधानाचार्य वर्ग–I व II की नियुक्ति – पात्रता – याची की अभ्यर्थिता अस्वीकार की गयी इस कारण कि वे संगणक शास्त्र में बी.ई. की डिग्री धारक थे और कार्यपालक अनुदेशों में उपबंधित था कि केवल सिविल, मैकेनिकल, इलेक्ट्रिकल और इलेक्ट्रोनिक्स के साथ बी.ई. डिग्री धारक ही पात्र हैं – किसी भी शाखा में बी.ई., भर्ती नियमों में उपबंधित – अभिनिर्धारित – राज्य सरकार द्वारा लोक आयोग को जारी किये गये कार्यपालक अनुदेश, प्रधानाचार्य वर्ग I और वर्ग II के पदों की भर्ती के मामले में कानूनी भर्ती नियमों को अधिक्रांत नहीं कर सकते अर्थात म.प्र. औद्योगिक प्रशिक्षण (राजपत्रित) सेवा भर्ती नियम, 2008. (संजीव कुमार बाथम वि. म.प्र. राज्य) ...1931

सेवा विधि – भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 22 व 104(2) – पटवारी की सेवा समाप्ति – अभिनिर्धारित – पटवारियों की नियुक्ति के संबंध मे संहिता की धारा 104(2) के अंतर्गत उपखण्ड अधिकारी को कलेक्टर की शक्तियाँ प्रयोग करने का प्राधिकार है – उपखण्ड अधिकारी पटवारी को नियुक्त और पदच्युत करने की शक्ति रखता है। (रवीन्द्र कुमार गुप्ता वि. म.प्र. राज्य) ...2511

सेवा विधि – असद्भावी स्थानांतरण – व्यक्ति, जिसके विरुद्ध असद्भाव के अभिकथन

of mala fides are made, has to be personally impleaded and plea of mala fides has to be properly pleaded and proved. [Bhagwati Singh Verma v. State of M.P.] ...2466

Service Law - ***Policy for regularization*** - *The candidate to be regularized should be a candidate whose appointment at the initial stage is irregular and he should have been appointed 10 years back and working continuously and should have been appointed on the basis of fulfillment of criteria laid down in recruitment rules - At the time of appointment petitioner was not possessing qualification of Diploma or Degree in Engineering which is minimum criteria for appointment to the post of Sub-Engineer - His appointment would fall in the category of illegal appointment - Held - The criteria of possessing Diploma or Degree for period of 10 years laid down in policy is a criteria laid down on the basis of principles of law as has emerged from judgment of Supreme Court in Umadevi's case [(2006) 4 SCC 1] - State Government and Competent Authority have not committed any error in rejecting claim of petitioner.* [Shailendra Kumar Sahu v. State of M.P.]... 1922

Service Law - ***Probation and confirmation*** - *By confirmation, an incumbent is deemed to have been absorbed in the service on a post to which he was initially appointed on probation.* [G.V.S. Shastri v. M.P. State Electronics Development Corporation Ltd., Bhopal] ...*79

Service Law - ***Promotion*** - *When promotion is granted by way of absorption in a higher cadre post after due scrutiny, it will only have prospective effect.* [Umakant Mudgal v. State of M.P.] ...2552

Service Law - ***Reasonable restriction on multiple employment*** - *Clause 10(4) of the invitation letter stipulated that the Guest Faculty member should not be involved in teaching in any other college - Held - There appears to be a clear objective behind asking a Guest Faculty about his other engagements with other college and even if the same is taken or felt as a "restriction" for obtaining analogous employment, the same seems to consist of a pious nexus with the objective, sought to be achieved by the Higher Education Department and/or the college - It passes the test of reasonableness and could not be classified as "unreasonable" in any manner.* [Manish Gupta v. State of M.P.] ...*64

Service Law - ***Recruitment of Clerk-Steno / Assistant Grade-III*** - *Rejection of application forms of candidates on ground that the certificates of diploma have not been issued by a university recognised by UGC or by DOEACC or by a Govt. Polytechnic College - Held - It is clear and apparent that none of the certificates have been issued by the affiliating institutions i.e. the concerned universities, the DOEACC or the Government and, therefore, none of them conform to the requirement - No fault in rejection of the petitioners' forms - Petition dismissed.* [Mukesh Tripathi v. Registrar General] ...*31

Service Law - *The petitioners initially appointed as Assistant Engineer*

किये गये हैं, को वैयक्तिक रूप से पक्षकार बनाना होगा और असद्भाव का अभिवचन समुचित रूप से करना और साबित करना होगा। (भगवती सिंह वर्मा वि. म.प्र. राज्य) ...2466

सेवा विधि – नियमितीकरण के लिए नीति – नियमित किया जाने वाला अभ्यर्थी ऐसा अभ्यर्थी होना चाहिए जिसकी प्रारम्भिक अवस्था पर नियुक्ति अनियमित हो और वह 10 वर्ष पूर्व नियुक्त किया जाना चाहिए था और नियमित कार्यरत हो और भर्ती नियमों में अधिकथित मानक के पूरा करने के आधार पर नियुक्त किया जाना चाहिए था – नियुक्ति के समय याची इंजीनियरिंग में डिप्लोमा या डिग्री की अर्हता नहीं रखता था जो कि उप–इंजीनियर के पद पर नियुक्ति के लिए न्यूनतम मानक है – उसकी नियुक्ति अवैध नियुक्ति की श्रेणी में आयेगी – अभिनिर्धारित – नीति में अधिकथित 10 वर्ष की कालावधि के लिए डिप्लोमा या डिग्री रखने का मानक उच्चतम न्यायालय के उमादेवी के मामले [(2006) 4 SCC 1] में उत्पन्न विधि के सिद्धांतों के आधार पर अधिकथित मानक है – राज्य सरकार और सक्षम प्राधिकारी ने याची का दावा नामंजूर कर कोई त्रुटि कारित नहीं की है। (शैलेन्द्र कुमार साहू वि. म.प्र. राज्य) ...1922

सेवा विधि – परिवीक्षा एवं स्थायीकरण – स्थायीकरण के द्वारा पदधारी सेवा में उस पद पर जिस पर प्रारम्भ में परिवीक्षा पर उसकी नियुक्ति हुयी थी, आमेलित समझा जाता है। (जी. व्ही.एस. शास्त्री वि. एम.पी. स्टेट इलेक्ट्रानिक्स डेव्हलपमेन्ट कारपोरेशन लि., भोपाल) ---*79

सेवा विधि – पदोन्नति – जब सम्यक् जाँच के बाद उच्च संवर्ग पद पर आमेलन के रूप में पदोन्नति प्रदत्त की जाती है तो इसके केवल भावी प्रभाव होंगे। (उमाकांत मुदगल वि. म.प्र. राज्य) ...2552

सेवा विधि – बहुविध नियोजन पर युक्तियुक्त निर्बंधन – आमंत्रण पत्र के खंड 10(4) में निर्दिष्ट है कि अतिथि विद्वान सदस्य को अन्य किसी महाविद्यालय में अध्यापन कार्य में सम्मिलित नहीं होना चाहिए – अभिनिर्धारित – अतिथि विद्वानों से उसके अन्य महाविद्यालय के साथ अन्य काम–काज के संबंध में पूछने के पीछे स्पष्ट उद्देश्य प्रतीत होता है और यद्यपि उसे सदृश नियोजन प्राप्त करने के लिए "निर्बंधन" माना या समझा जाए तथापि वह उस उद्देश्य के साथ पुनीत संबंध मे अनुरूप होना प्रतीत होता है जिसे उच्च शिक्षा विभाग और/अथवा महाविद्यालय द्वारा प्राप्त करना चाहा गया है – वह युक्तियुक्तता की परीक्षा मे सफल होता है और किसी प्रकार से उसका "अयुक्तियुक्त" के रूप मे वर्गीकरण नहीं किया जा सकता। (मनीष गुप्ता वि. म.प्र. राज्य) ---*64

सेवा विधि – क्लर्क–स्टेनो/सहायक ग्रेड–तीन की भर्ती – अभ्यर्थियों के आवेदन फार्म इस आधार पर अस्वीकार किये गये कि डिप्लोमा प्रमाण पत्र यूजीसी द्वारा मान्यता प्राप्त विश्वविद्यालय द्वारा या डीओईएसीसी द्वारा या शासकीय पॉलीटेक्निक महाविद्यालय द्वारा जारी नहीं किये गये – अभिनिर्धारित – यह स्पष्ट और दृश्यमान है कि कोई भी प्रमाण पत्र संबद्ध संस्थान् अर्थात संबंधित विश्वविद्यालय, डीओईएसीसी या सरकार द्वारा जारी नहीं किया गया है, इसलिए उनमें से कोई भी अपेक्षा के अनुरूप नहीं होता – याचियों के फार्म अस्वीकार करने मे कोई त्रुटि नहीं – याचिका खारिज. (मुकेश त्रिपाठी वि. रजिस्ट्रार जनरल) ---*31

सेवा विधि – याची पूर्व मे सहायक यंत्री के पद पर नियुक्त, बाद मे परिवीक्षा पर दिनांक

were subsequently promoted as Executive Engineer vide order dated 07.02.2005 on probation - They were reverted back by impugned order dated 12.05.2010 on the ground that they have not successfully completed their period of probation, as they were not awarded 2 'B' grades during period of the years 2006, 2007 & 2008 - Held, - The period of probation of the petitioners includes the entire period of service rendered by them on probation on the promotional post of Executive Engineer i.e. from 07.02.2005 to 12.05.2010 - Thus the respondent authorities are required to consider the entire service record of the period of probation for the purpose of considering the case of the petitioners for confirmation on the post of Executive Engineer - The petitions were allowed and order dated 12.05.2010 quashed - The matter reverted back for reconsideration taking into consideration the entire period of probation i.e. from 07.02.2005 to 12.05.2010. [Narendra Kumar Singh & Raj Kumar Jain v. MPSEB] ...*46

Service Law - ***Transfer*** - *Until and unless the transfer is vitiated by mala fide or is made in violation of any statutory provision, the Court cannot interfere with the order of transfer.* [Bhagwati Singh Verma v. State of M.P.]...2466

Service Law - ***Withdrawal of resignation*** - *Petitioner has not submitted any application for withdrawal of his resignation prior to the date reflected in the notice period - The question of accepting the application for withdrawal of his resignation does not arise.* [Virendra Kumar Mandloi v. State of M.P.]...*73

Service Law - ***Withholding of Gratuity and GPF - Natural justice*** - *Petitioner Gratuity and GPF withheld without holding an enquiry or issuance of show cause notice - Held - Action cannot be said to be proper.* [Ramesh Chandra Gupta v. State of M.P.] ...2506

Specific Relief Act (47 of 1963), Section 28 - ***Rescission of contract for sale*** - *In a case where decree holder is not directed, under decree of specific performance of execution of sale deed, to pay the balance and rather the judgment debter is directed to receive the balance amount and execute the sale deed, within a stipulated time, the non-payment of balance amount by decree holder will not attract S. 28, unless the judgment debtor gives a notice by himself or through the Court requiring decree holder to pay/deposit the balance - Petition dismissed.* [Khoobiram v. Smt. Urmila Chouhan] ...*61

Stamp Act (2 of 1899), Sections 35 & 36 - *Once the document is exhibited while recording the statements of witnesses and the same is not objected by the other side at that stage, then the other side does not have any right or authority to challenge its admissibility at any subsequent stage on the ground of deficit or non-payment of the stamp duty.* [R. Hanfi v. Yogendra Singh Dashmer] ...2402

Succession Act (39 of 1925), Sections 57 & 213 - *Probate - Letter of administration - When not necessary - A probate will not be required to be*

07.02.2005 द्वारा कार्यकारी यंत्री के पद पर पदोन्नत – परिवीक्षा अवधि सफलतापूर्वक पूर्ण न करने के आधार पर याची को आलोच्य आदेश दिनांक 12.05.2010 द्वारा पदावनत कर दिया गया जैसे कि उन्हें वर्ष 2006, 2007 एवं 2008 के दौरान 2 'बी' ग्रेड दिया ही नहीं गया – अभिनिर्धारित – याची की परिवीक्षा अवधि मे याचियों द्वारा कार्यकारी यंत्री के पदोन्नत पद पर परिवीक्षा के दौरान पूर्ण सेवाकाल अर्थात 07.02.2005 से 12.05.2010 सम्मिलित है – इस प्रकार प्रत्यर्थी प्राधिकारी द्वारा याचियों को कार्यकारी यंत्री के पद पर स्थायी करने संबंधी प्रकरण हेतु उनके परिवीक्षा अवधि के पूरे सेवा अभिलेख पर विचार करने की आवश्यकता है – याचिका स्वीकृत तथा आदेश दिनांक 12.05.2010 अपास्त – दिनांक 07.02.2005 से 12.05.2010 तक के सेवाकाल पर विचार करने हेतु प्रकरण वापस प्रेषित किया गया। (नरेन्द्र कुमार सिंह एवं राज कुमार जैन वि. एम.पी.एस.ई.बी.) ---*46

सेवा विधि – स्थानांतरण – जब तक और यदि स्थानांतरण असद्भाव से दूषित न हो अथवा किसी कानूनी उपबंध के उल्लंघन में न किया गया हो, तब तक न्यायालय स्थानांतरण के आदेश में हस्तक्षेप नहीं कर सकता है। (भगवती सिंह वर्मा वि. म.प्र. राज्य) ...2466

सेवा विधि – त्यागपत्र का प्रत्याहरण – याची ने नोटिस अवधि में दर्शित/वर्णित दिनांक के पूर्व त्यागपत्र की वापसी/प्रत्याहरण का आवेदन प्रस्तुत नहीं किया – त्यागपत्र की वापिसी का आवेदन स्वीकार किये जाने का प्रश्न ही उत्पन्न नहीं होता है। (वीरेन्द्र कुमार मंडलोई वि. म.प्र. राज्य) ---*73

सेवा विधि – उपदान और सामान्य भविष्य निधि का रोका जाना – नैसर्गिक न्याय – बिना जाँच करवाये या कारण बताओ सूचनापत्र जारी किये याची की उपदान और साधारण भविष्य निधि रोकी गयी – अभिनिर्धारित – कार्यवाही को उचित नहीं माना जा सकता । (रमेश चन्द्र गुप्ता वि. म.प्र. राज्य) ...2506

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 28 – विक्रय की संविदा का विखंडन – किसी मामले में जहाँ विक्रय विलेख के निष्पादन की विनिर्दिष्ट अनुपालन की डिक्री के अन्तर्गत डिक्रीदार शेष राशि भुगतान करने हेतु निदेशित नहीं है एवं निर्णीत–ऋणी शेष राशि प्राप्त किये जाने एवं निर्धारित समय में विक्रय विलेख निष्पादित किये जाने के लिये निदेशित है, डिक्रीदार द्वारा शेष राशि का भुगतान न किया जाना धारा 28 को आकृष्ट नहीं करेगा, जब तक कि निर्णीत ऋणी स्वयं अथवा न्यायालय के माध्यम से डिक्रीदार से शेष राशि भुगतान/जमा करने की अपेक्षा करते हुए सूचना नहीं दे देता – याचिका खारिज। (खूबीराम वि. श्रीमति उर्मिला चौहान)---*61

स्टाम्प अधिनियम (1899 का 2), धाराएँ 35 व 36 – साक्षियों के कथन अभिलिखित किये जाते समय जब एक बार दस्तावेज प्रदर्शित हो जाता है और दूसरे पक्ष द्वारा उसके संबंध में उस प्रक्रम पर कोई आपत्ति नहीं की जाती है, तब दूसरे पक्ष को किसी पश्चात्वर्ती प्रक्रम पर स्टाम्प शुल्क की कमी या असंदाय के आधार पर उसकी ग्राह्यता को चुनौती देने का कोई अधिकार या प्राधिकार नहीं होता। (आर. हनफी वि. योगेन्द्र सिंह दशमेर) ...2402

उत्तराधिकार अधिनियम (1925 का 39), धाराएँ 57 व 213 – प्रोबेट – प्रशासन पत्र – कब आवश्यक नहीं – उन राज्यक्षेत्रों के बाहर की गयी अथवा उन राज्यक्षेत्रों के बाहर स्थित

obtained by a Hindu in respect of a Will made outside those territories or covering the immovable properties situated outside those territories. [Rupindersingh Anand v. Smt. Gajinder Pal Kaur] ...*50

Sugar (Control) Order, 1966, Clause 4 & 5 - See - *Essential Commodities Act, 1955, Section 3(3D) & (3E)* [Barwani Sugar v. Union of India] ...*40

Tender - *Non-consideration of terms of tender - Petitioner did not comply with clause 4 of the "Important Instructions to Tenderers" - Commercial bid submitted by the petitioner was rightly found to be unresponsive and was not considered.* [Kineco Pvt. Ltd. V. West Central Railways] ...2489

Tender - *Parity - Each tender notice is governed by a particular set of conditions and the criteria or the principle applied for evaluation of a bid in one tender cannot be applied in another - On that ground parity cannot be claimed.* [Kineco Pvt. Ltd. V. West Central Railways] ...2489

Trade Unions Act (16 of 1926), Section 10 - *Derecogition of Trade Union - Show Cause Notice - M.O.U. signed by management and M.P. Bank Officer's Association requires issuance of show cause notice before derecognizing trade union - Held - Petitioner union not signatory to M.O.U. cannot claim previlidges conferred by said M.O.U. - Non-compliance of M.O.U. does not arise.* [All India State Bank of Indore, Officers Co-ordination Committee v. State Bank of Indore] ...*74

Transfer of Property Act (4 of 1882), Section 44 - See - *Civil Procedure Code, 1908, Order 39 Rules 1 & 2* [Girish Shrivastava v. N.K. Pateria] ...2164

Wakf Act (43 of 1995), Sections 54 & 55 - See - *Constitution, Article 226* [Maszid Chandal Bhata Prabandh Committee v. Secretary, Local Self Department] ...1952

Workmen's Compensation Act (8 of 1923) - *Death by a dog bite - Could it be termed as during the course and arisen out of employment - Held -Deceased was required to remain present in the office and while performing the work, suddenly a mad dog entered in the office and bit the deceased which means that the incident occurred during the course and arisen out of employment - The employer can be forced to pay compensation.* [Executive Engineer v. Smt. Kalawati] ...1967

Workmen's Compensation Act (8 of 1923), Section 4A(3) - *Interest - Commissioner allowed the interest @ 6% p.a. - Challenged in appeal and prayer made for enhancement - Held - The penalty which is prescribed by virtue of Sub-clause (a) of Sub-section (3) of Section 4A is 12% - Accordingly, the claimants are entitled to get the rate of interest @ 12% p.a. - Appeal of claimants partly allowed.* [Baijnath Choudhary v. Secretary, M.G.M. Higher Secondary School] ...2339

स्थावर सम्पत्तियों को समाविष्ट करने वाली किसी वसीयत के संबंध में किसी हिन्दू द्वारा प्रोबेट अभिप्राप्त करना आवश्यक नहीं होगा। (रूपिन्दरसिंह आनंद वि. श्रीमती गजिंदर पाल कौर) ---*50

चीनी (नियंत्रण) आदेश, 1966, खण्ड 4 व 5 – देखें – आवश्यक वस्तु अधिनियम, 1955, धारा 3 (3डी) व (3ई) (बरवानी शुगर वि. यूनियन ऑफ इंडिया) ---*40

निविदा – निविदा के निबंधनों पर विचार न करना – याची ने "निविदाकार के महत्वपूर्ण निर्देशों" के खण्ड 4 का अनुपालन नहीं किया – याची द्वारा प्रस्तुत व्यवसायिक बोली भलीभाँति अनुत्तरदायी पायी गयी एवं उस पर विचार नहीं किया गया। (काईनेको प्रा.लि. वि. वेस्ट सेन्ट्रल रेल्वेज) ...2489

निविदा – समानता – प्रत्येक निविदा सूचना शर्तों के समुच्चय विशेष द्वारा अधिशासित होती है एवं एक निविदा में किसी बोली के मूल्यांकन हेतु लागू मानदण्ड या सिद्धान्त दूसरी निविदा में लागू नहीं हो सकता – उस आधार पर समानता का दावा नहीं किया जा सकता। (काईनेको प्रा.लि. वि. वेस्ट सेन्ट्रल रेल्वेज) ...2489

व्यवसाय संघ अधिनियम (1926 का 16), धारा 10 – कार्मिक संघ की अमान्यता – कारण बताओ सूचना पत्र – प्रबंधन और म.प्र. बैंक अधिकारी संघ द्वारा हस्ताक्षरित एम.ओ.यू. कार्मिक संघ को अमान्यी.त करने के पूर्व कारण बताओ सूचना पत्र जारी करना अपेक्षित करता है – अभिनिर्धारित – याची संघ जो एम.ओ.यू. का हस्ताक्षरकर्ता नहीं है कथित एम.ओ.यू. द्वारा प्रदत्त विशेषाधिकारों का दावा नहीं कर सकता – एम.ओ.यू. के अपालन का प्रश्न ही उत्पन्न नहीं होता। (ऑल इंडिया स्टेट बैंक ऑफ इंदौर ऑफीसर्स को–ऑर्डिनेशन कमेटी वि. स्टेट बैंक ऑफ इंदौर).--*74

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 44 – देखें – सिविल प्रक्रिया संहिता 1908, आदेश 39 नियम 1 व 2 (गिरीश श्रीवास्तव वि. एन.के. पटेरिया) ...2165

वक्फ अधिनियम (1995 का 43), धाराएँ 54 व 55 – देखें – संविधान, अनुच्छेद 226, (मस्जिद चंडाल भाटा प्रबंध कमेटी वि. सेक्रेटरी, लोकल सेल्फ डिपार्टमेन्ट) ...1952

कर्मकार प्रतिकर अधिनियम (1923 का 8) – कुत्ते के काटने से मृत्यु – क्या यह नियोजन के अनुक्रम में और उससे उत्पन्न हुआ माना जा सकता था – अभिनिर्धारित – मृतक को कार्यालय में उपस्थित रहना आवश्यक था और कार्य करते समय एक पागल कुत्ते ने कार्यालय में प्रवेश किया और मृतक को काट लिया जिसका अर्थ है कि घटना नियोजन के अनुक्रम में घटित हुई और उससे उत्पन्न हुई – नियोक्ता को प्रतिकर अदा करने के लिए बाध्य किया जा सकता है। (एग्जीक्यूटिव इंजीनियर वि. श्रीमति कलावती) ...1967

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 4ए(3) – ब्याज – कमिश्नर ने 6 प्रतिशत वार्षिक की दर से ब्याज मंजूर किया – अपील में चुनौती दी गयी और वृद्धि के लिए प्रार्थना की गयी – अभिनिर्धारित – शास्ति, जो धारा 4ए की उपधारा (3) के उपखण्ड (ए) के आधार पर विहित है, 12 प्रतिशत है – तदनुसार, दावेदार 12 प्रतिशत वार्षिक की दर से ब्याज की दर पाने के हकदार हैं – दावेदारों की अपील अंशतः मंजूर की गयी। (बैजनाथ चौधरी वि. सेक्रेटरी, एम.जी.एम. हायर सेकेन्डरी स्कूल) ...2339

Workmen's Compensation Act (8 of 1923), Section 4A(3) - *No prayer for penalty made in the claim - In appeal, prayer made for award of penalty - Held - In the absence of any prayer of penalty, there was no reasonable opportunity to the employer to offer any explanation for non-payment of amount of compensation within the stipulated period - Penalty rightly not awarded.* [Baijnath Choudhary v. Secretary, M.G.M. Higher Secondary School] ...2339

Workmen's Compensation Act (8 of 1923), Section 4A(3) - *Penalty - Power of the Commissioner - The manner in which it is to be exercised - Held - The Commissioner of Workmen Compensation Act before imposing the penalty has to record some findings for imposition of either the maximum penalty or some penalty whatever the facts and circumstances permit to impose the percentage of penalty.* [Executive Engineer v. Smt. Kalawati]...1967

Workmen's Compensation Act (8 of 1923), Section 12 - *Principal employer denying to pay compensation on the ground that deceased workman was employed by a contractor and not by him - Held - S. 12 of the Act is specific which primarily fix the responsibility of the Principal employer to pay the amount of compensation - The Principal employer cannot be absolved from its liability to pay the amount of compensation.* [Baijnath Choudhary v. Secretary, M.G.M. Higher Secondary School] ...2339

******

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 4ए(3) – दावे में शास्ति के लिए कोई प्रार्थना नहीं की गयी – अपील में, शास्ति अधिनिर्णीत करने की प्रार्थना की गयी – अभिनिर्धारित – शास्ति की किसी प्रार्थना के अभाव में नियोक्ता को नियत कालावधि के भीतर प्रतिकर की राशि के असंदाय के लिए कोई स्पष्टीकरण प्रस्तुत करने का कोई युक्तियुक्त अवसर नहीं था – शास्ति उचित रूप से अधिनिर्णीत नहीं की गयी। (बैजनाथ चौधरी वि. सेक्रेटरी, एम.जी.एम. हायर सेकेन्डरी स्कूल) ...2339

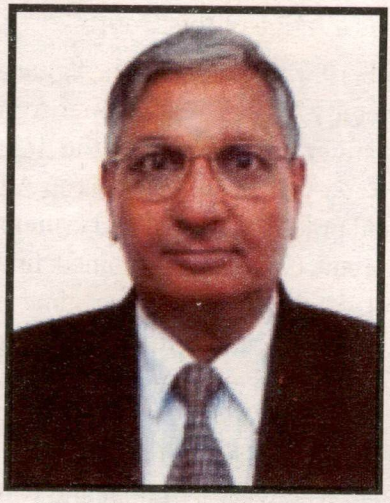
कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 4ए(3) – शास्ति – आयुक्त की शक्ति – ढंग जिसमें इसका प्रयोग किया जाना है – अभिनिर्धारित – कर्मकार प्रतिकर अधिनियम के आयुक्त को शास्ति अधिरोपित करने के पूर्व, या तो अधिकतम शास्ति या कोई शास्ति जो भी शास्ति की प्रतिशतता अधिरोपित करने के लिए तथ्य और परिस्थितियाँ अधिरोपित करना अनुज्ञेय करते हों, के अधिरोपण के लिए कुछ निष्कर्ष अभिलिखित करने होंगे। (एग्जीक्यूटिव इंजीनियर वि. श्रीमति कलावती) ...1967

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 12 – प्रिंसीपल नियोक्ता ने इस आधार पर प्रतिकर का भुगतान करने से इंकार कर दिया कि मृतक कर्मकार को ठेकेदार द्वारा नियोजित किया गया था न कि उसके द्वारा – अभिनिर्धारित – अधिनियम की धारा 12 विनिर्दिष्ट है जो प्रतिकर की राशि अदा करने का प्रथमतः प्रिंसीपल नियोक्ता का उत्तरदायित्व निश्चित करती है – प्रिंसीपल नियोक्ता प्रतिकर की राशि भुगतान करने के अपने दायित्व से मुक्त नहीं हो सकता है। (बैजनाथ चौधरी वि. सेक्रेटरी, एम.जी.एम. हायर सेकेन्डरी स्कूल) ...2339

******

POSTING TO THE MADHYA PRADESH HIGH COURT

We congratulate Shri Sri Niwas Aggarwal on his posting as Judge of the High Court of Madhya Pradesh. Shri Sri Niwas Aggarwal took Oath of the High office on 28-10-2010.



Shri Sri Niwas Aggarwal

Born in Delhi on 25-08-1950. Did B.Sc. and Master of Laws, both from Delhi University. Had the distinction of getting several gold medals and silver medals, both during the L.L.B, and L.L.M. studies. Enrolled as an Advocate with Bar Council of Delhi on 25-10-1980. Practised civil and criminal law, both original and appellate side in District Courts, Delhi High Court and Supreme Court. Became Advocate on record in Supreme Court in 1984 and had the distinction of attaining first position in Advocate-on-record examination. Joined Faculty of Law, Delhi University as part time Lecturer-in-Law in 1986 and continued teaching there till appointment as Additional District & Sessions Judge, Delhi on 30-11-1991. Handled several important matters of public importance and exercised different jurisdictions as Member of Delhi Higher Judicial Service. Went on deputation as Presiding Officer of Debt Recovery Tribunal, Delhi on 20-12-2000. Was appointed as Chairman of an All India Working Group for suggesting amendments in Recovery of Debts Due to Banks and Financial Institution Act, 1993. Worked as Registrar General of High Court of Delhi from 14-10-2005 till 27-02-2006, Elevated to the Bench of High Court of Delhi as Additional Judge on 28-02-2006 and was confirmed on 25-04-2007.

As a Judge of High Court of Delhi, delivered more than 2000 judgments. Sat on almost all jurisdictions, civil & criminal, and also on Company side. Handled many important matters including PIL cases. In 19 years of judgeship, acquired rich judicial and administrative experience.

Transferred to High Court of Madhya Pradesh and took Oath on 28-10-2010.

We wish Shri Sri Niwas Aggarwal, a successful tenure on the Bench.

OVATION TO HON'BLE SHRI JUSTICE SRI NIWAS AGGARWAL

Shri R. D. Jain, Advocate General, M. P., while felicitating the Judge, said :

It gives me pleasure to extend hearty welcome to Hon'ble Justice Sri Niwas Aggarwal on his posting as a Judge of this Court.

Born in Delhi on 25.8.1950 Shri Sri Niwas Aggarwal did B.Sc and Master of Laws from Delhi University. Because of his meritorious performance he got several gold medals and silver medals both in the degree course of LL.B and LL.M. Justice Sri Niwas Aggarwal was enrolled as an Advocate with Bar Council of Delhi on 25.10.1980 and practised in civil and criminal law in District Courts, Delhi High Court and Supreme Court. He obtained first position in Advocate-on-record examination in 1984. He was also a part time Lecturer-in law in Faculty of Law, Delhi University and continued teaching there till his appointment as Addl. District & Sessions Judge, Delhi on 30.11.1991. As a member of Delhi Higher Judicial Service Justice Sri Niwas Aggarwal handled several important matters of public importance. Justice Sri Niwas Aggarwal went on deputation as Presiding Officer of Debt Recovery Tribunal and was appointed as Chairman of an all India Working Group for suggesting amendments in Recovery of Debts Due to Banks and Financial institution Act 1993. He worked as Registrar General of High Court of Delhi from 14.10.2005 till 27.2.2006. Justice Sri Niwas Aggarwal was elevated to the Bench of High Court of Delhi as Additional Judge on 28.2.2006 and was confirmed on 25.4.2007.

I may draw the attention of Your Lordship towards the problems of arrears of cases in the High Court which call for remedial measures and change is envisaged in this regard. With Your Lordship's experience as a Judge of Delhi High Court this problem may be solved to a great extent in this State. Judgments delivered by his Lordship as a Judge of Delhi High Court reflect upon his socio legal concept. He feels concerned about the poor class and has always tried to stress upon the supremacy of law. I may profitably refer Your Lordship's view on the object and policy of legislature which were taken note of in the case of Multipurpose Training Centre and for ameliorating plight of workers, the expediency of fixing minimum wages was stressed.

Your Lordship took note of working conditions of labourers and felt that there is a need of treating the employees in accordance with the directions of the various statutory provisions and if the employer denies the benefit of statutory provisions to the employee, then such a right can be enforced by a Writ Petition. In the case of **Secretary Education v. Mukesh Chand** the plight of disabled persons was sympathetically considered by Your Lordship and it was laid down that the persons appointed against the post reserved for disabled persons should

not be refused appointment against the general seats. This was so laid-down with a view that the disabled persons may get larger share in the services beyond the quota fixed for them.

These are some illustrations of cases. in which Your Lordship took special care for uplifting the status of havenots.

Your Lordship dealt with a large number of cases under the Companies Act in relation to amalgamation of companies, holding of the meetings of share-holders, and in arbitration matters Your Lordship decided many legal questions.

It is indeed a matter of pride to welcome a jurist having such a bright academic career and whose judicial merit and distinction as a Judge of this court, will be a great asset to people of this State which is known for its high traditions through out the country.

I, on behalf of State Govt., Law Officers and My own behalf welcome Your Lordship and wish a successful tenure as Judge of this Hon'ble Court.

Shri Anil Khare, President, M. P. High Court Bar Association, Jabalpur, while felicitating the Judge, said :–

I feel it to be my proud privilege when I stand here on behalf of the Madhya Pradesh High Court Bar Association, Jabalpur to welcome my Lord Hon'ble Justice Shri S.N. Aggarwal on his transfer as the Judge of this prestigious High Court from the Delhi High Court. This is a moment when I feel it to be my duty to apprise My Lord with the history and the glory of the High Court of Madhya Pradesh and also with the high traditions of this prestigious Bar Association.

The High Court of Madhya Pradesh came into existence on 1st of November 1956 on the reorganization of the States by virtue of State Reorganization Act, 1956. Hon'ble Justice M. Hidayattullah who was the Chief Justice of Nagpur High Court before the formation of present state of Madhya Pradesh was appointed as the first Chief Justice of this High court. With the constitution of the High Court of Madhya Pradesh, this Bar Association came into existence. From its inception the legal fraternity has witnessed and felt the Madhya Pradesh High Court Bar Association's well etched principles, determination and endeavor for the cause of justice.

The credentials and professional profile of My Lord has already been read out by my earlier speakers: The said professional profile speaks volume of My Lords intellect and legal acumen and makes us confident that My Lord would leave no stone unturned in preserving the Rule of Law and protecting the sacred Constitution given by 'We the People'.

The hallmark of Indian Judiciary is its independence and we expect that

My Lord would protect the same for ensuring that the faith and confidence of the public in the judicial system remains intact.

The concept of judicial independence was described in C. Ravichandran Iyer Versus Justice A.M. Bhattacharjee and Others, reported in (1995) 5 SCC 457, in the following words :-

" To keep the stream of justice clean and pure the Judge must be endowed with sterling character , impeccable integrity and upright behavior . Erosion thereof would undermine the efficacy of the rule of law and the 'working of the Constitution itself. The Judges of higher echelons , therefore should not be mere men of clay with all the frailties and foibles , human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fiber not susceptible to any pressure, economic , political or of any sort. The actual as well as the apparent independent of judiciary would be transparent only when the office- holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law."

My Lord has come to this prestigious High court when much is talked about the concept of judicial accountability. Though the concept was not incorporated by the framers of the Constitution still the oath under the Constitution makes a Judge accountable to the expectations of 'We the People'.

This High Court Bar Association is well known for its high traditions, which would always be felt by My Lord during his tenure as a Judge of this High Court. At this moment when I am welcoming My Lord, I feel duty bound to assure that the Bar would always be keen and willing to extend its fullest of cooperation in the discharge of My Lords duties.

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 as a Judge of this High Court. I also wish that all the goodness of the almighty be showered upon you.

Shri T. S. Ruprah, President, High Court Advocates' Bar Association, Jabalpur, while felicitating the Judge, said :–

I deem it to be my proud privilege to offer felicitations to your Lordship on your transfer as Judge of this High Court. We welcome Hon'ble Shri Justice SRI NIWAS AGGARWAL.

My Lord, today you join the distinguished group of jurists who have left their indelible mark on its institutional culture. Your professional profiles are also truly remarkable and enviable and make you eminently suitable for this high honour. Your all round experience since 30.11.1991 as the Additional District and Sessions Judge and thereafter as a Judge of the High Court of Delhi from 28.2.2006 onwards, is bound to help in successful and satisfying discharge of your duties and obligations. Since the success of the judiciary and judicial administration in the State is closely linked with your success in this office, we wish and pray for your success.

My Lords, this Bar is known for its high traditions. It is full of illustrious seniors and energetic bright young members who are extremely respectful and courteous. We the members of the Bar, have great expectations from your Lordship. Early decisions of cases are the dire need of the day. Public stares at the face of judiciary as the only source to hold their faith in the system. The judiciary has to keep the belief of the litigants. My Lord will bring to your task a wealth of experience, the vast knowledge of law, an almost inexhaustible fund of patience, tolerance and compassion and above all what lawyers always appreciate in a Judge, unfailing courtesy, affection and regard to the Bar.

My Lords, from the side of the Bar, with firm conviction we assure your Lordship of our fullest co-operation in discharging your functions.

I, on behalf of all the members of the High Court Advocates Bar Association and on my own behalf welcome Your Lordship to this glorious institution and wish Your Lordship a very brilliant and successful tenure.

Shri Radhelal Gupta, Assistant Solicitor General of India, while felicitating the Judge, said :–

I have the honour of introducing before the august house a great legal luminary Hon'ble Shri Justice Sri Niwas Aggarwal who is today gracing the high Office of Hon'ble Judge of this High Court.

Before introducing Your Lordship, I offer my heartiest welcome and congratulate Your Lordship for adorning the High Office of Hon'ble Judge, High Court of MP.

My Lord Shri Justice Sri Niwas Aggarwal,

Your Lordship has completed Bachelor of Science Degree and Law from

Delhi University. Your Lordship has been accolade with various gold medals, while studying LLB and LLM. Your Lordship was enrolled by the Bar Council of New Delhi in the year 1980. Your Lordship since beginning of His carrier has been meticulous, stickler, immutable, became Advocate on record in Supreme Court in the year 1984 and had the distinction of attaining first position in Advocate - on - record examination. Your Lordship has also the honour of working as Lecturer (part time) of Law, Delhi University in the year 1986 and continued there at till His Lordship was appointed as Additional District and Sessions Judge in the year 1991.

His Lordship has exercised different jurisdictions as Member of Delhi Higher Judicial Service. Your Lordship has also graced the Office of Chairman All India Working Group for suggesting amendments in Recovery of Debts Due to Banks and Financial Institutional Act 1993, Registrar General High Court of Delhi, Additional Judge for the Bench of High Court of Delhi for one year and finally today Your Lordship is taking oath of the High Office of Hon'ble Judge of this temple of Justice.

Being Judge of the High Court your Lordship has the credit of delivering more than 2000 judgement till now, graced all the jurisdictions of Civil & Criminal and on Company side, handled many important matters including Public Interest Litigation cases. Your Lordship in the journey of Justice has acquired rich judicial and administrative experience.

I am very much hopeful that with the help of Your Lordships great experience and wisdom Your Lordship shall set mile stones in the history of judicial administration of this great temple of Justice.

Before concluding my address today I remember the few words of Hon'ble Shri Justice Raina who once said :

" Administration of justice is very solemn duty and it demands whole hearted devotion. Being religious minded, I believe that God alone is the true foundation of justice and the Judges are called upon to discharge the judicial functioning as his agents. We are accountable to god for all that we do in discharging our functioning and therefore, it is necessary for us to do our best according to light and wisdom given to us by him. I have always felt that if we fail in doing justice to others, we shall not be entitled to claim justice for ourselves from god."

At last but not the least, I once again on behalf of Government of India, law officers of the Central Government and my own behalf, I sincerely offer my whole hearted welcome and best wishes Hon'ble Shri Justice Sri Niwas Aggarwal to the city of marble rocks and holly river Narmada.

Shri S. C. Datt, President, Senior Advocates' Council, while felicitating the Judge, said :–

On behalf of the M.P. High Court Senior Advocates Council and on my own behalf, I wish you a very good welcome on your appointment as a Judge of this High Court.

You, My Lord, have wide experience both in the Court craft and conduction of cases.

You were a versatile student and have obtained several Silver and Gold Medals during L.L.B. and L.L.M. Examinations.

You started practice on 25.10.1980 and were enrolled as an Advocate with Bar Council of Delhi. You also joined Faculty of Law, Delhi University as Part Time Lecturer in Law in 1986 and continued teaching till appointed as Additional Sessions Judge, Delhi on 30. 11.1991 Later on, after working as Presiding Officer of Debt Recovery Tribunal, Delhi and Registrar General of High Court of Delhi, you were elevated to the Bench of High Court of Delhi as an Additional Judge on 28.2.2006 and were confirmed on 25.4.2007 and now you have been transferred to the High Court of MadhyaPradesh, Jabalpur.

My Lord, your wide and varied experience both of Court and adjudicating cases would be beneficial to us. You have delivered more than 2000 judgments till now and you have acquired rich judicial and administrative experience.

We wish, Your Lordship, a very happy and successful tenure.

Reply to Ovation by Shri Justice S. N. Aggarwal

Thank you very much for your generous comments about me. I am honoured by your kind words. I am over-whelmed by the affection and regard shown to me by the Bench and Bar of Madhya Pradesh High Court at Jabalpur. I am indeed happy to have the pleasure and privilege of expressing myself on this solemn occasion.

I have a humble origin and I have no shame in admitting this fact. Rather, I take pride in acknowledging this fact for the reason that despite my modest background I was able to rise to the present position. I attribute this rise in my career to my own hard work and dedication and above all I owe it to the blessings of my late parents. Right from childhood till now, my life had been full of struggle. I did my Senior Secondary from a Government-aided school and then did two years Diploma in Pharmacy in 1971. Thereafter, my entire education starting from Graduation till Master of Laws Degree from Delhi University was part time, working simultaneously for livelihood as a paramedical staff with the Government till I was enrolled as an Advocate with the Bar Council of Delhi in

October, 1980. I have practised as an Advocate in almost all the courts of Delhi up to the Hon'ble Supreme Court till I was appointed as an Additional District & Sessions Judge, Delhi in 1991. I also had the privilege to work as a part time lecturer in law at Delhi University for almost five years. Many of my students are working as Judicial Officers not only in Delhi but in other parts of the country also. As a member of Delhi Higher Judicial Service, I have held various positions including that of Presiding Officer in DRT, Delhi from December 2000 to October 2002. I was called upon to take over as Registrar General of Delhi High Court by its then Chief Justice, Justice Markandey Katju on 14th day of October, 2005 and worked in that position there till I was elevated to the Bench of Delhi High Court on 28.02.2006. Ever since then till now, I have tried to give my best to the system notwithstanding serious medical problems of my wife and other problems at the home front.

The Constitution of India requires an oath in the name of God or on solemn affirmation to be taken by a Judge before he takes over his office of judgeship either in the High Court or in the Supreme Court. It has often been said but needs to be said again that this oath taking ceremony is neither an empty ritual nor a matter of formal procedure. It is an occasion of making solemn promises for the performance of which the oath taker will be responsible not only to the people of this country but also to God and to his own conscious. I seek blessings of Almighty for giving me strength to fulfill this oath.

I have had the privilege and a chance to watch the legal system very closely. Our justice delivery system commands very high respect and the citizens have placed the judiciary on a high pedestal. Judiciary is a repository of public faith. It is the trustee of people. After knocking at all the doors and failing to get justice, people approach the Judiciary as a last resort. The Bar plays an important and indispensable function in the administration of justice. I have great respect for it and hold it in the highest esteem. Its commitment, its ethos and principles, its intelligence and its collegiality, is a precious thing which must be nurtured and protected. Although the Bar acts as the watchdog of the Bench, the relationship between these two important limbs of the justice delivery system must be marked by cooperation, coordination and harmony. I believe that everyone is entitled to a fair and public hearing by an independent and an impartial Court for the determination of his rights and obligations. We all, both at the Bench and the Bar, have to put our best foot forward to bring about a fair and just governance propelled by fair and just means. Injustice in all its manifestation has to be repelled. We have to ensure that the Rule of Law is maintained and purity of the Constitution is preserved, both in its structure and in its soul.

We, in India, are blessed with a highly ethical judiciary. It need not be emphasized that the good governance and the efficient working of the democratic

machinery of a country is heavily dependent upon the ethical standards and controls that are followed by its judiciary. Confidence in the judiciary does not require a belief that all judicial decisions are wise, or all judicial behavior impeccable. What it requires, however, is a satisfaction that the justice system is based upon values of independence, impartiality, integrity and professionalism and that the system pursues those values faithfully. Courts and Judges have a primary responsibility to conduct themselves in a manner that fosters that satisfaction.

We must also note that the judicial system is not free from criticism. Like other public institutions, the judiciary must be subjected to fair criticism and if the occasion demands, trenchant criticism. Scurrilous abuse of a particular member of the Judiciary or attack which questions the integrity of judicial institution undermines the public confidence in the Courts and acceptance of its decisions. This does not necessarily mean that the Court should be immune from criticism. But these critics should always keep in their mind that the Judiciary plays a pivotal role in maintaining the rule of law and those who hold positions of power and influence in the country have a responsibility to ensure that this institution survives and protect the valuable rights of citizen of this Country. Unwarranted and irresponsible criticism of judiciary would subvert the judicial independence.

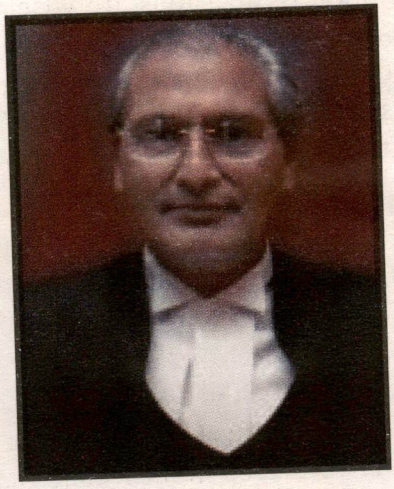
I am extremely conscious of the onerous responsibility you have entrusted upon me as a Judge of this Court. It will be my sincere endeavor to do my best and live up to your high expectations. As I have entered this hermitage after my transfer from Delhi High Court, I pray to the Almighty to give me strength and courage to maintain the high standards set up by the present and former Judges of this court. I shall try to deliver my best in this Court with whatever little administrative and judicial experience I have acquired in 30 years of my legal career. In conclusion, I beseech all my colleagues on the Bench and also the learned members of this great Bar to enlighten my task by giving me all their goodwill, support and encouragement for the effective promotion and protection of Rule of Law and human rights. In return, I assure you that you will never find me wanting on any count in the discharge of my constitutional obligations.

Thank you all so very much for coming and allowing me to express myself on this occasion. I am touched greatly by your generosity and great honour given to me by you all on this occasion. I wish every one of you well and extend my warmest greetings for happy deepawali and a bright and prosperous new year 2011.

Thank you.

****

Farewell



Justice Shantilal Kochar

Born on October 26, 1948 at Balaghat Madhya Pradesh. Completed matriculation in the academic year 1964-1965 from Nagar Palika School Balaghat. Done Graduation in the academic year 1969-1970 from Durga Mahavidyalaya (Ravi Shankar University) Raipur, Post Graduation in Economics from Govt. Jata Shankar Trivedi College Balaghat (Sagar University) M.P., and L.L.B. from Palival Law College, Tehsil Wara Seoni, District Balaghat.

Joined Profession in the year 1973 and started practice in High Court as well as District Court, Jabalpur. Elected as member of the Bar Council in the year 1984 and remained member of Bar Council of Madhya Pradesh up to the elevation. Worked in almost all Committees of the Bar Council as member as well as Chairman of the Committee (Committee for enrolment of Law Graduates as advocates, Finance Committee, Examination Committee, Library Committee, Executive Committee, Building Committee, Advocates welfare Committee as well as Trust etc.) Also worked as treasurer of the Council for 10 years. Practised in Criminal, Constitutional, Civil and Service matters.

Elevated as Additional Judge of M.P. High Court Jabalpur on October 22, 2001 thereafter transferred to Indore Bench and joined on November 5, 2001 in Indore Bench. Was confirmed as permanent Judge of High Court of Madhya Pradesh on March 27, 2002 and demitted office on 25-10-2010.

We wish his Lordship a healthy, happy and prosperous life.

Hon'ble Shri Justice Viney Mittal, bids farewell to the demitting Judge :–

Some words are easy to pronounce, but rather very difficult to comprehend and digest. FAREWELL is one such word. The mixed reactions it evokes are– a moment of separation for all– but a feeling of satisfaction for the one who leaves with a job well accomplished, and a feeling of gratitude towards the system– and a void and vacuum which would never be filled up.

It is with these varied and myriad reactions that we have gathered here today to honour and bid a very warm adieu to Hon'ble Mr. Justice Kochar, who on completion of a distinguished and very successful innings as a Judge of High Court of Madhya Pradesh, is leaving us, to render still more strenuous service to the system and society.

Justice S.L.Kochar was born on October 26, 1948, in a business family, at Balaghat. After completing his schooling, he graduated in Commerce from Durga Mahavidyalaya, Raipur (Ravishankar University), and thereafter did his Masters in Economics, from Jatashankar Trivedi Mahavidyalaya, Waraseoni, Balaghat. After completion of law from S.S.Patel Vidhi Mahavidyalaya, he was enrolled as an Advocate in December, 1973. While in practice, he excelled himself in Criminal Law, and was known for his excellence in the art of Cross-examination. Though practicing on the criminal side, he never left an opportunity to prove his acumen in other branches of law, as well, thus making him an all-rounder in profession. In a short span of time he gained such popularity that he was elected, successively, as a member of Bar Council of Madhya Pradesh, and contributed his expertise, while participating in its various committees.

The height which Shri Kochar acquired in the profession was aptly recognized and he was elevated as Judge of the Madhya Pradesh High Court on October 22, 2001.

I came in contact with Justice Kochar, when I joined this Bench in the month of April, 2007, and was highly impressed with his knowledge of law, practical wisdom, and his deep religious temperament– and above all his habit of working very hard and tirelessly. He would always face smilingly, even the most complicated situations. While dealing with complex legal issues, Justice Kochar would deliver the judgment with such effortless ease, that others would only admire him. He is always ready to share his knowledge and extend an helping hand to his colleagues, and members of the Bar, alike. Although, endowed with all these qualities, I have found one thing missing in him –ARROGANCE– yes, he is absolutely down to earth, a simple man, with absolutely no airs, of the office, around him.

Justice Kochar has contributed so much to the administration of justice in

the State of Madhya Pradesh– his innumerable judgments on all the legal issues are a clear testimonial– that his foot prints on the sand of judicial administration would keep on guiding the generations to come.

While leaving us– with heavy hearts– Justice Kochar– untiring as he is– is going to contribute his expertise, maturity and sound knowledge of law to the vexed and complicated issues arising from the unparalleled Industrial Catastrophe in the world– Bhopal Gas Tragedy. We all know, he has been assigned the onerous responsibility of being, the One Man Commission of Enquiry, to look into certain unanswered questions. We have no doubts that with his methodology and unending quest for truth, he would provide all the answers.

In the end, I salute the KARAMYOGI-the only apt word to describe Justice Kochar– and wish him a very long, happy, healthy and meaningful life.

Shri Vinay Zelawat, President, High Court Bar Association, Indore, bids farewell :–

जीवन एक सरल रेखा नहीं अपितू सर्पिल चाल है । जहां कर्म कभी एक छोर को छूता है तो उसी क्षण प्रारब्ध दूसरे छोर को स्पर्श कर रहा होता है । अपनी सर्पिल चाल से जीवन कई मादक घटनाओं के इन्द्रधनुषीय रंगों को बिखेर देता है । कभी किसी घटना से बुद्ध को बुद्धत्व प्राप्त होता हैं तो कोई घटना महावीर को जिनत्व प्रदान कर प्रकृति के परम की रंगीन छटाओं को बिखेर देती है । मिलना और बिछुड़ना प्रकृति का नियम है ।

आज भी ऐसा ही भावुक क्षण हमारे समक्ष विद्यमान है । माननीय न्यायमूर्ति श्री शांतीलाल जी कोचर आज इस न्यायालय के न्यायाधीश के रूप में हमसे बिदाई ले रहे हैं । न्यायमूर्ति कोचर साहब, आप भले ही इस न्यायालय से बिदाई ले लें, आप हमारे दिल और यादों में हमेशा बसे रहेंगे । कुछ बिरले ही व्यक्ति ऐसे होते है जो अपनी कीर्ति मंडल को इस तरह संजोए रखते है जो निकटता के स्नेह से बांध देते हैं । मुझे यह कहने में कोई संकोच नही है कि आपका व्यक्तित्व ऐसा ही व्यक्तित्व है । स्नेह और सादगी का अद्‌भुत संगम है । आपके स्वभाव एंव व्यवहार सब में इतनी सहजता, ऐसी सरलता है जो किसी को पराएपन का बोध नहीं होने देती है। आपका होना, परिपूर्ण वास्तविकता है ।इसे विधि की विडंबना कहे या कटु सत्य का ओझल, परदे से शनैः शनै उजागर होना कि समय के साथ फलता –फूलता मानव जीवन बालपन, फिर तरूणाई, प्रौढता से होता हुआ वृद्धावस्था को परिणत हो जाता है और घडी की सुई की तरह जहॉ से चला था वही पहुंच जाता है। सृष्टि सृजक परमेश्वर की परम इच्छाए ही मानव जीवन की घटनाएँ बन अवतरित होती हैं ।

जीवन के इस रंगमंच पर आपका पदार्पण 26 अक्टोबर 1948 को बालाघाट में हुआ । आपने अपना शैक्षणिक जीवन रायपुर एवं वारासिवनी जिला बालाघाट से पूर्ण किया । तत्पश्चात् दिसम्बर 1973 से श्री सतीशचन्द्र दत्त साहब के साथ अपनी विधिक यात्रा प्रारंभ की । आपने विधि के सभी क्षेत्रों में काम किया लेकिन फौजदारी न्याय क्षेत्र में आप विशेषज्ञ रहे । आपने 1984 से अनेक वर्षो तक बार कौसिंल के माध्यम से अभिभाषकों के कल्याण हेतु कार्य किया । 22 अक्टोबर 2001 को आपने मध्यप्रदेश उच्च न्यायालय के न्यायाधीश के रूप में शपथ ग्रहण की ।

महोदय, निर्दोष निष्कपट, निरागस और अहिंसा की वृत्ति से कार्य करने वाला व्यक्ति ही

निष्ठावान न्यायाधीश के रूप में जाना जाता है । एक न्यायाधीश की साधना ऐसी होनी चाहिए जिसमें राग, द्वेष, निंदा और कामनाओं से बचा जा सके । न्यायाधीश के लिए आवश्यक है साक्षी भाव । साक्षी भाव का अर्थ है जो कुछ है, उसे तटस्थता से देखते रहो । साक्षी भाव जीवन का एक अभिन्न भाव है । किसी भी कार्य को करते हुए चेतना के प्रति जागरूक रहना आवश्यक है । देह और मन को अलग कर कार्य करने की क्षमता आपमें रहीं ।

माननीय कोचर साहब, भगवान महावीर का जो समतावाद है उसके समक्ष कोई नहीं ठहरता है । कुछ अपवाद ही उनके आदर्शों तक पहुँच सकते है । एक सीमा तक तो उस समता को हर कोई स्वीकार कर सकता है और करना ही चाहिए । आपने किया, हम आपके आभारी है । आचरण की परिपक्वता व शुद्धता के बगैर भौतिकता पर नियंत्रण करना असंभव है ।

महोदय, साधना और दृढता दोनों अनुपम है । अनासक्त योगी पुरूष समाज को प्राप्त हुई ईश्वरीय निधि होती है । आपके जाने से जो रिक्तता उत्पन्न होगी उसकी पुर्ति संभव नहीं है ।

हमारे यहां निवृत्ति का जो गुणगान किया जाता है वह व्यर्थ और आधारहीन नहीं है । निवृत्ति की महिमा अत्युच्च है । यह बात अलग है कि प्रवत्ति के प्रति जितनी सुगमता से मनुष्य आकर्षित होता है उतनी सुगमता से साथ निवृत्ति के प्रति नहीं हो पाता है । निवृत्ति दुष्कर है और अपेक्षाकत कम आकर्षक है । लेकिन निवृत्ति से प्राप्त सुख अनन्त, स्थायी और यथार्थ सुख है विचारकों की यह भी धारणा है कि मनुष्य को प्रवृत्ति के मार्ग पर चलते हुए अपनी दृष्टि सदा निवृत्ति की ओर रखनी चाहिए ।

गीता में कहा गया है कि जो व्यक्ति भक्तिभाव से कर्म करता है, जो विशुद्ध आत्मा है और जो अपनी इंद्रियों को वश में रखता है वह सब को प्रिय होता है और सभी लोग उसे प्रिय होते है ऐसा व्यक्ति कर्म करता हुआ भी कभी नहीं बंधता है । अपने शरीर, मन, वचन तथा वाणी से भक्ति भावना में कर्म करता हुआ व्यक्ति इस संसार से मुक्त रहता है, भले ही वह तथाकथित अनेक कार्यकलापों में व्यस्त क्यों न रहा हो ।

माननीय कोचर साहब, हमारे अपने अंधेरे है । अलग अलग किस्म के । हमें स्वयं भी पता नहीं चलता कि कितने तरह के अंधेरे स्वयं के भीतर पाल रखे है । हम अपने ही अंधेरे से अनजान होते है । यह भी कहा जा सकता है कि हम जानबूझकर अनजान रहते है । क्योंकि स्वयं के अंधेरे से भी परिचित होने के लिए साहस चाहिए । आपमें यह साहस है इसका हमें दृढ विश्वास है कि आपकी बिदाई दशहरे और दिपावली के मध्य हो रही है दशहरा विजय का प्रतीक भी है । वीतराग साधना पद्धति में दो तरह की साधना है । जिनकी भावना उँची है वह साधना में सर्वोच्च माना जाता है । दीपावली कभी पूर्णिमा को नहीं आती है । वह सदा अमावस्या को होती है । क्योंकि अंधकार के ज्ञान के बिना प्रकाश का महत्व नहीं होता है ।

आज आपके जीवन का एक अध्याय बंद होकर नया अध्याय जुडने जा रहा है आप अपना कार्यकाल बिताकर जब यहाँ से बिदा होंगे तो आपके चेहरे पर संतोष की भावना होगी । अपने कार्यकाल के समापन के अवसर पर चिर स्मरणीय सौगात के रूप में इन्दौर के अभिभाषकों का स्नेह विश्वास आदर लेकर बिदा होंगे । आपके गुणों के गागर से ईमानदारी, सादगी, सरलता व सहजता का स्नेह बिखरना हमारे लिए हमेशा यादगार रहेगा । आप स्वस्थ प्रसन्न और कार्यशील रहे । यह दीपावली आपकी जीवन देहरी पर ऐसा दीप जलाए जिसके आलोक से आपके जीवन एवं अंतरमन में उजाला हो जाए, यही कामना है. आप स्वयं शांति के प्रतीक हैं । आपका नाम आपके कर्म और आपके स्वभाव को सार्थक करता है । यह आपके जीवन के सौभाग्य को बढाए । आपको और परिजनों को मेरे स्वयं की ओर से, मेरे साथियों की ओर से एवं इन्दौर उच्च न्यायालय अभिभाषक संघ के समस्त सदस्यों की असीम शुभकामनाऐं ।

.....

Shri L. N. Soni, Addl. Adv. General of M. P., bids farewell :–

Every inning comes to an end and so the every tenure. Its the time for which we all have gathered here is saying Bon voyage to My Lord, for starting a new inning, a totally new one. The day has come to bid your Lordship Farewell from the Office and not from our hearts and minds. It is this day that we give our judgment on you, having received so many at your hands for past one decade. Born on 26th October, 1948 at Balaghat, Lordship has completed his graduation and post gradation and thereafter graduated in Law and started practicing with Shri Satish Chandra Datt, Advocate, Jabalpur. Your Lordship had been elevated in 2001 as a Judge of this High Court.

By dint of his hard work and perseverance, Lordship had made his mark in the profession as a Lawyer at a very early stage.

Your Lordship had practiced on civil, criminal, constitution and service matters, he specialized in criminal cases. Your Lordship was elected to the Bar Council of Madhya Pradesh in the year 1984 and worked on many committees such as Executive Committee, Enrolment Committee, Finance Committee, Examination Committee, Trustees Committee.

Your Lordship's patience, profound knowledge and sharp sense of humor reflected in his court room, while sitting as a Judge. Your Lordship's congenial nature and the atmosphere of cordiality in the Court always added to the pleasure of conducting cases before you. Your Lordship's vast knowledge, experience and great analytical ability duly reflected in your judgments and we will always look forward to your guidance in future also.

You will always be with us in our minds and in our hearts. I extend good wishes to you on my behalf and all colleagues of my office for starting a new inning. I also extend good wishes and hope that you will continue as cheerful as always and spread happiness as usual.

Shri P. C. Mehta, Representative of State Bar Council, bids farewell :–

म0 प्र0 उच्च न्यायालय के न्यायाधीपति श्री एस. एल. कोचर साहब आज अपनी न्यायिक सेवा के इस महिति दायित्वपूर्ण कर अपने सेवाकाल से कार्यमुक्त हो रहे हैं ।

यह हर्ष और विशद यानी दुख की सन्धीबेला का समय है । हर्ष इस अर्थ में हो रहा है कि आपने अपने संपूर्ण कार्यकाल में अपनी विलक्षण प्रतिभा, गहन दूरदृष्टि और निष्ठापूर्वक दायित्व के आधार पर जो सेवाएं दी हैं वह म0 प्र0 उच्च न्यायालय के इतिहास में स्वर्णिम पृष्ठ के रूप में अंकित रहेगी । निसंदेह आपकी गरीमामय उपस्थिती से हम सभी गोरवान्वित होते रहे हैं । न्यायिक सेवा से ससम्मान सेवा निवृत होना वर्तमान समय में प्रसन्नता का विषय ही हैं । लेकिन जब भी हम

उच्च न्यायालय में प्रवेश करेगें तब हम आपकी सौम्य, सहज और गरीमामय उपस्थिती की रिक्तता का अनुभव हमेशा करते रहेंगें ।

हमें आपकी विद्वतापूर्ण कार्यशैली, स्पष्टवादिता और नीरक्षीर करने वाली विवेकपूर्ण दृष्टी का आभाव हमेशा महसूस होगा । हम आपके मुस्कुराहटपूर्ण चुम्बकीय व्यक्तित्व के सम्मोहन से न्यायपूर्ण निर्णय का एक विश्वास लेकर सहजं चले आते थें । इस सम्मोहन से मुक्त होने में हमें थोडा समय लगेगा और हो सकता है कि हम मुक्त भी नही हो पावें । हम ऋणी हैं आपके कि आपने गहन अनुभव न्यायिक ज्ञान और विलक्षण बुद्धी से इस न्याय के मंदिर में न्यायाधिपति रहते हुए जो निर्णय दिये वह हमेशा आपकी आभामय सुक्ष्म उपस्थिती की महक से हम सब के मन को सूगन्धित करते रहेगें। आपके अनेकों न्यायदृष्टान्त प्रसिद्ध हुए हैं जैसे नार्कोटिक्स एक्ट पर समसुद्धीन विरूद्ध स्टेट आफ एम. पी. फुड एडलट्रेशन एक्ट पर विठ्ठल विरूद्ध स्टेट, नार्को टेस्ट के संबंध में रणबीरसिंह सूदन केस ।

विधिवेत्ताओं के साथ आप एक सर्वथा धर्मीक इंसान भी हैं आपने सभी धर्मो का न केवल अध्ययन किया बल्कि धर्म के सत्योन्मूखी मर्म को अपने अन्तःकरण में धारण कर उसे निर्मल और स्वच्छ बनाया ।

कबीरा मन निर्मल भया जैसे गंगा नीर ।

पाछे पांछे हरी फिरे, कहत कबीर कबीर ।।

आपने जैन धर्म का कट्टरता से पालन किया । सूर्यास्त के बाद आपने कभी भोजन ग्रहण नही किया । आप शाजापूर जिले के पोर्टफोलीयों जज थे । शाजापुर के पहले मक्सी आता हैं । मक्सी में 23वें तिर्थंकर भगवान पार्श्वनाथ का बहुत प्राचीन मंदिर हैं । वहां पर आप अक्सर दर्शनार्थ जाते थे। एक अवसर आया कि मैं भी उस समय वहां पर था । आप मंदिर में कंठस्थ स्तवन पांठ कर रहे थे। आपके पाठ से प्रभावीत होकर मंदिर में दर्शनार्थी वहां काफी संख्या में इकट्ठे हो गये थे ।

उज्जैन में म0 प्र0 सामाजिक विज्ञान शोध संस्थान के नाम से एक प्रसिद्ध संस्था हैं । वहां पर भी सौशल जस्टीस विषय पर आपका डेढ़ घण्टे लेक्चर हुआ था और श्रोतांओं ने उस लेक्चर की बड़ी तारीफ की थी ।

मैं भूत भावन कालजयी भगवान महाकालेश्वर से आपके स्वस्थ, यशस्वी एवं दिर्घायु जीवन की प्रार्थना इस मंत्र के साथ करता हूँ

जीवेद शरदंह शतम

अन्त में मैं अपनी बात इस शैर के साथ समाप्त करता हूं

बस कि दुस्वार हैं हर काम आसा होना ।

हर आदमी को मयस्सर नही इंसा होना ।।

.....

Shri Vivek Sharan, Asstt. Solicitor General of India, bids farewell :–

It is said,

"Institutions become known and respected not because of their edifice of brick and mortar but through the sole and heart posses by its functionaries. Just as law without justice is anathema. Justice bereft of law is legal orphan. A judge feels complete when he tempers law with justice."

With the blessings of his father Shri Pannalalji Kochar and mother Smt. Shribai Kochar, he was sworn on 22nd October, 2001. Just after few days. My Lord came Indore in the same year, with his vast experience in law practice, in all branches of law clubbed with respect, he enjoyed amongst the community of lawyers which had been evidenced by his four consecutive elections as member of the Madhya Pradesh State Bar Council since the year 1984. At this juncture, it is worth remembering Smt. Sushma Kochar, wife of Justice Kocharji, although she is no more and could not be with him when he became judge of this Court but without her contribution in his struggle days, he could not have achieved the success in the profession.

Hon'ble Justice Kocharji is at Indore since last more than nine years, and many sitting Judges of this Court who appeared before him and those who are practicing, know and would share my feelings : when I say that this High Court is glorified and known by his honesty, integrity, compassion and industry.

According to Justice V. R. Krishna Iyer, in an article : 'Who will judge the judges' ? He says :

When he left the bench, Senior Advocate, Fali S. Nariman and others passed a resolution which says : "Permit us to remind you that the Bar is the Judge of judges and no judge can avoid or escape the verdict of the Bar. We have summoned you this evening to hear our unanimous declaratory verdict. Our verdict is a decree of affection and admiration. Let us also declare, in these proceedings which are sui *generic,* that we are not only your judges but also your judgement-debtors. No words of prosaic prose would be adequate to encompass your vitality and versatility. We shall therefore crave your indulgence to supplement the record by those profound feelings, which the language of the lexicon cannot communicate and which are best conveyed by the language of the heart."

The tenure of Hon'ble Kocharji as judge of this Court reminds me the message given by my father (Justice Dr. Maithli Sharan) to me, my brother and sisters, when he demitted the bench : It says : "Justice, Judicial Consciousness writ large, is the true manifestation of God Almighty, Omnipotent and

Omnipresent. Imbibe it Judiciously, Sincerely and with Religious honesty in the game of life on your 'Karma Bhoomi". It shall not be out of place to mention that Hon'ble my lord had fulfilled the expectations expressed by Justice R. V. Raveendran about a judge in a lecture delivered on 25"' March, 2006 on the topic : "Do We Sit and Watch ?"[2]:-

"Each case that comes before a Judge, is a human problem concerning life, liberty, food, shelter, safety and security of the citizens. Most of the litigants are of weaker sections, downtrodden, defenceless, poor and ignorant. They are crying out for justice, for a civilized solution to their grievances and problems, and a level playing field. A judge should take interest and play an active role in rendering justice. He further says : Let judges stop being passive spectators. Let them become active crusaders for justice, of course, acting within the recognized parameters."

My lord shall have enough opportunity to serve the victims of Bhopal Gas Disaster and to make true the saying of Jawaharlal Nehru :

"He believed as our tryst with destiny to be to wipe every tear from every eye. That may be beyond us but as long as there are tears and suffering, so long our work will not be over."

Your lordship had always been an inspiring force for the young lawyers of this bar. Under your command, we yearned to improve, strife with determination to forge ahead and create a niche for ourselves both within the system as also in the community.

Sir, you will always enjoy a special position in the records of this court as well as in the hearts of all advocates of this Bar.

I, on my behalf, on behalf of the Union of India and on behalf of my colleagues, offer our greetings, good wishes to My Lord Hon'ble Justice Shri S. L. Kocharji.

Shri G. M. Chafekar Sr. Advocate Representative for Senior Advocates, bids farewell :–

On behalf of the senior Advocate, I would like to add a few words.

I have been a regular visitor to Jabalpur ever since the establishment of the High Court at Jabalpur in 1956, and, therefore, I had .the opportunity of watching your Lordships' progress at the Bar which eventually culminated in your elevation to the Bench of this August High Court in October 2001.

Even on the Bench, your Lordship's performance has been highly commendable. I can say this without fear of contradiction that you have been a judge of unimpeachable integrity. In these days when the judiciary is being subjected to ignorance and uncharitable criticism, not even a whisper touched your Lordship.

To our everlasting regret, successive Chief Justices chose to restrict you largely to the Criminal roster, with the result that a majority of lawyers have been deprived of the benefit of opportunity before you. You were thorough in your hearing and learned in your judgments.

You have constantly sought to improve the Bar by offering constructive criticism. The happy blend of spirituality and conscientious devotion to duty in your Lordship indeed entitles you to greet praise on this occasion.

On behalf of the senior Advocates and my own behalf I wish your Lordship good health, happiness and occupation of your choice in the years to come.

Farewell Speech delivered by Hon'ble Mr. Justice S. L. Kochar :

I feel overwhelmed for your very kind expressions and good will on my retirement and for your very generous comments about my career.

One thing I had never shared with anybody as to why I accepted offer of a Judge especially when I started going towards peak of my Advocacy. Today I would like to reveal the secret that persuaded me to accept the offer rather why I was curious and desiring for this assignment ?.

After joining Bar in December, 1973, for the first time when I had occasion to attend oath ceremony of High Court Judge in Principal Bench of our High Court at Jabalpur I came across the oath which was taken by Judges as prescribed in our Constitution. After attending the oath ceremony, its words started dwelling in my mind and from time to time I started thinking on it. Again after an year or so I had occasion to attend the oath ceremony and heard the words of oath took by Judges. After attending second oath ceremony, I had passed about 4-5 years in my practice and was able to partly understand the sanctity of the oath. After this, the words of oath started reverberating my mind and I had gone through the provisions of Constitution and Form of oath mainly given in IIIrd Schedule. I found that the words given in oath ie. **"without fear or favour, affection or ill-will"** are for High Court Judges, Supreme Court Judges as also for all Ministers of Central Government, State Government and Controller and Auditor General, all these persons would be approximately not more than 2000. These words are not given even in the oath of President of India, Vice President of India, Governor or any other Constitutional Authority. The next question which troubled my mind was as to what would be the criteria for selecting these 2000 persons out of about more than one billion population of India and ultimately I got the answer which revealed that it is because of their Past Good Deeds (SHUBH KARMAS). They got this privilege and special blessings of the Almighty by giving golden opportunity to again perform good deeds and elevate their soul. These Constitutional Authorities are the direct representatives of God by whose name they take oath or solemnly affirms. According to me, out of these about 2000 persons, Judges can more easily and religiously follow and observe the oath , because their period of retirement is fixed, they are getting reasonable salary, other perks and they are being appointed after passing reasonably long time in Bar or Bench. Normally in the case of High Court Judge, appointment is being made after crossing the age of 40 years whereas for Ministers, the period is not fixed and after crossing the age of 25 years and fulfilling the eligibility they can be appointed. In High Court, Judges can be appointed either after completing 10 years practice in Bar or 10 years Judicial Service and they can be removed only by impeachment under the provision of Article 124 of the Constitution of India which is a difficult task and yet after coming into force the Constitution of India, no one has been removed. It is heard that Central

Government has decided to bring the bill of Judicial Accountability for High Court Judges and Supreme Court Judges but in my view our forefathers, while bringing into existence the Constitution, must had thought on this issue and not made any such provision except the provision of impeachment, reason being as I understand that these are the self disciplined post and after taking oath in a matured age, if one is not able to act according to oath, then he cannot be controlled by any other enactments. If such enactment is brought into existence, in place of its proper use, there is every possibility of its misuse.

It is my considered opinion about appropriate interpretation of oath and to use the same in practical life as a Judge, the Judge must be unbiased, he must keep away his all prejudices about caste, creed, colour, language, region, religion, his liking, disliking etc. He must be fully impartial, should not be swayed with emotions rather he should be magnanimous and merciful. It is well accepted principle that "justice can be tampered with mercy whenever question of discretion would arise". I had accepted this appointment not for having power or glamour of the post, but wanted to comply with the oath for that tried my level best. Now it is for the almighty to assess my work and give marking.

According to me, all these about 2000 souls are the representatives of god and they functions as his agents. The fate of entire country is mainly in their hands and they are answerable to god. Out of these persons, the work of Judge is more easier than the work of Ministers. As I understand, the meaning of "fear or favour, affection or ill-will" is that the Judge is required to concur "TAMOGUN AND RAJOGUN" and must have "SAM BHAV" while Judging. For them it is a golden opportunity for elevation of soul. This view of mine is fortified by reply Speech delivered in his farewell by an eminent Judge of our High Court Former Justice Late Shri. Shyam Mohan Nath Raina and I quote :-

"Administration of Justice is a very solemn duty and it demands whole hearted devotion. Being religious minded, I believe that God alone is the true fountain of Justice and the Judges are called upon to discharge the judicial function as his agents. We are accountable to God for all that we do in the discharge of this function and, therefore, it is necessary for us to do our best according to light and wisdom given to us by Him. I have always felt that if we fail in doing justice to others we shall not be entitled to claim justice for ourselves from God.

It is essential for a Judge to keep his hands as well as conscience clean. It is easy to keep your hands clean; but if you want to keep your conscience clear and to be at peace with yourself; constant vigilance and introspection are necessary. Sometimes a Judge has to handle cases in which important persons are either involved or interested. In such cases the Judge has to see that he rises above the usual frailties of the human

mind and his judgment is not influenced by any consideration except that of Justice. You know there are various provisions in the Constitution in order to make the Judiciary independent but in the final analysis it is the conscience of a Judge which makes him independent. Like a Saint, a Judge should be able to overcome Kam, Krodh, Lobh and Moh to be able to dispense justice with a pure mind.".

Judges must be unapproachable by any means. Souls of these 2000 persons are the souls reached upto Number 98 in a worldly game of Snake & Ladder and there is a snake at No.99, if any one betrayed the oath, the snake would bite him and threw him to the last position at number 3. When this thought of game of Snake & Ladder came in my mind actually I found an old painting in Jain Temple situated in Sadar Bazar, Jabalpur wherein the game of Paap and Punya - Karmas are defined. In that it is shown, by doing which Karma, person would be bitten by snake and would come down to the circle of death and birth and would go in different YONI, and by which Karma would go up by Ladder. Our former Chief Justice and also Former Chief Justice of India, Late Mr. Justice Mohd. Hidayatullah, in reply to the ovation, quoted some lines out of an Article on a caption "Judicial Ideals" published in 1925 November Part of All India Reporter Series, I would also like to refer the same:-

"Referring to Sir Walworth Howland Roberts, the Law Times said, "No litigant ever left his Court without feeling even though unsuccessful, that his cause had been fully, impartially and competently heard". What a great compliment ! We fervently hope that Judges of this country would strive to make themselves worthy of such praise when they retire from the service".

As an Advocate, I was expecting proper behaviour, little adjustment and patient hearing by the Judge. I have never forgotten my this expectation when I became Judge and at no point of time I had lost my temper and made unhealthy atmosphere in my Court room.

Our country is the biggest democracy in the world and to be an effective democracy, the independence of the judiciary is the condition precedent, meaning thereby Supreme Court and incidentally High Court as part of there, are generally the guardian of democracy afad the Constitution. Time and again our judiciary has exhibited its strength of independence and made a mark in all over the world. We are proud of our judicial system. We should never forget that we were ruled by foreigners for more than 1000 years and according to me it was because of our selfishness and dishonesty towards the country and now we should learn lesson from our past.

After my elevation, just after 3 days I came here in Indore and started

functioning, I learnt a lot while sitting with the then Administrative Judge and now sitting Supreme Court Judge Mr. Justice Deepak Verma, Former Judge Mr. Justice N.K. Jain , Mr. Justice S.B. Sakrikar and Mr.Justice Abhay Gohil. They were very kind to me and at the initial stage they guided me, for which I am grateful to them.

I headed Division Bench with brother Judges S/ Shri. Umanath Singh, Viney Mittal, S.K.Seth, A.K.Shrivastava, Late A.K.Awasthy, W.A. Shah, S.K.Gangele, A.K.Tiwari, S.S.Dwivedi, S.S.Kemkar, J.K. Maheshwari, S.A.Naqvi, Piyush Mathur, B.K.Dubey, Prakash Shrivastava, I.S.Shrivastava, Sister Justice Manjusha Namjoshi in time to time and lastly with sister Mrs. Justice Shubhada Waghmare. I had memorable time with all these colleague Judges and had no conflict whatsoever be it on any issue. Our Division Bench functioned smoothly, effectively and decided quite a good number of cases while maintaining quality. We were having healthy discussions and our motto was to come to the right conclusion on the basis of given facts, circumstances and law applicable to the case.

I would be failing in my duty by not mentioning the name of brother Mr.Justice A.M. Sapre, who is now Judge of Rajasthan.High Court who always suggested right way and supported me in discharging my duty as a Judge. When I came to Indore, on the second day of my sitting as a Junior Judge in Division Bench, he suggested me to request for giving case for writing judgment from Senior Judge Justice Deepak Verma and I had followed his advise. I am also grateful to Former Acting Chief Justice of this High Court Mr.Justice R.S.Garg with whom I had few opportunities to share the dais.

I express my gratitude to the Former Chief Justice of our High Court Mr.Justice Bhawani Singh and the then Administrative Judge and Acting Chief Justice Mr. Justice D.P.S. Chouhan, who had given this opportunity to me and also several important tips for discharging my duty. I am thankful to the then Collegium of our High Court and Supreme Court. I am also grateful to Former Justice S.K. Kulshreshth with whom also I had shared the dais. I express my regard to our Former Chief Justice S/Shri Kumar Rajaratnam, R. V. Ravindran, A. K. Patnaik who always supported and guided me and in time to time expressed their love and affection by appreciating my work. I pay my humility, love and respect to our present Chief Justice Mr. Justice S.R. Alam who persuaded and suggested me to accept the assignment of Chairman of Bhopal Gas Enquiry Commission otherwise I had already decided to form a good group of retired persons with whom I can render social services especially in village for education and health and according to me I can work in both the sides while working as Chairman. I request all of you to pray for me so that I may be able to discharge my duty honestly, efficiently and with full zeal.

I am proud of my children who have always supported me for discharging my onerous duty as a Judge and whenever I was not able to take decision on some crucial occasions, they were immediately suggesting me and showing me path. Whatever I have achieved could have not been achieved without the love, affection, cooperation and support of my late wife Smt. Sushma Kochar. At the time of her death, my eldest daughter was 15 years of age and youngest son was aged about two years and nine months. I am blessed by my parents as well as elder brother Shri Inderchandji Kochar whose devotion for my entire joint family is uncountable.

In my whole tenure, I got full and effective support from my entire staff especially from my present Private Secretary Shri Varghese Mathew, Personal Assistant Shri G.S. Dube, Steno Shri Trilok Singh Savner, Reader Shri C.M. Awasthy, Law Researcher Mrs.Anamika Jain and Peon Shri Dhruv Prasad. They all have worked with full efficiency, honesty, integrity, sincerity and always maintained the secrecy of the office. I had never faced any kind of problem or inconvenience because of them. They were always ready to render their services on any day at any point of time. So many times I had called them at odd hours or on holidays, early in the morning in the office and bungalow, and they were always readily available without expressing any kind of resentment or unhappiness. Their devotion was par excellence and I pray to the Almighty for their good health, happiness with family and prosperity in all spheres of life. I am also thankful to my former staff S/Shri S.C. Kale, R.C. Pare, both Readers and Shri Naval Kishore Giri, Peon.

Without co-operation of members of the Registry, it was not possible for me to discharge my duty with full efficiency and I am proud of our Registry who never troubled me at any occasion at any point of time and they always cooperated with me. I extend my special thanks to present Principal Registrar Shri Maheshwariji, Dy.Registrar S/Shri Anand Mandloi and M.H. Karnik who always kept ready all administrative work in proper and legal way for discharging my duty as Administrative Judge. I am also thankful to Protocol Officer S/Shri Sanjay Chithrakar, Kamlakar Deshmukh, L.D.Charan, R.S.Yadav, Rupesh Balbhadra, Umesh Dubey, Shireesh Sharma and Gopal Solanki. Though I had no occasion to sit with my other colleague brothers Mr. Justice S.C.Vyas, now Chairman of Consumer Forum, Chhattisgarh, Mr. Justice N.K. Mody, Mr. Justice P.K. Jaiswal and Mr. Justice S.C. Sharma, but in general, on every occasion they all have extended their full co-operation and rendered valuable suggestions from time to time for discharging my duty at judicial as well as administrative side. We all lived as one family and never directly or indirectly had any conflict. The atmosphere of our Tea Club was very joyful and I was waiting every day for that half an hour where we used to have free discussions

on all issues and relax and prepared ourselves for the second half. It was the only place for effective entertainment for me. Peon S/Shri. Ram Pal and Pramod Giri of Tea Club made arrangements in Tea Club and served eatables with great zeal, I am thankful to them also. Even when I was not administrative Judge, whenever any employee of the High Court though was not working under me come to me for any problem of any kind, I tried my level best to help them.

I also express my gratitude to Doctors and Nursing Staff of Dispensaries attached with this Registry especially Dr. G.K. Parashar, Dr. Rajesh Solanki, Dr. R.Chouhan and Dr. O.P. Sharma, for their valuable service from time to time to me and my family.

I would not forget to mention services rendered to me by employees in my bungalow, namely S/Shri Bhawanisingh, his wife Shakunbai, Cook Harisingh, Driver, Parvat Singh, my personal attendant Ravi Shankar Yadav and PSO's Judavan Singh Kuswaha and R.N. Mishra. Whether me or any of my family members were in bungalow or not we were not required to lock any part of the bungalow. Even when we went out on LTC, they were the incharge of the entire house and I always found them honest and sincere in their duties in all respects.

It is well known fact that without good bar and co-operation by the members of the bar, Judge cannot discharge his duty effectively and efficiently and I am lucky in this way that each and every member of the bar helped me to arrive at just and true conclusions. I would never forget the special assistance given to me and my bench in Criminal Administration of Justice by Dy.Advocate General Shri Girish Desai who is an asset to this institution and I pray to almighty to keep him healthy to continue till his last breath so that my brother Judges may get his assistance. I have never seen such. an honest, intelligent and laborious Advocate in Advocate General office of the State.

I express my gratitude to one and all particularly my all brother and sister Judges, sitting on the dais and off the dais without their co-operation, guidance and support I would not have been able to achieve the goal for performing my onerous duty as a Judge in the light of oath taken by me which was my earnest desire.

In the last but not the least whatever I had achieved in my whole life is only and only because of blessings, and light shown to me by my Dada Gurudev and great Saint Acharya Shree Vidyasagarji and I have no words to explain their special treatment with me.

I hope the occasion will be many and frequent when we meet together but for the present thank you all of you and my good wishes to all of you for excellent health, future and prosperity. Thus, I conclude my speech with the following prayer which I chant every day in my regular POOJA, and my favourite Urdu Sher.

खामेमि सव्वे जीवे, सव्वे जीवा खामन्तुमें ।
मित्ती मे सव्वे भुऐसु, वेर मन्झन केणइ ।।

अर्थात :– मैं सभी जीवों को क्षमा करता हूं ।
सभी जीव मुझे क्षमा करें ।
इस संसार में सभी से मेरी मित्रता हो ।
किसी से भी मेरा बैर न हो ।

शिवमस्तू सर्व जगत:, परहित निरता भवन्तु भूतगणाः ।
दोषा : प्रयान्तु नाशं, सर्वत्र सुशी भवतु लोक : ।।

जिन्दगी तुझ से हर बात से समझौता करू
शौक जीने का बहुत है मगर इतना भी नही ।

.....

NOTES OF CASES SECTION

Short Note

*(74)**

S.C. Sharma, J

ALL INDIA STATE BANK OF INDORE OFFICERS' CO-ORDINATION COMMITTEE

Vs.

STATE BANK OF INDORE

A. Trade Unions Act (16 of 1926), Section 10 - *Derecogition of Trade Union - Show Cause Notice - M.O.U. signed by management and M.P. Bank Officer's Association requires issuance of show cause notice before derecognizing trade union - Held - Petitioner union not signatory to M.O.U. cannot claim previlidges conferred by said M.O.U. - Non-compliance of M.O.U. does not arise.*

क. व्यवसाय संघ अधिनियम (1926 का 16), धारा 10 – कार्मिक संघ की अमान्यता – कारण बताओ सूचना पत्र – प्रबंधन और म.प्र. बैंक अधिकारी संघ द्वारा हस्ताक्षरित एम.ओ.यू. कार्मिक संघ को अमान्यीकृत करने के पूर्व कारण बताओ सूचना पत्र जारी करना अपेक्षित करता है – अभिनिर्धारित – याची संघ जो एम.ओ.यू. का हस्ताक्षरकर्ता नहीं है कथित एम.ओ.यू. द्वारा प्रदत्त विशेषाधिकारों का दावा नहीं कर सकता – एम.ओ.यू. के अपालन का प्रश्न ही उत्पन्न नहीं होता।

B. Constitution, Article 19(1)(c) - *Denial of recognition - A registered trade union filed writ petition being aggrieved by order passed by Bank/respondent, by which the petitioner union has been informed that it ceases to be a majority union and has lost the character of recognized union - Held - Since officers of the State Bank of Indore have switched over to another union and their option forms are also on record, therefore, no irregularity of any kind has been committed by the respondent Bank - No case for interference is made out - Writ petition dismissed.*

ख. संविधान, अनुच्छेद 19(1)(सी) – मान्यता से इनकारी – एक पंजीकृत कार्मिक संघ ने बैंक/प्रत्यर्थी द्वारा पारित आदेश, जिसके द्वारा याची संघ को सूचना दी गयी कि वह बहुसंख्यक संघ नहीं रहा है और उसने मान्यता प्राप्त संघ का स्वरूप खो दिया है, से व्यथित होकर रिट याचिका प्रस्तुत की – अभिनिर्धारित – चूंकि स्टेट बैंक इंदौर के अधिकारियों ने संघ बदल लिया तथा उनके विकल्प फॉर्म भी अभिलेख पर हैं, अतएव प्रत्यर्थी बैंक द्वारा किसी प्रकार की कोई अनियमितता नहीं की गयी – हस्तक्षेप के लिए कोई मामला नहीं बनता – रिट याचिका खारिज।

Cases referred :

2002 II LLJ 339, (1192) I LLJ 72 AP.

A.K. Sethi with *S.H. Moyal*, for the petitioner.

Rohit Arya with *G.S. Patwardhan*, for the respondent.

S.H. Karanjawala, for the intervenor.

***W.P. No.959/2010 (Indore), D/- 3 August, 2010.**

NOTES OF CASES SECTION

Short Note

*(75)**

Rajendra Menon, J

ASHUTOSH SHARMA (DR.)
Vs.
SCHOOL OF PLANNING &
ARCHITECTURE, BHOPAL & ors.

A. Service Law - ***Appointment*** - *The new employer is entitled to verify the previous antecedents of the person, who is being appointed and after being satisfied about his service record with the previous employer, can take a decision regarding his appointment.*

Having confidence in a person to be appointed is of paramount importance for entering into a contract of service and if the employer feels that the person to be appointed is not beyond reasonable doubt or his career with the previous employer is covered by a cloud of suspicious activities, is tainted and is not in accordance to the conduct expected of a prudent employee, the employer has an option to reject the candidature for appointment of such a person.

क. सेवा विधि – नियुक्ति – नया नियोजक उस व्यक्ति के, जिसे नियुक्त किया जा रहा है, पूर्ववृत्त की जाँच करने का हकदार है और पूर्व नियोजक के पास उसके सेवा अभिलेख के संबंध में सन्तुष्ट होने के बाद उसकी नियुक्ति के संबंध में निर्णय ले सकता है।

B. Constitution, Article 226 - ***Writ of mandamus*** - *High Court cannot sit over the decision of the employer as if it exercises appellate jurisdiction - Respondent having refused to enter into a contract of service with the petitioner for the reasons not arbitrary or illegal, a writ of mandamus cannot compel respondent to enter into a contract, contrary to their wishes.*

Petitioner initially working as a Professor in the Department of Architecture and Planning, in Maulana Azad National Institute of Technology, Bhopal (MANIT). His candidature for the post of Professor of Architecture in School of Architecture, Bhopal was accepted and vide communication dated 2.7.09 his appointment was recommended by Selection Committee. The petitioner accepted the offer and informed that he will apply to his institute namely MANIT for relieving. Petitioner applied to MANIT for relieving, however, he was not given relieving order. The petitioner sought for his relieving and in the alternative submitted his offer for Voluntary Retirement in accordance to the provisions of Rule 48-A of the Central Civil Services Pension Rules, 1972, which is applicable to him and informed the MANIT authorities that he would stand retired after completing a period of three months i.e... on 7.10.09. In the application petitioner also sought for relaxing the statutory notice period of three months to enable him to join the School of Planning and Architecture immediately by virtue of the powers

conferred on the competent authority under Rule 48 of the Rules of 1972. Another communication made by the petitioner on 15.7.09 seeking his relieving. On 21.10.09 petitioner approached the School of respondent No.1 on 21.10.09 alongwith his joining letter and Attestation Form. Instead of permitting the petitioner to join in pursuance to the offer submitted by him on 21.10.09, he was not permitted to join, instead communication dated 21.10.09 was issued to him and it was intimated that as he has not submitted a proper relieving from MANIT, so he cannot be permitted to join. He was also given impugned order dated 23.10.09. The petitioner challenged the action of respondent on the grounds :-

(i) Once the retirement of the petitioner came into force with effect from 7.10.09 and he stood retired from the services of MANIT by virtue of the statutory deeming provision contemplated under Rule 48-A of the Rules of 1972, there was no necessity for submitting any relieving letter from the Management of MANIT, and the action of the respondents in refusing joining to the petitioner only on the ground that he has not been properly relieved, is unsustainable.

(ii) The petitioner having retired from the services of MANIT on 7.10.09 without any enquiry being conducted against him, without any punishment being imposed and when the allegations put forth by respondents 1 and 2 against the petitioner with regard to his services in MANIT are false and fabricated and on the aforesaid grounds the Management of MANIT cannot refuse joining to the petitioner.

ख. संविधान, अनुच्छेद 226 – परमादेश रिट – उच्च न्यायालय अपनी अपीलीय अधिकारिता का प्रयोग करने के जैसे नियोजक के निर्णय पर निर्णय नहीं दे सकता – प्रत्यर्थी द्वारा किसी मनमाने या अवैध कारण के बिना याची को सेवा में नियोजित करने की संविदा से इंकार, परमादेश की रिट प्रत्यर्थी को उसकी इच्छा के विरुद्ध संविदा करने हेतु विवश नहीं कर सकती।

Cases referred :

AIR 1962 SC 764, AIR 1975 SC 2226, AIR 1984 SC 1182, 1999(7) SLR 422, (2001) 3 SCC 290, AIR 1978 SC 851, (2003) 3 SCC 432, (2005) 7 SCC 177, (1992) 2 SCC 196, 1994 (Supp) 1 SCC 250, (1998) 2 SCC 574.

Ajay Mishra with *H.K. Upadhyay,* for the petitioner.

R.N. Singh with *Mrigendra Singh & Arpan Pawar,* for the respondents.

***W.P. No.11403/2009 (Jabalpur), D/- 6 October, 2010.**

NOTES OF CASES SECTION

Short Note

(76)*

Sanjay Yadav, J

BALBIR @ BUNTY
Vs.
STATE OF M.P. & ors.

Rajya Suraksha Adhiniyam, M.P. 1990 (4 of 1991), Section 5 - ***Externment - Petitioner was indicted and externed for one year from the district - Held - Merely because in past the petitioner has admittedly paid fine in the cases under Public Gambling Act, 1867 and that cases u/ss. 107, 116(3) of Cr.P.C., registered against the petitioner the same cannot be the basis for drawing a nexus with the case which is registered against the petitioner - Petition allowed and externment order quashed.***

राज्य सुरक्षा अधिनियम, म.प्र. 1990 (1991 का 4), धारा 5 – निष्कासन – याची को अभ्यारोपित किया गया और एक वर्ष के लिये जिले से निष्कासित किया गया – अभिनिर्धारित– मात्र इसलिये कि पूर्व में सार्वजनिक द्यूत अधिनियम, 1867 के अधीन मामलों में याची ने स्वीकृत रूप से जुर्माना अदा किया है तथा याची के विरुद्ध द.प्र.सं. की धारा 107, 116(3) के अंतर्गत मामले दर्ज किये गये हैं, वह उस मामले के साथ संबंध मानने का आधार नहीं बन सकता जो याची के विरूद्ध दर्ज किया गया है – याचिका मंजूर और निष्कासन आदेश अभिखंडित।

Cases referred :

1994(1) VIBHA 168, 1996 Cr.L.R. (M.P.) 72, AIR 1981 SC 2166, 2009(4) MPHT 263 (DB).

Anitha Kaithwas, for the petitioner.

Samdarshi Tiwari, G.A., for the respondents.

***W.P. No.6185/2010 (Jabalpur), D/- 27 August, 2010.**

Short Note

(77)*

I.S. Shrivastava, J

BANSILAL & ors.
Vs.
STATE OF M.P.

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/18(b) - ***Independent witnesses not supporting the prosecution case - The proceeding u/s 52-A of the Act was not proved - Search of the lady accused and the notice u/s 50 of the Act was defective - Seized property was not produced before Court during trial - The appellants were not liable to be convicted - Conviction set aside.***

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61) धारा 8/18(बी) – स्वतंत्र साक्षियों ने अभियोजन के मामले का समर्थन नहीं किया – अधिनियम की धारा 52–ए के अतंर्गत कार्यवाही सिद्ध नहीं हुई – महिला अभियुक्त की तलाशी तथा अधिनियम की धारा 50 के

अन्तर्गत सूचना त्रुटिपूर्ण थी – अभिग्रहीत सम्पत्ति विचारण के दौरान न्यायालय में प्रस्तुत नहीं की गयी – अपीलार्थीगण दोषसिद्ध किये जाने योग्य नहीं थे – दोषसिद्धि अपास्त।

Cases referred :

(2004) 10 SCC 562, 2008(IV) AD-Cri (SC) 337, 2009(2) JLJ 148, 2001(2) EFR 8, (2008) 1 SCC 450, (1999) 6 SCC 172.

D.D. Vyas with *Ashish Sharma,* for the appellants.
Deepak Rawal, G.A., for the respondent/State.

***Cr.A. No.1213/2008 (Indore), D/- 15 July, 2010.**

Short Note

*(78)**

Aftab Alam & T.S. Thakur, JJ

D.V. PAUL
Vs.
MANISHA LALWANI

A. Civil Procedure Code (5 of 1908), Section 148 - *Enlargement of time - When any period or time is granted by the Court for doing any act, the Court has the discretion from time to time to enlarge such period even if the time originally fixed or granted by the Court has expired.*

Where the Court has the power to fix time and that power is not regulated by any statutory limits, it has in appropriate cases the power to extend the time fixed by it.

क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 148 – समय का बढ़ाया जाना – जब न्यायालय द्वारा किसी कार्य को करने के लिए कोई अवधि अथवा समय अनुदत्त किया जाता है, तब न्यायालय को समय–समय पर ऐसी अवधि को बढ़ाने का विवेकाधिकार है, भले ही न्यायालय द्वारा मूलतः नियत या प्रदत्त समय व्यतीत हो गया हो।

B. Civil Procedure Code (5 of 1908), Section 148 - *Enlargement of time - Appellant did get a bank draft prepared and dispatched to the address of the respondent - This may not have been a strict compliance with the direction issued by the High Court regarding the deposit before the Trial Court but this certainly establishes the bonafides of the appellant, which is a weighty consideration while examining the request for extension of time - Appellant has made out a case for extension.*

ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 148 – समय का बढ़ाया जाना – अपीलार्थी ने एक बैंक ड्राफ्ट तैयार कराया और प्रत्यर्थी के पते पर प्रेषित किया – यह उच्च न्यायालय द्वारा विचारण न्यायालय के समक्ष जमा किये जाने के सम्बन्ध में जारी निदेश का पूर्ण पालन नहीं हो सकता था, किन्तु यह निश्चित तौर पर अपीलार्थी के सद्भाव को सिद्ध करता है, जो समय बढ़ाये जाने की प्रार्थना की जाँच करने के लिये महत्वपूर्ण विचार है – अपीलार्थी ने समय वृद्धि हेतु प्रकरण स्थापित किया।

Cases referred :

1961(3) SCR 763, (1982) 1 SCC 159, (1983) 1 SCC 26, (1989) 4 SCC 403, (1985) 3 SCC 53, (2005) 6 SCC 344.

***C.A. No.6734-6735/2010 (SC), D/- 18 August, 2010.**

Short Note

*(79)**

Rajendra Menon, J.

G.V.S. SHASTRI & ors.

Vs.

M.P. STATE ELECTRONICS DEVELOPMENT CORPORATION LTD., BHOPAL & ors.

A. Service Law - ***Probation and confirmation*** - *By confirmation, an incumbent is deemed to have been absorbed in the service on a post to which he was initially appointed on probation.*

क. सेवा विधि – परिवीक्षा एवं स्थायीकरण – स्थायीकरण के द्वारा पदधारी सेवा में उस पद पर जिस पर प्रारम्भ में परिवीक्षा पर उसकी नियुक्ति हुयी थी, आमेलित समझा जाता है।

B. Service Law - ***Absorption - Maintenance of lien - Permissibility*** - *Petitioners substantively appointed to a different post by OTL, due to their selection, their lien if any held in a different post with MPSEDC, previously, automatically comes to an end after their appointment and confirmation to a different post, substantive in nature with OTL.*

Petitioner employees of MPSEDC transferred to OTL due to recession in the Television industry-They secured fresh appointments on higher post after undergoing fresh selection in OTL-Later on OTL also on the verge of winding - The petitioner claimed that their lien is still with MPSEDC and directions be issued transfer them to MPSEDC as it was the parent Department - Held - Petitioners willingly and of their own took appointment on a post advertised by OTL cannot now seek the benefit of repatriation or going back to MPSEDC on the ground that their lien is protected. Once petitioners were substantively appointed to a different post by OTL, due to their selection, their lien if any held in a different post with MPSEDC, previously, automatically comes to an end after their appointment and confirmation to a different post, substantive in nature with OTL.

ख. सेवा विधि – आमेलन – धारणाधिकार का बना रहना – अनुज्ञेयता – ओ. टी.एल. द्वारा भिन्न पद पर अधिष्ठायी रूप से नियुक्त याची, उनका चयन हो जाने के कारण, पूर्व में उनका एम.पी.एस.ई.डी.सी. के भिन्न पद पर धारणाधिकार ओ.टी.एल. में अधिष्ठायी रूप में भिन्न पद पर उनकी नियुक्ति एवं स्थायीकरण के उपरांत स्वतः ही समाप्त हो जाता है।

Cases referred :

AIR 2005 SC 2242, AIR 1989 SC 1577, 2004(1) MPLJ 104, 2010 AIR SCW 3311, (1992) 4 SCC 72, (1989) 4 SCC 99.

Rohit Arya with *Anubhav Jain,* for the petitioners.

R.N. Shukla with *H.K. Upadhyaya*, for the respondents.

***W.P. No.3789/2000 (Jabalpur), D/- 29 June, 2010.**

Short Note

*(80)**

Mrs. S.R. Waghmare, J

GANGARAM and anr.

Vs.

MANGILAL and ors.

A. Motor Vehicles Act (59 of 1988), Section 166 - *Legal representatives of claimant - Claimant, father of deceased died during appeal - His legal representatives would get the amount of compensation, but limited to the share of claimant.*

क. मोटर यान अधिनियम (1988 का 59), धारा 166 – दावेदार के विधिक प्रतिनिधि – दावेदार, मृतक के पिता, की अपील के दौरान मृत्यु – उसके विधिक प्रतिनिधि दावेदार के हिस्से की सीमा तक प्रतिकर की राशि प्राप्त कर सकेंगे।

B. Motor Vehicles Act (59 of 1988), Section 166 - *Claimant, the neice of deceased, used to stay with deceased to look after him - Her fees etc. was paid by deceased - She may also get compensation.*

ख. मोटर यान अधिनियम (1988 का 59), धारा 166 – दावेदार, मृतक की भतीजी, मृतक की देखभाल के लिये उसके साथ रहती थी – उसकी फीस इत्यादि का भुगतान मृतक द्वारा किया जाता था – वह भी प्रतिकर प्राप्त कर सकती है।

Cases referred :

1987 AIR (SC) 1690, 1995 ACJ 908, 2004 ACJ 1077, 2007 ACJ 2173, 1989 ACJ 1128, 2004 ACJ 1638, 2007 ACJ 682.

Sameer Verma, for the appellants.

P. Pancholi & Madhu Bhatia, for the respondent No.3/Insurance Company.

***M.A. No.1147/2003 (Indore), D/- 23 August, 2010.**

NOTES OF CASES SECTION

Short Note

*(81)**

Arun Mishra & S.C. Sinho, JJ

LALIT TONGIA
Vs.
STATE OF M.P. & ors.

Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, M.P. (21 of 2007), Admission (Reservation to NRI) Regulation, M.P. 2009, Regulation 3 & 5 - *Vires of - Challenged being repugnant to the provision of Chapter VIII of AICTE Regulations, 2010 - Held - Regulation cannot be said to be defeating the object with regard to a bona fide NRI nor it can be said to be violative of definition of NRI as contained in Regulation 2.19 of AICTE Regulation - No repugnancy found in AICTE Regulations and NRI Regulations 2009 framed by State Government.*

In case parents are not alive, nor a person as provided in regulation 3(b) available in that case only a student taken as ward by some other nearest relative can stake his claim for admission under the aforesaid regulation and not otherwise.

NRI has been defined in the amended NRI Regulation 2009 and the Court found the regulations to be within parameter of legislature power in Entry 25 List III of VII Schedule of Constitution of India, it cannot be said to be entrenching upon the field occupied by the regulations framed by the AICTE under Entry 66 List-I.

निजी व्यावसायिक शिक्षण संस्था (प्रवेश का विनियमन एवं शुल्क का निर्धारण) अधिनियम, म.प्र. (2007 का 21), प्रवेश (अनिवासी भारतीय को आरक्षण) विनियम, म.प्र. 2009, विनियम 3 व 5 – की शक्तिमत्ता – एआईसीटीई विनियम, 2010 के अध्याय VIII के उपबंधों के प्रतिकूल होने के कारण चुनौती – अभिनिर्धारित – अधिनियम को न तो सद्भाविक अनिवासी भारतीय संबंधी उद्देश्य को निष्फल करने वाला कहा जा सकता और न ही इसे एआईसीटीई विनियम के विनियम 2.19 में समाविष्ट अनिवासी भारतीय की परिभाषा का उल्लंघनकारी कहा जा सकता है – एआईसीटीई विनियम और राज्य सरकार द्वारा विरचित अनिवासी भारतीय विनियम, 2009 में कोई प्रतिकूलता नहीं पायी गयी।

Cases referred :

(2005) 6 SCC 537, (1995) 4 SCC 104, (2004) 11 SCC 755, 2008(1) Simla LC 90, 2008 MPLJ 450, 2010(2) MPHT 522 (DB).

Siddharth Gupta, for the petitioner.
Purushaindra Kaurav, Dy.A.G., for the respondent Nos.1 & 4.
Paritosh Gupta, for the respondent No.2.
Manish Verma, for the respondent No.3.
Pradeep Sharma, for the respondent Nos.5 & 6.
Ashok Lalwani, for the intervenors.

***W.P. No.7744/2010 (Jabalpur), D/- 16 July, 2010.**

Short Note
(82)*

Sanjay Yadav, J

MANKUNWAR BAI (SMT.)
Vs.
CHAIRMAN & ors.

Public Liability Insurance Act (6 of 1991), Section 3 - ***Liability to give relief in certain cases on principle of no fault - The victim died due to electric shocks and the application by his legal representative u/s 6 of the Act rejected - Held - The death was due to 'handling' of hazardous substance being the proximate cause for death, sufficient it is for the person who claims through such deceased to maintain the claim for relief - On principle of no fault liability the Collector was not justified in rejecting the claim - Petition allowed.***

लोक दायित्व बीमा अधिनियम (1991 का 6), धारा 3 – कोई त्रुटि न होने के सिद्धांत पर कतिपय मामलों में अनुतोष देने का दायित्व – बिजली का झटका लगने के कारण पीड़ित की मृत्यु हुयी तथा उसके विधिक प्रतिनिधियों द्वारा अधिनियम की धारा 6 के अंतर्गत प्रस्तुत आवेदन नामंजूर किया गया – अभिनिर्धारित – मृत्यु किसी आसन्न मृत्यु वाले परिसंकटमय पदार्थ का उपयोग करने के कारण हुयी थी, यह किसी व्यक्ति के लिए, जो ऐसे मृतक के माध्यम से दावा करता है, अनुतोष हेतु दावा लाने के लिये पर्याप्त है – कोई त्रुटि दायित्व न होने के सिद्धांत पर कलेक्टर द्वारा दावा नामंजूर किया जाना न्यायसंगत नहीं था – याचिका मंजूर।

Cases referred :
AIR 2003 MP 156, AIR 1990 SC 1480, (2002) 2 SCC 162.

Nitin Agrawal, for the petitioner.
Vivek Rusia, for the respondent No.1.
Sheetal Dubey, G.A., for the respondent No.2.

***W.P. No.6102/2009 (Jabalpur), D/- 1 April, 2010.**

Short Note
(83)*

Shantanu Kemkar & S.K. Seth, JJ

MANKUNWARBAI
Vs.
VINOD KUMAR & ors.

A. Civil Procedure Code (5 of 1908), Order 1 Rule 10 - ***Impleadment of party - Defendant / Petitioner raised the objection about non-joinder of necessary party and issue framed on that basis was decided in favour of plaintiff - Subsequent application by plaintiff for impleadment of same party - Held - The prayer could not be allowed without considering the effect of earlier order deciding the preliminary issue.***

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – पक्षकार बनाना – प्रतिवादी/याची ने आवश्यक पक्षकार के असंयोजन के बारे में आक्षेप किया और उस

आधार पर विरचित विवाद्यक वादी के पक्ष में विनिश्चित किया गया – उसी पक्षकार के संयोजन हेतु वादी द्वारा पश्चात्वर्ती आवेदन – अभिनिर्धारित – प्रारंभिक विवाद्यक का विनिश्चय करने वाले पूर्ववर्ती आदेश के प्रभाव पर विचार किये बिना प्रार्थना मंजूर नहीं की जा सकती।

B. Civil Procedure Code (5 of 1908), Order 6 Rule 17 - ***Amendment - Once the trial is commenced, no application for amendment can be allowed unless the Court comes to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.***

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – संशोधन – जब एक बार विचारण प्रारम्भ हो जाता है, तब संशोधन के लिए कोई आवेदन तब तक मंजूर नहीं किया जा सकता जब तक कि न्यायालय इस निष्कर्ष पर न पहुँचे कि सम्यक् तत्परता के बावजूद भी पक्षकार विचारण प्रारम्भ होने के पूर्व मामले को नहीं उठा सकते थे।

Cases referred :

(2009) 2 SCC 409 = AIR 2009 SC 1433, (2009) 14 SCC 38, 2008 AIR SCW 4763, 2008 AIR SCW 3159, (2006) 4 SCC 385 = AIR 2006 SC 1647, (2005) 6 SCC 344, (2006) 12 SCC 1.

Sameer Athwale, for the petitioner.

Anwar Khan, for the respondent Nos.1 & 2.

***W.P. No.7640/2007 (Indore), D/- 27 July, 2010.**

Short Note
(84)*

S.L. Kochar & S.R. Waghmare, JJ

MUBARIK KHAN
Vs.
U.O.I. & ors.

A. Constitution, Article 226 - ***Public Interest Litigation - Closure of Railway Crossing Gate challenged on the ground of inconvenience to the residents - Over bridge has already been constructed just one kilometer away and tenders are also called for constructing Foot Over Bridge near Railway Crossing Gate - Held - Keeping in view that (i) no mala fides alleged against respondents regarding closing of Railway Crossing Gate (ii) the convenience of inhabitants of area have already been taken care and given alternative mode and further, (iii) for improvement in Railway development in town and broader public utility area, people are also required to do little sacrifice, petition disposed of expecting that respondents would seriously take this matter for construction of F.O.B. as early as possible.***

क. संविधान, अनुच्छेद 226 – लोकहित वाद – रेलवे फाटक को बंद किये जाने को निवासियों को असुविधा के आधार पर चुनौती दी गयी – मात्र एक किलोमीटर दूर ऊपरी पुल का निर्माण किया जा चुका है और रेलवे फाटक के पास ऊपरी पैदल पुल के निर्माण के लिए निविदाएँ

भी बुलायी गयी हैं – अभिनिर्धारित – इस बात को दृष्टि में रखते हुए कि (i) रेलवे फाटक को बंद करने के सम्बन्ध में प्रत्यर्थियों के विरुद्ध किसी असद्भाव का अभिकथन नहीं किया गया है, (ii) क्षेत्र के निवासियों की असुविधा का ध्यान रखा गया है और वैकल्पिक उपाय दिया गया है और इसके अतिरिक्त (iii) नगर और व्यापक लोक उपयोगी क्षेत्र में रेलवे विकास में अभिवृद्धि के लिए लोगों को भी थोड़ा त्याग करना आवश्यक है, इस प्रत्याशा के साथ याचिका का निपटारा किया गया कि प्रत्यर्थी ऊपरी पैदल पुल के यथासंभव शीघ्र निर्माण के लिए इस मामले को गंभीरता से लेंगे।

B. Constitution, Article 226 - ***Public Interest Litigation*** - *Fixing of outer limit for construction of foot over bridge prayed for - Held - Since the construction work is being done by joint venture of State of M.P. & Railway department, it would not be just & proper to Court to fix any period.*

ख. संविधान, अनुच्छेद 226 – लोकहित वाद – ऊपरी पैदल पुल के निर्माण के लिए बाह्य सीमा नियत करने की प्रार्थना – अभिनिर्धारित – चूंकि निर्माण कार्य म.प्र. राज्य और रेल विभाग के संयुक्त उद्यम द्वारा किया जा रहा है, इसलिए न्यायालय के लिए यह न्यायसंगत और उचित नहीं होगा कि कोई कालावधि नियत की जाए।

Cases referred :

(2009) 3 SCC 35, (2003) 4 SCC 289, (2009) 3 SCC 649.

Sumeet Samvatsar, for the petitioner.
Anand Pathak, for the respondent Nos.1 & 2.
Manoj Dwivedi, Dy.A.G., for the respondent No.3.

***W.P. No.3962/2010 (Indore), D/- 25 August, 2010.**

Short Note
(85)*

R.C. Mishra, J

RAJEEV LOCHAN & anr.
Vs.
STATE OF M.P.

A. Penal Code (45 of 1860), Section 307/34 - ***Sentence*** - ***Mitigating circumstance*** - *Factum of compromise entered into by victims, but permission to compound the offence was declined, being the offence u/s 307 IPC non-compoundable and other offence u/s 324 IPC intrinscically connected to form the same transaction - May not be a mitigating circumstance to reduce the term of sentence to 13 months, the period already undergone - Appeal partly allowed and sentence reduced from 7 years to 2 years.*

क. दण्ड संहिता (1860 का 45), धारा 307/34 – दण्डादेश – कम करने वाली परिस्थिति – पीड़ित के द्वारा राजीनामा किये जाने का तथ्य, लेकिन भा.द.सं की धारा 307 के अन्तर्गत अपराध शमनीय न होने तथा भा.द.सं. की धारा 324 के अन्तर्गत अपराध वस्तुतः एक ही संव्यवहार से सम्बद्ध होने के कारण अपराध का शमन करने की अनुज्ञा नहीं दी गयी – दण्ड की अवधि 13 माह, भुगती जा चुकी सजा अवधि, तक कम करने वाली परिस्थिति नहीं हो सकती – अपील अंशतः मंजूर एवं दण्डादेश 7 वर्ष से घटाकर 2 वर्ष किया गया।

B. Penal Code (45 of 1860), Sections 307 & 324 - *Prosecution evidence comprising of testimony of the injured persons, a promptly lodged FIR, supportive eye witness account and substantially consistent medical evidence may be considered as sufficient to bring home the charges.*

ख. दण्ड संहिता (1860 का 45), धाराएँ 307 व 324 – अभियोजन साक्ष्य, जिसमें आहत व्यक्तियों की साक्ष्य, तत्काल दर्ज प्रथम सूचना रिपोर्ट, प्रत्यक्षदर्शी साक्षी की समर्थनकारी साक्ष्य तथा सारभूत रूप से संगत चिकित्सीय साक्ष्य समाविष्ट है, आरोपों को साबित करने हेतु पर्याप्त समझी जा सकती हैं।

Cases referred :

1990 (Supp) SCC 145, AIR 2002 SC 2980, AIR 2008 SC 3284, (2005) 9 SCC 705, AIR 1993 SC 1899, AIR 2005 SC 1460, (2001) 6 SCC 145, (2005) 5 SCC 554, AIR 1973 SC 84.

Prakash Upadhyay, for the appellants.

G.S. Thakur, Panel Lawyer, for the respondent/State.

***Cr.A. No.1411/2009 (Jabalpur), D/- 13 September, 2010.**

Short Note
*(86)**

Arun Mishra & S.C. Sinho, JJ

RAMDIN & ors.
Vs.
STATE OF M.P. & ors.

Land Acquisition Act (1 of 1894), Sections 4 & 6 - ***Public purpose*** - *Acquisition for Corporation/Company owned by Government and purpose of acquisition clearly for public purpose - Non-mention of fact that acquisition is for Company, not prejudicial to the petitioner - Petition & Writ Appeal dismissed.*

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 4 व 6 – लोक प्रयोजन – अर्जन सरकार के स्वामित्वाधीन निगम/कम्पनी के लिए और अर्जन का प्रयोजन स्पष्टतः लोक प्रयोजन – इस तथ्य का उल्लेख न होना कि अर्जन कम्पनी के लिए है, याची के प्रतिकूल नहीं – याचिका और रिट अपील खारिज।

Cases referred :

AIR 1965 SC 427, 2007 AIR SCW 6692.

R.K. Samaiya, for the appellants.

Brian D'silva with *Alok Hoonka,* for the respondents no. 4 to 6.

Deepak Awasthy, G.A., for the State.

***W.A. No.554/2009 (Jabalpur), D/- 25 March, 2010.**

NOTES OF CASES SECTION

Short Note

*(87)**

Rakesh Saksena & N.K. Gupta, JJ — RAVINDRA KUMAR GANVIR

Vs.

STATE OF M.P.

Prevention of Corruption Act (49 of 1988), Sections 7, 13(1)(d), 13(2) & 20, Penal Code, 1860, Section 201 - *Demand of bribe from complainant for getting the possession of shop delivered to him is proved - Conversation of complainant and accused/appellant was recorded in a cassette, also proved - Conversation at 12 O'clock of night at residence of appellant between complainant and appellant regarding matter of shop and when the bribe money was delivered was also recorded in cassette and proved - The hands of appellant when dipped into solution of sodium corbonate, its colour turned to light pink - Bribe money/currency notes were recovered from the sewage chamber connected to the house of appellant - The defence/ explanation furnished by the appellant did not appear reliable - It stands established that the appellant demanded and accepted the bribe money by way of illegal gratification and also attempted to obtain further money as bribe for himself and also for SDM as a motive for showing favour to complainant in getting possession of the shop to him - Conviction affirmed.*

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 7, 13(1)(डी), 13(2) व 20, दण्ड संहिता, 1860, धारा 201 – परिवादी को दुकान का कब्जा दिलाने के लिए उससे रिश्वत की मांग किया जाना साबित – परिवादी और अभियुक्त/अपीलार्थी का कैसेट में रिकॉर्ड किया गया वार्तालाप भी साबित – रात के 12 बजे अपीलार्थी के आवास पर अपीलार्थी एवं परिवादी के मध्य दुकान के विषय में वार्तालाप और जब रिश्वत का पैसा दिया गया उसकी भी कैसेट में रिकार्डिंग की गयी और साबित किया गया – जब अपीलार्थी के हाथों को सोडियम कार्बोनेट के घोल मे डुबोया गया, उसका रंग हल्का गुलाबी हो गया – रिश्वत का पैसा/करेंसी नोट अपीलार्थी के घर से जुड़े सीवेज चेंबर से बरामद किये गये – अपीलार्थी द्वारा प्रस्तुत बचाव/स्पष्टीकरण विश्वसनीय प्रतीत नहीं होता – यह सिद्ध है कि अपीलार्थी ने अवैध परितोषण के रूप में रिश्वत मांगी एवं ग्रहण की तथा परिवादी को दुकान का कब्जा दिलाने में सहायता करने के हेतु स्वरूप स्वयं के लिए एवं एस.डी.एम. के लिए भी रिश्वत के रूप में और अधिक रुपया प्राप्त करने का प्रयत्न किया – दोषसिद्धि की पुष्टि की गयी।

Cases referred :

(1973) 1 SCC 471, (1870) 34 JP 759, AIR 1964 SC 72, (1984) 1 SCC 446, AIR 1979 SC 1191, (1995) 3 SCC 351, (1998) 1 SCC 557, (2004) 7 SCC 700, (1980) 2 SCC 390.

S.C. Datt with *Siddharth Datt*, for the appellant.

Aditya Adhikari, for the respondent/State.

***Cr.A. No.1816/2001 (Jabalpur), D/- 21 May, 2010.**

Short Note

*(88)**

Shantanu Kemkar & Prakash Shrivastava, JJ

SANJAY & anr.
Vs.
STATE OF M.P. & anr.

National Security Act (65 of 1980), Section 3(2) - *Where respondents have failed to point out even a single act relating to the public order proximate in point of time when the order of detention was passed and they have also failed to justify the need for passing the detention order when the petitioner is already in jail, the order of detention cannot be sustained - Order of detention set aside.*

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – जहाँ प्रत्यर्थी उस समय बिन्दु के समीप जब निरोध का आदेश पारित किया गया, लोक व्यवस्था संबंधी किसी एक कार्य को बताने में असफल रहे हों एवं वे उस समय जब कि याची पूर्व से जेल में है, निरोध का आदेश पारित किये जाने का औचित्य बताने में भी असफल रहे हों, वहाँ निरोध का आदेश कायम नहीं रखा जा सकता है – निरोध का आदेश अपास्त।

Cases referred :

(1989) 4 SCC 556, (1989) 2 SCC 222, (1989) 4 SCC 418, (1990) 1 SCC 746, (1987) 3 SCC 502, AIR 1964 SC 334, 2002 CrLJ 1587, 2000 CrLJ 4315, AIR 2004 SC 4703.

Subodh Abhyankar, for the petitioners.

L.N. Soni; Addl.A.G. with *Anjali Jamkherkar, Panel Lawyer,* for the respondent/State.

***W.P. No.5199/2010 (Indore), D/- 30 August, 2010.**

Short Note

*(89)**

P.K. Jaiswal, J

SHANKAR YADAV
Vs.
BASANTIBAI & anr.

A. Criminal Procedure Code, 1973 (2 of 1974), Section 319 - *Successive application - Maintainability - 1st application withdrawn - Evidence of witnesses recorded thereafter - 2nd application u/s 319 cannot be said to be barred on the ground of public policy.*

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – आनुक्रमिक आवेदन – पोषणीयता – प्रथम आवेदन वापस लिया गया – उसके पश्चात् साक्षियों की साक्ष्य अभिलिखित – धारा 319 के अन्तर्गत दूसरा आवेदन लोक नीति के आधार पर वर्जित होना नहीं कहा जा सकता।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 319 - *Exercise of power - It should appear to Court that some other person who is*

not arraigned as accused in that case has committed an offence for which he could be tried together - Some doubt about involvement of another person is not enough - It is discretion and power conferred upon the Court which should be exercised only to achieve justice.

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – शक्ति का प्रयोग – न्यायालय को यह प्रतीत होना चाहिये कि किसी अन्य व्यक्ति ने, जिस पर उस मामले में आरोप नहीं लगाया गया है, कोई अपराध किया है जिसके लिये उसका साथ–साथ विचारण किया जा सकता है – अन्य व्यक्ति के अन्तर्ग्रस्त होने सबंधी किंचित संदेह ही पर्याप्त नहीं है – यह न्यायालय को प्रदत्त विवेकाधिकार एवं शक्ति है जिसे केवल न्याय करने हेतु प्रयोग करना चाहिये।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 319 - *Evidence - Evidence contemplates that evidence of witnesses given in Court - Statement of witness recorded u/s 161 of Cr.P.C. cannot be taken into consideration.*

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – साक्ष्य – साक्ष्य अनुध्यात करती है कि साक्षियों की साक्ष्य न्यायालय में दी जाये – द.प्र.सं. की धारा 161 के अन्तर्गत अभिलिखित साक्षी के कथन को विचार में नहीं लिया जा सकता।

D. Criminal Procedure Code, 1973 (2 of 1974), Section 319 - *Plea of alibi - Application u/s 319 cannot be rejected on the ground that plea of alibi raised by applicants was investigated by police personnel and on his satisfying about substance in plea of accused about their non-involvement, directed the omission of their names - Although the names of applicants were deleted from array of accused, but their names were found in FIR and statements of witnesses - Revision rejected.*

घ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – अन्यत्र उपस्थित होने का अभिवाक् – धारा 319 के अन्तर्गत प्रस्तुत आवेदन इस आधार पर निरस्त नहीं किया जा सकता कि आवेदकों द्वारा किये गये अन्यत्र उपस्थित होने के अभिवाक् का पुलिस द्वारा अन्वेषण किया गया और अभियुक्तों के उनके अन्तर्ग्रस्त न होने के अभिवाक् में सार के बारे में संतुष्ट होने पर उनके नाम हटाने हेतु निर्देशित किया था – यद्यपि आवेदकों के नाम अभियुक्तों की सूची में से हटा दिये गये, लेकिन उनके नाम प्रथम सूचना रिपोर्ट एवं साक्षियों के कथनों में पाये गये – पुनरीक्षण नामंजूर।

Cases referred :

(1987) 1 SCC 5, 1991 CrLJ 840, (1983) 1 SCC 1, (2009) 16 SCC 46, (2004) 7 SCC 262, (2000) 3 SCC 262, (2010) 6 SCC 1, AIR 2007 SC 2786, AIR 2006 SC 1892, (2007) 4 SCC 773, AIR 2009 SC 1723.

R.P. Agrawal with *Abhinav Dhanodkar,* for the applicant.
G.S. Chouhan, G.A., for the Non-applicant No.2.
Mitul Saxena, for the Objector.

***Cr.R. No.835/2010 (Indore), D/-13 September 2010.**

Short Note
*(90)**

I.S. Shrivastava, J

SHEETAL AGRAWAL
Vs.
STATE OF M.P.

Penal Code (45 of 1860), Section 307/34 - *Common intention to commit attempt to murder - Mere presence of the appellant on the spot at the time of the incident will not make him liable under the common intention for the offence - Appeal allowed.*

दण्ड संहिता (1860 का 45), धारा 307/34 – हत्या का प्रयत्न करने का सामान्य आशय – घटना के समय घटनास्थल पर अपीलार्थी की उपस्थिति मात्र ही उसे अपराध के लिए सामान्य आशय के अन्तर्गत दायी नहीं बनायेगी – अपील मंजूर।

Cases referred :

1991(II) MPWN 174, AIR 2004 SC 1489.

Sharmila Sharma, for the appellant.

Manish Joshi, P.L., for the respondent/State.

***Cr.A. No.1161/2007 (Indore), D/- 7 January, 2010.**

Short Note
*(91)**

G.S. Solanki, J

SHESH UPADHYAYA @ SHESHMANI & anr.
Vs.
STATE OF M.P.

A. Penal Code (45 of 1860), Section 376 - *Rape - Evidence of prosecutrix corroborated by her mother and further corroborated by FIR and FSL report - The possibility of false implication is also ruled out - The offence is proved beyond reasonable doubt.*

क. दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – अभियोक्त्री की साक्ष्य उसकी माँ द्वारा एवं उसके अतिरिक्त एफ.आई.आर. एवं एफ.एस.एल. रिपोर्ट द्वारा संपुष्ट – झूठा फंसाये जाने की संभावना भी खत्म – अपराध युक्तियुक्त संदेह से परे साबित।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 464 - *Appellant charged simplicitor for offence u/s 376 IPC - Section 376(2)(g) IPC and also ingredients of gang rape not mentioned in the charge - The conviction of appellant u/s 376(2)(g) altered to S. 376 of IPC - Appeal partly allowed.*

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 464 – अपीलार्थी पर भा. द.सं. की धारा 376 का आरोप लगाया गया – भा.द.सं. की धारा 376(2)(जी) एवं सामूहिक बलात्संग के संघटक आरोप में वर्णित नहीं – भा.द.सं. की धारा 376(2)(जी) के अंतर्गत की गयी अपीलार्थी की दोषसिद्धि धारा 376 में परिवर्तित – अपील अंशतः मंजूर।

Cases referred :

2005(1) MPLJ 334, AIR 2001 SC 3049, AIR 1983 SC 753.

P.R. Bhave with *Bhanu Pratap Yadav,* for the appellants.
Prakash Gupta, Panel Lawyer, for the respondent/State.

***Cr.A. No.1650/1995 (Jabalpur), D/-10 September 2010.**

Short Note
*(92)**

Sanjay Yadav, J

SHYAM MURARI SHARMA
Vs.
ADDITIONAL COMMISSIONER, SAGAR DIVISION & ors.

Registration of Births and Deaths Act (18 of 1969), Section 8, Municipalities Act, M.P. 1961, Sections 307 & 308 - *Death Certificate - Appellate Authority - Additional Collector can not entertain an appeal against a death certificate issued in accordance with the Act of 1969 - The Additional Collector apparently exceeded his jurisdiction while entertaining an appeal against the issuance of death certificate.*

जन्म और मृत्यु रजिस्ट्रीकरण अधिनियम (1969 का 18), धारा 8, नगरपालिका अधिनियम, म.प्र. 1961, धाराएँ 307 व 308 – मृत्यु प्रमाण पत्र – अपीलीय प्राधिकारी – अपर कलेक्टर 1969 के अधिनियम के अनुसार जारी किये गये मृत्यु प्रमाण पत्र के विरूद्ध अपील ग्रहण नहीं कर सकता – अपर कलेक्टर ने मृत्यु प्रमाण पत्र जारी किये जाने के विरूद्ध अपील ग्रहण करने में प्रकट रूप से उसकी अधिकारिता का अतिलंघन किया।

Amit Seth, for the petitioner.
Jailakshmi Aiyer, for the respondent Nos.1 & 2.
None, for respondent No.3.
Navneet Dubey, for the respondent No.4.

***W.P. No.1495/2009 (Jabalpur), D/- 6 August, 2010.**

Short Note
*(93)**

Sanjay Yadav, J

UNITED INDIA INSURANCE CO. LTD.
Vs.
SMT. VANDANA

Motor Vehicles Act (59 of 1988), Section 166 - *Compensation - Liability of the Insurance Company - The tribunal giving a finding that there was no negligence of the Driver in causing accident - The tribunal holding the owner and Insurance Company jointly and severally liable - Held - The tribunal has returned a categorical finding that there was no negligence on the part of the driver driving the vehicle i.e. jeep which met with an accident*

resulting in his death - Insurance Company cannot be held liable to indemnify the insured - Insurance Company exonerated from the liability.

मोटरयान अधिनियम (1988 का 59), धारा 166 – प्रतिकर – बीमा कम्पनी का दायित्व – अधिकरण ने निष्कर्ष दिया कि दुर्घटना कारित करने में चालक की कोई उपेक्षा नहीं थी – अधिकरण ने मालिक एवं बीमा कम्पनी को संयुक्ततः एवं पृथकतः दायी ठहराया – अभिनिर्धारित – अधिकरण ने स्पष्ट निष्कर्ष दिया कि चालक की ओर से वाहन अर्थात् जीप जो दुर्घटनाग्रस्त हुयी और जिसमें उसकी मृत्यु हो गयी, को चलाने में कोई उपेक्षा नहीं थी – बीमा कम्पनी को बीमाकृत की क्षतिपूर्ति करने के लिये दायी नहीं ठहराया जा सकता – बीमा कम्पनी को दायित्व से मुक्त किया गया।

Cases referred :

AIR 1977 SC 1248, (1987) 3 SCC 234, (2007) 5 SCC 428, 2009(4) MPLJ 453.

Suresh Raj, for the appellant.
A.D. Mishra, for the respondent Nos.1 to 4.
U.R. Mishra, for the respondent No.5.

***M.A. No.3446/2004 (Jabalpur), D/- 16 February, 2010.**

Short Note
*(94)**

R.C. Mishra, J

VINAY KUMAR KEDIA
Vs.
STATE OF M.P.

Criminal Procedure Code, 1973 (2 of 1974), Section 438 - ***Anticipatory bail - While considering the prayer for grant of anticipatory bail, it would not be desirable to enter into merits of the question as to whether the charge of the offence under offence would be made out - Suffice it to notice the principle that ingredients of the offence require proximity and nexus between the conduct and behaviour of the accused and the offence.***

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत – अग्रिम जमानत प्रदान करने के लिए प्रार्थना पर विचार करते समय यह वांछनीय नहीं होगा कि इस प्रश्न के गुणावगुण को देखा जाए कि क्या अपराध के अन्तर्गत अपराध का आरोप साबित होगा – सिद्धांत कि अपराध के तत्व/घटक, अभियुक्त के व्यवहार एवं आचरण तथा अपराध के मध्य निकटता एवं संबंध अपेक्षित करते हैं, देखा जाना ही पर्याप्त होगा।

Cases referred :

AIR 2008 SC 2108, AIR 2010 SC 327, (2010) 1 SCC 707, 2009 AIR SCW 4421, AIR 1980 SC 785, AIR 2003 SC 4662, AIR 1980 SC 1632, AIR 2000 SC 3541.

S.C. Datt with *Kapil Jain,* for the applicant.
C.K. Mishra, G.A., for the respondent/State.
S.K. Tiwari, for the complainant/objector.

***M.Cr.C. No.12859/2009 (Jabalpur), D/- 7 May, 2010.**

Short Note

*(95)**

Alok Aradhe, J

YASHODA DEVI (SMT.) & anr.
Vs.
KANHAIYALAL

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(b) - ***Sub-letting - Onus of proof - Held - Plaintiff is required to place on record certain circumstances from which an inference with regard to sub-letting can be drawn - Held - When such circumstances are proved, prima facie the burden on the plaintiff is discharged and the onus shifts on the defendant to prove by positive fact about the non-existence of alleged sub-tenant.***

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ब) – उप–भाड़ेदारी – साबित करने का भार – अभिनिर्धारित – याची से केवल यह अपेक्षित है कि वह कतिपय परिस्थितियाँ अभिलेख पर लाये जिनसे उप–भाड़ेदारी के सम्बन्ध में अनुमान निकाला जा सके – अभिनिर्धारित – जब ऐसी परिस्थितियां साबित की जाती है, वादी प्रथम दृष्टया भार से प्रमुक्त हो जाता है और दायित्व प्रतिवादी पर आ जाता है कि वह कथित उपभाड़ेदारी के अनस्तित्व के बारे में सकारात्मक तथ्य द्वारा साबित करे।

Cases referred :

(2005) 1 SCC 481, (2000) 6 SCC 359, AIR 1957 SC 912, AIR 1976 SC 1053, (2009) 3 SCC 287, (2006) 11 SCC 587, (2007) 1 SCC 546, (2004) 5 SCC 140, (2004) 5 SCC 762, (2009) 5 SCC 264, (2000) 7 SCC 409, (2008) 3 SCC 120, (2007) 12 SCC 774.

Ashok Lalwani, for the appellants.

Naman Nagrath & Sanjeev Mishra, for the respondents.

***S.A. No.108/1996 (Jabalpur), D/- 30 July, 2010.**

Short Note

*(96)**

Anil Sharma, J

YOGENDRA GUPTA
Vs.
SMT. RENU AGRAWAL

Negotiable Instruments Act (26 of 1881), Section 138 - ***Dishonour of cheque on the ground of death of partner with intention to force the petitioner/accused for doing necessary formalities on the death of partner - Cannot make the petitioner liable for punishment u/s 138 of the Act.***

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – साझेदार के निधन के आधार पर याची/अभियुक्त को साझेदार के निधन पर आवश्यक औपचारिकताएँ करने के लिये विवश करने के आशय से चैक का अनादरण – याची को अधिनियम की धारा 138 के अन्तर्गत सजा के लिए दायी नहीं बना सकता।

Cases referred :

(2009) 6 SCC 72, 2001(2) MPLJ 272, (2008) 5 SCC 633, AIR 1973 SC 2407, 1998(II) MPWN 60, 2007(2) MPHT 184, 2009(1) Crimes 189 (J&K), 2008(2) DCR 591, 2008(2) DCR, 2008(2) DCR 90, 2005(I) MPHT 203 (SC).

Prashant Sharma, for the applicant.

V.D. Sharma & A.R. Shivhare, for the Non-applicant.

***Cr.R. No.594/2009 (Gwalior), D/- 3 August, 2010.**

---

to use to his detriment. But if the client himself refuses to retain him, then the advocate is at liberty to appear for the opposite side but the confidential information obtained must not be used, and if that it is found impossible, then he should forgo the chance of appearing on the opposite side.

> iii) **An advocate is representative of his client and not his mouthpiece** :-He is governed by the rules of his professional etiquette and is not to act according to the whims of his client merely because it suits the latter's wishes. Even if the client's interest so requires, he will not knowingly misstate the law, or willfully misstate the facts or tutor witnesses, or fabricate or tamper with documents, or make reckless allegations in the pleadings, or put in pleas which are known to be false, or put in a forged document or produce a perjured witness.

5. Hence according to the principles of law and ethics, the same public prosecutor cannot appear in both the cases from the side of the prosecution which are the cross cases of each other, because he has to support the case of the one client only. Hence, the District Magistrate is directed to appoint separate public prosecutor in both the sessions trial.

6. With the above directions, this petition is disposed of.

7. A copy of this order be sent to the District & Sessions Judge, Ujjain for necessary compliance.

C c as per rules.

Petition disposed of.

I.L.R. [2010] M. P., 2441

SUPREME COURT OF INDIA

Before Mr. Justice R.V. Raveendran & Mr. Justice H.L. Gokhale

26 August, 2010*

PRAHLAD ... Appellant

Vs.

SHIV NANDAN KUMARI (DEAD) THROUGH L.RS. & ors .... Respondents

Registration Act (16 of 1908), Section 17 - ***Where there is an oral partition of the ancestral property, a subsequent memorandum embodying the factum of partition would not require registration.*** (Para 4)

रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 17 – जहाँ पैतृक सम्पत्ति का कोई मौखिक विभाजन हो, विभाजन के तथ्य को सन्निविष्ट करने वाले पश्चात्वर्ती ज्ञापन का रजिस्ट्रीकरण आवश्यक नहीं होगा।

Case referred :

AIR 1988 SC 881.

*C.A. No.1715/2003

ORDER

The second defendant in a suit for declaration of title and possession is the appellant before us. Respondents 1, 2 and 3 were plaintiffs in the said suit. Respondent 4 was the first defendant and the appellant was the second defendant in the said suit. For convenience, we will refer to the paries, by their ranks in the suit. The first plaintiff was the step-mother and plaintiffs 2 and 3 are the step-brothers of the first defendant. The first defendant sold field No.47, measuring 5 bigha 18 biswas to the second defendant (appellant) under sale deed dated 17.5.1978. It may be mentioned that at the time of such purchase the second defendant was a minor and represented by his father.

2. In the year 1981, the plaintiffs filed a suit for declaration and possession alleging that the suit property (field No.47) was a joint family property of Raj Bahadur Singh (father of defendant No.1 and plaintiffs 2 and 3 and husband of plaintiff No.1) and his brother Shiv Bahadur Singh; that there was an oral partition in the year 1968 which was affirmed by reducing it into writing in the form of a family settlement dated 15.2.1970; and that under the said partition field No.47 was allotted to the share of Dharmendra Singh - third plaintiff. It was contended that the first defendant, who was allotted a different property at the partition, and therefore had no right, title or interest in field No.47, sold the said property to the second defendant and consequently the sale by the first defendant in favour of the second defendant was null and void.

3. The second defendant-appellant resisted the suit by contending that the suit property belonged to the first defendant and the sale was valid. He denied that the suit property was a joint family property and that it was allotted to the share of third plaintiff at the family partition. Parties went to trial. The trial court by its judgment dated 16.11.1989 decreed the suit. It held that there was an oral partition in the year 1968 and that was reduced to writing subsequently as per Exhibit P.1. The trial court held that being a confirmation/acknowledgment of an earlier oral partition, the said document did not require registration.

3. Feeling aggrieved, the second defendant filed an appeal before the High Court. The High Court by the impugned judgment dated 21.10.2002 dismissed the appeal affirming the findings of fact recorded by the trial court. The said judgment is under challenge in this appeal.

4. The only question raised by the appellant is that the Memorandum of Partition (Exhibit P.1) not having been registered, could not have been relied upon by the courts below. As noticed above the courts below have found that there was an oral partition in the year 1968 and that the terms thereof were embodied in the form of a memorandum subsequently, as per Exhibit P.1. This Court has held that where there is an oral partition of the ancestral property, a subsequent memorandum embodying the factum of partition would not require registration

(See *Roshan Singh & Others vs. Zile Singh and Others* AIR 1988 SC 881). Therefore, the contention of the appellant that Exhibit P.1 could not be relied upon is liable to be rejected. If the said contention goes, what remains is the concurrent finding of fact recorded by the trial court and the High court that the property was a joint family property and that it was allotted to the share of third plaintiff. It is not open to question.

5. Therefore, the appeal is dismissed as there is no merit.

Appeal dismissed.

I.L.R. [2010] M. P., 2443

FULL BENCH

Before Mr. Justice Shantanu Kemkar, Mr. Justice S.C. Sharma & Mr. Justice Prakash Shrivastava

1 September, 2010*

VIKRAM CEMENT ... Petitioner

Vs.

COMMISSIONER OF COMMERCIAL TAX & ors. ... Respondents

A. Doctrine of merger - *Where the appeal against original order of assessment was on limited point and the appellate authority without touching any other ground though set-aside the order of assessment but the remand was confined to give opportunity to appellant to file Form B and appendix declaration and to pass a fresh appropriate assessment order, the entire assessment order is not merged in the assessment order which passed after remand.* (Para 22)

क. विलयन का सिद्धांत – जहाँ कर निर्धारण के मूल आदेश के विरुद्ध अपील सीमित बिन्दु पर थी तथा अपीलीय प्राधिकारी ने किसी अन्य आधार से परे यद्यपि कर निर्धारण का आदेश अपास्त कर दिया, लेकिन प्रतिप्रेषण अपीलार्थी को फार्म 'बी' एवं परिशिष्ट घोषणा प्रस्तुत करने एवं पुनः समुचित कर निर्धारण आदेश पारित करने तक सीमित था, सम्पूर्ण कर निर्धारण आदेश का प्रतिप्रेषण के बाद पारित कर निर्धारण आदेश में विलय नहीं होता है।

B. General Sales Tax Act, M.P. 1958 (2 of 1959), Section 19(1) - *Where the entire assessment order (dt. 19.03.1991) was not merged in the assessment order (dt. 26.10.1994) which was passed after remand, the initiation of proceedings u/s 19(1) of the Act (dt. 23.09.1997) for re-opening of the alleged escaped assessment of the items regarding which no appeal was filed could not have been ordered being barred by limitation.*

Assessment order passed on 19.03.1991 deciding various aspects of tax liability - Appeal preferred by petitioner on a limited ground that Assessing Authority did not grant time to procure and submit Form B-2 and appendix

---

*W.P. No.9506/2003 (Indore)

declarations from buyers - Appellate authority remanded the case granting opportunity to submit Form B & appendix declarations and pass appropriate order - In compliance assessing authority passed a fresh order on 26.10.1994 by maintaining its earlier order in regard to the other points - Later on the assessing authority issued a notice u/s 19(1) of the Act proposing to levy sales tax @ 12% on various items - Notice was challenged by petitioner, on the ground that the proceedings are barred by limitation, however, the order of reassessment was passed on 26.12.1998 - Held - The order of remand was passed only in respect of the prayer of the petitioner to afford opportunity to submit Form B and appendix declarations by directing the Assessing Authority to afford an appropriate opportunity to the petitioner to submit Form B and appendix declarations - The appellate authority did not touch other parts of the order of the assessing authority - Thus, the only point merged in the remand order of assessment was in respect of the said Form B and appendix declarations filed by the petitioner in consequence of the directions given by the appellate authority and not the whole original order of assessment. In the circumstances, the initiation of proceedings u/s 19(1) of the Act for re-opening of the alleged escaped assessment of the items regarding which no appeal was filed could not have been ordered being barred by limitation. (Paras 20 & 22)

ख. साधारण विक्रय–कर अधिनियम, म.प्र. 1958 (1959 का 2), धारा 19(1) – जहाँ प्रतिप्रेषण के उपरान्त पारित कर निर्धारण आदेश (तारीख 26.10.1994) में सम्पूर्ण कर निर्धारण आदेश (तारीख 19.03.1991) का विलय नहीं किया गया, वहाँ तथाकथित निर्धारण से छूट जाने वाली मदों, जिनके सम्बन्ध में कोई अपील प्रस्तुत नहीं की गयी, का निर्धारण पुनः चालू करने के लिए अधिनियम की धारा 19(1) के अन्तर्गत कार्यवाही का आरम्भ (तारीख 23.09.1997) परिसीमा द्वारा बाधित होने के कारण आदेशित नहीं किया जा सकता।

Cases referred :

(1984) 55 STC 54, (1983) 54 STC 392, (1981) 47 STC 415, (1982) MPLJ 296, (1983) 140 ITR 677, (1975) 35 SCC 601 (AP), (1967) 19 SCC 144, 1977 Vol. 39 STC 177, (1958) 34 ITR, (1958) SCR 595, (1981) 128 ITR 77, MCC No.142/1978 decided on 14.01.1981.

G.M. Chaphekar with *C.R. Pancholiya,* for the petitioner.

L.N. Soni, Addl.A.G. with *Vivek Patwa, Dy.G.A.,* for the respondents.

ORDER

The Order of the Court was delivered by SHANTANU KEMKAR, J. :–This petition under Articles 226/227 of the Constitution of India has been filed against the order of re-assessment dated 26.12.1998 (Annexure P-9) passed by the Assistant Commissioner, Commercial Tax, Ujjain, the appellate order dated 09.09.2002 (Annexure P-ll) passed by the Appellate Deputy Commissioner, Commercial Tax, Ujjain and the order dated 02.07.2003

(Annexure P-13) passed in revision by the Additional Commissioner of Commercial Tax, Indore.

2. Briefly stated the petitioner a registered dealer under the M.P. General Sales Tax Act, 1958 (for short the Sales Tax Act) and under the M.P. Vanijyik kar Adhiniyam, 1994 (for short Vanijyik kar Adhiniyam) engaged in the business of manufacture and sale of cement was assessed to the tax for the period of 01.04.1987 to 31.03.1988 vide order dated 19.03.1991 passed by the fourth respondent in Assessment Case No.24/1988. On assessment additional demand of Rs.41.062/- was raised against the petitioner. The petitioner being a new industrial unit was granted the facility of deferment of payment of tax for the period from 22.06.1985 to 21.06.1988 under the notification dated 01.09.1983 for a period of 10 years, was allowed the facility to purchase all classes of goods specified in Schedule II of the Sales Tax Act from other registered dealer for use of raw material or incidental goods in the manufacturing of other goods for sale without payment of tax. In the circumstances, while making assessment the fourth respondent did not levy purchase tax under Section 7 (1) of the Sales Tax Act on the goods purchased by the petitioner from other registered dealers without payment of tax in view of the notification dated 08.05.1984. However, the fourth respondent levied tax on some part of the sales of cement by denying the petitioner opportunity to produce the declarations in Form B-2 and appendix declarations.

3. Feeling aggrieved by the part of the said order passed by the fourth respondent Assistant Commissioner in not granting the petitioner time to produce the declarations in Form B-2 and appendix declarations by procuring it from the buyers as desired by its letter dated 11.03.1991 and levying of tax for the same, the petitioner filed an appeal (Annexure P-5) under Section 38 of the Sales Tax Act. The Appellate Authority third respondent vide order dated 20.05.1992 (Annexure P-6) allowed the petitioner's appeal, set aside the order of the assessing authority and remanded the matter to the assessing authority the fourth respondent directing him to provide opportunity to the petitioner to submit declarations in Form B-2 and appendix declarations and make appropriate assessment of the tax. In pursuance to the aforesaid appellate order (Annexure P-6) the assessing authority permitted the petitioner to submit declarations in Form B-2 and appendix declarations and thereafter passed the order dated 26.10.1994 (Annexure P-7).

4. When the matter stood thus, the assessing authority issued a notice (Annexure P-8) under Section 19 (1) of the Sales Tax Act to the petitioner in Form No. 16 proposing to levy sales tax @ 12% on cement amounting to Rs.20.00,000/-. In addition it was also proposed to levy purchase tax under Section 7 (1) of the Sales Tax Act on the purchase of coal amounting to Rs.3,31,63,065/- and on High Speed Diesel (Diesel Oil) amounting to Rs.3,05,23,132/- which was purchased by the petitioner from the registered dealer of Madhya Pradesh without payment of tax taking the benefit of notification dated 08.05.1984. On receipt of the said notice the petitioner contended before the assessing authority that no purchase

tax under Section 7 (1) of the Sales Tax Act was leviable and that the proceedings of re-assessment initiated under Section 19 (1) of the Sales Tax Act were barred by limitation of five calender years from the date of original order of assessment which was passed on 19.03.1991. However, the petitioner's contentions were not accepted by the assessing authority and the order of re-assessment was passed on 26.12.1998 (Annexure P-9). In the re-assessment order purchase tax under Section 7 (1) of the Sales Tax Act was levied on purchase of coal and High Speed Diesel. As regards levying of sale tax of cement, it was found that the said value of the cement was not sold but was transferred to Grasim Industries the owner of the petitioner's unit and there being no sale, no tax was leviable on it.

5. The petitioner being dissatisfied with the order of re-assessment (Annexure P-9) preferred an appeal before the third respondent Appellate Deputy Commissioner of Commercial Tax, Ujjain. The main contention of the petitioner before the appellate authority was that the proceedings of re-assessment initiated by the assessing authority invoking powers under Section 19 (1) of the Sales Tax Act were barred by limitation of five calender years from the date of order of assessment dated 19.03.1991. However, the appellate authority did not agree with the petitioner's contention. He held that in view of the fresh order of assessment passed on 26.10.1994 the period of limitation would run from the date of fresh assessment order dated 26.10.1994. Accordingly, the petitioner's appeal was dismissed vide order dated 09.09.2002 (Annexure P-11). The revision filed by the petitioner before the first respondent Commissioner of Commercial Tax was also dismissed vide order dated 02.07.2003 (Annexure P-13). Aggrieved the petitioner has filed this petition.

6. The question raised and involved in this writ petition is as to whether on the facts and circumstances of the case, the period of limitation for invoking powers under Section 19 (1) of the Sales Tax Act would run from the date of fresh assessment after the order of remand passed by the appellate authority or from the date of original order of assessment. On 28.10.2009 when this writ petition was listed for hearing a Division Bench after considering the submissions made by the learned counsel for the parties, the nature of controversy and the judgment delivered by Division Bench of this Court in the case of *Commissioner of Sales Tax M.P. Vs. Sanawad Cooperative Society*, (1984) 55 STC 54 in which it was held that there is a conflict in two Division Bench judgments of this Court in the matters of *Commissioner of Sales Tax Vs. Jammatlal Prahladlalrai* (1983) 54 STC 392 and *Commissioner of Sales Tax Vs. Himmatlal and Company* (1981) 47 STC 415 took a view that the matter deserves to be considered by a Larger Bench. Accordingly, the matter was placed before the Hon'ble Chief Justice for constituting an appropriate Bench. On the basis of the orders passed by Hon'ble the Chief Justice this Full Bench has been constituted.

7. Heard Shri G.M.Chaphekar, learned Senior counsel for the petitioner and Shri L.N.Soni. learned Additional Advocate General for the respondents and perused the record.

8. Shri G.M.Chaphekar, learned Senior counsel for the petitioner argued that the assessing authority, the appellate authority and the revisional authority have committed error in holding that the proceedings of re-assessment initiated by the fourth respondent under Section 19(1) of the Sales Tax Act were not barred by limitation since they were initiated within the period of five calender years from the date of order of fresh assessment passed on 26.10.1994 in terms of the order of remand. His contention was that the appeal which was filed against the original order of assessment passed on 19.03.1991 was on a limited point and the case was remanded by the appellate authority vide order dated 20.05.1992 (Annexure P-6) only to the extent of the ground on which the appeal was filed. According to him as per the **'doctrine of merger'** the only point which merged in the order of appeal dated 20.05.1992 was in respect of opportunity to be given to the petitioner to file declarations in Form B and appendix declarations and, therefore, all other points emanating from the original order of assessment passed on 19.03.1991 had become final and did not merge in the appellate order. He also urged that from the date of original order of assessment dated 19.03.1991 the period of limitation had already expired on 31.12.1996 in the circumstances, the proceedings of re-assessment initiated on 23.09.1997 were clearly barred by limitation. In support of his contentions learned Senior counsel for the petitioner placed reliance on the Division Bench judgment of this Court in the case of *Commissioner of Sales Tax Vs. Jammatlal* (supra). The Full Bench judgment of this Court in the case of *Commissioner of Income Tax, Bhopal Vs. R.R.Banwarilal* (1982 MPLJ 296), yet another Full Bench judgment of this Court in the case of *Commissioner of Income Tax Bhopal Vs. Mandsaur Electricity Supply Company Limited* (1983) 140 ITR 677, Division Bench judgment of Andhra Pradesh High Court in the case of *State of A.P. Vs. Sri Rama Laxmi Satyanarayana Rice Mill* (1975) 35 SCC 601 (AP), Division Bench judgment of this Court in the case of *Commissioner of Commercial Tax M.P. Vs. Sanawad Cooperative Society* (supra). Division Bench judgment of this Court in the case of *Commissioner of Sales Tax, M.P. Vs. Himmatlal and Company* (supra), and on a judgment of the Supreme Court in the case of *State of Madras Vs. Madurai Mills Company Limited* 1967 (19) SCC 144.

9. Shri G.M.Chaphekar, learned Senior counsel also submitted that though there is a conflict in the two Division Bench judgment of this Court in the case of *Commissioner of Sales Tax Vs. Jammatlal Prahlad Rai* and *Commissioner of Sales Tax Vs. Himmatlal and company* but the facts and the questions involved in both the cases are different from the present case. On addressing the Court about the conflict in the views he supported the view taken by the Division Bench in the case of *Commissioner of Sales Tax Vs. Jammatlal* (supra). He argued that in the case of *Commissioner of Sales Tax Vs. Himmatlal Company* the Division Bench overlooked the provisions contained in Section 43 (1) of the Sales Tax Act which empowers to the Commissioner or the appellate authority by providing that in the course of any proceedings under the Act, on being satisfied

that dealer has concealed his turnover or the aggregate of purchase price in respect of any goods or has furnished inaccurate particulars for such sales or purchases as the case may be, or has furnished a false return, the Commissioner or the appellate authority, as the case may be after giving a dealer a reasonable opportunity of being heard, direct the dealer to pay penalty in addition to the tax payable by him. In the circumstances, according to him the judgment passed by the Division Bench of this Court in the case of ***Himmatlal and Company*** has not taken a correct view. He supported the view taken by the Division Bench in the case of *Commissioner of Sales Tax Vs. Jammatlal Prahlad Rai* which is in conformity with the provisions of Section 43 (1) of the Sales Tax Act in which it has been held that the appellate authority, while hearing an appeal and finding that the circumstances of the case showed that the dealer was guilty of concealment of turnover, could take proceedings for imposition of penalty. In failing to take action under Section 43 of the Act and in not imposing penalty while disposing of the appeal, the appellate authority passed an order which was clearly prejudicial to the revenue. The Commissioner was therefore, entitled under Section 39 (2) of the Act to revise that order. As the order imposing penalty could have been passed by the appellate authority, the limitation for taking proceedings under Section 39 (2) of the Act for revising the order of the appellate authority was three years from the date of the appellate order, and in the instant case, counting the limitation from the date of the order of the appellate authority, the revisional proceedings were within limitation.

10. On the other hand, Shri L.N.Soni, learned Additional Advocate General placing reliance on the judgment of the Supreme Court in the case of *Deputy Commissioner of Commercial Tax Vs. H.R.Sriramulu* 1977 Vol. 39 STC 177 argued that the while allowing the petitioner's appeal the appellate Deputy Commissioner vide order dated 20.05.1992 (Annexure P-6) had set aside the assessment order dated 19.03.1991 and remanded the matter to the assessing authority the fourth respondent, therefore, the order passed. by the assessing authority after remand on 26.10.1994 (Annexure P-7) is the order of fresh assessment, and as such the period of limitation provided under Section 19(1) of the Sales Tax Act would run from the fresh assessment order dated 26.10.1994.

11. We have considered the contentions raised by learned counsel for the parties and have gone through the record and the judgments relied upon by them. Before dealing with the facts of the present case we would deem it proper to consider and decide as to which of the two conflicting views expressed by two Division Bench of this Court in the case of *Commissioner of Sales Tax v. Jammatlal Prahlad Rai* and in the case of *Commissioner of Sales Tax Vs. Himmatlal Company* is correct.

12. In the case of *Commissioner of Sales Tax Vs. Himmatlal & Co. (supra)* the Division Bench was considering the question that when under Section 43 (1) of the Sales Tax Act penalty has not been imposed either by the assessing authority

or by the first appellate authority, the time limit for initiating the proceedings under Section 39 (2) of the Sales Tax Act will be taken from the date of the order of the first appellate authority or from the date of the order of the assessing authority. From the facts narrated it is clear that in the said case the order of assessment passed by the assessing authority was confirmed in appeal by the Appellate Aurhority, however with a slight modification in the penalty under Section 17(3) of the Sales Tax Act. It was held by the Division Bench that in the assessment order no penalty under Section 43(1) of the Sales Tax Act was imposed on the assessee on the ground of alleged concealment of its turnover. In the assesse's appeal before the Appellate Assistant Commissioner only two questions had arisen for consideration; one was about the estimate of the turnover and another about the penalty for late filing of the return under Section 17(3) of the Sales Tax Act. The Division Bench held that the Appellate Assistant Commissioner was not called upon to consider the question of penalty under Section 43 (1) of the Sales Tax Act and, therefore, the default if any was in the assessment order itself. Having held so the Division Bench held that the order of assessing authority did not merge with that of the appellate authority so far as the question of penalty under Section 43 (1) of the Act was concerned because at no stage this question had arisen before the appellate authority.

13. In the case of *Commissioner of Sales Tax M.P. Vs. Jammatlal Prahladrai (supra)* the assessment order was passed on 07.06.1965. The Assessing authority did not take any proceedings for imposing penalty under Section 43 of the Sales Tax Act. In the appeal preferred by the assessee which was decided by the Additional Appellate Assistant Commissioner on 09.03.1966 the appellate authority also did not take any action under Section 43. In the circumstances, the Commissioner took the matter in *suo motu* revision in exercise of its powers under Section 39 (2) of the Sales Tax Act. He was of the view that the order of the appellate authority was erroneous and prejudicial to the interest of the revenue as no action was taken for imposition of penalty under Section 43. After issuing the notice to the dealer on 07.03.1969 the Additional Commissioner imposed upon him the penalty of Rs. 1,000/- under Section 43 (1) in the revision. The appeal preferred by the dealer was allowed by the Sales Tax Appellate Tribunal holding that the revision was barred by limitation. The Division Bench after considering the proviso to Section 39 (2) providing limitation of 3 years to initiate proceedings from the date of order sought to be revised held the Tribunal was not correct in holding the proceedings under Section 39 (2) to be barred by limitation. The Division Bench held that the Tribunal has failed to take notice of Section 43 by which the appellate authority is also empowered to take proceedings for imposition of penalty as Section 43 opens with the words "if the Commissioner or the appellate authority in the course of any proceedings under this Act is satisfied." It further held that the appeal is certainly any proceedings within the meaning of Section 43 and the appellate authority while hearing an appeal and finding that the

circumstances of the case show that the dealer was guilty of concealment of turnover can take proceedings, for imposition of penalty. In failing to take action under Section 43 and in not imposing penalty while disposing the appeal the appellate authority passed an order which was clearly prejudicial to the interest of the revenue and, therefore, revisional proceedings were within limitation.

14. Having regard to the aforesaid we find that the view taken by the Division Bench in the case of *Commissioner of Sales Tax M.P. Vs. Jammatlal Prahladrai* to be inconsonace with the provisions contained in Section 43 of the Sales Tax Act whereas, we find that the Division Bench in the case *Commissioner of Sales Tax M.P. Vs. Himmatlal* has overlooked the opening words of Section 43 which empowers the appellate authority also to take proceedings for imposition of penalty and in the circumstances if the appellate authority while hearing an appeal if is satisfied that the circumstances of the case show that the dealer was guilty of concealment of turnover it can take proceedings for imposition of penalty and in not doing so while disposing of the appeal if the appellate authority had passed an order the same can be clearly said to be prejudicial to the interest of the revenue. Therefore, the view taken in the case of *Commissioner of Sales Tax, M.P. Vs. Himmatlal* cannot be approved, as a result we hold that in the case of *Commissioner of Sales Tax, M.P. Vs. Himmatlal* the Division Bench has not laid down the law correctly whereas, the judgment rendered in the case of *Commissioner of Sales Tax, M.P. Vs. Jammatlal Prahaladrai* lays down correct law and accordingly we approve the view taken by the Division Bench in the case of *Commissioner of Sales Tax Vs. Jammatlal Prahladrai.*

15. Now in order to decide the controversy involved in this petition as to whether the period of limitation for initiating the proceedings for re-assessment under Section 19 (1) of the Seles Tax Act would start from the original order of assessment or from the order of fresh assessment passed after the order of remand we would first deal with the judgments on which learned counsel for the parties have relied. In the case of *State of Madras Vs. Madurai Mills Co. Ltd. (supra)* the Supreme Court after considering the various judgments including the judgment in the case of *Commissioner of Income Tax, Bombay Vs. Amritlal Bhogilal and Co.* (1958) 34 I.T.R. 130 and in the case of *State of U.P. Vs. Mohammad Nooh* (1958) S.C.R. 595 held that the **'doctrine of merger'** is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior tribunal and the other by a superior tribunal, passed in an appeal or revision, there is a fusion or marger of two orders irrespective of the subject matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute. It was held that the application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of statutory provisions conferring the appellate or revisional jurisdiction. Noticing the facts of the case the Supreme Court further held that it cannot be said that there was merger of the order of

assessment made by the Deputy Commercial Tax Officer dated 28.11.1952 with the order of Deputy Commissioner of Commercial Tax dated 21.08.1954 because the question of exemption on the value of yarn purchased from outside the State of madras was not the subject matter of revision before the Deputy Commissioner of Commercial Taxes. The only point that was urged before the Deputy Commissioner was that sum of Rs. 6,57,971-4-9 collected by the respondent by way of tax should not be included in the taxable turnover. This was the only point raised before the Deputy Commissioner and was rejected by him in revision proceedings. On the Contrary the question before the Board of Revenue was whether the Deputy Commercial Tax Officer, Madurai was right in excluding from the net taxable turnover of the respondent the sum of Rs. 77,4,62,706-1-6. Having noticed the facts as stated the Supreme Court has held that there was no merger and the doctrine of merger cannot be invoked in the circumstances of the case.

16. In the case of *Commissioner of Income Tax, M.P.-II Bhopal Vs. R.R. Banwarilal (supra)* the Full Bench of this Court which was constituted on being suggested at the time of hearing the matter before the Division Bench that the two Division Bench of this *Court in C.I.T. vs. Narpat Singh Malkhan' Singh (1981) 128 I.T.R. 77 and M/s Alok Paper Industries, Indore Vs. C.I.T. M.C.C. No. 142/1978* decided on 14.01.1981 appear to have taken contrary views, after considering the law laid down by the Supreme Court in the case of State of *Madras Vs. Madurai Mills Co. Ltd. (supra)* on the doctrine of merger noticed that there is no difference in the two Division Bench decision on the meaning and scope of the dectrine of merger. While answering the question the Full Bench applying the law laid down by the Supreme Court in the case of *State of Madras Vs. Madurai Mills* held that the Appellate Tribunal was not correct in law in holding that the entire assessment orders of Income Tax Officer had merged in the order of Appellate Assistant Commissioner, irrespective of the points urged by the parties or decided by the Appellate Assistant Commissioner and, therefore, the Commissioner of Income Tax was not competent to revise those orders under Section 263 of the Income Tax Act, even in respect of the points not considered and decided by the Appellate Assistant Commissioner. In the case of *Commissioner of Sales Tax, M.P. Vs. Sanawad Co-operative Society, (supra)* the Division Bench of this Court has held that the appellate authority under the Income Tax Act as well as the Sales Tax Act has jurisdiction to consider and decide even that part of the order of the assessing authority against which no appeal has been preferred. But when the appellate authority does not touch any part of the order of the assessing authority, the order of the assessing authority to that extent cannot be held to be merged in the order of the appellate authority. (emphasis supplied).

17. In the case of *Deputy Commissioner of Commercial Taxes Vs. H.R. Sri Ramulu* on which reliance has been placed by the learned Additional Advocate General, the Supreme Court was considering the period of limitation for exercising

the powers of revision under Section 21 (2) of the Mysore Sales Tax Act. It held that the order passed under Section 12 A would be the starting point and not the initial assessment order. It was observed by the Supreme Court that once an assessment is re-opened the initial order of assessment ceases to be operative. It has been further held that the effect of Re-opening the assessment is to set aside the initial order of assessment and to substitute in its place the order made on re-assessment.

18. For correct application of law laid down by the Supreme Court on the **'doctrine of merger'** we have gone through the original order of assessment, the memo of appeal, the order of remand and the order of assessment passed after the remand. We find that against the original order of assessment passed on 19.03.1991 (Annexure P-2) deciding various aspects of tax liability against the petitioner the appeal was preferred by the petitioner on a limited ground:-

> "The learned Assistant Commissiner has erred in not granting time period as desired by us vide our letter dated 11.3.1991 to procure the Forms B-2 and appendix declaration from our buyers".

19. Before the appellate authority the petitioner raised the aforesaid sole ground in regard to its grievance that the Assessing authority has not granted it time to procure and submit Forms B-2 and appendix declarations from buyers. The Appellate Deputy Commissioner considering the very sole ground raised and urged by the petitioner remanded the matter to the Assessing authority by setting asside the assessment order with a direction to the Assessing authority to grant the petitioner opportunity to submit Form B and appendix declarations and pass appropriate assessment order. Thereafter, in compliance of the order of remand passed on 20.05.1992 (Annexure P-6) the Assessing authority passed a fresh order dated 26.10.1994 (Annexure P-7) by maintaining its earlier order in regard to the other points except in regard to the directions contained in the remand order pertaining to Form B and appendix declarations.

20. Having reagard to the original assessment order the aforesaid limited challenge to the original assessment order in the appeal, the order of the appellate authority and the order of assessment passed after the remand in our view the respondents have committed error in holding that the original order of assessment passed on 19.03.1991 was completely set aside. In fact from the perusal of the memo of appeal and the order of remand passed on 20.05.1992 it is clear that the order of remand was passed only in respect of the prayer of the petitioner to afford opportunity to submit Form B and appendix declarations by directing the Assessing Authority to afford an appropriate opportunity to the petitioner to submit From B and appendix declarations. The appellate authority did not touch other parts of the order of the assessing authority. Thus in our considered view, the only point merged in the remand order of assessment was in respect of the said Form B and appendix declarations filed by the petitioner in consequence of the directions given by the appellate authority and not the whole original order of assessment.

21. The judgment of the Supreme Court in the case of *Deputy Commissioner of Commercial Taxes, Mysore Vs. H.R. Sri Ramulu* relied upon by the respondents is based on different footings.In the said case the dealer was first assessed to tax under Mysore Sales Tax Act, 1957. On initiation of proceedings under Section 12 A of the said Act on a view being taken by the Commercial Tax Officer that some items of turnover had escape assessment re-assessment being made under Section 12-A. The Deputy Commissioner of Commercial Tax took up the case in revision on own motion in exercise of its powers under Section 21 (2) of the Mysore Sales Tax Act and passed orders on revision within four years from the date of order of re-assessment. The question for consideration before the Supreme Court was whether the period of four years for initiating the proceedings of revision would be counted from the date of first assessment order or from the date of re-assessment order. While considering the said question the Supreme Court held that when an order of re-assessment is made, the original order of assessment merges in the order of re-assessment. Whereas, as would be clear from the facts of the present case the remand order of assessment was not under Section 19(1) but was passed in terms of the order of appellate authority in order to give opportunity to the petitioner to file Form B and appendix declaration. In the circumstances, the reliance of the respondents on the judgment of the Supreme Court in the case of *Deputy Commissioner of Commercial Taxes Vs. H.R. Sri Ramulu* is misplaced.

22. Applying the doctrine of merger, we find that the petitioner's appeal against the original order of assessment was on limited point about not giving of opportunity to furnish Form-B, appendix declarations by the assessing authority. While deciding the appeal the appellate authority without touching any other ground though set aside the order of assessment but the remand was confined to give opportunity to the petitioner to file Form B and appendix declarations and to pass a fresh appropriate assessment order. In compliance of the order of remand the assessing authority maintained its earlier order except to the extent ordered by the appellate authority in the order of remand. Therefore, in our considered view the entire assessment order was not merged in the assessment order which was passed after remand. In the circumstances the initiation of the proceedings under Section 19 (1) for re-opening of the alleged escaped assessment of the items regarding which no appeal was filed by the petitioner could not have been ordered being barred by limitation.

23. In view of the aforesaid finding, the petition deserves to be and is hereby allowed. The entire proceedings of re-assessment initiated on 23.09.1997 under Section 19 (1) of the Sales Tax Act being barred by limitation are quashed. As a consequence, the orders Annexures P-9, P-11 and P-13 are also quashed. No orders as to costs.

Petition allowed.

I.L.R. [2010] M. P., 2454

FULL BENCH

Before Mr. Justice Arun Mishra, Mr.Justice Krishn Kumar Lahoti & Mr. Justice Alok Aradhe.

08 September, 2010*

SUNIL RADHELIA and ors. ... Petitioners

Vs.

AWADH NARAYAN and ors. ... Respondents

Court Fees Act (7 of 1870), S. 7 (iv) C and Art. 17 Schedule II - *If plaintiff makes an allegation that the instrument is void and hence not binding upon him, then ad valorem court- fee is not payable and he can claim declaration simplicitor for which court-fee under Article 17(iii)of Schedule-II would be sufficient.* (Para 14)

न्यायालय फीस अधिनियम (1870 का 7), धारा 7(iv) स एवं अनुच्छेद 17 अनुसूची–दो – यदि वादी यह अभिकथन करता है कि लिखतम शून्य है और इस प्रकार उस पर बाध्यकारी नहीं है तब मूल्यानुसार न्यायशुल्क देय नहीं होगी एंव वह केवल घोषणा का दावा कर सकेगा, जिसके लिये द्वितीय अनुसूची के अनुच्छेद 17 (iii) के अन्तर्गत न्याय शुल्क पर्याप्त होगी।

Cases referred:

2003(1) MPHT 184, 1982 WN464, 1983 MPLJ Note 31, AIR 2004 P & H 207,1976 JLJ 703, AIR 2004 P&H 207,1976 JLJ 703, AIR 2004 P & H 207, 1970 MPLJ 363, 1967 MPLJ 242, AIR 1968 SC 956, (2002) 9 scc 28 (2006) 5 sCc 353 (2008)15 SCC 673, (2009) 6 SCC 194, 2009 (4) MPLJ 182.

A.K.Jain, for the petitioners.

Sharad Gupta, for the respondent No.1.

Pushpendra Kaurav, Dy. AG. for State.

J U D G M E N T

The Judgment of the Court was delivered by KRISHN KUMAR LAHOTI, J. :– A Division Bench of this Court has referred following two questions for the consideration of the Full Bench:-

> "(1) Whether ad-valorem court fee is not payable when the plaintiff/plaintiffs make an allegation that the instrument is void and hence, not binding upon him/them ?
>
> (2) Whether the decision rendered in *Narayan Singh* (supra) lays down the law correctly that the plaintiff, a party to the instrument, is not required to pay ad valorem court fee as he has made an allegation that the instrument is void ?"

2. Before proceeding further in the matter, it would be appropriate to refer to facts of the case.

W.P. No. 14679/2006 (Jabalpur)

(A) In Writ Petition No. 14679/06, the facts are as under:-

(i) Respondent No.1 Awadh Narayan filed a suit. before the District. Judge, Katni bearing No.6-A/2005 for declaration and permanent injunction. The suit was valued at Rs.27,89,911/- and court fee of Rs.540/- was paid. In the relief clause, the plaintiff sought a declaration that he be declared to be entitled to receive an amount of Rs.14,80,000/- as the detained salary from the defendant No.1. He also claimed a relief that. the. agreement dated 26.6.2000, which was executed for an amount of Rs.3,45,000/-,be declared as null and void.

(ii) The petitioners/defendants filed an application under Order 7 rule 11 Code of Civil Procedure on the ground that plaintiff had not paid requisite court-fee regard being had to the relief of declaration and permanent injunction as claimed by him. The application filed by the petitioners was dismissed by the Court below on the ground that respondent/plaintiff was free to value the suit for declaration at the amount by paying fixed court-fee Rs.500/-. The trial Court assigned the reason that the plaintiff sought a declaration that the agreement dated 26.6.2000. be declared as void as it was executed practising misrepresentation and fraud on him. The trial Court found that the plaintiff had challenged the agreement as a forged document, he was not required to pay ad valorem court-fee on the whole amount in view of the decision rendered by a Single Bench of this Court in *Smt. Shahista Qureshi vs. State of M.P.& others* 2003 (I) MPHT 184.

Aggrieved by the aforesaid order, defendants filed a writ petition under Article 226 of the Constitution of India.

(iii) Before the Division Bench, an argument was advanced.that Section. 7(iv)(c) of the Court Fees Act, 1870 (in short 'Court Fees Act') provides to obtain a declaratory decree or order where a consequential relief is prayed and Section 7(iv)(d) provides for court-fee for a relief of injunction. The petitioners also invited attention of the Court to Article 17, Schedule-II of the Court Fees Act which provides in clause (iii) for fixed court-fee to obtain a declaratory decree where no consequential relief is prayed. Referring aforesaid provision, it was stated by the defendants/ petitioners that where consequential relief is prayed, the provisions of Section 7(iv)(c) and (d) would apply and ad valorem court-fee is payable on the plaint.

(iv) Per contra, respondent/plaintiff supported the order on the basis of the reasoning given by the trial.Court:that the agreement

was sought to be declared as void, so no ad valorem court-fee was required and fixed court-fee was rightly paid by the plaintiff.

The trial Court rejected the application by holding that the suit was properly valued and the fixed court-fee was rightly paid.

(B)(i) In Writ Petition No.7582/2005, plaintiff's Chhotelal, Buddhsen and Ramnaresh filed a suit against their real brother Bala Prasad in respect of suit lands claiming as an ancestral property. A partition among the brothers took place in the year 1983 and as per partition, mutation in revenue record was carried out recording name of each share holders as per partition. At the time of the partition, mother of parties Mst.Hansi was alive who was entitled for 1/5th share but it was resolved by all the four brothers that she would be maintained severally and jointly by all the brothers and therefore, she was not allotted-any share in the ancestral land. After partition, all the brothers were in exclusive possession of their share. They had also developed their land according to their choice. The plaintiffs pleaded that by taking undue advantage of his position, defendant No.1 Bala Prasad shrewdly got a sale-deed executed and registered dated 6.8.1988 in respect of 1/5th share of the suit land from mother Mst. Hansi. This sale-deed would adversely affect the interest and right of the plaintiffs, therefore, they filed a suit for declaration of title simpliciter in respect of the suit land. For the purpose of jurisdiction, the suit was valued for Rs.46,500/-, according to the sale-consideration and a fixed court-fee was paid as per Article 17(iii) of Schedule-II of the Court Fees Act. No consequential relief was sought in the plaint.

Respondent/defendant Bala Prasad and his sons jointly filed their written statement denying all the facts in the plaint. They also raised an objection in respect of non-payment of adequate court-fee.

(ii) On the basis of pleadings of both parties, the trial Court framed 5 issues out of which Issue No.3 was framed as a preliminary issue in respect of court-fee. The issue was heard and decided by the trial Court by order dated 2.7.2005. Before the trial Court, the plaintiffs alleged that they were not parties to the sale-deed, so they are not liable for payment of court-fee as per valuation in the sale-deed, while the objection of the defendants was that Smt. Hansi got 1/5th share in the land at the time of the partition which she had sold in faovur of the defendants. The suit is not merely for declaration but in fact it is for cancellation of the sale-deed executed by Mst. Hansi, so ad valorem court-fee was payable.

The trial Court decided the aforesaid issue against the plaintiffs by sustaining the objection raised by the defendants and directed the plaintiffs to pay ad valorem court-fee. This order was challenged by the plaintiffs before the Division Bench by filing a writ petition under Article 227 of the Constitution of India.

3. The Petitioners/plaintiffs of W.P.No.7582/05 reiterated their contention before the Division Bench that as the plaintiffs were not party to the sale-deed and mother Mst Hansi was not given any share in the property, so sale-deed against the interest of plaintiffs was void and no ad valorem court fee was payable, while defendants/respondents supported the order on the same analogy which prevailed the trial Court to decide the issue against the plaintiffs.

4. So far as question No.2, in respect of the decision rendered in *Narayan Singh* (supra) is concerned, the Division Bench has referred the matter to examine correctness of the decision by the Full Bench.

Before proceeding further, we would like to refer the decision the Division Bench in *Narayan Singh*, W.P.No.11583 of 2008 decided on 6.11.2008, as it is not a reported judgment which is reproduced thus:-

> "An application under order 7 Rule 11 C.P.C. was filed by the petitioner for rejecting the plaint on the ground that the sale-deed has been assailed, thus on the basis of valuation of the house, ad-valorem court-fee should have been paid. The Trial Court has rejected the application vide impugned order dt. 2.9.2008.
>
> The plaintiffs have come up with the averment that the sale-deed in question is illegal and void, it is a forged document and it was without consideration. Plaintiffs are in possession of the land. For declaratory relief the fixed court-fee has been paid.
>
> The Trial Court has held that the averments made to the plaint with respect to payability of the court-fee are relevant. The plea taken in the written statement cannot be taken into consideration. The averment made in the plaint which is material with respect to payment of the court-fee. Relying upon the decisions in *Rohan Ram v. Dashmath Bai*, 1982 WN 464 and *Bisahin v. Mehtar*, 1983 MPLJ Note 31 it has been held that in such circumstances ad valorem court-fee is not payable.
>
> Shri Sourabh Bhushan Shrivastava, learned counsel appearing on behalf of the petitioners has submitted that as the plaintiff's are the parties to the sale-deed ad valorem court-fee should have been ordered to be paid, thus, the plaint is liable to be rejected under order 7 Rule 11 C.P.C. He has placed reliance on the decision of the Punjab & Haryana High Court in *Himanshu v. Smt. Kailash Rani and anr.* AIR 2004 P & H 207
>
> After hearing learned counsel for the petitioner, considering

that fact and circumstances of the instant case and averments made in the plaint, it is apparent that the plaintiffs have come up with the case that the document is a forgery, it does not bear signature of Sitaram. Sitaram was not party to the sale-deed. Plaintiffs have claimed their possession over the suit land. Suit is for permanent injunction and for declaration. Thus, in our opinion, the court-fee paid is proper. When document is alleged to be illegal and void and executant was not party to the document, it is not necessary to make the payment of ad valorem court-fee, is the settled view of this Court in various decisions. In *Pratap and anr. v. Punia Bai and ors.* 1976 JLJ 703. it has been held that in case document is voidable it is necessary to make the payment of court fee, if it is wholly void and material declaration that it is so is sufficient, in the instant case, as per the averments made in the plaint document is shown to be void, not voidable. Consequently, we hold that adequate court-fee has been paid. Facts of *Himanshu v. Smt. Kailash Rani and anr.* AIR 2004 P & H 207 were different. Writ petition is without merits. Same is dismissed."

5. The first question which arises for consideration of this Bench is whether ad-valorem court-fee is not payable when the plaintiff makes an allegation that the instrument is void and hence not binding upon him.

The Full Bench in *Santoshchandra & others Vs. Smt. Gyansundarbai* 1970 MPLJ 363 expressed the view thus:-

"14. Thus, all these cases lay down the proposition that where it is necessary for a plaintiff to avoid an agreement or a decree or a liability imposed, it is necessary for him to avoid that and unless he seeks the relief of having that decree, agreement, document or liability set aside, he is not entitled to a declaration simpliciter. In such cases the question of court-fees has to be determined under section 7(iv)(c) of the Act. However, where a plaintiff is not a party to such. a decree, agreement, instrument or liability, and he cannot be deemed to be a representative in interest of the person who is bound by that decree, agreement, instrument or liability, he can sue for a declaration simpliciter, provided he is also in possession of the property. The matter may be different if he is not in possession of the property. In that event, the proviso to section 42 of the Specific Relief Act might-be a bar to the tenability of a suit framed for the relief of declaration simpliciter. But, that would be a different aspect. All the same, if the plaintiff is not bound by that decree or agreement or liability and if he is not required to have it set aside, he can claim to pay court-fee under any of the clauses of Article 17, Schedule II of the Court-Fee Act."

The Full Bench in *Santoshchandra* (supra) considering the controversy held that where it is necessary for a plaintiff to avoid an agreement or a decree or a liability imposed, it is necessary for him to avoid that and unless he seeks the relief of having that decree, agreement, document or liability set aside, he is not entitled to a declaration simpliciter. In such cases the question of court-fees has to be determined under section 7(iv)(c) of the Act. The Full Bench further held that where a plaintiff is not a party to such a decree, agreement, instrument or liability and he cannot be deemed to be a representative in interest of the person who. is bound by that decree, agreement, instrument or liability, he can sue for a declaration simpliciter, provided he is also in possession of the property. The matter may be different if he is not in possession of the property. In that event, the proviso to section 42 of the Specific Relief Act might be a bar to the tenability of a suit framed for the relief of declaration simpliciter. But, that would be a different aspect. All the same, if the plaintiff is not bound by that decree or agreement or liability and if he is not required to have it set aside, he can claim a declaration and to pay court-fee under any of the clauses of Article 17, Schedule II of the Court-Fee Act.

6. The Full Bench also referred a Special Bench Judgment of this Court on difference of opinion between two learned judges of this Court in *Baldeo Singh Vs. Gopal Singh* 1967 MPLJ 242 wherein the Special Bench considering the question held that the court-fee is payable on the plaint as it was framed and not on a plaint as it ought to have been framed. The question of court-fees is distinct and separate from the question of the maintainability of the suit. In that case the suit was filed by a minor for declaration that sale-deed executed by his brother as Karta of joint Hindu family was void for want of legal necessity. An alternative plea was raised that the sale-deed was void to the extent of plaintiff's share. The Special Bench held that where the plaintiff sues for a declaration simplicitor that a sale-deed executed by his elder brother is not binding on him without further seeking any consequential relief, the fact that his claim would be incompetent, because of his failure to seek further consequential relief which he was able to claim does not affect the question of court-fee and he will be liable to pay court-fee under Article 17(iii)of Schedule 2 of the Court Fees Act and not under section 7(iv)(c). The Special Bench further held that the declaration asked for by the plaintiff in such a case must not be mere garb for the real, substantial or consequential, relief intended to be claimed, if it be so, it is competent for the Court to look to the substance of the relief claimed apart from the form and require him to pay the court-fee which he would be bound to pay in case he had not resorted to a device in concealing the relief he really wanted. Where the plaintiff is not bound either by a deed or a decree to which he is co-nominee, not a party or privy because of its being void on the allegations made by him, then his claim for declaration with reference to his title to the property, alleged to be in his possession, will not be taken to involve a claim for a consequential relief. The

Special Bench held that the court-fee payable was under Article 17(iii) of Schedule-II of the Court Fees Act and not under Section 7(iv)(c).

7. The Apex Court considering the difference between void and voidable transaction in *Ningawwa Vs. Byrappa Shiddappa* AIR 1968 SC956, held that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interest in the matter which they may enforce against the party defrauded. The legal position may be different if there is a fraudulent misrepresentation as to the contents of the document or as to its character. With reference to the former the transaction is void, while in the case of the latter, it is merely voidable.

8. The Apex Court considering the distinction and meaning of void and voidable in *Government of Orissa Vs. Ashok Transport Agency & others* (2002) 9 SCC 28 held that the expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same, no declaration is necessary. Law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g. may be transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be one which is not a nullity but for avoiding the same, a declaration has to be made. Voidable act is that which is a good act unless avoided e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as,the apparent state of affairs is the real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.

9. The Apex Court in *Prem Singh Vs. Birbal* (2006) 5 SCC 353 considering the question held that when a. document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law and it would be nullity.

10. A similar view has been taken by the Apex Court in *Ranganayakamma Vs. K.S.Prakash* (2008) 15 SCC 673 wherein the Apex Court held that voidable transaction are required to be avoided while void transaction are not required to be avoided. When a contract is said to be voidable by reason of any coercion, misrepresentation or fraud particulars thereof are required to be pleaded. That

void document is not required to be avoided whereas voidable document must be. The position may have been different in respect of orders, judgments and decrees of the Courts.

11. The Apex Court considering similar question in *Sneh Gupta Vs. Devi Sarup* (2009) 6 SCC 194 held that if an order is void or voidable, the same must be set aside. Thus, the compromise/consent decree, which is as good as a contested decree even if void was required to be set aside. If the compromise has been accepted in absence of all the parties, the same would be void and the decree based thereupon must be set aside. The compromise may be void or voidable but it is required to be set aside by filing a suit within the period of limitation. A consent/compromise decree must be set aside if it has been passed in violation of law. For the said purpose, the provisions contained in the Limitation Act, 1963 would be applicable.

12. A Division Bench of this Court in *Manzoor Ahmed Vs. Jaggi Bair and others* 2009 (4) MPLJ 182, considering the question held that the question of payment of ad valorem court fee depends upon the averments made in the plaint. The Court has to find out whether transaction is alleged to be void or voidable. It depends upon the averments made, in each case, in the plaint whether ad valorem court-fee is payable or not. The Court is to find out whether transaction is alleged to be void or voidable. In case of void document, it is not necessary to seek the relief of cancellation of the document. In that case, plaintiff filed a suit for declaration of title and confirmation of possession. She had not claimed the relief for possession, so it was held that ad valorem court-fee was not required to be paid. The averments made in the plaint had indicated that the document in question was shown to be void not voidable, so ad valorem court-fee was not required. In case the document is voidable at the instance of executant, ad valorem court-fee is required to be paid but not in the case of void document. In such case, injunction which was prayed, flows from the relief of declaration.

13. Now in the light of aforesaid settled position by the Apex Court and Full Bench of this Court, the first question referred by the Division Bench may be examined. When the plaintiff makes an allegation that the instrument is void and hence not binding upon him, and if a declaration simplicitor is prayed then he is not required to pay ad valorem court fee and a fixed court-fee under Article 17, Schedule-II of the Court Fees Act will be payable. This position is well settled by the Apex Court in *Ningawwa* (supra) and continued till the decision in *Sneh Gupta* (supra). The void document which is not binding upon the plaintiff needs to be avoided and in this regard a declaration is sufficient. The Full Bench of this Court in *Santoshchandra* (supra) has clarified the position and. we respectfully agree with the law laid down by the Full Bench in *Santoshchandra* (supra).

14. In view of the aforesaid discussion, there is no doubt that if plaintiff makes an allegation that the instrument is void and hence not binding upon him then ad valorem court-fee court fee is not payable and he can claim declaration simplicitor

for which court-fee under Article 17(iii) of Schedule-II would be sufficient. The question No.1 is answered accordingly.

15. Now second question may be seen in respect of the judgment rendered in *Narayan Singh* (supra). In *Narayan Singh,* the plaintiffs had field suit with the averment that the sale-deed in question was illegal and void. It was a forged document and also without consideration. The plaintiffs were in possession of the land, a relief for declaration was prayed and a fixed court-fee was paid. The defendants moved an application under Order 7 rule 11 of CPC for rejecting the plaint on the ground that though the plaintiffs had assailed the sale-deed but had not paid ad valorem court-fee which ought to have been paid. The trial Court had rejected the application which order was assailed before the Division Bench. The Division Bench held that the case of the plaintiffs was that the document was a forged one and it does not bear the signature of Sitaram though Sitaram was party to the sale-deed. Plaintiffs had claimed their possession over the suit land. The suit was for permanent injunction and declaration. When the document was alleged to be illegal, void and executant had not signed the document, it was not necessary for them to make payment of ad valorem court-fee. The document in the plaint was shown to be void and not voidable, so ad valorem court-fee was not required and a fixed court-fee was found to be adequate.

The Division Bench .further held that if the document, as per averments made in the plaint, is pleaded to be a void document so it is not necessary for the plaintiffs to avoid document by claiming relief to set aside and a fixed court-fee under Article 17(iii) of Schedule-II of the Court Fees Act was sufficient. In the light of the discussion, while deciding the question No.1, we have also held so and accordingly we find that the law laid down by the Division Bench in *Narayan Singh* (supra) has been correctly laid down.

16. To sum up, the questions referred to this Court are answered thus:-

(1) Ad valorem court-fee is not payable when the plaintiff makes an allegation that the instrument is void and hence not binding upon him.

(2) The decision rendered in *Narayan Singh* (supra) lays down the law correctly that the plaintiff a party to the instrument is not required to pay ad valorem court-fee as he had made an allegation that the instrument was void on the ground that the document was forged one and it does not bear the signature of the executant.

Now matter be placed before the Division Bench for deciding the case in accordance with law.

Order accordingly.

I.L.R. [2010] M. P., 2463

WRIT APPEAL

Before Mr. Justice S.K.Gangele & Mr. Justice S.S. Dwivedi

10 August, 2010*

NARAYAN DHARMSHALA ... Appellant

Vs.

REGISTRAR, PUBLIC TRUST ... Respondent

Public Trusts Act, M.P. (30 of 1951), Section 14 - *Trust property in dilapidated condition and not in any use - Alienation in any manner restricted in trust deed - Held - It will be beneficial for the object of the trust that trust property can be sold out and after obtaining entire sale proceeds, another property can be purchased in the name of trust so that by the income of that purchased property, the object of the trust can be fulfilled - Appeal allowed.*

(Paras 10 & 11)

लोक न्यास अधिनियम, म.प्र. (1951 का 30), धारा 14 – न्यास सम्पत्ति जीर्णशीर्ण अवस्था में और किसी उपयोग में नहीं – किसी प्रकार से अन्य संक्रामण न्यास विलेख में निर्बन्धित – अभिनिर्धारित – न्यास के उद्देश्य के लिये यह लाभदायक होगा कि न्यास सम्पत्ति विक्रय की जा सकती है और संपूर्ण विक्रय आगम प्राप्त करने के पश्चात् न्यास के नाम से अन्य सम्पत्ति क्रय की जा सकती है ताकि उस क्रय की गयी सम्पत्ति की आय से न्यास का उद्देश्य पूरा किया जा सके – अपील मंजूर।

Cases referred:

AIR 1933 Madras 242, AIR 1981 AP 340.

S.K. Shrivastava, for the appellant.

Vishal Mishra, G.A., for the respondent.

ORDER

The Order of the Court was delivered by **S.S. Dwivedi, J.** :–Appellant / petitioner has filed this appeal under Section 2 (1) of Madhya Pradesh Uchcha Nyalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005, aggrieved by the order dated 4-9-2009 passed learned Single Judge of this Court in W. P. No.2651/2009, whereby the petition filed by the petitioner against the order dated 4-5-2009 passed by the learned Registrar, Public Trust, has been dismissed.

2. Brief facts of the case are that the petitioner being trustee of a Public Trust filed an application before the Registrar for grant of permission to sell out the trust property a house situated at Saudagar Santar, Morar, Gwalior, having Municipal No. 358 and Halka No.33, on the ground that the aforesaid house has become dilapidated and is not in any use. No income is also accruing by the use of said house, therefore, permission be given to the Trust to sell the aforesaid property so that sale proceed can be deposited in fixed deposit in a nationalised

*W.A. No.199/2010 (Gwalior)

bank in the name of the trust and accrued interest can be used for the object of the Trust. Aforesaid application has been dismissed by the Registrar, Public Trust, by the order dated 20-2-2006. Aggrieved by the aforesaid order, the petitioner filed W. P. No. 2651/2009. The learned Single Judge of this Court by order dated 4-9-2009 has also dismissed the petition. Hence, this appeal before this Court.

3. Having heard learned counsel for the parties and perused the impugned order.

4. It is submitted by learned counsel for the appellant / petitioner that admittedly the trust property i.e. the concerning house is in so dilapidated condition that nobody can use the aforesaid house for the object of trust concerned and for the use of any school or Ashram as directed in the trust deed. The trust itself is not having so amount by which the aforesaid property can be re-prepared or reconstructed, therefore, only option remains with the trust to sell out the aforesaid trust property for betterment of the trust and the entire amount of the sale proceed of the concerning trust house can be deposited in a nationalised bank and accrued interest can be used for the purpose of object for which the trust has been created and the learned Registrar, Public Trust as well as learned Single Judge of this Court have wrongly disallowed the aforesaid prayer of the trust. Hence, he prayed for setting-aside of orders and also prayed for grant of permission for sale of the trust property.

5. Learned counsel for the appellant has also placed reliance on the decision of *P. Rajagopala Gramani v. Baggiammal,* AIR 1933 Madras, 242 and also on the decision of Andhra Pradesh High Court in *Sahebzadi Amina Marzia v. Syed Mohd. Hussain and Others,* AIR 1981 Andhra Pradesh 340.

6. In reply, learned Govt. Advocate for the State supported the impugned order and submits that in the trust deed itself, the trustees are forbidden for any transfer of trust property in any manner, therefore, both the courts have rightly refused to grant permission for sale of the property concerned and no grounds are available for any interference in the impugned order.

7. On perusal of the trust deed it is apparent that in the trust deed, a specific condition has been imposed that the trust property cannot be alienated in any manner and only the income of the trust property can be used for the object for which the trust has been created. But, on perusal of the photographs attached with the petition it is apparent that whole trust property, the concerning house, is so dilapidated that can not be used for any purposes and if the property is of no use then certainly it is also not earned any income for the aforesaid house of the property concerned. Similarly, as stated hereinabove, trust is not having so much amount on which basis the aforesaid house can be re-prepared and reconstructed and in such circumstances, for the betterment of the trust, the aforesaid property can be sold and the sale proceed can be deposited in a nationalised bank so that accrued interest can be spent for the object for which the trust has been created.

8. The Division Bench of Andhra Pradesh High court in the case of *Sahebzadi* (supra) dealt with similar situation wherein in the trust deed there is a specific bar for sale of the trust property then High Court came to the conclusion to achieve better object of the trust property, trustee concerned can be permitted to sale and held here as under :-

> "Under a trust deed executed in 1951, H.E.H. Nizam of Hyderabad settled jewellery and ornaments and Government securities for the benefit of his two grand-daughters. Under the deed the beneficiaries were only allowed to wear and use the jewellery and ornaments on any special or festive occasion. The income out of certain security (i.e. Rs.376 per annum) was only meant for meeting expenses for the safe custody, preservation and upkeep of the trust property. The corpus settled under the deed had been the subject matter of levy of tax under Wealth Tax Act, 1957. There was no money in the hands of trustees to meet this heavy and recurring wealth tax liability. The trustees were unable to sell the jewellery because of the prohibition contained in the deed. Hence, they sought directions and advice of the City civil court under S. 34 of the trusts Act. The court was of the view that the selling of entire items of jewellery would amount to defeating the trust itself. On revision, the High Court opined that to carry out the real object of the trust and property course to be adopted in the interest of the beneficiaries was to direct the sale of the entire jewellery (the unproductive asset) in the bank idle when the trustee clearly stated that after meeting the present tax liability there would be sufficient balance which could be interested in fixed deposit to meet the recurring tax demand. Therefore, the entire jewellery and ornaments were directed to be sold."

9. Similarly, in the case of *P. Rajagopala* (supra), Madras High Court has also expressed the same view that "in the emergency for the benefit of the trust, the trust property can be sold after obtaining requisite permission from the competent authority".

10. On perusal of the entire facts of the case, we are of the considered opinion that it will be beneficial for the object of the trust that the trust property can be sold out and after obtaining entire sale proceed, another property can be purchased in the name of the trust so that by the income of that purchased property, the object of the trust can be fulfilled.

11. Considering the circumstances of the case, writ appeal succeeds and is hereby allowed with the following directions :-

> (i). Petitioner / Trustee will find out the proposed purchaser for the property and proposal of the sale price from the proposed

purchaser and thereafter, petitioner shall file an application before the Registrar, Public Trust, for the permission to execute the sale deed.

(ii). Registrar shall verify the actual value of the property from the market and if the aforesaid proposed price is found to be maximum price of the house then Registrar shall grant permission to the trustee for execution of the sale deed.

(iii). Entire sale proceed shall be deposited in the name of the trust in a nationalised bank in the fixed deposit.

(iv). Thereafter, the petitioner / trustee will search out a specific house which can be purchased from the aforesaid sale proceed of the trust property and after obtaining permission from the Registrar, Public Trust, the petitioner / trustee shall purchase another house in the name of the trust or purchase a plot of land and construct house thereon by the aforesaid sale proceed and thereafter, that house can be used for the object for which the trust has been created.

With the aforesaid directions, appeal stands disposed of with no order as to costs.

Appeal allowed.

I.L.R. [2010] M. P., 2466

WRIT APPEAL

Before Mr. S.R. Alam, Chief Justice & Mr. Justice Alok Aradhe

27 September, 2010*

BHAGWATI SINGH VERMA ... Appellant

Vs.

STATE OF M.P. ... Respondent

A. **Service Law** - *Transfer - Until and unless the transfer is vitiated by mala fide or is made in violation of any statutory provision, the Court cannot interfere with the order of transfer.* (Para 6)

क. सेवा विधि – स्थानांतरण – जब तक और यदि स्थानांतरण असद्भाव से दूषित न हो अथवा किसी कानूनी उपबंध के उल्लंघन में न किया गया हो, तब तक न्यायालय स्थानांतरण के आदेश में हस्तक्षेप नहीं कर सकता है।

B. **Service Law** - *Mala fide transfer - Person against whom allegations of mala fides are made, has to be personally impleaded and plea of mala fides has to be properly pleaded and proved.* (Para 7)

ख. सेवा विधि – असद्भावी स्थानांतरण – व्यक्ति, जिसके विरुद्ध असद्भाव के अभिकथन किये गये हैं, को वैयक्तिक रूप से पक्षकार बनाना होगा और असद्भाव का अभिवचन समुचित रूप से करना और साबित करना होगा।

---

*W.A. No.971/2010 (Jabalpur)

Cases referred :

(1993) 4 SCC 357, (2003) 4 SCC 104, (2006) 9 SCC 458, (2003) 4 SCC 579.

Amitabh Gupta, for the appellant.

Kumaresh Pathak, Dy.A.G., for the respondents.

ORDER

The Order of the Court was delivered by ALOK ARADHE, J. :–Heard on the question of admission.

2. This intra-Court appeal arises from the order dated 15.9.2010 passed by learned Single Judge in W.P. No.12497/2010 by which writ petition preferred by the appellant has been dismissed.

3. Facts giving rise to filing of the instant writ appeal briefly stated are that appellant is posted as Patwari in Halka No.16, Tahsil Udaipura, District Raisen. Vide order dated 15.6.2010, appellant has been transferred to Begumganj in the same district. Appellant challenged the order of his transfer on the ground that if the appellant is required to carry out the order of transfer, he would suffer personal inconvenience. Learned Single Judge vide order dated 15.9.2010 dismissed the writ petition preferred by the appellant and held that order of transfer was not passed in violation of any Rule or Regulation, therefore, no interference is called for.

4. Learned counsel for the appellant submitted that from perusal of the impugned order, it is evident that appellant has been shown to be transferred at his request. However, it was asserted that appellant has never made request for his transfer. It was further contended that impugned order of transfer has been passed malafide by the Collector.

5. We have considered the submissions made by the learned counsel for the appellant.

6. It is well settled in law that transfer is an incidence of service. Appellant admittedly holds a transferable post. Which employee should be posted where is a matter for the appropriate authority to decide. Until and unless the transfer is vitiated by malafide or is made in violation of any statutory provisions, the Court cannot interfere with the order of transfer. [See: *Union of India and others Vs. S.L. Abbas,* (1993) 4 SCC 357]. Similarly, in *Public Services Tribunal Bar Association Vs. State of U.P. and another* (2003) 4 SCC 104, once again dealing with the scope of judicial review in the matter of transfer, Supreme Court reiterated that transfer is an incidence of service and normally should not be interfered with by the Court.

7. In case in hand, though the order of transfer has been challenged on the ground of malafides yet, the appellant has not chosen to implead the Collector by name against whom allegations of malafides have been made. Apart from this, there is no pleading with regard to the malafides. It is trite law that a person against whom allegations of malafides are made, has to be personally impleaded

and plea of malafides has to be properly pleaded and proved. See: *Purushottam Kumar Jha Vs. State of Jharkhand and others,* (2006) 9 SCC 458. Burden of establishing malafides is very heavy on the person who alleges it. See: *Indian Railway Construction Co. Ltd., Vs. Ajay Kumar,* (2003) 4 SCC 579.

8. In the facts and circumstances of the case, we deem it appropriate to dispose of the instant writ petition with a direction that if the appellant submits a representation to the Collector for cancellation of his order of transfer, the Collector shall consider and decide the representation submitted by the appellant within a period of 10 days from filing of such representation.

9. With the aforesaid direction, the writ appeal stands disposed of.

C.C. as per rules.

Appeal disposed of.

I.L.R. [2010] M. P., 2468

WRIT APPEAL

Before Mr. S.R. Alam, Chief Justice & Mr. Justice Alok Aradhe

30 September, 2010*

RAMINDER SINGH KALRA ... Appellant

Vs.

KANHAIYA TIWARI & ors. ... Respondents

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 36 - *A person must incur the disqualifications as has been enumerated in sub-section (1) of S. 36 which is condition precedent for invoking sub-section (3) of S. 36 of the Adhiniyam.* (Para 10)

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 36 – किसी व्यक्ति का अधिनियम की धारा 36(1) में वर्णित निर्योग्यताओं में से किसी से ग्रस्त होना आवश्यक है, जो धारा 36(3) के अवलंब के लिए पूर्ववर्ती शर्त है।

Cases referred :

(2003) 6 SCC 230, (2004) 3 SCC 1.

A.M. Trivedi with *Ashish Trivedi,* for the appellant.

Ashish Pathak, for the respondent No.1.

Sanjay Dwivedi, for the respondent Nos.2 to 4.

O R D E R

The Order of the Court was delivered by

S.R. ALAM, C. J. :–With the consent of parties, the matter is heard finally.

2. This intra-court appear arises from the order dated 10.8.2010 passed by learned Single Judge, by which the writ petition preferred by respondent No.1 has been disposed of with certain directions.

---

*W.A. No.832/2010 (Jabalpur)

3. Facts giving rise to filing of the writ appeal, briefly stated, are that the respondent No.1 had filed a writ petition inter alia, alleging that the appellant herein by suppressing the fact of disqualification contested the election of member of Janpad Panchayat, Ghansaur and was elected. It was further averred that respondents No.2 to 4 have failed to take any action against the appellant herein notwithstanding the fact that he was disqualified from contesting election for a period of six years in view of order dated 13.1.2005 passed by the competent authority under section 40 of Madhya Pradesh Panchayat Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'the 1993 Act').

4. Learned Single Judge vide order dated 10.8.2010 held that the respondent No.1 has the remedy of approaching the Collector under Section 36(3) of the 1993 Act for redressal of his grievance. Accordingly, the writ petition was disposed of with liberty to respondent No.1 to approach the Collector under sub-section (3) of Section 36 of the 1993 Act by filing an application. It was further directed that in case the respondent No.1 submits an application within a period of 15 days, the Collector shall consider and decide the application submitted by respondent No.1 in accordance with law after giving due opportunity of hearing to all concerned expeditiously preferably within a period of three months.

5. Being aggrieved by the aforesaid order the appellant who was arrayed as respondent No.6 in the writ petition has preferred the writ appeal.

6. Learned senior counsel appearing for the appellant vehemently contended that learned Single Judge erred in holding that respondent No.1 has the remedy of approaching the Collector under section 36(3) of the 1993 Act and in consequently issuing the impugned direction. It was further submitted that the provisions of section 36(3) of the 1993 Act have no application in the obtaining factual matrix of the case and the order under the provisions of 36 could be passed only when a person incurs disqualification which is mentioned in sub-section (1) of Section 36 of the 1993 Act. Admittedly, in the instant case the appellant has not incurred any disqualification which has been enumerated in sub-section (1) of section 36 of the Act.

7. It was further contended by learned senior counsel that notice, which has been issued by the Collector pursuant to the direction passed by the learned Single Judge is ab initio void. In support of his submission learned senior counsel placed reliance on the decisions of Supreme Court reported in *Dwarka Prasad Agrawal vs. B.D.Agarwal,* (2003) 6 SCC 230 and *Ashok Leyland Ltd. vs. State of T.N. And another*, (2004) 3 SCC 1.

8. On the other hand learned counsel for respondent No.1 while opposing the submissions made by learned counsel for the appellant submitted that by order dated 13.1.2006 passed in exercise of powers under section 40 of the 1993 Act the appellant was disqualified from contesting the election for a period of six years. The aforesaid period would expire on 12.1.2011, therefore, the appellant was not eligible to contest the election. However, by suppressing the fact with

regard to his disqualification, the appellant contested the election. However, the learned counsel for the respondent No.1 during the course of his submissions could not point out that appellant has incurred any disqualification as enumerated in sub-section (1) of Section 36 of the Act.

9. We have considered the submissions made by learned counsel for the parties. In order to adjudicate the controversy involved in the instant writ appeal it is necessary to refer to section 36 of the 1993 Act, which reads as under:-

> *"36. Disqualification for being office bearer of Panchayat : (1) No person shall be eligible to be an office-bearer of Panchayat who-*
>
> *(a) has, either before or after the commencement of this Act, has been convicted.-*
>
> *(i) of an offence under the Protection of Civil Rights Act, 1955 (No.22 of 1955) or under any law in connection with the use, consumption or sale or narcotics or any law corresponding thereto inforce in any part of the State, unless a period of five years or such lesser period as the State Government may allow in any particular case has elapsed since his conviction; or*
>
> *(ii) of any other offence and had been sentenced to imprisonment for not less than six months, unless a period of five years or such less period as the State Government may allow in any particular case has elapsed since his release; or*
>
> *(b) is of unsound mind and stands so declared by a competent court; or*
>
> *(c) is an applicant to be adjudged an insolvent or is an undischarged insolvent; or*
>
> *(c-a) even after one year of being elected, does not have flush latrine in his residential premises; or*
>
> *(cb) has not paid all the dues which are recoverable by Panchayat and has not filed with nomination paper, the declaration of such intention that no money is due to be paid by him on any account payable to the Panchayat; or*
>
> *(cc) has encroached upon any land or buildings of the Panchayat and Government; or*
>
> *(d) hold an office of profit under any Panchayat or is in the service of any other local authority or Co-operative Society or the State Government or Central Government or any Public Sector Undertaking under the control of the Central Government or the State Government:*

Provided that no person shall be deemed to have incurred disqualification under this clause by reason of being appointed as Patel under the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959); or

(e) has been dismissed from the service of the State Government or Central Government, or a Panchayat, or any other loctal authority, or a Co-operative Society, or any Public Sector undertakings under the control of the Central Government or the State Government for corruption or for disloyalty; or

(f) has directly or indirectly any share or interest in any contract with, by or on behalf of the Panchayat, while owning such share or interest:

Provided that a person shall not be deemed to have incurred disqualification under clause (f) by reason of his-

(i) Having share in any joint stock company or a share or interest in any Association registered under the Madhya Pradesh Society. Registrikaran Adhiniyam, 1973 (No.44 of 1973) or in any Co-operative Society which shall contract with or be employed by or on behalf of the Panchayat; or

(ii) having share or interest in any newspaper in which any advertisement relating to the affairs of the Panchayat is inserted; or

(iii) holding a debenture or being otherwise concerned in any loan raised by or on behalf of the Panchayat;

(g) is employed as paid legal practitioner on behalf of the Panchayat; or

(h) is suffering from a variety of leprosy which is infectious; or

(i) has voluntarily acquired the citizenship of a Foreign State; or is under any acknowledgement of allegiance or adherence to a Foreign State; or

(j) has been disqualified under the Act repealed by Section 130 during the period of five years preceding the date of filing a nomination paper in any election to be held for the first time under this Act and the period of such disqualification has not elapsed or the disqualification has not been removed; or

(k) is disqualified by or under any law for the time being in force for the purpose of election to the State Legislative Assembly;

Provided that no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years.

(l) is so disqualified by or under any law made by the legislature of the State.

(m) has more than two living children one of whom is born on or after the 26th day of January 2001.

(2) If any person having been elected as an office bearer of Panchayat:-

(a) subsequently becomes subject to any of the disqualification mentioned in sub-section (]) and such disqualification is not removable or being removable is not removed (or becomes office bearer concealing his disqualification for it which has not been questioned and decided by any election petition under Section 122);

(b) accepts employment as legal practitioner against the Panchayat;

(c) absents himself from three consecutive meetings of the Panchayat or its Committee or does not attend half the number of meetings held during the period of six months without the leave of the Panchayat;

he shall, subject to the provisions of sub-section (3), cease to be such office bearer and his office shall become vacant :

Provided that where an application is made by an office bearer to the Panchayat for leave to absent himself under clause © and the Panchayat fails to inform the applicant of its decision on the application within a period of one month from the date of receipt of the application, the leave applied for, shall be deemed to have been granted by the Panchayal.

(3) In every case the authority competent to decide whether a vacancy has occurred under sub-section (2) shall be Collector in respect of Gram Panchayat and Janpad Panchayat and Commissioner in respect of Zila Parished who may give his decision either on an application made to him by any person or on his own motion. Until, the Collector or the Commissioner, as the case may be, decides that the vacancy has occurred, the person shall not cease to be an office bearer:

Provided that no order shall be passed under this sub-section against any office bearer without giving him a reasonable opportunity of being heard.

(4) Any person aggrieved by the decision of Collector or Commissioner, as the case may be, under sub-section (3), may, within a period of 30 days from the date of such decision appeal to Commissioner or Board of Revenue respectively whose orders in such appeal shall be final."

10. From conjoint reading of sub-sections (1) and (2) of Section 36 it is evident that if any person incurs any of the disqualification as has been enumerated in sub-section (1) of Section 36 of the 1993 Act, then the consequence which is provided in sub-section (2) follows i.e. the person concerned subject to provisions of sub-section (2) of section 36 shall cease to be such office bearer and his office shall become vacant. Admittedly, in the instant case the appellant has not incurred any of the disqualification which has been mentioned in section 36(1) of the 1993 Act. The *sine qua non* for applicability of section 36 of the 1993 Act is that a person must incur the disqualifications as has been enumerated in sub-section (1) of section 36 which is condition precedent for invoking sub-section (3) of Section 36 of the 1993 Act. Thus, for the aforementioned reasons we have no hesitation in holding that no action against the appellant under section 36(3) of the 1993 Act could be taken.

11. Accordingly, the order passed by the learned Single Judge is set aside. However, it is provided that in case the respondent No.1 makes a complaint in respect of the alleged disqualification of the appellant, the competent authority may initiate appropriate proceeding against the appellant in accordance with law under the provisions of the 1993 Act.

12. In the result the writ appeal succeeds and is hereby allowed but without costs.

Appeal allowed.

I.L.R. [2010] M. P., 2473
WRIT PETITION
Before Mr. Justice Sanjay Yadav
1 February, 2010*

SRIKANT PANDEY ... Petitioner
Vs.
STATE OF M.P. ... Respondent

Right to Information Act (22 of 2005), Section 11 - ***Third party information - Access to personal service books - Entitlement - Held - The respondents were right in declining the right of the petitioner to have access to certified copy of the service record and personal record of third party - Petition dismissed.*** (Para 15)

सूचना का अधिकार अधिनियम (2005 का 22), धारा 11 – पर–व्यक्ति सूचना –

*W.P. No.13646/2009 (Jabalpur)

व्यक्तिगत सेवा पुस्तिका तक पहुँच – हकदारी – अभिनिर्धारित – प्रत्यर्थियों ने पर–व्यक्ति के सेवा अभिलेख एवं निजी अभिलेख की प्रमाणित प्रतिलिपि तक पहुँच रखने के याची के अधिकार से इनकार कर ठीक किया – याचिका खारिज।

Vasudeo Bhatt, for the petitioner.

ORDER

SANJAY YADAV, J. :–Petitioner by way of present petition calls in question the legality of order dated 14.9.2009 passed by the Appellate Authority under Right to Information Act, 2005; whereby, the appeal preferred by the petitioner against an order dated 2.6.2008 passed by District Education Officer/District Information Officer, whereby the Information sought by the petitioner regarding the entire personal/service record of Shri M.S. Parihar, Sankul Pracharya has been turned down.

2. The case of the petitioner is that he filed an application under Section 6 (1) of Right to Information Act, 2005 on 1.5.2008 for supplying him 'certified copy' of complete service book and personal file of Shri M.S. Parihar, Sankul Pracharya, Karri.

3. The said application of the petitioner was rejected on 2.6.2008 on the ground that the person concerned, i.e., said M.S. Parihar had declined to part with his service record and the personal file. Aggrieved of this order the petitioner preferred an appeal before the first appellate authority.

4. The said appeal was dismissed on 8.8.2008 whereagainst the petitioner filed a second appeal before M.P. State Information Commissioner, whereupon after considering the entire facts and while adverting to the provisions contained under Section 11 read with Section 8 (1) (j), the appeal of the petitioner has been dismissed. It is this order which the petitioner is aggrieved of.

5. The petitioner questions the legality of said order on the ground that the appellate authority having misconstrued the provisions contained under Section 11 read with Section 8 (1) (j) has committed gross illegality in rejecting the appeal preferred by the petitioner. It is urged that, under the Act of 2005, it is the right of the petitioner to seek information in respect of third party because the information which was sought in respect of Shri M.S. Parihar was to disclose the fact that he had gained undue advantage by giving wrong declaration regarding his sterilizing and obtaining two advance increments. It is contended that none of the provisions as contained under Sections 11 and 8 could have prevented the competent authority to have disseminated the information which was sought.

6. For a proper appreciation of submission put forth by learned counsel for the petitioner, worth it would be to note the relevant provisions of Act of 2005.

7. The expression "information" as defined under Section 2 (f) means:

> "2 (f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press

releases, circulars, orders, logbooks, contracts, reports, papers, samples, models data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;"

8. Section 3 stipulates that, subject to the provisions of the Act of 2005, all citizens shall have the right to information.

9. Section 4, obligates public authorities to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated.

10. Section 6 enables a person, who desires to obtain any information under this Act of 2005, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, specifying the particulars of the information sought by him or her to such authority as are designated under Section 5.

11. Section 8 deals with disposal of such request made by such persons. Sub-section (1), whereof, stipulates that

"(1) Subject to the proviso to sub-section (2) of Section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9;"

Sub-section (1) of Section 8 further stipulates:

8. Exemption from disclosure of information.-(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

Section 8, thus enumerates the cases as are exempted from disclosure of information.

12. Furthermore, Section 11 stipulates provisions pertaining to third party information that:

11. Third party information.-(1) Where a Central Public

Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

13. Close reading of Section 11 with Section 8 would clearly establish that when an information is sought in respect of third party the exception which are stipulated under Section 8 has a role to pay; meaning thereby that, if such information sought for fall within the exception clause, then an application is not entitled for such information.

14. In the case at hand the certified copy of personal record as well as service

book of third party, which was being sought by the petitioner would contain annual confidential reports and other information like details of family and nomination thereof. These information are personal in nature and a government servant has a right to guard the same. These information have no relationship to any public activity and if parted with will certainly lead to the unwarranted invasion of the privacy of a government servant.

Clause (j) of sub-section (1) of Section 8 stipulates that:

> **"8. Exemption from disclosure of information.-**(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
>
> (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:
>
> Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

15. In the present case, the certified copy of service book and personal record has been sought on the allegation that, the third party, namely, M.S. Parihar had taken benefit of two advance increments in lieu of sterilization. The respondents were, therefore, within the right in declining the right of the petitioner to have access to certified copy of the service record and personal record of third party, namely, M.S. Parihar.

16. In view of above, no relief can be granted to the petitioner.

The petition is, therefore, dismissed in limine.

Petition dismissed.

I.L.R. [2010] M. P., 2478

WRIT PETITION

Before Mr. Justice Sanjay Yadav

29 June, 2010*

AKHIL BHARTIYA UPBHOKTA CONGRESS ... Petitioner

Vs.

STATE OF M.P. & ors. ... Respondents

Constitution, Article 226 - ***Allotment of Government Land - Petitioner, a consumer society applied for allotment of land free of premium and annual rent of Rs.1 for establishing laboratory and administrative block - Order***

---

*W.P. No.693/2002 (Jabalpur)

issued by State Government postulates earmarking of areas for Housing Board, Bhopal Development Authority, Municipal Corporation and Government and Semi-Government Departments for residential purpose and for administrative offices - Held - There is no indefeasible right of the petitioner as well as respondent No.4 to have a land for its administrative office as a matter of right. (Paras 9 & 11)

संविधान, अनुच्छेद 226 – शासकीय भूमि का आवंटन – याची, एक उपभोक्ता सोसायटी ने प्रयोगशाला और प्रशासनिक खण्ड स्थापित करने के लिए अधिशुल्क रहित एवं 1 रूपये वार्षिक किराये पर भूमि के आवंटन के लिए आवेदन किया – राज्य सरकार द्वारा जारी आदेश नैवासिक प्रयोजन और प्रशासनिक कार्यालयों के लिए गृह निर्माण मण्डल, भोपाल विकास प्राधिकरण, नगरपालिक निगम और शासकीय एवं अर्धशासकीय विभागों के लिए क्षेत्रों का निर्धारण करता है – अभिनिर्धारित – याची का एवं प्रत्यर्थी क्र. 4 का अपने प्रशासनिक कार्यालय के लिये भूमि को साधिकार प्राप्त करने का कोई अत्याज्य अधिकार नहीं है।

S.K. Dwivedi, for the petitioner.
Harish Agnihotri, G.A., for the respondent Nos.1 to 3.
A.P. Shroti, for the respondent No.4.

ORDER

SANJAY YADAV, J. :– Grievance put forth by the petitioner in the present writ petition under Article 226 of the Constitution of India is to an inaction on the part of the functionaries of respondent regarding allotment of a piece of land for construction of laboratory and office building to facilitate in petitioner's voyage in the said cause of the consumers at large.

2. As the name goes the petitioner is a consumer association registered under Madhya Pradesh Societies Registration Act, 1973 and as a consumer association in terms of clause (A) of Section 2 of the Monopolies and Restrictive Trade Practice Act, 1969.

3. The case of the petitioner in nutshell is that an application in the year 1999 was tendered by the petitioner for allotment of 5000 sq. ft. of land in any of the places either at Tulsi Nagar, Shivaji Nagar, Arora Hills or anywhere in New Bhopal for construction of the laboratory and administration block. In response to the petitioner's application a letter dated 6-2-1999 was issued, whereby, the petitioner was called upon to make an application in prescribed form, which as per the petitioner, was complied with. The petitioner, it is urged, was thereafter not informed about the procedure adhered and the matter was kept pending.

4. It is contended that, during pendency of the petitioner's application, the respondent No. 4, an association of Madhya Pradesh Scheduled Caste and Scheduled Tribe Officers and Employees, approached the respondent/State for allotment of a particular piece of land situated at Main Road No. 2, Panchsheel Nagar. It is urged that the State Government ignoring the claim of the petitioner went on to consider the application filed by respondent No. 4 and by order dated

11-2-2002, the land sought for was allotted free of premium and on an annual ground rent of Re. 1. It is urged that further efforts were also made for allotment of additional piece of land admeasuring 3056 sq. ft. adjacent to existing land.

5. In the background of these facts the grievance made by the petitioner in the petition is that he is being discriminated in respect of the allotment of land. It is urged that the order of allotment of land in favour of respondent No. 4 suffers from the vice of arbitrariness as the same is an outcome of the pick and choose policy of the State Government, which otherwise is under an obligation to act in fair and just manner. It is accordingly contended that the allotment order issued in favour of respondent No. 4 be quashed and be prevented from raising any construction thereon.

6. The respondent/State while defending its action regarding allotment of land in favour of respondent No. 4, free of premium and on an annual rent of Re. 1 has to submit that the application by the petitioner was vague as there was no pinpointing of the piece of land which the petitioner wanted. It is further contended that the petitioner was however offered a piece of land being part of Khasra No. 393/5/1 admeasuring 0.35 acre situated at village Bawadiya kala adjacent to National highway, Bhopal-Hoshangabad Road by communication dated 2-5-2002. It is urged that petitioner did not show any interest in the said land. It is accordingly urged that, the petitioner thus cannot have any grievance regarding the non-consideration of petitioner's claim for allotment of land. It is contended that allotment in favour of respondent No. 4 being after following due procedure no interference is warranted.

7. The respondent No. 4 on its turn in addition to submission on behalf of the State has to contend that there is no comparison between the petitioner and respondent No. 4. It is urged that it is not the case of the petitioner that he had applied for allotment of same piece of land as was allotted to the respondent No. 4. It is urged that the objections were also invited before alloting the land in question, which was published in Nav Bharat, Bhopal on 13-3-200. It is contended that there were no objection from any corner, nor the petitioner raise any objection. It is therefore averred that the allotment of land in favour of respondent No. 4 since was after following due procedure, the same is not liable to be quashed at the instance of the petitioner.

8. Though claim and counter-claim have been put forth by respective parties and even by the State justifying their action of alloting the piece of land sought for by respondent No. 4 free of premium and on an annual rent of Re. 1; however, none of parties including the State has brought on record any rules, regulations, as would indicate the entitlement of the bodies like petitioner and respondent No. 4, to have piece of land at prime location or even at other places in the urban agglomeration.

9. An order dated 4-11-1988 issued from the department of Environment and

Housing has been pressed in service by the State Government to justify their action. The said order, Annexure-R/5, is in the following terms :

"कमांक 3291/858/321/88.भोपाल निवेश क्षेत्र के अन्तर्गत आवसीय भूमि के आरक्षण हेतु राज्य शासन को प्राप्त प्रस्तावों का परीक्षण करके आरक्षण हेतु अनुशंसा करने के लिये राज्य शासन निम्नानुसार समिति का गठन कर रहा है।

(1)	सचिव आवास एवं पर्यावरण विभाग	अध्यक्ष
(2)	संचालक नगर एवं संभाग नियोजन	सदस्य
(3)	अध्यक्ष/संस्था का संचालन अधिकारी भोपाल विकास प्राधिकरण,भोपाल	सदस्य
(4)	आयुक्त, गंदी बस्ती निर्मूलन मंडल भोपाल	सदस्य
(5)	कलेक्टर भोपाल राजस्व विभाग के प्रतिनिधि	सदस्य
(6)	आवास एवं पर्यावरण विभाग के संबंधित अधिकारी	संयोजक

इस समिति व्दारा भोपाल निवेश क्षेत्र में निम्न प्रकार आबंटन हेतु भूमि के आरक्षण संबंधी प्रस्तावों का परीक्षण करने अनुशंसा की जायेगी।

(1) गृह निर्माण मंडल, भोपाल विकास प्राधिकरण, नगर निगम एवं शासकीय विभाग, अर्ध्दशासकीय संस्थाओं अथवा अन्यों के लिये आवासीय भूमि का आरक्षण।

(2) संस्थाओं शासकीय कार्यालयों एवं अर्ध्दशासकीय कार्यालयों के लिये प्रशासकीय एवं वाणिज्यिक उपयोग के लिये भूमि का आरक्षण।"

10. The order thus postulates earmarking of areas for Housing Board, Bhopal Development Authority, Municipal corporation and Govt. and Semi-Govt. Departments for residential purpose and for administrative offices. The order however nowhere stipulates allotment of land to any of the institutions, including the bodies as the petitioner, and the respondent No. 4 at any other place -earmarked and that to free of premium and at an annual rent of Re. 1. And as observed, none of the parties have brought on record rules, regulation or any other order which would entitle them for allotment of land as a matter of right. Though it is emphatically urged on behalf of the respondents that the State Government exercises the discretionary power; however, the authority on the basis whereof such discretion is being exercised is not disclosed.

11. In view of above this Court finds that there is no indefeasible right of the petitioner as well as respondent No. 4 to have a land for its administrative office

as a matter of right. Therefore, the relief claimed by the petitioner for grant of land cannot be accorded.

12. In respect of respondent No. 4 since it is held that there is no indefeasible right for allotment of land free of premium and on annual rent of Re. 1, the State Government is directed to re-examine the matter and after informing itself of the provisions of law whereunder the respondent No. 4 has been allotted the land at Panchsheel Nagar, shall pass a suitable order after affording an opportunity of hearing. The lease granted in favour of respondent No. 4 would be subject to the final outcome of the order passed by the State Government. Let the same be done within three months from the date of communication of this order.

13. The petition is disposed of finally in above terms. No costs.

Petition disposed of.

I.L.R. [2010] M. P., 2482
WRIT PETITION
Before Mr. Justice Piyush Mathur
14 July, 2010*

BHUPENDRA SINGH KUSHWAH ... Petitioner

Vs.

STATE OF M.P. & anr. ... Respondents

A. **Constitution, Article 226 - *Contracts - Judicial review - Action of the State expected - Held - When the State deals with the individuals in the matters of contract and construction, it becomes necessary for the State to act bonafidely and without any bias, while complying with the mandatory provisions of law including the cardinal principle of natural justice.*** (Para 6)

क. संविधान, अनुच्छेद 226 – संविदा – न्यायिक पुनर्विलोकन – राज्य का कार्य प्रत्याशित – अभिनिर्धारित – जब राज्य संविदा एवं निर्माण कार्य के मामलों में व्यक्तियों के साथ व्यवहार करता है, तो राज्य के लिये विधि के आज्ञापक प्रावधानों एवं नैसर्गिक न्याय के मूल सिद्धांतों का पालन करते समय सद्भाविक रूप से एवं पक्षपात रहित कार्य करना आवश्यक हो जाता है।

B. **Constitution, Article 226 - *Contracts - Blacklisting of a Contractor - Natural Justice - Held - Registration and cancellation of the registration acquires great importance, as it incur civil consequences and in that situation the principle of 'audi alteram partem', requires to be necessarily complied with by the department.*** (Paras 8 & 10)

ख. संविधान, अनुच्छेद 226 – संविदा – किसी ठेकेदार का वर्ज्यसूची में डाला जाना – नैसर्गिक न्याय – अभिनिर्धारित – पंजीकरण एवं पंजीकरण का रद्दकरण अत्यंत महत्वपूर्ण है क्योंकि इससे सिविल परिणाम उपगत होते हैं तथा उस स्थिति में विभाग द्वारा 'दूसरे पक्ष को भी सुनो' के सिद्धांत का पालन अनिवार्य रूप से किया जाना आवश्यक है।

---

*W.P. No.3101/2010 (Gwalior)

Cases referred :

(1975) 1 SCC 70, (1990) 3 SCC 752, (2001) 8 SCC 604, (2007) 14 SCC 517 (relied upon).

D.S. Raghuwanshi, for the petitioner.

Ami Prabal, Dy.A.G. & Praveen Newaskar, Dy.G.A., for the respondents.

ORDER

Piyush Mathur, J. :–The Petitioner has challenged Order Dated 30.04.2010 in the present petition, whereby the Chief Engineer of Public Health Engineering Department, Gwalior has ordered for cancellation of the Registration of the Contractor as also for Blacklisting the Petitioner.

2. Shri D. S. Raghuwanshi Learned Counsel appearing for the Petitioner submit that the Petitioner is a Class A-1 Contractor, who has been registered with the Public Health Engineering Department and has been participating in various Tenders for digging Tubewell for the Department.

3. Shri Raghuwanshi Learned Counsel for the Petitioner submit that a Departmental Enquiry was conducted against an Executive Engineer viz. Shri R.N. Karaiya wherein charges of misconduct and financial irregularities were levelled against him and while passing an adverse Order against him, all those Contractors, who were working with the Department during the tenure of Shri R. N. Karaiya, Executive Engineer, were blacklisted by the Department and their Registration as Contractor was cancelled without complying with the principles of natural justice.

4. Shri Raghuwanshi submits that the Registration of the Contractor was cancelled on the ground that incorrect document was furnished with the Department at the time of Registration and when a verification was made, the document was found to be contrary to the description given in the Application. Shri Raghuwanshi submits that the Registration as Contractor was never based on any such document and the Registration could not be cancelled on the strength of the incorrectness of the description of the documents, without issuing a show cause notice to the Petitioner.

5. Ms. Ami Prabal Learned Dy. Advocate General appearing for the State submit that in place of filing a reply to the Writ Petition, she would refer to the record of the Department to demonstrate that an enquriy was conducted against Shri R. N. Karaiya, Executive Engineer, wherein it was found that certain misconduct was committed by him, which goes to further demonstrate that he had unauthorizedly extended a variety of benefits to the Contractors working in the Department and as such it was required in all fitness of things that the Registration of the Contractor should be cancelled and his name should be blacklisted and to substantiate this submission Learned Counsel appearing for the State read over a large number of documents to demonstrate the correctness of the aforesaid contention, but could not show any document to demonstrate that at

any point of time, a show cause notice was ever issued to the Petitioner before either cancelling the Registration or blacklisting the Petitioner.

6. Public Health Engineering is a Department of the State of Madhya Pradesh, which is engaged in the activity of providing technical support and developing of infrastructure, for providing water to the citizens and thus it perform statutory duties being a Department of the State. When the State deals with the individuals in the matters of contract and construction, it becomes necessary for the State to act bonafide and without any bias, while complying with the mandatory provisions of Law including the cardinal principle of natural justice. The Supreme Court of India while dealing with the case of blacklisting has observed in the case of *Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal*, a Judgment reported as (1975) 1 SCC 70 in the following terms ;

> "19. Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice. A body may be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised and the nature of sanctions involved therein.
>
> 20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

7. In yet another case while dealing with the doctrine of arbitrariness, the Supreme Court has observed that the action of the "State" must be reasonable, fair and just even at the stage, when no formal contract was entered into, which means that not only at the initial stage, but throughout the stages of entering into a contract and thereafter the State Authorities are bound to act reasonably and in a fair manner. These observations of the Supreme Court find mention in its Judgment reported as (1990) 3 SCC 752 *Mahabir Auto Stores Vs. Indian Oil Corporation.*

8. Before participating in the Tender Process, a Contractor is required to obtain

Registration with Public Health Engineering Department and without securing the Registration with the Department, the Contractor cannot even participate in the Tender Process, therefore Registration and Cancellation of the Registration acquires great importance, as it incur civil consequences and in that situation, the principle of audi alteram partem requires to be necessarily complied with by the Department. While dealing this analogy, the Supreme Court had observed in the case of *Grosons Pharmaceuticals (P) Ltd. Vs. State of U.P.*, a Judgment reported as (2001) 8 SCC 604 in the following terms ;

> "2. .....It is true that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principle of audi alteram partem which is one of the facets of the principles of natural justice....."

9. In yet another Judgment, the Supreme Court while examining the extent of the power of judicial review in relation to the Government Contracts has observed that the cases involving blacklisting or imposition of penal consequences require a higher degree of fairness in action of the "State". The observations of the Supreme Court reported in the Judgment of *Jagdish Mandal Vs. State of Orissa* (2007) 14 SCC 517 are as follows;

> "22. .....Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action....."

10. Therefore in view of the aforesaid fact and the legal position, it is clear that before passing any Order of cancellation of Registration or blacklisting a Contractor, the State Government or its Departments are necessarily required to issue a show cause notice or to provide an adequate hearing to a Contractor, in terms of the principles of natural justice. A perusal of the document annexed with the petition and the record placed for consideration of the Court on behalf of the Respondents clearly demonstrate that no show cause notice was ever issued to the Petitioner before ordering for cancellation of the Registration and placement of the name of the Petitioner in the blacklist seriously violates the cardinal principles of audi alteram partem, therefore on this ground alone, the Order of Cancellation of Registration of Contractor and Order of Blacklisting deserves to be quashed.

11. While perusing the Record, this Court has found that there exist some material for the Department to ascertain the correctness of the documents, on the strength of which the Contractors were registered with the Department, therefore even while quashing the Order Dated 30.04.2010 (Annexure P/1), this Court is of the view that the liberty should be given to the Department to examine the correctness of the documents and to take an appropriate action against the

erring Contractor either for the purposes of cancellation of Registration or for blacklisting him, therefore the Respondents are granted liberty to examine the correctness/genuineness of the documents presented by the Contractor at the time of obtaining Registration as also to pass a Final Order thereupon.

12. Therefore the Writ Petition is allowed and the Order passed by the Chief Engineer/Superintending Engineer on Date 30.04.2010 (Annexure P/1) is quashed with the aforesaid liberty to the Department.

Petition allowed.

I.L.R. [2010] M. P., 2486
WRIT PETITION

Before Mr. S.R. Alam, Chief Justice & Mr. Justice Alok Aradhe

21 July, 2010*

ABDUL NAIM ... Petitioner

Vs.

STATE OF M.P. & ors. ... Respondents

Public Interest Litigation - *Alternative remedy - Petitioner sought direction to hold an enquiry against the respondent No.5 and to take suitable action regarding different Government construction works - Held - Since the provisions of the M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 are a complete Code in itself and provide a remedy to an aggrieved person, he should at the first instance resort to the remedy provided under the Act - In such a case the PIL should not be entertained.* (Para 8)

लोकहित वाद – वैकल्पिक उपचार – याची ने विभिन्न शासकीय निर्माण कार्यों के सम्बन्ध में प्रत्यर्थी क्र. 5 के विरुद्ध जाँच करने और उपयुक्त कार्यवाही करने के लिए निदेश चाहा – अभिनिर्धारित – चूंकि म.प्र. लोकायुक्त एवं उप–लोकायुक्त अधिनियम, 1981 के उपबंध स्वमेव पूर्ण संहिता हैं और व्यथित व्यक्ति के लिए उपचार का उपबंध करते हैं, इसलिए उसे सर्वप्रथम अधिनियम के अन्तर्गत उपबंधित उपचार का आश्रय लेना चाहिए – ऐसी दशा में लोकहित वाद ग्रहण नहीं किया जाना चाहिए।

Cases referred :

(2003) 7 SCC 546.

R.B. Singh, for the petitioner.

Jaideep Singh, G.A., for the respondents.

ORDER

The Order of the Court was delivered by

S.R. ALAM, CHIEF JUSTICE. :– Heard on the question of admission.

2. In this petition, which has been filed as public interest litigation, the petitioner inter alia has alleged that a sum of Rs.52,21,000/- was sanctioned for construction of 115 kitchen sheds for midday meals in several schools situated at Block Birsa,

*W.P. No.7245/2010 (PIL) (Jabalpur)

District Balaghat. Similarly, amounts of Rs.5,80,000/- and Rs.1,28,000/- were sanctioned for construction of boundary walls of two girls hostels and two water wells respectively. The aforesaid works were to be carried out under the control and supervision of the respondent no.5, namely M.D. Daharwal, the then Chief Executive Officer and Block Development Officer, Birsa, who is presently working as Principal of High School, Janpur, District Balaghat, In the aforesaid factual backdrop the petitioner inter alia has sought for direction to the respondents to hold an enquiry against the respondent no.5 and to take suitable action.

3. Learned counsel for the petitioner vehemently contended that the petitioner being a social activist and public spirited person has always vindicated the cause of common people and has raised grievance against the corruption which-is rampant in the public life. He further submitted that the respondent no.5 has misused his official position as Block Development Officer, Birsa, and the amount sanctioned for construction of kitchen sheds under the Midday meal Scheme, construction of boundary walls of girls hostels and the amount sanctioned for the construction of water wells was misappropriated. The petitioner made several complaints, but the complaints made by the petitioner failed to evoke any response. Being aggrieved by the inaction on the part of authorities, the petitioner has approached this court.

4. On the other hand, learned Government Advocate opposed the submissions made on behalf of the petitioner and argued that against the alleged financial irregularities and misappropriation of the amount the petitioner should approach the appropriate authority at the first instance before invoking the extra-ordinary jurisdiction of this Court under .Article 226 of the Constitution of India.

5. We have considered the submissions made on both sides. We are of the view the allegations made by the petitioner are required to be investigated before expressing any opinion on such allegations. In this regard it would be relevant to notice that the Government has created various authorities under the Special Act to investigate and also to suggest appropriate action against such public servant or officer who has misused or abused his position and as such is guilty of corruption. In this regard it would be relevant to take note of the provisions of the M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981, (hereinafter referred to as 'the Act) which is an Act to make provision for the appointment and functions of certain authorities for enquiry into the allegations against public servants and for matters connected therewith. The Act was enacted with an object to constitute Lokayukt Organisation, which replaced the Vigilance Commission. Lokayukt Organisation is an organisation which is setup under an enactment made by the State legislature. Having received the statutory sanction, the Lokayukt Organisation is totally free from executive influence. The organisation functions as an instrument of control over the executive by the legislature as its annual reports are submitted to the Governor to be laid and discussed in the State Legislative assembly Section 2(a) of the Act defines 'officer' which reads as under:

"2(a) 'Officer' means a person appointed to a public service or post in connection with the affairs of the State of Madhya Pradesh."

Section 2(b) defines the expression 'allegation' which reads as under:

"2(b) 'allegation' in relation to a public servant means any affirmation that such public servant,-

(i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm to any person;

(ii) was actuated in the discharge of his functions as such public servant by improper or corrupt motives;

(iii) is guilty of corruption; or

(iv)is in possession of pecuniary resources or property disproportionate to his known source of income and such pecuniary resources or property is held by the public servant personally or by any member of his family or by some other person on his behalf.

Explanation - For the purpose of this sub-clause 'family' means husband, wife, sons and unmarried daughters living jointly with him".

6. Section 9 of the Act deals with the provisions relating to complaints. Section 9 inter alia provides that every complaint involving an allegation shall be made in such form as may be prescribed and shall be accompanied by deposit of twenty-five rupees. In case a complaint is made against a public servant in relation to whom the Chief Minister is not the competent authority neither the deposit nor the affidavit shall be necessary. Section 10 of the Act deals with the procedure inrespect of enquiry. It empowers the Lokayukt or Up-Lokayukt to decide the procedure to be followed for making the enquiry and in so doing ensure that the principles of natural justice are satisfied. Section 11 of the Act makes the provision of the Evidence Act as well as the Code of Criminal Procedure applicable to the procedure of enquiry before the Lokayukt or Up-Lokayukt.

7. Section 12 of the Act provides that if after enquiry into the allegations the Lokayukt or an Up-Lokayukt is satisfied that such allegation is established, he shall by report in writing communicate his findings and recommendations along with the relevant document, materials and other evidence to the competent authority. The competent authority is under the obligation to examine the report and to initiate within three months of the date of receipt of the report, the action taken or proposed to be taken on the basis of the report.

8. Thus, from perusal of the provisions of the Act it is graphically clear that the Act has been enacted with the object to investigate cases of corruption in public life and provides for an inbuilt mechanism in respect of complaint with regard to corruption by an officer appointed to a public service or post in connection

with affairs of the State of Madhya Pradesh. Since the provisions of the Act are a complete Code in itself and provide a remedy to an aggrieved person, he should at the first instance resort to the remedy provided to him under the Act. In such a case the public interest litigation should not be entertained.

9. The apex court in the case of *Guruvayoor Devaswom Managing Committee and another Vs. C.K. Rajan and others,* (2003)7 SCC 546, wherein the allegations ware made regarding mismanagement of the affairs of the Gunivayoor temple by a devotee, found that the affairs of the temple are governed by the provisions of the Guruvayoor Devaswom Act, 1978, wherein forums have been created for ventilating the grievances of the affected persons. In that backdrop it was observed in para 60 of the judgment that ordinarily, therefore, such forums should be moved at the first instance. It was further held that the State Government should be asked to look into the grievances of the aggrieved devotees, both as parens patriae as also in discharge of its statutory duties.

10. In view of the aforesaid enunciation of law by the Supreme Court facts of the case in hand may be examined. The allegations made by the petitioner required to be enquired into in the appropriate forum, wherein detailed enquiry would be conducted as per provisions prescribed in the Act and an opportunity of hearing would be afforded to the respondent no.5. Therefore, the petitioner should avail the remedy provided under the Act.

11. For the aforementioned reasons, we are of the considered opinion that the petitioner has remedy to agitate his grievance under the provisions of the Act. We have no doubt that in the event the petitioner approaches the appropriate authority, as indicated above, by making complaints as per the prescribed procedure, the same would be examined and necessary action would be taken in accordance with law.

12. With the aforesaid observation, the writ petition stands dismissed.

Petition dismissed.

I.L.R. [2010] M. P., 2489

WRIT PETITION

Before Mr. S.R. Alam, Chief Justice & Mr. Justice Alok Aradhe

23 July, 2010*

KINECO PRIVATE LTD. ... Petitioner

Vs.

WEST CENTRAL RAILWAYS & ors. ... Respondents

A. Tender - ***Parity*** - *Each tender notice is governed by a particular set of conditions and the criteria or the principle applied for evaluation of a bid in one tender cannot be applied in another - On that ground parity cannot be claimed.* (Para 15)

*W.P. No.771/2010 (Jabalpur)

क. निविदा – समानता – प्रत्येक निविदा सूचना शर्तों के समुच्चय विशेष द्वारा अधिशासित होती है एवं एक निविदा में किसी बोली के मूल्यांकन हेतु लागू मानदण्ड या सिद्धान्त दूसरी निविदा में लागू नहीं हो सकता – उस आधार पर समानता का दावा नहीं किया जा सकता।

B. Tender - *Non-consideration of terms of tender - Petitioner did not comply with clause 4 of the "Important Instructions to Tenderers" - Commercial bid submitted by the petitioner was rightly found to be unresponsive and was not considered.* (Para 17)

ख. निविदा – निविदा के निबंधनों पर विचार न करना – याची ने "निविदाकार के महत्वपूर्ण निर्देशों" के खण्ड 4 का अनुपालन नहीं किया – याची द्वारा प्रस्तुत व्यवसायिक बोली भलीभाँति अनुत्तरदायी पायी गयी एवं उस पर विचार नहीं किया गया।

Cases referred :

(1979) 3 SCC 489 = AIR 1979 SC 1628, (1990) 2 SCC 488, (1991) 3 SCC 273, (2002) 6 SCC 315.

R.N. Singh with *Arpan J. Pawar*, for the petitioner.

Sheel Nagu, for the respondents.

ORDER

The Order of the Court was delivered by

S.R. Alam, Chief Justice. :– In the instant petition, the petitioner, a private limited Company, has sought a writ of Mandamus commanding the West Central Railway, Jabalpur, to consider its commercial bid submitted pursuant to the tender notice dated 13.4.2008. Further prayer has been made to quash the letter of approval dated 25.1.2010 contained in annexure P/5 in favour of respondents no.3 and 4 and the communication dated 4.2.2010 dismissing the appeal preferred by the petitioner against non-acceptance of its bid.

2. The facts leading to filing of the present petition, briefly stated, are that the petitioner is engaged in manufacturing of Fibre reinforced Plastic Products for train interiors. The respondent no.2 Controller of Stores, West Central Railway, Jabalpur, vide notification dated 21.10.2008 invited tender for the work of design, supply and supervision of installation of furnishings and fittings for world class rake railway coach interiors at coach rehabilitation workshop, Bhopal. Under the aforesaid tender notification work of 111 coaches was to be undertaken. It appears that a pre-bid conference was held on 22.9.2008 in which nine bidders participated. However, only four tenderers including the petitioner and respondents no. 3 and 4 submitted their bids. The petitioner has claimed that its offer was the lowest with a special discount of 16% on the engineering, development and supervision of installation cost, hence the respondents ought to have accepted its bid. However, when bid of petitioner was not accepted, it preferred an appeal on 7.9.2009 before the General Manager of the respondent no. 1, which was rejected vide order dated 4.2.2010 on the ground that the bid being consolidated was found to be not in terms and conditions contained in tender notice.

3. The respondents no. 1 and 2 in their return pointed out that as per clause 4 of the tender booklet Part II, in case of multi item or single item with multi consignees, the bid was required to be submitted item-wise because the inter-se position of the bidders was to be decided item-wise and consignee-wise, unless otherwise some other evaluation criteria is specifically mentioned in the tender. Clause 4.2 of the tender provides that only unconditional rates quoted will be considered for determining inter se ranking. Conditions incorporated in the Tender Booklet Part-II were known to the petitioner. However, petitioner offered a consolidated financial bid which was impermissible as the tender was a multi-item tender and, therefore, inter se ranking of the tenderers could only be decided item wise and not in a consolidated manner. It was mandatory for the petitioner to have submitted its commercial bid item wise. Since it failed to do so, therefore, the commercial bid of the petitioner did not deserve consideration. It was not possible to assess the commercial bid of the petitioner. As per Central Vigilance Commission guidelines only lowest bidders were called for negotiation. The letter of approval has rightly been issued to respondents 3 and 4 and there is nothing arbitrary and unfair about it.

4. Shri R. N. Singh, learned senior counsel appearing for the petitioner, contended that the bid submitted by the petitioner was the lowest. The petitioner had submitted bid for an amount of Rs .35.76 Crore after discount whereas respondents no. 3 and 4 have offered Rs.37.62 Crore and Rs.43.13 Crore respectively. Learned senior counsel while referring to the financial bid submitted by the respondent no. 4 as well as by the petitioner contended that though the respondent no.4 did not quote item-wise price (design and supervision cost) as sought for in format 'D', yet it was called for negotiation and letter of acceptance has been issued in favour of the respondent no.4. While referring to financial bid submitted by the petitioner, it was pointed out that the petitioner has quoted supervision cost coach-wise along with material cost. It is further submitted by him that if respondents no. 1 and 2 could evaluate figures given by the respondent no.4, there was no justification in refusing to evaluate the commercial bid submitted by the petitioner and not to invite petitioner for negotiation. It has further been argued that in the tender which was invited in the year 2006, the petitioner had quoted consolidated price against the similar work and the same was considered. Therefore, it is now not open to respondents no. 1 and 2 to reject commercial bid on the ground that the same is unresponsive. It has further been argued that consolidated price of design and engineering for similar work was accepted by Interior Coach Factory, Chennai and, therefore, the stand taken by respondent no. 1 and 2 that commercial bid of the petitioner was not responsive cannot be said to be justified. It has further been contended that though the respondent no. 4 had also submitted a conditional bid, i.e. with discount, yet the same was considered and accepted whereas in the case of petitioner, respondents no. 1 and 2 have refused to consider financial bid on the ground that the offer submitted by

the petitioner is conditional one and, therefore, respondents no. 1 and 2 while dealing with the financial bid of the petitioner have practiced discrimination which is impermissible in law. It was also submitted that deliberate exclusion of petitioner's bid from consideration is malafide, illegal and arbitrary.

5. On the other hand, Shri Sheel Nagu, learned counsel appearing for the respondents no.1 and 2, has contended that the petitioner had offered the consolidated financial bid which was impermissible as the tender was a multi-item tender and inter se position while assessing various offers made by various tenderers could be decided item-wise only and not in consolidated manner. Learned counsel for the respondents no.1 and 2 has further contended that in format 'D', incorporated in tender documents, a tenderer was supposed to fill up various columns towards break-up of prices enabling the evaluation of the bid item-wise on landed cost basis. Since, the petitioner had quoted lump-sum price for engineering, development and supervision of installation cost along with project supervision/ management cost for all the coaches clubbed together along with landed cost for all the 111 coaches, it was not possible to evaluate the bid as per item-wise landed cost as laid down in the tender document. The petitioner had filled up lump-sum price of Rs.38,12,61,759/- in column 'total cost' of the format 'D', therefore, financial bid was considered commercially unresponsive. It has further been submitted that once a condition of determining inter-se ranking of the offers has been specified in the tender document, the tender has to be evaluated accordingly without any deviation in view of the judgment of the Delhi High Court. A copy of the said decision has been annexed as Annexure R-1/8 to the return. It has further been argued that reliance placed by the petitioner with regard to acceptance of consolidated price of Design and Engineering for a similar work which was accepted by Interior Coach Factory, Chennai, is of no assistance to the petitioner as the same was a tender of different organisation and tender in question is governed by different set of tender conditions.

6. It has further been argued that respondents no. 1 and 2 have followed the norms, rules and regulations in letter and spirit as per tender conditions and have not violated any condition specified in tender documents while determining the inter se ranking of tenderers. Negotiations were held with the lowest bidders in terms of the guidelines of Central Vigilance Commission. After negotiations, letter of approval was issued on 29.1.2010 in favour of respondents no.3 and 4. The contention of the learned counsel for the petitioner that conditional offer of the respondent no.4 has been accepted does not deserve acceptance as respondents no. 1 and 2 have only considered the rates without discount which were offered by the respondent no.4. The tender process is transparent and clear and there is no element of arbitrariness in it.

7. We are conscious of the fact and there cannot be any quarrel with the proposition of law that under Article 14 of the Constitution and also as per judicially evolved rule of administrative law that State or its agency in the

matter of awarding contracts or issuing licences cannot act arbitrarily at its own sweet will like a private individual. Reference may be made to the judgment of the apex court in *Ramanna Dayaram Shetty V. International Airport Authority of India,* (1979)3 SCC 489 = AIR 1979 SC 1628. It is equally well settled principle of law that an authority inviting tender is bound to give effect to every term mentioned in the notice in meticulous detail and cannot ignore or give a go-bye to any terms, conditions and procedure given in the tender notice.

8. It would be worthwhile to mention here that in a tender notice normally 2 types of conditions are provided. The conditions which are of mandatory nature, could be classified in the first category and those which are incidental and ancillary and their non-compliance may not be strictly construed, could be placed in the second category. This aspect has been considered by the apex court in *G. J. Fernandez V. State of Karnataka and others,* (1990)2 SCC 488. Following the view taken in *C.J.Fernandez* (supra) the apex court in *Poddar Steel Corporation V. Ganesh Engineering Works and others*, (1991)3 SCC 273, observed that as a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories - those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary, with the main object to be achieved by the condition. In the former case, the authority issuing the tender may be required to enforce them rigidly whereas in the latter case they may deviate from and not insist upon the strict literal compliance of the condition in appropriate cases.

9. Similar view was again reiterated by the apex court in *Kanhaiya Lal Agrawal V. Union of India and others,* (2002)6 SCC 315 wherein it has been held that when essential condition of tender is not complied with, it is open to the person inviting tender to reject the same. Whether such condition is essential or collateral could be ascertained by reference to the consequence of non-compliance thereto. Therefore, in view of the exposition of law made by the apex court the requirements of the conditions placed in the first category are mandatory and its non-observance would entail rejection of the tender whereas non-compliance with the conditions classified in the second category may not entail rejection of tender.

10. We, therefore, now proceed to examine the merits of the case in the light of the above exposition of law.

11. Respondent No.2 invited tender for the work of design, supply and supervision of installation of furnishings and fitting for world class rake railway coach interiors at coach rehabilitation workshop, Bhopal vide notification No.34/2008 for 111 coaches with estimated tender value of Rs-36.23 crores. A pre-bid conference was held on 22.9.2008 with prospective tenders to provide clarification if any regarding tender. The tender was purely stores supply tender which provides that all interior furnishing components were to be manufactured by tenderer and

were to be supplied to the Railways. Tender processing system involved a two packets bid system wherein Technical as well as Commercial bids were received simultaneously. On 12.11.2008 Technical bids were opened and four offers were found technically suitable. Thus, commercial bids of all four bidders including petitioner as well as respondents 3 and 4 were opened on 27.5.2009.

12. Clause 4 and 4.2 of the "Important Instructions to Tenderers" in Part II booklet of tender document which are relevant for the purpose of the controversy involved in the instant writ petition as extracted hereinbelow :

> **"Clause 4.0:**
>
> In case of multi item or single item with multi consignees, the inter-se position will be decided item wise and consignee wise, unless otherwise some other evaluation criteria is specifically mentioned in the tender",
>
> **Clause 4.2:**
>
> Only unconditional rates quoted will be considered for determining inter-se ranking. Thus, conditional discount (for quantity, early payment, delivery at other than specified locations, etc.) will not be considered for determining inter se ranking. However, railway reserve the right to use the discounted rate/rates considered workable and appropriate for counter offer to the successful tenderers."

13. The tender in question involved design, supply and supervision of installation of furnishing and fittings for nine different types of coaches at one consignee location. The tender was a multi-item tender and hence the inter-se ranking was to be decided item-wise. From perusal of clause 4 of the "Important Instructions to Tenderers" incorporated in Part II booklet of tender documents, it is apparent that tenderers were required to submit their offers item-wise so that their inter-se ranking/position could be decided item-wise. From perusal of the financial bid submitted by the petitioner (Annexure R-1/4) it is clear that petitioner has quoted consolidated price for engineering, development and supervision of installation cost along with project supervision/ management cost per coach against the break-up of prices. Therefore, it was not possible to evaluate the bid item-wise. Thus, the tender submitted by the petitioner was in violation of clause 4 of "Important Instructions to Tenderers" incorporated in Part II booklet of tender documents. Accordingly, in our opinion, respondents no. 1 and 2 rightly found the commercial bid submitted by the petitioner, being consolidated one, unresponsive and it was not possible to evaluate it. It is pertinent to mention here that Engineering, Development and Supervision of Installation of furnishing and fittings was to be done under the tender in respect of nine different coaches. Since coaches were of different types, therefore, design cost would vary according to type of coach and, therefore, cost element was required to be

mentioned separately. Thus, in our considered opinion, respondents no. 1 and 2 have rightly found that commercial bid submitted by the petitioner was not capable of evaluation. Further the petitioner offered the conditional bid which was not permissible in Clause 4.2 wherein it was made clear that only unconditional rates quoted will be considered for determining inter se ranking.

14. From perusal of financial bid submitted by the petitioner, it is clear that the petitioner has not mentioned total cost in respect of each coach separately whereas from perusal of financial bid submitted by the respondent no.4 it is apparent that respondent no.4 has mentioned total cost in respect of each type of coach separately, therefore, it was possible to evaluate the bid submitted by the respondent no. 4. Thus, contention of the petitioner that while evaluating the financial bid of the petitioner vis-a-vis the respondent no.4 different yardsticks were applied has no force and cannot be accepted for the reason that figures given by the respondent no.4 about total cost of each type of coach was separately mentioned and, therefore, it was possible to work out separately whereas the petitioner furnished the total cost in respect of coaches and did not mention cost of each coach separately as a result of which separate cost of each coach could not be arrived at. Thus, the petitioner has violated clause 4 of the "Important Instructions to Tenderers" incorporated in Part II booklet of tender documents. Commercial bid submitted by the petitioner has not been considered on the ground that the same is unresponsive. We are of the view that where terms and conditions of N.I.T. provides the manner and procedure to do a particular thing, then it has to be performed in that particular manner and all other modes of performance are necessarily forbidden. The instruction provided in the tender notice, in our view, does not suffer from any vagueness and the conditions were made known to the tenderers in pre-bid conference in which petitioner admittedly participated and; therefore, he now cannot be permitted to say that its bid, which was not in conformity with clause 4 of the N.I.T., ought to have been evaluated. As noticed above, petitioner's bid was not evaluated because it did not give unconditional rates and quoted discounted rates, hence, it was not possible to evaluate the financial bid of the petitioner. We, therefore, under the circumstances, do not find any element of arbitrariness in the action of the respondents in not evaluating the financial bid of the petitioner.

15. Contention of the petitioner that since respondents no. 1 and 2 evaluated the tender which was submitted by him on earlier occasion and, therefore, they cannot be permitted to take a stand that the bid submitted by the petitioner was unresponsive, also cannot be accepted as from perusal of the return it is apparent that respondents no. 1 and 2 have taken a stand that earlier tender which was invited was for a different work and terms and conditions of the said tender were also different. Therefore, the submission is misplaced and cannot be accepted for the reason that each tender notice is governed by a particular set of conditions and the criteria or the principle applied for evaluation of a bid in one tender cannot

be applied in another and on that ground parity cannot be claimed. Petitioner has not brought on record the terms and conditions of the earlier notice inviting tender to demonstrate that the same were identical and, therefore, the contention raised by the petitioner in this regard cannot be accepted.

16. The arguments advanced on behalf of the petitioner that the petitioner offered a composite cost of Rs.3,93,26,000/- as design and project supervision/management cost for 9 different types of coaches and therefore the respondents could have applied a simple mathematical calculation and divided the aforesaid amount by 9 i.e. total design cost equally apportioned into 9 types of coaches, the design cost of each coaches comes to Rs.43,69,556/- which added to the material cost would have given the landed cost of coach. If this would have been worked out the petitioner's bid would have been lowest in four out of nine types of coaches as shown in the table given in para 8 of the rejoinder. The aforesaid submissions could also not be accepted because the same is based on the assumption that 9 items are identical and the respondents could have assumed any figure on behalf of the petitioner. It has rightly been pointed out by the learned counsel for the Railways that such assumption after opening of bids would be against the norms and Central Vigilance Commission guidelines as this would defeat sanctity of tender and result in undue favour to a particular tenderer and will change the inter se ranking of the bidders prepared at the time of opening of bids. The inter se position as provided in Clause 4.0 of Part II of Important Instructions to Tenderers was to be determined item wise and therefore if it would have been worked out by dividing by 9 it would have defeated the sanctity of the tender and had financial implication. Besides the same is not permissible as per the guidelines issued by the Ministry of Railways as stated in para 6.7 of the return and a copy of the Railway Board's letter is also enclosed as Annexure R-1/9. It has been contended on behalf of the respondents that the cost of Rs.3,93,26,000/- quoted on behalf of the petitioner consist of 18 cost element of the tender and not the design cost, for 9 different types of coaches marked as (b) in Format 'D' and the supervision cost of 111 coaches of 9 different types marked as (e) in Format 'D'.

17. In view of the aforementioned reasons and in view of the law laid down by the Supreme Court in *Poddar Steel Corporation* (supra) and *Kanhaiya Lal Agrawal* (supra), clause 4 of the "Important Instructions to Tenderers" in Part II booklet of tender document is held 'to be a mandatory condition. Any deviation from the requirement of clause 4 of the "Important Instructions to Tenderers" was not permissible. Since the petitioner did not comply with clause 4 of the "Important Instructions to Tenderers" therefore, commercial bid submitted by the petitioner was rightly found to be unresponsive and was not considered.

18. We, therefore, do not find any merit in the instant writ petition. The same deserves to and is hereby dismissed. However, there shall be no order as to costs.

Petition dismissed.

I.L.R. [2010] M. P., 2497

WRIT PETITION

Before Mr. Justice Shantanu Kemkar & Mr. Justice S.K. Seth

27 July, 2010*

EMAMI LTD. (M/S) ... Petitioner

Vs.

REGISTRAR, M.P. COMMERCIAL TAX & ors. ... Respondents

Commercial Tax Act, M.P. 1994 (5 of 1995) - *Petitioner preferred appeals before the M.P. Commercial Tax Appellate Board - Final arguments were heared by the Bench on 22.12.2007 and the appeals were closed for orders - The order is purported to have been passed on 02.08.2008 but at the behest of the Chairman, the order passed by the Bench not communicated and the matter was referred to the larger Bench by the order of the Chairman in terms of sub-rule (8) of Rule 4 of the Rules, 1995 - Action challenged by the petitioner that such a course/reference is without jurisdiction - Held - There was nothing wrong in the course of action adopted in the facts and circumstances of the case - Mere passing of an order alone was not sufficient until it was pronounced or delivered.* (Paras 4, 5 & 10)

वाणिज्यिक कर अधिनियम, म.प्र., 1994 (1995 का 5) – याची ने म.प्र. वाणिज्यिक कर अपीलीय बोर्ड के समक्ष अपीलें पेश कीं – न्यायपीठ द्वारा अंतिम तर्क 22.12.2007 को सुने गये और अपीलें आदेशों के लिए रोक दी गयीं – आदेश 02.08.2008 को पारित किया जाना तात्पर्यित है किन्तु चेयरमेन के आदेश पर न्यायपीठ द्वारा पारित आदेश संसूचित नहीं किया गया और मामला नियम, 1995 के नियम 4 के उपनियम (8) के निबंधनानुसार चेयरमेन के आदेश से बड़ी न्यायपीठ को निर्देशित किया गया – याची द्वारा कार्यवाही को चुनौती दी गयी कि ऐसा रीति/निर्देश अधिकारिता के बिना है – अभिनिर्धारित – मामले के तथ्यों और परिस्थितियों में अपनायी गयी कार्यवाही में कुछ गलत नहीं था – केवल आदेश का पारित किया जाना ही पर्याप्त नहीं था जब तक यह घोषित या सुनाया नहीं गया हो।

Cases referred :

AIR 1954 SC 194, AIR 1938 PC 292.

G.M. Chaphekar with *Pradeep Choudhary*, for the petitioner.

Rashmi Pandit, Dy.G.A., for the respondent/State.

ORDER

The Order of the Court was delivered by **S. K. Seth, J.** :–This order shall also govern disposal of writ petition No. 3598 of 2010. The only difference between them is the period of assessment otherwise the controversy involved in both of them is identical. For the sake of convenience, facts are noted form W.P. No. 3597 of 2010.

2. Petitioner is a registered dealer engaged in business of manufacture and sale of Fast Moving Consumer Goods such as Boroplus Antiseptic Cream,

*W.P. No.3597/2010 (Indore)

Boroplus Prickly Heat Powder, Navratan Oil etc. Petitioner has its sales depot at Indore. For assessment year 1-4-1999-2000 petitioner's turnover was assessed to tax under M.P. Vanijyik Kar Adhiniyam, 1994 i.e. M.P. Commercial Tax Act (hereinafter called as "the Act").

3. The A. 0. rejected the contention of petitioner that some of the products, such as Boroplus Antiseptic Cream, Boroplus Prickly Heat Powder, Navratan Oil, Gold Turmeric Cream and Nirog Dant Manjan were taxable @ 8% being Ayurvedic Drug and Medicine under Entry 11 Part IV Schedule II. The A.0. classified these items under Entry No. 41 and 49 of Part III Schedule II and levied tax @ 12%. In two appeals, the Appellate Dy. Commissioner of Commercial Tax maintained the orders of the A.O relating assessment year 1999-2000 and 2000-2001.

4. Petitioner preferred two second appeals before the MP Commercial Tax Appellate Board, Bhopal. Both appeals were clubbed together and final arguments were heard by the Bench of MP Commercial Appellate Board in both appeals as proceeding recorded on 22.12.2007 and the appeals were closed for orders. The order is purported to have been passed on 2.8.2008 but at the behest of the Chairman the Order passed by the Bench on 2.8.2008 is not communicated and the matter was referred to the larger. Bench by the order impugned.

5. According to learned counsel for the petitioner such a course/reference is without jurisdiction. Hence, these two writ petitions.

6. We have heard learned counsel for the petitioner. Considering the seriousness of allegation leveled in the writ petitions, we considered it necessary to summon the original record in sealed envelope . through Registrar of the MP Commercial Tax Appellate Board, Bhopal. Records were duly produced in sealed condition before us on 8-7-2010. We have carefully and minutely gone through the records.

6. We refrain from offering any comment on the question of rate of tax since the matter is now pending before the Full-Bench.

7. The question that falls for our consideration is whether any illegality was committed in referring the matter to the Full Bench ?

8. Order XX of the Code of Civil Procedure deals with the Judgment and Decree in a civil suit. Rule 1 enjoins upon a Court to pronounce judgment in the open Court either at once or on some future day fixed with due notice to the parties or their pleader. When judgment is not pronounced at once, then efforts shall be made by the Court to pronounce Judgment within fifteen days from date of hearing of the case was concluded and where it not practicable to do so, then the judgment shall be pronounced not beyond thirty days from date of hearing of the case was concluded. Similarly, in criminal case, as per section 353 of the Code of Criminal Procedure, 1973 the presiding officer of the Court shall

pronounce the judgment in the open Court immediately after the termination of trial or at some subsequent time of which notice shall be given to the parties or their pleaders. The question when a judgment is delivered/ pronounced in the context of Criminal P.C. (1898) came up for consideration of their Lordships in *Surendra Singh v. State of U.P.* reported in AIR 1954 S.C. 194. The judgment of the Court was delivered by Vivian Bose J. In his inimitable style, he explained the meaning of delivery or pronouncement of judgment. According to that decision, delivery of judgment is a solemn act which carries with it serious consequences for the parties or persons involved. It was therefore, necessary to know with certainty exactly when these consequences start to take effect. After noticing decision of the Judicial Committee in *"Firm Gokul Chand v. Firm Nand Ram"* AIR 1938 PC 292, it was held as under :–

> "In our opinion, a judgment.....is the final decision of the Court intimated to the parties and to the world at large by formal 'pronouncement or 'delivery in open Court." (See paragraph ten at page 196)."

The general principles underlying and relating to pronouncement and/or delivery of judgment in civil or criminal case, in our considered opinion, is equally applicable to the passing of an order by the Board or the authority under the Act determining assessment or appeal against levy of tax/penalty. **If the order passed under the Act is not delivered with notice to parties or their pleaders and the copy thereof is not communicated, could be said to be an order in the eyes of law. Answer is obviously no because such an order is nonest.**

9. A great deal of emphasis was laid during the course of argument on sub-rul (9) of Rule (4) to contend that the matter could be referred to the larger/ full bench in the event of difference of opinion between two members of the bench hearing an appeal or when any member of the Board deciding any case has difference of opinion about any earlier judgment passed by a single member or by a bench the case shall be referred to the Full bench. It was submitted that in no other eventuality, the matter could be referred to the Full bench.

10. The record shows that the Bench of two members ex-facie passed the order dated 2.8.2008. No notice of this date was given either to the parties or their pleaders. As pe'r Regulation No. 7(xv), the records of the two appeals were sent to the Registrar of the Board to certify and to issue copies of the order to the parties. Before certifying and issuing the orders purported to have been passed on 2.8.2008, the Registrar in view of the Order of Chairman dated 17.7.2008 and 31.7.2008 brought these two matters to the notice of the Chairman and as per his direction, referred the matter to the Full Bench. The Order dated 17.7.2008 and 31.7.2008 were duly circulated amongst members and were issued by the Chairman after due consultations with all members to reduce the pendency of appeal and tone up system for the quick disposal of appeals

within three months from the date of hearing of final arguments otherwise he could transfer the appeal to other bench or full bench in terms of sub-rule (8) of Rule 4 of the 1995 Rules. There was nothing wrong in the course of action adopted in the facts and circumstances of case as revealed by the records. Thus, we find no force in the submissions of learned counsel for the petitioner. As pointed out above, mere passing of an order alone was not sufficient until it was pronounced or delivered in terms of law laid down by their Lordships of the Supreme Court in *Surendra Singh's case* supra.

11. In view of the foregoing discussion, we find no merit and substance in the writ petition, hence it fails. Let a copy of this Order be retained in the record of writ Petition No. 3598 of 2010.

Order accordingly.

I.L.R. [2010] M. P., 2500
WRIT PETITION
Before Mr. Justice Rakesh Saksena & Mr. Justice G.S. Solanki
3 August, 2010*

SAYEED MOHD. ... Petitioner
Vs.
UNION OF INDIA & ors. ... Respondents

A. National Security Act (65 of 1980), Section 2 - Law & Order and Public Order - *Distinguished - Held - The true distinction between the areas of "law and order" and "public order" lies upon the degree and extent of the reach of an act upon the community or specified locality - The acts causing disturbance of public order need not necessarily differ in nature and quality, but must differ in the degree and extent of reach upon the community or public at large.* (Para 10)

क. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 2 – कानून एवं व्यवस्था तथा लोक व्यवस्था – भेद किया गया – अभिनिर्धारित – "कानून एवं व्यवस्था" तथा "लोक व्यवस्था" के क्षेत्रों के मध्य सही विभेद समुदाय या विनिर्दिष्ट स्थानीयता पर किसी कृत्य की पहुँच की मात्रा एवं सीमा पर अवलंबित होता है – ऐसा आवश्यक नही है कि लोक व्यवस्था मे व्यवधान कारित करने वाले कृत्य के गुण एवं प्रकृति में आवश्यक रूप से भेद हो, किन्तु समुदाय अथवा जनता तक पहुँच की मात्रा एवं सीमा में भेद होना चाहिए।

B. National Security Act (65 of 1980), Section 2(3) - *Detention - Public Order - What amounts to - Held - Petitioner along with his associates and armed with swords, brutally murdered the Priest at the time of worship when others were present - Held - This crime was committed by detenu at a public place in the presence of number of people - It would have affect of disturbing the public tranquility and creating terror in the locality.* (Para 10)

---

*W.P. No.784/2010 (Jabalpur)

ब. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 2(3) – निरोध – लोक व्यवस्था – किस कोटि में आता है – अभिनिर्धारित – याची ने पूजा के समय जब अन्य लोग भी उपस्थित थे, अपने सहयोगियों के साथ तलवार से पुजारी की नृशंसतापूर्वक हत्या कर दी – अभिनिर्धारित – निरुद्ध व्यक्ति द्वारा यह अपराध लोक स्थान पर अनेक लोगों की उपस्थिति में किया गया – यह लोक शांति भंग करने तथा उस स्थान में आतंक उत्पन्न करने का प्रभाव रखता है।

Manish Datt, for the petitioner.
R.L. Gupta, Assistant Solicitor General, for the respondent No.1.
J.K. Jain, Dy.A.G., for the respondent Nos.2 to 4.

ORDER

The Order of the Court was delivered by RAKESH SAKSENA, J. :–By this petition filed under Article 226 of the Constitution of India, the petitioner prays for quashment of order dated 9th November, 2009 (Annexure P/1) passed by respondent no.3/District Magistrate, Bhopal and to quash the order dated 14.12.2009 (Annexure P/3) passed by respondent no.2/ State of Madhya Pradesh and to revoke the detention order of his relative Athar S/o Babu Khan-detenu.

2. The facts recited in the petition as well as in the return submitted by the respondent no.2/State, in brief, are that the petitioner's relative Athar has been detained by virtue of order dated 9th November, 2009 passed by respondent no-3/ District Magistrate Bhopal in exercise of powers conferred by sub section (2) of section 3 of the National Security Act (hereinafter referred to as the 'Act' for short). This order was confirmed by the order dated 14.12.2009 (Annexure P/3) passed by respondent no.2/State Government in exercise of powers confirmed under Section 12(1) of the Act after receiving the report from the Advisory Board.

3. The detention of the detenu Athar is based on the grounds referred to in Annexure P/2 as follows:

(1) दिनांक 10/01/98 को आपने रीतेश कुमार के घर के सामने खड़े होकर उसे गंदी गंदी गालियां दी एवं मारपीट कर चोट पहुँचाई तथा जान से मारने की धमकी दी जिससे क्षेत्र में भय एवं आतंक व्याप्त हो गया एवं क्षेत्र में भगदड़ मच गई जिससे लोक व्यवस्था को आसन्न खतरा उत्पन्न हो गया ।

(2) दिनांक 16/05/08 को आपने अपने साथियों के साथ एक राय होकर रोहित मीना के घर में अनाधिकृत प्रवेश कर तोड़ फोड़ की एवं मां–बहन की अश्लील गालियां देकर मारपीट की जिससे क्षेत्र में भय एवं आतंक व्याप्त होकर लोक व्यवस्था को खतरा उत्पन्न हो गया ।

(3) दिनांक 4/11/09 को आपने अपने अन्य साथियों के साथ घातक हथियार तलवार, डण्डे आदि से लैस होकर पीपुल्स अस्पताल के सामने आम रोड के समीप बने धार्मिक स्थल हनुमान मंदिर में प्रवेश कर प0 दीनदयाल शर्मा की निर्मम हत्या कर दी । जिससे क्षेत्र में तनाव उत्पन्न हो गया तथा साम्प्रदायिक तनाव व्याप्त होकर लोक व्यवस्था को खतरा उत्पन्न हो गया ।

(4) दिनांक 6/11/09 को रात्रि में थाना निशातपुरा में सूचना दी गई कि पं0 दीनदयाल की हत्या के मामले में आप कैंची छोला व्यस्ततम क्षेत्र में तलवार लेकर आम नागरिकों को धमकियॉ दे रहे हैं कि पुजारी बहुत हिन्दुत्ववादी बात करता है इस पुजारी का काम लगाना है साथ ही किसी ने गवाही दी तो उसका भी वही हाल कर दूंगा जो पुजारी का किया है । आपके इस कृत्य से क्षेत्र में भगदड़ मच गई व मुश्किल लोगों को विश्वास में लेकर नियमित कारोवार जारी रखने की हिदायत दी गई । आपके उक्त कृत्य से क्षेत्र की लोक व्यवस्था को आसन्न खतरा उत्पन्न हो गया ।

(5) दिनांक 6/11/09 को पीएसआई अशोक मरावी जो उक्त घटित अपराध से उत्पन्न शांति सुरक्षा व्यवस्था डियूटी में लगे हुए थे को सूचना प्राप्त हुई कि हत्या के मामले में फरार अतहर तलवार लेकर पटेल मार्केट में लोगों को भयभीत कर रहा है जिससे क्षेत्र में भगदड़ मच गई एवं लोक व्यवस्था को खतरा उत्पन्न हो गया ।

4. It has been mentioned in the detention order that the detention of the detenu is necessary for preventing his criminal activities, affecting the maintenance of public order and peace and tranquility of public at large.

5. Learned counsel for the petitioner has challenged his detention mainly on the ground that the grounds number 1 and 2 were stale as they pertained to the offences alleged to have been committed by him on 10.1.1998 and 16.5.2008 and that all the grounds right from ground number 1 to ground number 5 pertained to law and order and not to the maintenance of public order as they did not disturb the public tranquility at large.

6. Per contra, in its return respondent/State submitted that the order of detention was passed by District Magistrate/Bhopal after being satisfied that the detention of Athar under the provisions of the Act was essential for maintenance of the public order. The Advisory Board as well as Govt. of M.P., Home Department confirmed the detention order after appreciating the facts. The grounds on which the detention order was passed were clear, relevant and pertained to disturbance of public order and not merely the law and order. Since there was continuity in commission of the offence by the detenu, grounds number 1 and 2 cannot be said to be stale.

7. We have heard the learned counsel for the parties and perused the grounds and the material on record produced by the counsel for the State.

8. On perusal of ground number 1, which pertains to offence under Sections 294, 323, 506 of the Indian Penal Code, it is revealed that in the night of 10.1.1998, detenu abused, assaulted and intimidated complainant Ritesh Kumar infront of his house situated at Shavri Nagar, Bhopal. On perusal of facts enumerated in the ground, it is apparent that it was a case which at the most affected law and order. It does not appear that it had any affect of disturbing the public tranquility. It may be said to be a infraction of law affecting the complainant individually, but it cannot be described to affect the even tempo of life of public at large. This ground apparently appears not relevant for forming the basis of subjective satisfaction for passing the detention order.

9. Ground number 2 is an incident in which on 16.5.2008 at about 12.30 0' clock in the night detenu with his associates entered the house of complainant Rohit Meena and abused and intimidated him. Apparently the acts of detenu as described in the ground are merely individual as they affect the complainant only and do not trouble rest of the community in any manner. Thus, they cannot be termed to be breaches of public order.

10. Ground number 3 is that on 4.11.2009 at about 8.30 P.M. detenu along with his seven associates armed with swords and sticks, entered in the Hanuman Temple situated on the public road infront of Peoples Hospital and committed brutal murder of Pt. Deen Dayal Sharma. When other people tried to intervene, they were also assaulted. This offence was committed at the time of worship. From the facts narrated in the first information report of the incident, it is apparent that this crime was committed by detenu at a public place in the presence of number of people. It can be assumed that it would have affect of disturbing the public tranquility and creating terror in the locality. This would certainly come within the ambit of the concept of the public order and not merely the law and order. The true distinction between the areas of 'law and order' and 'public order' lies upon the degree and extent of the reach of an act upon the community or specified locality. The acts causing disturbance of public order need not necessarily differ in nature and quality, but must differ in the degree and extent of reach upon the community or public at large. In our opinion, this sole incident is enough to form the basis of subjective satisfaction of the Detaining Authority for passing the detention order. Committing murder at the time of worship in the temple in presence of number of people would certainly have affect of disturbing even tempo of the life of community in a locality. It cannot be held that it affected merely an individual.

11. The other grounds taken into consideration by the Detaining Authority comprised of the acts of detenu on 6.11.2009, wherein he is said to have terrorized the public near Chola Mandir and Bhanpur by brandishing sword and holding out threats that he had committed murder of the Priest of Hanuman Temple, who was supporter of Hindus and if any body spoke against him, he would do away with him. From the Rojnamcha entries no. 213 of 6.11.2009 and 529 of 6.11.2009, it appears that because of terror caused by the act of detenu shops of locality were closed and that people were not ready to lodge the report out of fear. The aforesaid activities of detenu clearly demonstrate that by his acts panic and terror was created in a large section of community/society.

12. In our opinion, ground numbers 3, 4 and 5 were the kind of incidents which were definitely prejudicial to the maintenance of public order and the Detaining Authority was fully justified in forming the subjective satisfaction on the basis of these grounds.

13. Though we have found that grounds no. 1 and 2 were not relevant for forming the basis of subjective satisfaction for passing the detention order, yet the

detention order passed by the detaining authority is not rendered invalid by virtue of Section 5(A) of the 'Act', as the other grounds which have been found valid are clearly separable from them.

14. For the reasons stated above, we find no ground to interfere in the impugned detention order passed by the District Magistrate, Bhopal. This petition is, accordingly, dismissed.

Petition dismissed.

I.L.R. [2010] M. P., 2504
WRIT PETITION
Before Mr. Justice Piyush Mathur
4 August, 2010*

FULJENCIA KUJUR (SMT.) ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

Service Law - Civil Services (Promotion) Rules, M.P. 2002 - *Promotion - D.P.C. recommending the name of the petitioner for promotion but D.E.O. withholding the same - Action challenged - Held - When the candidature of the petitioner gets scrutinized by the D.P.C. and recommendation for promotion are made by D.P.C. for promoting the petitioner, it could not be subjected to further scrutiny at the hands of the D.E.O. - The benefit of promotion could not be denied on the ground of appearance or non-appearance of the employee before the authority competent to issue promotion order.* **(Para 8)**

सेवा विधि – सिविल सेवा (पदोन्नति) नियम, म.प्र. 2002 – पदोन्नति – विभागीय पदोन्नति समिति (डी.पी.सी.) ने पदोन्नति के लिये याची के नाम की अभिशंसा की परन्तु जिला शिक्षा अधिकारी ने उसे रोक लिया – कार्यवाही को चुनौती दी गयी – अभिनिर्धारित – जब याची की पदोन्नति के लिये याची की अभ्यर्थिता का डी.पी.सी. द्वारा संवीक्षण कर लिया गया और डी.पी.सी. द्वारा पदोन्नति की अभिसंशा की गयी, तब उसे जिला शिक्षा अधिकारी के हाथों और आगे संवीक्षा के अध्यधीन नहीं रखा जा सकता – पदोन्नति जारी करने के लिये सक्षम प्राधिकारी के समक्ष कर्मचारी की उपस्थिति या अनुपस्थिति के आधार पर पदोन्नति के लाभ से वंचित नहीं किया जा सकता।

Arvind Dudawat, for the petitioner.
Praveen Newaskar, Dy.G.A., for the respondents/State.

ORDER

PIYUSH MATHUR, J. :–The petitioner complains in this Writ Petition that inspite of being considered for her promotion by the Departmental Promotion Committee, for the post of Head Master, Middle School, the Promotion Order has not been issued in her favour by the respondents for no good or known reasons.

2. Shri Dudawat Learned Counsel for the Petitioner submit that the petitioner

---

*W.P. No.3757/2009(S) (Gwalior)

was initially appointed on the post of Assistant Teacher and subsequently vide Order Dated 13.11.2002 (Annexure P/4), she was promoted to the post of Head Master, Primary School (which is equivalent to Upper Division Teacher) and from the date of her promotion, the petitioner is continuously working as Head Master of the Primary School.

3. Learned Counsel for the Petitioner submit that when a meeting of the Departmental Promotion Committee was convened, the petitioner was found to be eligible for being promoted to the post of Head Master, Middle School and necessary recommendations were made by the Departmental Promotion Committee in her favour, pursuant to which, the District Education Officer, Guna had intimated her vide Letter Dated 10.07.2009 that a Counselling is scheduled to be held on Date 18.07.2009, where the petitioner was directed to remain present at the counselling.

4. Learned Counsel for the Petitioner makes a grievance that no Counselling was organized on Date 18.07.2009 and no subsequent Date was given to the petitioner for attending the subsequent counselling and suddenly One Promotion Order was issued on Date 28.07.2009 (Annexure P/8), whereby as many as 18 persons were promoted but the petitioner was not promoted inspite of recommendation of the Departmental Promotion Committee.

5. I have heard Shri Arvind Dudawat, Learned Counsel for the Petitioner and Shri Praveen Newaskar, Learned Dy. Government Advocate and perused the record.

6. This Writ Petition has been preferred by the petitioner for the redressal of a limited grievance that the respondents should be directed to issue promotion order in favour of the petitioner, on the strength of the recommendation made in her favour by the Departmental Promotion Committee.

7. Learned Deputy Government Advocate appearing for the respondents/State submit that the case of the petitioner for promotion was certainly considered by the Departmental Promotion Committee and necessary recommendations were made for promoting the petitioner to the post of Head Master, Middle School, but since at the time of holding Counselling on Date 27.07.2009, it was found that the petitioner lack eligibility for promotion to the post of Head Master, Middle School, therefore no orders of promotion could be issued in favour of the petitioner.

8. The entire Service Jurisprudence and more particularly the M.P. Civil Services (Promotion) Rules, 2002 provide for promoting employees by organizing meeting of the Departmental Promotion Committee and when the candidature of the petitioner gets scrutinized by the Departmental Promotion Committee and recommendation for promotion are made by D.P.C. for promoting the petitioner on the post of Head Master, Middle School, it could not be subjected to further scrutiny at the hands of the District Education Officer and benefit of promotion could not be denied on the ground of appearance or non-appearance of the employee before the authority competent to issue Promotion Order.

9. Therefore it is evident from the perusal of the documents annexed alongwith the Writ Petition and the reply filed by the respondents that the District Education Officer, Guna was having no jurisdiction or authority to either refrain from issuing promotion order in favour of the petitioner or to simply sit tight over the matter by not issuing Promotion Order, inspite of clear recommendation made by the Departmental Promotion Committee in favour of the petitioner for promoting her to the post of Head Master of the Middle School.

10. Therefore this Writ Petition is allowed. The respondents are directed to issue formal Promotion Order in favour of the Petitioner for the post of Head Master, Middle School within a maximum period of 15 days from Today, on the strength of the recommendation made by the Departmental Promotion Committee.

11. With the aforesaid observation, this Writ Petition is allowed and finally disposed of.

Petition allowed.

I.L.R. [2010] M. P., 2506
WRIT PETITION
Before Mr. Justice Piyush Mathur
4 August, 2010*

RAMESH CHANDRA GUPTA ... Petitioner

Vs.

STATE OF M.P. & ors. ... Respondents

A. **Service Law** - ***Withholding of Gratuity and GPF - Natural justice -*** *Petitioner Gratuity and GPF withheld without holding an enquiry or issuance of show cause notice - Held - Action cannot be said to be proper.* (Para 8)

क. सेवा विधि – उपदान और सामान्य भविष्य निधि का रोका जाना – नैसर्गिक न्याय – बिना जाँच करवाये या कारण बताओ सूचनापत्र जारी किये याची की उपदान और साधारण भविष्य निधि रोकी गयी – अभिनिर्धारित – कार्यवाही को उचित नहीं माना जा सकता ।

B. **Service Law** - ***Civil Services (Pension) Rules, M.P. 1976, Rule 9(b)(2) - Withholding of Gratuity and GPF without obtaining sanction from the Governor - Held - Any outstanding amount against a retired employee can only be deducted or withheld after obtaining proper sanction/approval of the Governor - No such sanction/approval taken by the respondents before withholding retiral dues - The action of respondents seriously violates the mandate reflecting in the Pension Rules - Withholding of the retiral dues (GPF and Gratuity) would run counter to the Pension Rules.*** (Para 8)

ख सेवा विधि – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9(बी)(2) – राज्यपाल से मंजूरी प्राप्त किये बिना उपदान और सामान्य भविष्य निधि का रोका जाना – अभिनिर्धारित – केवल राज्यपाल की उचित मंजूरी/अनुमोदन प्राप्त करने के पश्चात्

*W.P. No.5412/2008(S) (Gwalior)

ही सेवानिवृत्त कर्मचारी के विरूद्ध किसी बकाया राशि की कटौती की जा सकती है अथवा रोकी जा सकती है – प्रत्यर्थियों द्वारा सेवानिवृत्ति बकाया रोकने के पूर्व ऐसी कोई मंजूरी/अनुमोदन नहीं लिया गया – प्रत्यर्थियों का कार्य पेंशन नियमों में दिये आदेश का गम्भीर रूप से उल्लंघन करता है – सेवानिवृत्ति बकाया (जी.पी.एफ. एवं उपदान) का रोका जाना पेंशन नियमों के विरुद्ध होगा।

C. Service Law - *Civil Services (Pension) Rules, M.P. 1976, Rule 65 - Whether dues would include Miscellaneous Advance - Held - No - For applicability of Rule 65, firstly the amount should fall into the category of 'dues' and secondly such dues should be specified dues like house building or conveyance advance or arrears of rent or overpayment of salary or allowances as prescribed in the explanation appended to Rule 65, but it would not include, "Miscellaneous Advance" upon not falling into the category of 'dues' - Respondents are directed to release the entire amount of GPF and gratuity and all other retiral dues - Petition allowed.* (Para 9)

ग. सेवा विधि – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 65 – क्या देयक में विविध अग्रिम सम्मिलित होगा – अभिनिर्धारित – नहीं – नियम 65 की प्रयोज्यता के लिये, प्रथमतः राशि 'देयकों' की श्रेणी मे आनी चाहिए और द्वितीयतः ऐसें देयक विनिर्दिष्ट देयक होने चाहिये जैसे कि मकान बनाना या अग्रिम वाहन भत्ता या भाड़े का बकाया या वेतन अथवा भत्ते का अधिक भुगतान जैसा कि नियम 65 से संलग्न स्पष्टीकरण में विहित है, परंतु उसमें "विविध अग्रिम" जो "देयक" की श्रेणी में नहीं आते, सम्मिलित नहीं होंगे – सामान्य भविष्य निधि एवं उपदान तथा सभी अन्य सेवानिवृत्ति देयों की संपूर्ण राशि को मुक्त करने के लिये प्रत्यार्थियों को निर्देशित किया गया – याचिका मंजूर।

Amit Lahoti, for the petitioner.
Deepak Khot, for the G.A., respondent/State.

ORDER

PIYUSH MATHUR, J. :–The Petitioner has preferred this Petition against the inaction on the part of Respondents in not disbursing to him the entire Retiral Dues including the amount of General Provident Fund (GPF) and Gratuity.

2. Shri Amit Lahoti, Learned Counsel appearing for Petitioner submits that although during the pendency of the Writ Petition, the Pension has been released to the Petitioner but his Gratuity and GPF amount have yet not been released on the ground stated in the Return of the State Government that an amount of Rs. 2,28,294/- was lying as "Miscellaneous Advance" given to the Petitioner in relation to the pending Projects and since the Petitioner did not deposit the same before his retirement, his Gratuity and G.P.F. has been withheld. Shri Lahoti further submits that advancement of Miscellaneous Advance amount is a common practice prevalent in the Department and Engineers are authorised to utilize this amount in relation to on going Projects of the Department and as such it could not be treated to be one such amount, which was utilized/mis-utilized or misappropriated by the employee/Petitioner for his own individual benefit and based upon such an interpretation, the amount of GPF and Gratuity could have not been withheld by the Department.

3. Shri Lahoti submits that in an identical case being W.P. No. 742/2006 (S) *(Khanivalal Gupta vs. State of M.P.)* the State Government has taken a similar stand but has given a different interpretation to the advancement of "Miscellaneous Advance" in the following words:

> "(5.15) That facts mentioned in para 5.15 of the petition as stated by the petitioner it is submitted that Misc. Advance placed in the name of petitioner has to be cleared ultimately on availability of funds and allotment from the Government but the same will remain continue in the name of the petitioner as Misc. Advance so long as the fund and allotment is made available by the Government."

4. Shri Lahoti submits that while examining the aforesaid matter in W.P. No. 742/2006 (S), this Court had examined the facts and law and had specifically analyzed the meaning and scope of the term "Miscellaneous Advance" and had found that it is a technical term which provide for advancement of Funds to the Competent Authority for completion of pending Projects, as per the practice of the Department, which could not be described to be any kind of misappropriation of Funds. Relevant paragraph (6) of the Order passed by this Court in W.P. No. 742/2006 (S) on Date 30/08/2007 is quoted herein below:

> (6)"From the facts of the case it is clear that the petitioner was posted as Executive Engineer at Jaura he had sanctioned payment of Rs. 70 Lacs to a private contractor and the amount was also paid to him. However because there was no allotment from the Government, hence it was shown as miscellaneous advance against the petitioner. The respondent themselves in para 5.15 of the return have stated that as soon as the allotment be made by the Government the amount which was shown against the petitioner be cleared of. It is clear from the fact that it is a technical objection apparently there is no misappropriation of any fund by the petitioner neither any enquiry is pending against him. It is not a case that an amount has to be recovered from the petitioner on account of pecuniary loss. In such circumstance the petitioner is entitled for no objection certificate after his retirement for the purpose of clearance of retiral dues and pension."

5. Shri Lahoti submits that when the Petitioner has not misappropriated any amount and an amount of Rs. 2,28,294/- was simply found to be lying as "Miscellaneous Advance" which was allegedly given to the Petitioner, during tenure of his service, the same was required to be adjusted in accounts, soon upon receiving relevant sanction/grant from the State Government. He submits that only on the strength of a Letter written by the Executive Engineer, Water Resources Department, Bhind, the amount of Gratuity and GPF were withheld,

without holding any enquiry or issuing any Show Cause Notice or by affording an opportunity of hearing. Shri Lahoti submits that after retirement of the Petitioner, no deduction could have been made without obtaining proper sanction/approval of the Governor and without obtaining such an approval/sanction, no action for withholding of Retiral Dues could have been taken to the detriment of the interest of the Petitioner.

6. Shri Deepak Khot, Learned Government Advocate appearing for Respondents/State submit that since the Executive Engineer, Water Resources Department had found that a miscellaneous amount of Rs. 2,28,294/- is lying in the account of the Petitioner, therefore the Department had withheld the payment of retiral dues for adjusting this amount, from out of the Funds payable to the Petitioner by way of GPF and Gratuity. Shri Khot relied upon Rule 65 of the Madhya Pradesh Civil Services (Pension) Rules, 1976 to justify its action: Rule 65 is quoted hereinbelow;

> **"65. Recovery and adjustment of Government dues.**
>
> (1) It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.
>
> (2) Where a retiring Government servant does not clear the Government dues and such dues are ascertainable-
>
> (a) an equivalent cash deposit may be taken from him; or
>
> (b) out of the gratuity payable to him, his nominee or legal heir, an amount equal to that recoverable on account of ascertainable Government dues shall be deducted.
>
> Explanation: 1. The expression "ascertainable Government dues" includes balance of house building or conveyance advance, arrears of rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of income-tax deductible at source under the Income-tax Act, 1961."

7. I have heard Shri Amit Lahoti, Learned Counsel and Shri Deepak Khot, Learned Government Advocate and perused the record of case.

8. From the perusal of the pleadings of the parties, as also from a perusal of the documents, it is evident that before making deduction of Rs. 2,28,294/- from out of the payable dues of GPF and Gratuity, the Respondents did not care to issue any Show Cause Notice to the Petitioner and no Enquiry was conducted for ascertaining the liability of the Petitioner for making payment of this amount to the Department. It is also evident from the pleadings of the parties that the action of withholding of G.P.F. and Gratuity was ordered only after the retirement of the Petitioner. It would be relevant to mention that Clause 2 of Rule 9(b) of Madhya Pradesh Civil Services (Pension) Rules, 1976 provide that any outstanding

amount against a retired employee can only be deducted or withheld after obtaining proper sanction/approval of the Governor and since no such sanction/approval was taken by the Respondents before withholding retiral dues, the action of respondents seriously violate the mandate reflecting in the Pension Rule and from this view of the matter, withholding of the retiral dues (GPF and Gratuity) would run counter to the Pension Rules.

9. So far as the applicability of Rule 65 of Pension Rule is concerned, the plain language of the Rule makes it very clear that firstly; the amount should fall into the category of "dues" and secondly; such dues should be specified dues like, house building or conveyance advance or arrears of rent or over-payment of Salary or Allowance etc. as prescribed in the Explanation appended to Rule 65, but it would not include "Miscellaneous Advance" upon not falling into the category of 'dues', therefore it would be difficult to stretch the scope of Rule 65 to such un-imaginable length and breadth and only for the purpose of searching some source of power for withholding retiral dues of an employee, no such offence could be permitted to be done with an innocently carved out provision of law, by allowing the State Government to commit such an illegality.

10. Consequently, the Writ Petition succeeds and resultantly it is allowed. The action of State Government of withholding of G.P.F. And Gratuity or making deduction of Rs. 2,28,294/- out of the GPF and Gratuity of the Petitioner is hereby quashed and the Respondents are directed to release the entire amount of GPF and Gratuity and all other Retiral Dues to the Petitioner, within a period of Three Months from the date a Certified Copy of this Order is presented before the Respondents. It is further directed that in case, the Respondents make any default in releasing payment of the amount of GPF and Gratuity after expiration of the aforesaid period of Three Months, then the Respondents shall be liable to pay interest on the entire amount at the rate of 6% per annum, till the date of actual payment to Petitioner.

With the aforesaid observation, this Writ Petition is allowed and finally disposed of.

There shall be no order as to costs.

Petition allowed.

I.L.R. [2010] M. P., 2511
WRIT PETITION
Before Mr. Justice R.S. Jha
5 August, 2010*

RAVINDRA KUMAR GUPTA ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

A. Service Law - Land Revenue Code, M.P. (20 of 1959), Sections 22 & 104(2) - *Termination of Patwari - Held - The Sub Divisional Officer has the authority to exercise powers of the Collector u/s 104(2) of the Code regarding appointment of Patwaris - The Sub Divisional Officer has the power to appoint and dismiss Patwari.* (Paras 7 & 10)

क. सेवा विधि – भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 22 व 104(2) – पटवारी की सेवा समाप्ति – अभिनिर्धारित – पटवारियों की नियुक्ति के संबंध मे संहिता की धारा 104(2) के अंतर्गत उपखण्ड अधिकारी को कलेक्टर की शक्तियाँ प्रयोग करने का प्राधिकार है – उपखण्ड अधिकारी पटवारी को नियुक्त और पदच्युत करने की शक्ति रखता है।

B. Practice & Procedure - *Judgments - Judicial discipline - Held - Decisions rendered on the same facts of law have to be followed and subsequently no authority, whether quasi-judicial or judicial, can generally be permitted to take a different view - However this mandate is subject to the usual gateways of distinguishing the earlier decisions or where the earlier decision is per incuriam.* (Para 18)

ख. पद्धति और प्रक्रिया – निर्णय – न्यायिक अनुशासन – अभिनिर्धारित – विधि के समान तथ्यों पर दिये गये विनिश्चयों का अनुसरण करना होगा और तत्पश्चात् किसी प्राधिकारी को, चाहे न्यायिक–कल्प हो अथवा न्यायिक, अलग दृष्टिकोण लेने की सामान्यतः अनुमति नहीं दी जा सकती – तथापि, यह आदेश, पूर्वतर विनिश्चयों को सुभिन्न करने के साधारण रास्तों के अधीन है अथवा जहां पूर्वतर विनिश्चय अनवधानता के कारण है।

Cases referred :

ILR (2008) M.P. 1436, W.P. No.8777/2003 decided on 25.09.2008, W.P. No.7785/2003 decided on 10.01.2005, 1978(II) MPWN Note 116, 1995 RN 67, (1988) 2 SCC 602, (1990) 3 SCC 682, (2006) 5 SCC 752, (2006) 3 SCC 1, 2003(1) MPLJ 513.

V.P. Nema, for the petitioner.
Vivek Agrawal, G.A., for the respondents.

ORDER

R.S. Jha, J. :–The petitioner, who is a Patwari of Revenue Circle Bahoriband, Patwari Halka No.23/38 of Village Udaipur, by way of the instant petition has assailed the legal validity of order dated 10.7.2006 passed by the Sub

*W.P. No.10863/2009 (Jabalpur)

Divisional Officer, Sihora by which the petitioner's services as Patwari have been terminated and order dated 16.10.2007 passed by the Collector dismissing his appeal.

2. It is stated by the learned counsel for the petitioner that the petitioner has filed a second appeal before the Commissioner, Jabalpur Division which is pending adjudication but as the very initiation of proceedings and the order of termination of the petitioner is without jurisdiction and authority of law, as held by this Court in the case of *Vinod Kumar Khare vs. State of M.P. And Others*, reported in ILR (2008) M.P. 1436 and the judgment in the case of *Phulloo Ram Kol vs. State of M.P. And Others*, W.P No.8777/2003 decided on 25.9.2008, the petitioner has filed the present petition during the pendency of the appeal before the Commissioner.

3. It is further submitted by the learned counsel for the petitioner that the petitioner is a Patwari whose appointing/disciplinary authority is the Collector as prescribed in Section 104(2) of the M.P. Land Revenue Code, 1959 (hereinafter referred to as 'the Code') and the notification issued under section 24 of the Code does not confer any power or authority upon the Sub Divisional Officer, inspite of which the impugned order of termination in respect of the petitioner dated 10.7.2006 has been passed by the Sub Divisional Officer, Sihora which per se is without authority or jurisdiction. The learned counsel for the petitioner has relied upon the judgment of this Court rendered *Vinod Kumar Khare* (supra) and *Phulloo Ram Kol* (supra) to submit that the aforesaid legal position has already been settled by this Court and, therefore, the impugned order of termination of the petitioner be quashed.

4. I have heard the learned counsel for the parties at length. Section 104(2) of the Code reads as under:-

> "(2) The Collector shall appoint one or more patwaris to each patwari circle for the maintenance and correction of land records and for such other duties as the State Government may prescribe."

Section 22 of the Code, which is relevant for the purpose of decision of the issue, raised by the petitioner, is in the following terms:-

> **"Sub-Divisional Officers**-(1) The Collector may place one or more Assistant Collectors or Deputy Collectors in-charge of a sub-division of a district or in-charge of two or more sub-divisions of a district.
>
> (2) Such Assistant Collector or Deputy Collector shall be called a Sub-Divisional Officer and shall exercise such powers of a Collector as the State Government may, by notification, direct."

5. In exercise of powers conferred by Section 22 sub-section (2) of the Code, the State government issued notification No.11429-CR-653-V11-N-2 dated

1.10.1959 which was published in the M.P. Gazette dated 9.10.1959 which is in the following terms:-

> "In exercise of the powers conferred by sub-section (2) of section 22 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959), and in supersession of all previous notifications on the subject, the State Government hereby directs that all Sub-Divisional Officers shall exercise powers of a Collector under sub-section (2) of section 57, sub-section (5) of section 59, section 87, sub-section (2) of section 104 and sub-section (2) of section 110 of the said Code, within their respective jurisdictions."

6. A conjoint reading of the provisions of Section 22 and Section 104(2) of the Code and the notification issued under Section 22 of the Code, makes it abundantly clear that the power of appointment of Patwaris for each Patwari Circle has been conferred upon the Collector under section 104(2) of the Code and that under section 22(2) of the Code the Sub Divisional Officer has been empowered to exercise such powers of the Collector as the State Government may by notification direct.

7. It is further clear that in exercise of powers under section 22 (2) of the Code, the State Government has issued the aforementioned notification authorizing the Sub Divisional Officer to exercise powers of the Collector under section 104(2) of the Code amongst other provisions. It is, therefore, manifestly clear that the Sub Divisional Officer has the authority to exercise powers of the Collector under section 104 (2) of the Code regarding appointment of Patwaris in view of the aforesaid provisions. Apparently, as the Sub Divisional Officer has the power to appoint Patwaris he consequently also has the power to dismiss a Patwari.

8. The aforesaid legal position was considered by a Division Bench of this Court in the case of *Manmohan Singh Thakre vs. Govt. of M.P. and others,* 1978 (II) MPWN Note 116, wherein it was held as under:-

> "Under section 104 of the Code, the Collector has been designated the person who shall appoint a Patwari, Under section 22 of the Code, the Sub Divisional Officer exercised such powers of a Collector as the State Government by notification directed. By Notification No.11429-CR-635-VII-N-2 published in the Madhya Pradesh Rajpatra dated 9.10.1959 and notification No.13691-CR-770-VII-N (Rules), published in the Madhya Pradesh Rajpatra dated 1.10.1960, the State Government in exercise of the powers under section 22 of the code directed all the sub-Divisional Officers to exercise powers of a Collector under sub-section (2) of section 104 of the Code. There is, therefore, no contention in the submission that the Sub-Divisional Officer had no power to remove the petitioner from service."

9. Another Division Bench of this Court, after taking into consideration the aforesaid provisions of law, has also held that the Sub Divisional Officer has the power to remove a Patwari from service, in the case of *Mangilal vs. State of M.P. and others*, 1995 RN 67 in the following terms:-

> "5. Section 22 of MPLJ Code dealt with the powers of SDO. Section 22(1) reads as follows:
>
> (1) "The Collector may place one or more Assistant Collector or Deputy Collectors incharge of a sub-division of a district or in-charge of two or more sub-divisions of a District.
>
> (2) Such Assistant Collector or Deputy Collector shall be called a sub-divisional Officer and shall exercise such powers of a Collector as the State Government may, by notification, direct."
>
> The State of Madhya Pradesh vide notification dated 9.10.59 has authorized all the S.D.Os to exercise powers u/s 104 (2) of the MPLR code, which reads as follows:
>
> "No.11429-CR-653-V11-N.2- in exercise of the powers conferred by sub-section (2) of section 22 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959), and in supersession of all previous notifications on the subject, the State Government hereby directs that all Sub-Divisional Officers shall exercise powers of a Collector under Sub-Section (2) of Section 57, sub-section (5) of section 59, section 87, sub-Section (2) of Section 104 and sub-section (2) of section 110 of the said Code, within their respective jurisdictions."
>
> 6. This goes to show that the powers of appointment of the patwari has been delegated to the S.D.O vide Notification referred above....."

10. Apart from the aforesaid provisions of law and the judgment of the Division Benches of this Court it is also clear from a perusal of the Schedule appended to M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 framed pursuant to Rules 5, 8, 10, 24 and 29 of the Rules, that the Sub Divisional Officer is the appointing as well as Disciplinary Authority of Patwaris.

11. From a perusal of the judgment in the case of *Vinod Kumar Khare* (supra) relied upon by the petitioner and which has subsequently been relied upon by this Court in *Phulloo Ram Kol* (supra), it is clear that it was passed in the light of the decision of this Court rendered in W.P No.7785/2003 *(Ashok Kumar Khare vs. State of M.P. and others)* decided on 10.1.2005.

12. From a perusal of the observations in the judgment of *Ashok Kumar Khare* (supra) which were made after quoting Section 104 and 24 of the Code (and not Section 22) which have been quoted in the case of *Vinod Kumar Khare* (supra)

in para-6, it is clear that the provisions of Section 22 of the Code and notification issued thereunder specifically conferring powers of the Collector under section 104(2) of the Code upon the Sub Divisional Officer were not brought to the notice of the Court nor were the Division Bench judgment rendered in the case of *Manmohan Singh Thakre* (supra) and *Mangilal* (supra) brought to the notice of this Court. It is also clear that this Court considered the notification issued under the provisions of Section 24 of the Code, but did not take into account or consider the notification published on the same date i.e. 9.10.1959 issued under section 22 of the Code and on that account observed that there was no conferral of powers on the Sub Divisional Officer to proceed against the Patwari.

13. In the case of *Vinod Kumar Khare* (supra) this Court has again considered only the notification issued under section 24 of the Code dated 9.10.1959. Apparently, the provisions of Section 22 of the Code and the notification issued thereunder conferring authority to exercise powers under section 104(2) of the Code upon the Sub Divisional Officer were not brought to the notice of the Court which is evident from the fact that the Court has gone on to state in para-11 that no other notification has been shown to the Court by which the Sub Divisional Officer has been empowered by the State Government to appoint a Patwari. The case of *Phulloo Ram Kol* (supra) has been decided on the basis of the judgment in the case of *Vinod Kumar Khare* (supra) and the provisions of Section 22 and the notification dated 9.10.1959 issued thereunder were again not placed before the Court.

14. In such circumstances it is clear that the provisions of Section 22 of the Code, the notification dated 9.10.1959 issued thereunder, the two Division Bench judgments of this Court and the Schedule appended to the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 were not placed before the Court while deciding the case of *Ashok Kumar Khare* (supra), *Vinod Kumar Khare* (supra) and *Phulloo Ram Kol* (supra). Had the said notification and judgments been placed before this Court the result would have been different.

15. In the case of *A. R. Antulay vs. R. S. Nayak and another,* (1988) 2 SCC 602, while dealing with a situation where a decision was rendered oblivious of the relevant provisions of law and a decision of the Supreme Court, it was held as under:-

> "42. It appears that when this Court gave the aforesaid directions on February 16, 1984, for the disposal of the case against the appellant by the High Court, the directions were given oblivious of the relevant provisions of law and the decision in *Anwar Ali Sarkar case* (1952 SCR 284; AIR 1957 SC 75; 1952 Cri LJ 510). See *Halsbury's Laws of England,* 4th edn., Vol.26, page 297, para 578 and page 300, the relevant notes 8, 11 and 15; Dias on Jurisprudence, 5th edn., pages 128 and 130; *Young v. Bristol*

Aeroplane Co. Ltd. (1944) 2 All ER 293, 300. Also see the observations of *Lord Goddard in Moore v. Hewitt* (1947) 2 All ER 270, 272-A and *Penny v. Nicholas* (1950) 2 All ER 89, 92-A. "Per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong. See *Mills Co. Ltd.* (1985) 3 SCR 26; 1985 Supp SCC 280. We are also of the opinion that in view of the clear provisions of Section 7(2) of the Criminal Law Amendment Act, 1952 and Articles 14 and 21 of the Constitution, these directions were legally wrong."

16. In the case of *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh vs. Presiding Officer, Labour Court, Chandigarh and Others,* (1990) 3 SCC 682, the Supreme Court while dealing with a question as to the meaning of the expression per incuriam held as under:-

"We now deal with the question of per incuriam by reason of allegedly not following the Constitution Bench decisions. The Latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam when this court has acted in ignorance of a previous decision of its own or when a High court has acted in ignorance of a decision of this Court. It cannot be doubted that Article 141 embodies, as a rule of law, the doctrine of precedents on which our judicial system is based. In *Bengal Immunity Company Ltd. v. State of Bihar* (1955) 2 SCR 603; AIR SC 66; (1955) 6 STC 446, it was held that the words of Article 141, "binding on all courts within the territory of India", though wide enough to include the Supreme Court, do not include the Supreme Court itself, and it is not bound by its own judgments but is free to reconsider them in appropriate cases. This is necessary for proper development of law and justice...."

17. The same view has again been reiterated by the Supreme Court in the case of *Mayur Subramanian Shrinivasan vs. CBI,* (2006) 5 SCC 752, in para-11 in the following terms:-

""Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law", as held in *Young v. Bristol Aeroplane Co. Ltd.* (1944) 2 All ER 293; 1944 KB 718, is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority". Same has been accepted, approved and adopted by this Court while

interpreting Article 141 of the Constitution of India, 1950 (in short "the Constitution") which embodies the doctrine of precedents as a matter of law. The above position was highlighted in *State of U.P. v. Synthetics and Chemicals Ltd.*, (1991) 4 SCC 139. To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience. The position was highlighted in *Nirmal Jeet Kaur v. State of M.P.*, (2004) 7 SCC 558); 2004 SCC (Cri) 1989."

18. In the case of *Bharat Sanchar Nigam Ltd. and Another vs. Union of India and Others*, (2006) 3 SCC 1, the Supreme Court while dealing with the nature of the precedential value of an earlier pronouncement by a Co-ordinate Bench has held that generally decisions rendered on the same facts of law have to be followed and subsequently no authority, whether quasi-judicial or judicial, can generally be permitted to take a different view however this mandate is subject to the usual gateways of distinguishing the earlier decisions or where the earlier decision is per incuriam.

19. A Five Judges Bench of this Court, in the case of *Jabalpur Bus Operators Association and others vs. State of M.P. and others*, 2003 (1) MPLJ 513, has also reiterated the aforesaid position of law.

20. In the instant petition, though the petitioner has relied upon the judgments in the case of *Vinod Kumar Khare* (supra) and *Phulloo Ram Kol* (supra), in view of the provisions of Section 22 of the Code and the Division Bench judgments in the case of *Manmohan Singh Thakre* (supra) and *Mangilal* (supra) wherein it has been held that the Sub Divisional Officer has been conferred with the powers of Collector under section 104(2) of the Code by notification dated 9.10.1959 issued under section 22 of the Code which apparently were not brought to the notice of the learned Single Judge while deciding the case of *Ashok Kumar Khare* (supra), *Vinod Kumar Khare* (supra) and *Phulloo Ram Kol* (supra), the said judgments are per-incuriam. I find myself bound and respectfully agree with the decision of the Division Bench in the cases of *Manmohan Singh Thakre* (supra) and *Mangilal* (supra) and, accordingly, I am of the considered opinion that the Sub Divisional Officer has exercised the powers of the Collector under Section 104(2) of the Code conferred upon him by Section 22 and the notification issued thereunder as well as the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 and in such circumstances it cannot be said that the impugned order of the Sub Divisional Officer dated 10.7.2006 is without jurisdiction and, therefore, patently erroneous.

21. The petition, as far as the aforesaid contention of the petitioner is concerned is, accordingly, rejected.

22. It is, however, submitted by the learned counsel for the petitioner that he be granted liberty to pursue the second appeal No.308/3-121/2007-08 filed by him

before the Commissioner, Jabalpur Division by taking up all the other issues involved in the case.

23. The petition is, accordingly, disposed of with liberty to the petitioner to pursue his second appeal before the Commissioner.

24. In the facts and circumstances of the case there shall be no order as to the costs.

Petition disposed of.

I.L.R. [2010] M. P., 2518
WRIT PETITION

Before Mr. S.R. Alam, Chief Justice & Mr. Justice Alok Aradhe

9 August, 2010*

ABHIMANYU SINGH & ors. ... Petitioners

Vs.

STATE OF M.P. & ors. ... Respondents

Constitution, Article 226 - *Public Interest Litigation - What does not amounts to - Municipal Corporation decided to sell houses in open auction - Petitioners claimed that houses be sold to them by extending the facility of payment of price in instalments as they are in possession of houses as tenants - Held - Pleadings made by petitioners and reliefs sought by them, by no stretch of imagination, can be said that public or the community at large has some pecuniary interest or some interest by which their legal rights or liabilities are affected - Instant writ petition cannot be entertained as public interest litigation - Writ petition dismissed.* (Paras 22 & 25)

संविधान, अनुच्छेद 226 – लोकहित वाद – की कोटि में क्या नहीं आता – नगरपालिक निगम ने खुली नीलामी में मकानों को विक्रय करने का निर्णय किया – याचियों ने दावा किया कि मूल्य का संदाय किस्तों में करने की सुविधा देकर मकान उन्हें विक्रय किये जाएँ क्योंकि वे किरायेदार के रूप में मकानों के कब्जे में हैं – अभिनिर्धारित – याचियों द्वारा किये गये अभिवचन और उनके द्वारा चाहे गये अनुतोषों से, कल्पना से परे यह नहीं कहा जा सकता कि लोक अथवा जन समुदाय का कोई धन संबंधी हित है अथवा ऐसा कोई हित है जिसके द्वारा उनके विधिक अधिकार या दायित्व प्रभावित होते हैं – प्रस्तुत रिट याचिका लोकहित वाद के रूप में ग्रहण नहीं की जा सकती – रिट याचिका खारिज।

Cases referred :

AIR 1979 SC 1628, AIR 2007 SC 414, 2010(1) MPLJ 486, (2003) 8 SCC 567, (1982) 3 SCC 235, (1988) 4 SCC 226, (1992) 4 SCC 605, (2003) 7 SCC 546, (2004) 3 SCC 349, (2010) 3 SCC 402 (relied upon).

R.K. Samaiya & Shailendra Samaiya, for the petitioners.

Kumaresh Pathak, Dy.A.G., for the respondent No.1.

Shobha Menon with *Rahul Choubey,* for the respondent Nos.2 & 3.

---

*W.P. No.9443/2009 (PIL) (Jabalpur)

ORDER

The Order of the Court was delivered by ALOK ARADHE, J. :–This writ petition has been filed as public interest litigation by the petitioner No. 1 alongwith two others, inter alia, on the allegations that sometime between 1988 to 1990 the Municipal Corporation, Singrauli constructed approximately 62 residential flats in Nav Jeevan Vihar in Singrauli District. Similarly, in order to provide housing accommodation to needy and weaker sections of the society, during the aforesaid period 126 Lower Income Group (LIG) quarters having an area approximately 540 sq.ft. each were constructed by Special Area Development Authority (SADA). It is alleged in the writ petition that Municipal Corporation, Singrauli incurred cost of approximately Rs.85,000/- on account of construction of flats whereas Special Area Development Authority incurred the cost of Rs.40,000/-on account of construction of said Lower income Group quarters. It is alleged that the construction work of residential flats and Lower Income Group quarters was of very poor quality and, therefore, nobody was prepared to purchase the aforesaid flats and Lower Income Group quarters.

2. Some time in the year 1994-95 the Lower Income Group quarters were sold to persons belonging to economically weaker sections of the society. In the year 1999 the residential flats constructed by the Municipal Corporation, Singrauli were let out on monthly rent of Rs.550/- to 51 members of Vindhya Nagar Shivaji Complex Residents Society, a society registered under the provisions of M.P. Society Registrikaran Adhiniyam, 1973. However, members of the said association learnt that Municipal Corporation, Singrauli,has passed a resolution on 18.6.2009. to sell the residential flats in question in an open auction and upset price of the flat was fixed at Rs.1,69,500/-. The petitioners thereupon submitted a representation in which it was stated that residential flats in their occupation, as tenants, be sold to them by granting them the facility of payment of sale consideration in instalments, as was done in the case of Lower Income Group quarters. However, without considering the representations submitted by the petitioners, a notice dated 28.8.2009 was issued by which the date of auction of the flats was fixed on 17.9.2009 and upset price of the flat was fixed at Rs.2,34 lacs. In the aforesaid factual backdrop the petitioner No. 1, who claims to be the President of the Vindhya Nagar Shivaji Complex Residents Society, alongwith two others who are members of the society in the instant writ petition has sought the relief of quashing of resolution dated 18.6.2009 (Annexure-P-4) as well as notice (Annexure-P-7) dated 28.9.2009, by which auction of flats in question was scheduled to be held on 17.9.2009.

3. Respondents No.2 & 3 have filed return in which, inter alia, it is contended that the instant writ petition cannot be treated as public interest litigation as individual grievances have been setforth in the writ petition. It has further been averred that flats in question and the Lower Income Group quarters were constructed under different schemes and, therefore, the plea of the petitioners that they are entitled to allotment of residential flats on the same rate is devoid of any merit.

4. This Court vide order dated 16.9.2009 while hearing the writ petition on the question of admission directed issuance of notice to the respondents. However, this Court declined to stay the auction which was scheduled to be held on 17.9.2009. It was further directed that the auction shall be held subject to the result of the writ petition and it was further directed that members of Shivaji Complex society whose members have been mentioned in Annexure-P-2 will not be dispossessed from the flats in their possession. The Municipal Corporation, Singrauli was directed to file an affidavit communicating the prices fetched at the auction.

5. In compliance of order passed by this Court on 16.9.2009, an affidavit was filed on behalf of the respondents No.2 & 3 in which, inter alia, it was stated that since the petitioners had spread rumors that stay has been granted, therefore, no auction could take place on 17.9.2009 and only two bidders participated in the auction as a result of which the auction had to be deferred and the same has been kept in abeyance. It was further stated in the affidavit that next date of auction is yet to be decided by the Corporation subject to further direction from this Court.

6. Thereafter, on 23.4.2010 when the matter came up for hearing, this Court found that there is possibility of amicable settlement of the controversy involved in the writ petition. Accordingly, the hearing of the writ petition was deferred and the petitioners were granted liberty to appear before respondent No.3, Commissioner, Municipal Corporation, Singrauli within a week. The Commissioner was directed to hold a meeting with the petitioners and it was further observed that in case any settlement is reached, the terms and conditions of the settlement shall be recorded and shall be produced before next date of hearing. It was made clear that if the parties fail to arrive at a consensus the matter would be heard on merits.

7. In compliance of the aforesaid order the petitioner No. 1 appeared before the respondent No.3 on 10.5.2010. The minutes of the meeting dated 10.5.2010 were filed alongwith the reply to application for taking additional facts and documents on record. From perusal of the minutes of the meeting it was found that the Municipal Corporation, Singrauli is ready and willing to allot the flats which are not yet auctioned to the members of the society on the upset price fixed for auction i.e. Rs.2.34 lacs.

8. On 21.5.2010 when the matter was taken up for hearing the learned counsel for the petitioners submitted that members of the society are ready and willing to purchase the flats at the upset price fixed at the time of holding of the auction on 03.3.2010. However, respondents No.2& 3 submitted that in the auction which was held on 03.3.2010, 45 members participated and their bids have been accepted. Only 17 flats are lying vacant and the aforesaid 17 flats can be allotted to the members of the society if they are ready and willing to pay the upset price fixed at Rs.2.34 lacs. Accordingly, the members of the society were directed to file an affidavit before the Commissioner, Municipal Corporation, Singrauli within a period of two weeks stating that they are ready and willing to purchase the flats

in question for consideration of Rs.2.34 lacs. The respondent no. 3 was also directed to file an affidavit indicating its willingness to allot the flats to the members of the society, in case, they are willing and ready to purchase the flats at the upset price.

9. On 02.7.2010 when the matter was taken up, the learned counsel for the respondents No.2 & 3 submitted that in compliance of this Court's order dated 21.5.2010 only petitioner No, 1 alongwith three others appeared before the Commissioner. It was further submitted that petitioner No. 1 filed affidavits of several persons, but on verification it was found that many of deponents who had sworn in the affidavit were not occupants of the flats in question.

10. The respondents No.2 & 3 have filed an application for bringing subsequent facts and affidavit on record, namely, I.A.No.7365/2010 in which, inter alia, it is stated that petitioner No. 1 alongwith Rajesh Agrawal, Satyendra Kumar and Anurag Kumar appeared before the Commissioner, Municipal Corporation, Singrauli on 04.6.2010 and filed 31 affidavits. On submissions of aforesaid affidavits the same were examined and it was found that 13 deponents who had disclosed themselves to be occupying flats No.32, 59, 57, 09, 23, 24, 29, 04, 17, 14, 50, 61 and 31 are actually not residing in said flats and, therefore, affidavits sworn by them are incorrect. It has further been stated that deponents who have disclosed to be residing in flats No. 13, 19, 21, 22, 49 and 53 participated in the bid held on 03.3.2010. The remaining 12 deponents did not participate in the auction which was held on 03.3.2010.

11. The petitioners have filed reply to the aforesaid application and have disputed the correctness of the contents mentioned therein. However, it has not been disputed that six members of the society participated in the auction which was held on 03.3.2010. It has further been stated that two members of the society, who are in occupation of flats No.21 and 53 have preferred to purchase other flats as per their own convenience.

12. Shri R.K.Samaiya, learned counsel for the petitioners submitted that initially a resolution was passed by the Municipal Corporation, Singrauli and upset price was fixed at Rs.1.65 lacs in respect of each flat. The aforesaid resolution was approved by the Mayor-in-Council, the Commissioner, therefore, had absolutely no authority in law to modify the resolution which was passed by the Corporation and approved by the Mayor-in-Council and to revise the upset price in respect of the flats in question to Rs.2.34 lacs. It was further contended that the Commissioner without considering the representation submitted by the petitioners fixed the auction on 17.9.2009. It was also submitted that the petitioners are also entitled to purchase the flats in question by making payment of sale consideration in instalments as was done in case of Lower Income Group quarters. It was further submitted that Municipal Corporation, Singrauli did not obtain prior permission of the State Government as required under sub-section 5 of Section 80 of the Municipal Corporation Act, 1956 before disposal of the property. He has also relied on Rule

7 of Transfer of Immovable Property Rules. It was further argued that respondents are bound by the doctrine of promissory estoppel. It was further contended that without seeking permission of this Court, the respondents No.2 & 3 had fixed the date of auction on 03.3.2010. In support of his submission, learned counsel has placed reliance on decisions of Supreme Court in *Ramana Dayaram Shetty vs. The International Airport Authority of India,* AIR 1979 SC 1628, *M.P.Mathur and others vs. D.T.C. And others,* AIR 2007 SC 414 and of this Court in *Association of the Residents of Mhow vs. Union of India and others,* 2010 (1) MPLJ 486.

13. On the other hand Mrs.Menon, learned senior counsel appearing for respondents No.2 & 3 while opposing the submissions made on behalf of the petitioners submitted that the instant writ petition cannot be entertained as a public interest litigation at the instance of the petitioners as the petitioners have setforth their individual grievance in the writ petition. Learned senior counsel in support of her submissions has placed reliance on the decision of Supreme Court reported in *Chairman & MD, BPL Ltd. vs. S.P.Gururaja and others,* (2003) 8 SCC 567. It was further contended that at no point of time any assurance was given on behalf of the Municipal Corporation to the petitioners that flats in question will be allotted by granting them the facility of instalments in payment. It was further contended that the State Government vide letter dated 28.3.2003 informed that Municipal Corporation is competent to fix the ground rent in respect of the immovable property. Accordingly, by resolution the upset price was fixed.

14. We have considered the submissions made by learned counsel for the parties. At this stage, we deem it appropriate to deal with the preliminary objection raised by learned counsel for the respondents No.2 & 3 with regard to maintainability of the instant petition as public interest litigation.

15. In *People's Union for Democratic Rights vs. Union of India,* (1982) 3 SCC 235 the Supreme Court while dealing with the scope and ambit of public interest litigation has held as follows:-

> *"Public interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed."*

Similar view was taken by the Supreme Court in *Sheela Barse vs. Union of India,* (1988)4 SCC 226.

16. In *Krishna Swami v. Union of India,* (1992) 4 SCC 605 the Supreme Court while dealing with the public interest litigation in which challenge was made

to proceedings of removal of a Supreme Court Judge held that ordinarily it is person aggrieved and directly affected who must seek the relief himself unless disabled from doing so for a good reason which permits someone else to seek the relief on his behalf.

17. While summerising the principles evolved by the Supreme Court with regard to maintainability of the public interest litigations, in *Guruvayoor Devasworn Managing Committee vs. C.K.Rajan,* (2003) 7 SCC 546 the Supreme Court held that a writ petition can be entertained as public interest litigation by any interested person in the welfare of the people who is in disadvantageous position and not in a position to knock the doors of the Court.

18. In *Ashok Kumar Pandey vs. State of West Bengal,* (2004) 3 SCC 349 the Supreme Court held that where there is material to show that public interest litigation is nothing but a private interest litigation, such petition deserves to be thrown out at the threshold and in appropriate case with exemplary costs.

19. The expression "public interest litigation" has been defined in Stroud's Judicial Dictionary, Vol.4, 4th Edition in the following terms:-

> *"public interest.- (1) A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."*

In Black's Law Dictionary, 6th Edition "public interest" is defined as follows:-

> *"public interest.-Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."*

20. Similarly, in *State of Uttaranchal vs. Balwant Singh Chaufal and others,* (2010) 3 SCC 402 the Supreme Court once again emphasized the need to preserve the purity and sanctity of PIL and held that the Court should be fully satisfied that substantial public interest is involved before entertaining the petition. The Court should also ensure that public interest litigation is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

21. On the touchstone of well settled legal proposition with regard to public interest litigation, the facts of the case may be adverted to. In the instant writ petition the petitioner No. 1 claims to be the President of the Society. The petitioners No.2 & 3 are the members of the society. At this stage we deem it appropriate to

quote the relief which has been prayed for by the petitioners in the instant writ petition:-

> *"(i) The Hon'ble Court may kindly call for the record for the kind perusal of this Hon'ble Court.*
>
> *(ii) That a writ of certiorari be issued and the impugned resolution Annexure P/4 dated 18.06.2009 and impugned notice Annexure P/7 dated 28.8.2009 may kindly be. quashed.*
>
> *(iii) That, a "writ of mandamus be issued restraining the respondent not to auction the quarters of the petitioners in their possession during the pendency of this petition.*
>
> *(iv) The Hon'ble court may kindly issue any other writ/ directions which it deems fit and proper in the facts and circumstances of the case."*

22. From perusal of the averments made in the writ petition and the reliefs claimed by the petitioners it is apparent that petitioners have setforth their individual grievances and claimed reliefs for themselves. From the pleadings made by the petitioners and the reliefs sought by them, by no stretch of imagination, it can be said that public or the community at large has some pecuniary interest or some interest by which their legal rights or liabilities are affected. It is also note worthy to state that when two members of the petitioner-association can approach this Court by filing the writ petition, there is no good reason why the other members of the petitioner-association cannot approach this Court for redressal of their grievances, as they cannot be said to be suffering from any disability to seek relief for themselves. Furthermore, petitioner No. 1 has filed the instant writ petition in individual capacity describing himself to be President of the society. The society has not filed the writ petition. It is not the case of the petitioners that members of society suffer from any disability which prevents them approaching this Court. There is no element of public interest involved in the writ petition, for the reason that members of public in general would not be benefited if the flats are allotted to members of Association.

23. The reliance placed by learned counsel for the petitioners on a Division Bench decision of this Court reported in *Association of the Residents of Mhow* (supra) is of no assistance to the petitioners. In the aforesaid case, the petitioner, which was an association of residents of Mhow cantonment, was registered under the provisions of M.P. Societies Registrikaran Adhiniyam, had filed a writ petition on behalf of the civilian residents of Mhow for declaration that lands and bungalows in Mhow Cantonment do not belong to the Central Government and that the Cantonment Land Administrative Rules, 1937 do not apply to Mhow Cantonment. The petitioner in the said petition had also sought a direction to respondents no. 1 & 3 to exclude civilian occupied areas from Mhow Cantonment and direct the Union of India to excise the civilian areas from Mhow Cantonment in favour of

the State Government. The petitioners had also sought declaration that the Order No. 179 of the Governor General of India in Council is void. Thus, in aforesaid factual backdrop the Division Bench of -this Court had expressed an opinion that when substantial question of law relating to interpretation of Article 295 of the Constitution and the provisions of the Cantonments Act, 1924 have been raised on behalf of civilian residents of Mhow by the petitioner-association contending that it is the State of Madhya Pradesh and not the Union of India which was the owner of the land under occupation of civilian residents for Mhow, then such a writ petition can be entertained as a public interest litigation. In the case referred to supra, the association of residents of Mhow had not sought the relief which was confined to members alone, whereas in the instant case, the instant writ petition is filed only for the benefit of the members of the association of which the petitioner no. 1 claims to be the President. The instant writ petition has not been filed for the benefit of the public in general. Therefore, at the best it can be said to be a representative petition. Thus, for the aforementioned reasons the decision of the Division Bench of this Court is of no assistance to the petitioners.

24. However, we are informed by learned senior counsel for the Municipal Corporation, Singrauli that 17 flats are yet to be auctioned. In case, the occupants of the aforesaid flats approach the respondent-Corporation for allotment of flats and if the occupants are ready to pay upset price, it would be open to the respondent-Corporation to sell the flats to the persons who are in occupation of the flats at the first instance, or to the persons who may be interested in the allotment of the aforesaid 17 flats which are yet to be auctioned.

25. For the aforementioned reasons, in our opinion, the instant writ petition cannot be entertained as public interest litigation. Accordingly, the same is hereby dismissed.

Petition dismissed.

I.L.R. [2010] M. P., 2525
WRIT PETITION
Before Mr. Justice Ajit Singh
10 August, 2010*

RAVENDRA PRASAD VERMA ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

Kashtha Chiran (Viniyaman) Adhiniyam, M.P. (13 of 1984), Section 6 - *Grant of license to run saw mill - Application for licence to run saw mill rejected for the reason that saw mill was purchased during the ban period as per the interim order in T.N. Godavarman case and there was no renewal of licence to run the saw mill nor any return was submitted - Held* - *Doctrine*

*W.P. No.15613/2006 (Jabalpur)

of English Law of feeding the estoppel, which means that when a person sells a property of which he is not the owner or has no right to sell but later becomes the owner or competent to sell and the sale in the interim period is not rescinded, the transferee acquires a good title - In India also this principle is enacted in S. 43 of the Transfer of Property Act - Orders quashed - Matter remanded to appellate authority for reconsideration. (Para 4)

काष्ठ चिरान (विनियमन) अधिनियम, म.प्र. (1984 का 13), धारा 6 – आरा मिल चलाने के लायसेंस का अनुदान – आरा मिल चलाने के लायसेंस के लिए आवेदन इस कारण नामंजूर किया गया कि टी.एन. गोदावर्मन के मामले में अंतरिम आदेश के अनुसार पाबंदी की अवधि के दौरान आरा मिल क्रय की गयी थी और आरा मिल चलाने के लायसेंस का कोई नवीकरण नहीं था और न ही कोई विवरणी प्रस्तुत की गयी थी – अभिनिर्धारित – विबंध के पोषण का अंग्रेजी विधि का सिद्धांत जिसका अर्थ है कि जब कोई व्यक्ति कोई संपत्ति विक्रय करता है जिसका वह स्वामी नहीं है अथवा विक्रय करने का उसे कोई अधिकार नहीं है परन्तु बाद मे स्वामी हो जाता है अथवा विक्रय करने के लिये सक्षम हो जाता है और अंतरिम अवधि में विक्रय विखंडित नहीं किया जाता है, तो अंतरिती अच्छा हक अर्जित कर लेता है – भारत में भी इस सिद्धांत को सम्पत्ति अंतरण अधिनियम की धारा 43 में अधिनियमित किया गया है – आदेश अभिखंडित – मामला पुनर्विचार के लिए अपीलीय प्राधिकारी को प्रतिप्रेषित।

Anshuman Singh, for the petitioner.

D.S. Purba, G.A., for the respondents.

ORDER

AJIT SINGH, J. :–By this petition, under Article 226 of the Constitution, the petitioner has prayed for quashing of order dated 1.3.2006, Annexure P8, passed by the Divisional Forest Officer, Katni (respondent no.3) whereby his application for licence to establish and operate a saw mill has been rejected. The petitioner has also prayed for quashing of order dated 8.6.2006, Annexure P1, passed by the appellate authority dismissing his appeal.

2. The facts are these. On 19.3.1997 the petitioner purchased a saw mill from M/s. Shyam Saw Mill, Katni, for a sum of Rs.50,000/-. He then made an application under section 6 of the Madhya Pradesh Kashtha Chiran (Viniyaman) Adhiniyam, 1984 (in short, "the Adhiniyam") for grant of licence to establish and run a saw mill at Rewa. The Divisional Forest Officer, Katni, by his letter dated 16.10.1997 addressed to the Conservator of Forests, Rewa, granted no objection certificate in his favour. The transfer proceedings of saw mill from Katni to Rewa and its registration in the name of petitioner could not be completed on account of the ban imposed by the State Government in compliance of the interim order dated 12.12.1996 passed by the Supreme Court in *T. N. Godavarman Vs. Union of India*. The application was, therefore, returned to him on 13.11.1997. The State Government, however, in the case of *T. N. Godavarman* furnished a list of saw mills running in the State of Madhya Pradesh to the Supreme Court in which the saw mill sold to the petitioner was mentioned at serial number 24. The Supreme

Court later by order dated 29.10.2002 lifted the ban imposed on transfer of saw mills and issuance of licences on saw mills to the transferee. The petitioner then applied afresh by application dated 19.7.2005 for the transfer of saw mill in his name and also for licence to run the saw mill but the Divisional Forest Officeer, Katni, rejected the same by order dated 1.3.2006 on the ground that the name of petitioner was not mentioned for the saw mill in question in the list of saw mills filed before the Supreme Court. Aggrieved, the petitioner filed an appeal under section 11 of the Adhiniyam which too was dismissed by the appellate authority vide order dated 8.6.2006. The appellate authority dismissed the appeal mainly on two grounds, firstly since the petitioner had purchased the saw mill during the ban period imposed by the Supreme Court, the sale was illegal and secondly that after 1997 there was neither any renewal of licence to run the saw mill nor any return was submitted.

3. It is argued on behalf of the petitioner that because of the rejection of his application for licence by the forest authorities and that too for no fault of his, grave injustice has been caused to him. The learned Government Advocate, on the other hand, defended the orders under challenge rejecting the petitioner's claim for the licence.

4. When the saw mill was sold by M/s. Shyam Saw Mill, Katni, to the petitioner it had no right to transfer because of the ban imposed by the Supreme Court. This restriction was at least not known to the petitioner. The restriction was removed by the Supreme Court by its subsequent order. During this period, the sale of saw mill was not rescinded either by M/s. Shyam Saw Mill or the petitioner. It would be equitable in these circumstances to hold that the sale of saw mill became effective from the date (29.10.2002) restriction was removed by the Supreme Court. Analogy in this respect may be taken from the doctrine of English Law of feeding the estoppel, which means that when a person sells a property of which he is not the owner or has no right to sell but later becomes the owner or competent to sell and the sale in the interim period is not rescinded, the transferee acquires a good title. In India also this principle is enacted in section 43 of the Transfer of Property Act. Applying this principle, I hold that the sale of saw mill dated 19.3.1997 was not void and it became valid from 29.10.2002. The application made by the petitioner for licence to establish and run the saw mill should not have been rejected on the ground that the sale was invalid and void. Further, since M/s. Shyam Saw Mill had sold the saw mill in the year 1997 there could not have been any renewal of licence in its name or it was possible for M/s. Shyam Saw Mill to submit the returns. As already mentioned above, the petitioner did apply for grant of licence in his name to run the saw mill and also for its shifting but the application was returned to him because of the ban imposed by the Supreme Court on the sale of saw mills.

5. For these reasons, I quash the orders dated 1.3.2006, Annexure P8, and 8.6.2006, Annexure P1, passed by the Divisional Forest Officer, Katni, and

appellate authority and remand the matter to the Divisional Forest Officer, Katni, for reconsideration on the footing that petitioner is the owner of saw mill. If the petitioner's application is not in form, the Divisional Forest Officer will given him an opportunity to make a proper application as may be required under the Adhiniyam and rules framed thereunder.

6. The petition succeeds and is allowed. No order as to costs.

Petition allowed.

I.L.R. [2010] M. P., 2528
WRIT PETITION

Before Mr. Justice K.K. Lahoti & Mr. Justice J.K. Maheshwari

11 August, 2010*

GANESH PRASAD ... Petitioner

Vs.

ASADULLA USMANI ... Respondent

Accommodation Control Act, M.P. (41 of 1961), Section 13(6), Civil Procedure Code, 1908, Order 47 Rule 1 - *Delay in deposit of rent - Trial Court after condonation directed tenant to deposit all arrears of rent within one month -Tenant deposited arrears of rent and rent in advance but failed to produce receipts in Court within time - Order striking of defense passed - Application for review filed along with rent receipts also rejected* - **Held** - *Tenant was not in arrears of rent and he had deposited all the arrears of rent in compliance of order and thereafter in accordance with provision as contained u/s 13(1) of the Act - Trial Court erred in rejecting application for review - Petition allowed.* (Paras 11 & 12)

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 13(6), सिविल प्रक्रिया संहिता, 1908, आदेश 47 नियम 1 – किराया जमा करने में विलम्ब – विचारण न्यायालय ने विलम्ब क्षमा करने के बाद किरायेदार को एक माह के अन्दर किराये की सम्पूर्ण बकाया राशि जमा करने का निदेश दिया – किरायेदार ने किराये की बकाया राशि तथा अग्रिम किराया जमा कर दिया परन्तु समय सीमा के अन्तर्गत न्यायालय में रसीद प्रस्तुत करने में असमर्थ रहा – प्रतिरक्षा काट दिये जाने का आदेश पारित – किराये की रसीदों के साथ प्रस्तुत पुनर्विलोकन का आवेदन भी नामंजूर किया गया – अभिनिर्धारित – किरायेदार पर किराया बकाया नहीं था एवं उसने आदेश के पालन में तथा उसके पश्चात् अधिनियम की धारा 13(1) में अन्तर्विष्ट उपबंधों के अनुसार किराये की सम्पूर्ण बकाया राशि जमा कर दी थी – विचारण न्यायालय ने पुनर्विलोकन का आवेदन नामंजूर करने में त्रुटि की – याचिका मंजूर।

Pranay Verma, for the petitioner.

G.K. Handa & Ahadulla Usmani, for the respondent.

---

*W.P. No.9911/2010 (Jabalpur)

ORDER

The Order of the Court was delivered by K.K. LAHOTI, J. :–This petition is directed against two orders passed by XIII Civil Judge Class-II, Jabalpur in Civil Suit No.20-A/2009. One order is dated 5.2.2010 Annexure P/15 by which the right of the petitioner to file reply was closed. Another order is dated 17.2.2010 Annexure P/16 by which the defence of the petitioner was struck out. The petitioner has also challenged order dated 23.6.2010 by which an application filed by the petitioner seeking review of the order dated 17.2.2010 (Annex.P/16) was rejected.

2. Facts in short necessary for just decision of the case are that the petitioner is a tenant of respondent. A suit for eviction against the petitioner is filed under Section 12(1)(a),(c) and (f) of the Madhya Pradesh Accommodation Control Act, 1961 (herein after referred to 'the Act').

3. In the suit, an application (Annex.P/6) under Section 13(6) of the Act for striking off the defence of the petitioner was filed by the respondent in which it was alleged by the respondent that the petitioner had not deposited the rent in the court as was required under Section 13(1) of the Act and his defence deserves to be struck out. The tenant took time to file reply, but had not filed reply till 18.1.2010. However on 5.2.2010, right of the petitioner to file reply was closed.

4. On 17.2.2010 vide Annexure/16, the trial Court considered the application. On the aforesaid date, none was appearing for the defendant. The trial Court found ,as per allegations made in the application, that the rent was not deposited after 31.12.2003 and directed to strike out the defence of the petitioner.

5. Thereafter,the petitioner moved an application under Order 47 rule 1 C.P.C. Annexure P/7 seeking review of the order dated 17.2.2010. The petitioner filed a chart showing deposit of the rent by the petitioner before the trial Court along with photocopies of all the receipts. The trial Court considered this application and rejected it by the order dated 23.6.2010. These orders are under challenge in this petition.

6. The learned counsel for the petitioner submitted that in the case rate of rent was not disputed which was Rs.200/- p.m. On 18.7.2003, the trial Court passed an order by which the petitioner was allowed two months' time for the compliance of the first limb of section 13(1) of the Act and in future for the compliance of the provision. The petitioner deposited all the arrears of rent including advance rent up to 31.12.2003 Rs.7,200 on 1.8.2003 . Thereafter the petitioner deposited the rent in advance of every three months rent. The rent was deposited by the petitioner in the months of January, April, July and October in advance. A chart in this regard was produced before the trial Court which is available on page 83 and 84 of the paper book. It is stated by the petitioner that when the entire rent was deposited before 17.2.2010, then the trial Court ought not to have struck out the defence of the petitioner. It was submitted that though

the reply could not be filed on 17.2.2010, but it was not deliberate act of the petitioner. On that date, the petitioner along with his counsel was in the office of Nazir of the Court to prepare a chart in respect of deposit of the rent, but in the meantime, the case was called and in absence of the petitioner and his counsel right to file reply was closed on 5.2.2010. Even on 17.2.2010, in the absence of counsel of the petitioner, the case was heard and order was passed.

7. On knowing all these facts, the petitioner moved an application under Order 47 rule 1 C.P.C for reviewing the aforesaid order . As there was an error on the face of record, but the trial Court has not considered the case in proper perspective. It is submitted that the defence available to the petitioner under Section 12(1) of the Act is valuable right available to the petitioner but now in the light of the orders passed by the trial Court, the petitioner would be deprived with the statutory protection. It is submitted that the impugned orders in Annexures P/15, P/16 and P/17 may be quashed.

8. Shri G.K.Handa, Counsel appearing for the respondent/ landlord opposed the petition vehemently. It was submitted by him that the rent was not deposited in time. He has drawn attention of this Court towards the rent deposited by the petitioner on 19.1.2006, 16.1.2008 and 18.1.2010 and submitted that the aforesaid rent was not deposited on or before 15th of English calendar month. The trial Court has rightly struck out the defence. It was also submitted by him that in spite of various opportunities, the petitioner herein had not furnished the accounts of deposit of the rent though petitioner was possessing receipts of deposit of the rent with him. The petitioner ought to have furnished the accounts of deposit of the rent when an application under Section 13(6) of the Act was filed by the petitioner before the trial court.

9. To appreciate rival contentions of the parties, the crucial question may be considered whether the petitioner deposited entire rent on or before 17.2.2010 when an order under Section 13(6) against the petitioner was passed. A chart showing deposit of the rent is filed on page 83-84, in which it is stated by the petitioner that there is an error in respect of the date which is mentioned as 7.7.2004 while the correct date is 7.4.2004. The petitioner has drawn attention to the receipt, available at page 76, which reveals that in fact the rent was deposited on 7.4.2004. Taking into consideration that the rent was deposited on 7.4.2004, we reproduce the chart prepared by the petitioner for ready reference which is as under:

No.	Date	Payment	Month
3181	1.8.2003	7200	Year of 2001 Year of 2002 Year of 2003 up to 31.12.2003

No.	Date	Payment	Month
11444	12.1.04	600	Jan,Feb,Mar
118840	7.4.04	600	Apr,May,June
11958	3.7.04	600	July, Aug. Sept.
12047	8.10.04	600	Oct, Nov, Decm
12127	6.1.05	600	Jan,Feb,Mar
11050	6.4.05	600	Apr,May,June
11095	7.7.05	600	July, Aug, Sept.
11171	10.10.05	600	Oct,Nov,Decm
11313	19.1.06	600	Jan,Feb,Mar
11422	10.4.06	600	Apr,May,June
11451	5.7.06	600	July, Aug. Sept.
11569	9.10.06	600	Oct, Nov, Decm
11697	10.1.07	600	Jan,Feb,Mar
11761	12.4.07	600	Apr,May,June
11830	9.7.07	600	July, Aug, Sept.
11920	11.10.07	660	Oct, Nov, Decm
11990	16.1.08	600	Jan,Feb,Mar
1238	1.4.08	600	Apr,May,June
1345	9.7.08	600	July, Aug, Sept.
1400	13.10.08	600	Oct, Nov, Decm
1582	6.1.09	600	Jan,Feb,Mar
1658	15.4.09	600	Apr,May,June
5329	7.7.09	600	July, Aug, Sept.
5441	5.10.09	600	Oct, Nov, Decm
5539	18.1.10	600	Jan,Feb,Mar.

10. The petitioner has also filed all the receipts of deposit of rent in Court in support of above chart.

11. On 18.7.2003, an order Annexure P/5 was passed by the trial Court by which the petitioner's application under Section 13(1) of the Act was allowed, the delay in deposit of the rent was condoned and the petitioner was directed to deposit all the arrears of rent within a period one month from the date of order and thereafter the petitioner was directed to deposit the rent regularly as per law. The petitioner deposited all the arrears of rent on 1.8.2003 which was within the time period as fixed by the order dated 18.7.2003 Annexure P/5. It is not in dispute that the aforesaid rent was deposited for the period up to 31.12.2003. Thereafter the petitioner has deposited rent in advance for 3 months regularly and continuously the rent was deposited by the petitioner in advance on the dates as stated hereinabove. This fact specifically shows that the petitioner deposited all the rent

up to 17.2.2010 when the order under Section 13(6) was passed against the petitioner. Though the petitioner ought to have produced all the particulars of deposit of the rent and receipts before the trial Court, but the petitioner failed to produce it within the time and has suffered an order and for this petitioner cannot blame to any other except himself. However, Section 13(1) of the Act provides special protection of the tenant against eviction and if the defence is struck out, the tenant will not be able to avail the defence, which are available to him under Section 12(1) of the Act. So it is a valuable right given by the legislation to the tenant and if the provisions as continued under Section 13 of the Act are complied with, the tenant is entitled to avail the defence available to him, but in case the defence is struck out, the tenant shall be deprived to avail the defence available to- him under Section 12(1) of the Act.So any order under Section 13(6) is penal in nature. In these circumstances,even if the tenant was at fault, the trial Court on furnishing the aforesaid particulars ought to have taken cognizance that on 17.2.2010 when the order was passed, the tenant in fact was not in arrears of rent and he had deposited all the arrears of rent in compliance of the order dated 18.7.2003 (Annexure P/5) and thereafter in accordance with the provisions as contained under Section 13(1) of the Act. Though Shri Handa appearing for the respondent,disputed the position and submitted that on 19.1.2006, 16.1.2009 and 18.1.2010 rent was not deposited within time, but the aforesaid contentions is not correct.As per Section 13(1) of the Act,the tenant is required to deposit the rent of last month in succeeding month on or 15th of the month. The aforesaid dates which are referred by Shri Handa refer to the rent deposited in advance for the month of January for which the tenant was entitled to deposit on or before 15th Feb., the succeeding month, but it appears that rent of months of January, February and March was deposited in the month of January itself and there was no default on the part of the petitioner.

12. In view of the aforesaid, we find that the trial Court erred in passing order in Annexure P/17 dated 23.6.2010 which order is not sustainable under the law. The trial Court ought to have considered all these facts and there was sufficient reason for reviewing of the order dated 17.2.2010.

13. In view of the aforesaid, the orders in Annexures P/16 and P/17 are not sustainable under the law and are hereby quashed.It is found that the rent was deposited by the petitioner within time and there were sufficient reasons to review order dated 17.2.2010 by allowing the application. Now the petitioner shall be entitled to contest the suit in accordance with law after complying with the provisions as contained under Section 13(1) of the Act.

14. Considering the facts of the case, as because of the fault of petitioner, the order dated 17.2.2010 was passed, the petitioner shall bear cost of the respondent's. Counsel Rs.1,000/- if certified.

15. At this stage, the learned counsel for the respondent submitted that the suit has been filed in the year 2002. The petitioner is an octogenarian. The conduct of

the petitioner is of delaying proceedings of the case. So the trial Court be directed to expedite the hearing of the suit.

16. To this Shri Verma, the learned counsel appearing for the petitioner, submitted that there is no delay on the part of the petitioner.

17. After considering the fact that the suit is pending since 2002 and the respondent is the octogenarian,a senior citizen, we direct the trial Court to expedite the hearing of the suit. The trial Court shall make an endeavour to hear and decide the suit expeditiously as far as possible within a period of six months from the date of communication of this order.

Certified copy as per rules.

Petition allowed.

I.L.R. [2010] M. P., 2533
WRIT PETITION
Before Mr. Justice Ajit Singh
17 August, 2010*

VINEET KABRA & ors. ... Petitioners
Vs.
STATE OF M.P. & ors. ... Respondents

A. Land Acquisition Act (1 of 1894), Sections 4 & 6 - *Public purpose - Acquisition to setup power plant - Notification not published in official gazette -Held - No fund provided by Government, therefore, the acquisition is not for public purpose - Acquisition proceedings and declaration u/s 6 quashed - Petition allowed.* (Para 13)

क. भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 4 व 6 – लोक प्रयोजन – पावर प्लांट स्थापित करने के लिए अर्जन – शासकीय राजपत्र में अधिसूचना प्रकाशित नहीं – अभिनिर्धारित – सरकार द्वारा कोई निधि प्रदत्त नहीं, इसलिए अर्जन लोक प्रयोजन हेतु नहीं है – अर्जन कार्यवाही एवं धारा 6 के अन्तर्गत घोषणा अपास्त – याचिका खारिज।

B. Land Acquisition Act (1 of 1894), Section 6 Proviso, General Clauses Act, 1897, Section 3(31) - *Local authority - Entire cost of acquisition deposited by company kept in separate account of treasury exclusively controlled and managed by Land Acquisition Officer - Collector and Land Acquisition Officer are not local authority as provided in proviso of S. 6.* (Para 14)

ख. भूमि अर्जन अधिनियम (1894 का 1), धारा 6 परन्तुक, साधारण खण्ड अधिनियम, 1897, धारा 3(31) – स्थानीय प्राधिकारी – कम्पनी द्वारा जमा की गयी अर्जन की सम्पूर्ण लागत भूमि अर्जन अधिकारी द्वारा अनन्य रूप से नियंत्रित एवं प्रबंधित कोषालय के पृथक खाते में रखी गयी – कलेक्टर और भूमि अर्जन अधिकारी धारा 6 के परन्तुक में यथा उपबंधित स्थानीय प्राधिकारी नही हैं।

---

*W.P. No.635/2009 (Jabalpur)

Cases referred :

(1996) 10 SCC 632, AIR 2003 SC 3140, AIR 1981 SC 951, (2008) 1 SCC 728.

H.K. Upadhyay, for the petitioners.

R.P. Tiwari, G.A., for the respondent Nos.1 & 2.

Brain Da'Silva with *Jaideep Sirpurkar,* for the respondent No.3.

ORDER

AJIT SINGH, J. :–These three writ petitions are being disposed of by this common order as they are of similar nature and were heard together.

2. The petitioners of Writ Petition No.635/2009 are owners of agricultural lands in village Niwari, Tahsil Gadarwara, District Narsinghpur. Likewise, the petitioners of other two writ petitions are owners of agricultural lands in village Paudi which is also in the same tahsil and district. They are aggrieved with the acquisition of their agricultural lands by the State Government under provisions of the Land Acquisition Act, 1894 (in short, "the Act"). They have, therefore, prayed for quashing of notification dated 3.1.2009 published under section 4(1) of the Act in "See Times" newspaper and subsequent notification dated 30.1.2009 published under the same section in the official gazette. They have also prayed for quashing of declaration dated 12.2.2009 made under section 6 of the Act.

3. Briefly stated the facts are that the State Government, in order to meet the shortage of power generation, decided to set up power plants with the collaboration of private sectors and signed Memorandum of Understanding (MoU) with several companies. Respondent BLA Power Private Limited (in short, "BLA Limited") is one such company. On 10.8.2007 BLA Limited also signed a MoU with the State Government. As per the MoU, BLA Limited has agreed to set up 140 MW Thermal Power Station at Gadarwara, District Narsinghpur. For this purpose BLA Limited has purchased lands by private negotiations and claiming requirement for more private lands, it approached the Collector, Narsinghpur, for acquisition under the provisions of the Act. The request was forwarded to the State Government which was allowed by order dated 10.9.2008. After receipt of permission from the State Government, BLA Limited deposited the entire cost of acquisition and asked for invocation of urgency clause provided under section 17(1) of the Act. The Collector, by letter dated 10.10.2008 sought approval from the Commissioner, Jabalpur Division, to invoke section 17(1) of the Act in order to expedite the process of acquisition. The petitioners, on receiving information about the proposal of their lands being acquired, made a written objection dated 12.12.2008 to the Commissioner against the acquisition and prayed not to accord approval for invoking section 17(1). The petitioners had made the objection to the Commissioner because they were told by the office of Collector that the file for acquisition of their lands has been sent to the office of Commissioner. But the Commissioner by order dated 26.12.2008 accorded permission for the invocation of section 17(1).

4. The Collector and ex-officio Deputy Secretary, Revenue Department, issued a notification dated 3.1.2009 under section 4(1) of the Act in the "See Times" newspaper to the effect that the lands of village Niwari mentioned therein were required for acquisition. This notification was not published in any official gazette and the "See Times" has no circulation in the Narsinghpur District. The notification also suffered from inherent defects such as non-mentioning of public purpose and the authority for carrying out the purposes of section 4(2) of the Act.

5. Aggrieved with the notification, the petitioners of Writ Petition No.635/2009 rushed to this court and filed the writ petition on 16.1.2009. The Collector also realized about the inherent defects of the notification and decided to publish another notification.

6. On 30.1.2009, another notification under section 4(1) of the Act was published in the official gazette. By this notification different private lands, including that of petitioners, were notified for acquisition for the alleged public purpose of establishment of 140 MW Thermal Power Station. The notification also authorized Managing Director of BLA Limited to enter upon and survey the lands in the locality and to do all other acts required or permitted by section 4 of the Act. It further directed that action under section 17(1) of the Act shall be taken.

7. In Writ Petition No.635/2009 this court by an interim order dated 30.1.2009 directed that the parties shall maintain status quo.

8. On 12.2.2009 the Collector, however, made a declaration under section 6 of the Act to the effect that State Government was satisfied that the lands specified in the schedule were required for public purpose i.e. for setting up 140 MW Thermal Power Station. The declaration also mentioned about the approval dated 26.12.2008 accorded by the Commissioner for invoking section 17(1).

9. By an interim order dated 18.2.2009 passed in Writ Petition No.1678/2009 this court directed the parties to maintain status quo in respect of their lands and later by similar order dated 24.6.2009 passed in Writ Petition No.5848/2009 directed the parties to maintain status quo in respect of their lands.

10. The petitioners thereupon amended their writ petitions for challenging the validity of above mentioned notification dated 30.1.2009 under section 4(1) and declaration dated 12.2.2009 made under section 6 of the Act.

11. The main thrust of challenge by the respective learned counsel for petitioners is that acquisition is not for public purpose and the lands, in fact, are being acquired for a company in the guise of acquisition for a public purpose. According to them, the Government has not contributed even a single penny for acquisition and the entire amount of money has been provided by the BLA Limited for the payment of compensation. The learned counsel have also argued that as the lands are being acquired for a company without complying with the provisions of Part VII of the Act, the acquisition stands vitiated. The learned Government Advocate, in reply, defended the acquisition proceedings by contending that the lands are being

acquired for a public purpose essentially to overcome the shortage of power generation and after the declaration having been made under section 6 of the Act, it becomes conclusive evidence that the lands are needed for public purpose. According to the learned Government Advocate, after the declaration is made under section 6, this court cannot go into the question that the lands are needed for other than public purpose i.e. for a company. The learned senior counsel, appearing for BLA Limited, has supported the arguments advanced by the learned Government Advocate. In addition, he has also argued that since the BLA Limited has deposited the amount of compensation with the Collector, which is now under the exclusive control of the Collector and managed by Land Acquisition Officer on his behalf, the requirements of second proviso to section 6(1) of the Act stands satisfied. In support of his argument, the learned senior counsel has filed a letter dated 14.8.2010 of the Collector as Annexure MA1 and placed reliance on the decision of Supreme Court in *Naihati Municipality Vs. Chinmoyee Mukherjee* (1996) 10 SCC 632.

12. The State Government as well as BLA Limited have admitted that the provisions of Part VII of the Act have not been complied with because the acquisition is not for a company but for a public purpose. They have also not relied upon the provisions of Part VII of the Act. The question, therefore, to be considered is whether the acquisition is for a public purpose or not.

13. There is no denial of the fact by the State Government that the entire cost of acquisition is being borne by the BLA Limited. It is also not the case of State Government that it has contributed even a single penny for the acquisition of petitioners' lands. The acquisition, therefore, cannot be held for a public purpose. This view is fully supported by the decision of Supreme Court in *Pratibha Nema Vs. State of M. P.* AIR 2003 SC 3140 of which relevant para 22 is quoted below:

> "22. Thus the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The main and perhaps the decisive distinction lies in the fact whether cost of acquisition comes out of public funds wholly or partly. Here again, even a token or nominal contribution by the Government was held to be sufficient compliance with the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the Government. In ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an Industry in private sector could get imbued with the character of public purpose acquisition if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present State of law, that seems to be the real position."
>
> (emphasis supplied)

14. The Collector in his letter dated 14.8.2010 Annexure MA1 has stated that the amount of compensation deposited by the BLA Limited is kept in account PD-28 of the treasury fund which is exclusively under his control and managed by the Land Acquisition Officer on his behalf. It is on the basis of this letter the learned senior counsel for BLA Limited has argued that requirement of second proviso to section 6(1) of the Act stands satisfied because the amount of compensation is now a "fund controlled or managed by the local authority". This argument cannot be accepted. The term local authority is not defined in the Act. I, therefore, refer to section 3(31) of the General Clauses Act 1897, which defines local authority as under:

> "3(31) "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund"

This definition of local authority has been dealt and interpreted in detail by the Supreme Court in *Union of India Vs. R. C. Jain* AIR 1981 SC 951. In this case, the Supreme Court has held that a proper and careful scrutiny of the language of section 3(31) suggests that an authority, in order to be a local Authority, must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board, or Body of Port Commissioners, but, possessing one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. The Supreme Court has went on to add that the authorities must also have separate legal existence as corporate bodies and must not be a mere Governmental agencies but must be legally independent entities. According to the Supreme Court, the authorities must also function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. The Collector and the Land Acquisition Officer apparently do not fall into any of the above categories and, therefore, they cannot be held to be a local authority.

15. In the case of *Naihati Municipality* (Supra), relied upon by the senior counsel, acquisition for land was made for the benefit of hawkers by the municipality which had no funds for the acquisition and, therefore, the hawkers' union deposited the cost of acquisition with the municipality. The Government imposed a condition that the said amount will be used only for the purpose of cost of acquisition and the hawkers had no right to withdraw the amount. On these facts, the Supreme Court held that the amount had become part of funds managed or controlled by the local authority i.e. the municipality and the second proviso to section 6 was satisfied. The facts in the present case are entirely different to which the case of *Naihati Municipality* has no application.

16. The acquisition of petitioners' lands cannot also be supported for the purpose of company because of the non-compliance of the provisions of Part VII of the Act which are mandatory (See *Devinder Singh Vs. State of Punjab* (2008) I SCC 728).

17. For these reasons, the acquisition proceedings as well as the declaration made under section 6 of the Act are invalid. They are, therefore, quashed and the petitions are allowed but without any order as to costs.

Petition allowed.

I.L.R. [2010] M. P., 2538
WRIT PETITION

Before Mr. Justice K.K. Lahoti & Mr. Justice S.C. Sinho

1 September, 2010*

UJJWAL KESARI ... Petitioner

Vs.

SHRI KRISHNA GUPTA & ors. ... Respondents

Civil Procedure Code (5 of 1908), Order 9 Rule 7 - *Ex parte order - Setting aside of - The trial Court ought to have taken a lenient view in the matter in setting aside the ex parte order as the object of Order 9 CPC is not penal in nature.* (Para 8)

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 7 – एकपक्षीय आदेश – का अपास्त किया जाना – विचारण न्यायालय को एकपक्षीय आदेश को अपास्त करने के मामले में उदार दृष्टिकोण रखना चाहिए क्योंकि सि.प्र.सं. के आदेश 9 के उद्देश्य की प्रकृति शास्तिक नहीं है।

Akhil Singh, for the petitioner.

Neeraj Ashar, for the respondent/election petitioner.

ORDER

The Order of the Court was delivered by **K.K. Lahoti, J.** :–This petition is directed against an order dated 25.2.2010 by III Additional District Judge (Fast Track Court), Shahdol in Case No.1/2010 by which the trial Court rejected the application under Order 9 rule 7 CPC.

2. It is submitted by the petitioner that the trial Court erred in rejecting the application filed by the petitioner on the ground that there was implied refusal of the summons on behalf of the petitioner and the petitioner ought to have moved an application within a period of 30 days from the date when the exparte order was passed. It is further submitted by the petitioner that no summons was served on the petitioner and on getting knowledge of the exparte order, he moved an application on 25.2.2010, but the trial Court erred in rejecting the application.

3. Learned counsel appearing for the respondent/election petitioner supported the order who submitted that on 8.2.2010, process-server offered summons to the

*W.P. No.3707/2010 (Jabalpur)

petitioner, but the petitioner on the pretext that he was busy in some meeting avoided service and asked process-server to come on next day. On next day, when process-server visited the house of the petitioner, he was not available as he had gone to Shahdol. As no other adult member was found in the house, the process-server returned the summons. The election Tribunal considering these aspects in order dated 15.2.2010 directed that the petitioner be proceeded exparte.

4. From the perusal of the summons report of the process-server on the reverse side of summons Annexure P/6, we find that he visited the petitioner and asked him to receive notice and copy of the election petition, but petitioner stated to him that he was busy in a meeting and he will receive the summons after reading on next day. On next day, when process-server visited the house of the petitioner, it revealed him that the petitioner had gone to Shahdol and there was no definite information of return of petitioner. No major member of the family of the petitioner was available on whom notice could have been served, so process-server with the report that the notice could not be served, returned it to the trial Court. The trial Court considered these aspects in order dated 15.2.2010 and found that non-receiving the notice on earlier date, on the pretext of meeting, falls within a purview of refusal and treating this as service on the petitioner directed to proceed exparte against the petitioner and the case was fixed for reply of other respondents on 25.2.2010. On 25.2.2010, petitioner preferred an application under Order 9 rule 7 CPC which has been rejected by the impugned order.

5. Aforesaid facts specifically reveal that on 9.2.2010 in fact the summons was returned as unserved and on 8.2.2010, though summon and copy of election petition were offered to the petitioner but he asked the process-server to come on next day, so that he can receive the notice after going through it. The process-server relying on the aforesaid contention of the petitioner returned back and had not treated aforesaid as refusal. On next date when petitioner or any other adult member of the family was not found in the house, process-server returned the summons as unserved.

6. The M.P. Municipalities (Election Petition) Rules, 1962 provides the procedure in respect of enquiry of an election petition under rule 5 which reads as under:-

> 5. **Procedure.-** Subject to the provisions of the Act of these rules, every election petition shall be enquired into by the Judge, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits;
>
> Provided that it shall only be necessary for the Judge to make a memorandum of the substance of the evidence of any witness examined by him.

7. Rule 3 provides a copy of the election petition to be served on each respondent. In absence of any specific procedure for service of summons, the procedure envisaged in rule 17 of Order 5 CPC may be seen, which reads thus.

Rule 17. Procedure when defendant refuses to accept service, or cannot be found.

Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

8. Rule 17 specifically provides that where defendant refuses to sign acknowledgement, the serving officer shall affix copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business and then shall return the original to the Court from which it was issued with a report endorsed thereon stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person by whom the house was identified and in whose presence the copy was affixed. But in the present case, no such procedure was followed. The election Tribunal before proceeding exparte against the petitioner ought to have looked into the procedure as contained in the M.P. Municipalities (Election Petition) Rules, 1962 or in Rule 17 of Order 5 of the Code of Civil Procedure and as such on recording a satisfaction about the compliance of the aforesaid provisions, the trial Court ought to have proceeded exparte in the matter. But it appears that ignoring aforesaid provisions, the election Tribunal presumed refusal of the summons which is apparently not correct, in the facts of the case. When the process-server himself returned the summons as unserved, the Election Tribunal ought to have issued a fresh summons to the petitioner. Apart from this, when the petitioner on 25.2.2010 itself moved an application for setting aside the exparte order dated 15.2.2010, the election Tribunal ought to have taken a lenient view in the matter. The object of Order 9 CPC is not penal in nature and Order 9 Rule 7 CPC specifically provides a good cause for setting aside exparte order, then the trial Court ought to have taken a lenient view in the matter in setting aside the exparte order. The subject matter of the case is election petition in which substantial

rights of the petitioner, who is a returned candidate are involved and in these circumstances, the trial Court ought to have set aside the exparte order dated 15.2.2010 on the application filed by the petitioner on 25.2.2010 i.e. within a period of 10 days from the date of exparte order.

9. In view of aforesaid, impugned order is not sustainable under the law and is hereby set aside. The petitioner is permitted to participate in the proceedings. The trial Court shall permit the petitioner to file written statement in the case within a period of 30 days from today.

10. Considering facts of the case, there shall be no order as to costs.

11. C.C. as per rules.

Order accordingly.

I.L.R. [2010] M. P., 2541
WRIT PETITION
Before Mr. Justice K.K. Lahoti & Mrs. Justice Vimla Jain
14 September 2010*

AKANKSHA PANDEY ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, M.P. (21 of 2007), Section 8, Private Medical and Dental Under Graduage Entrance Examination Rules, M.P. 2009, Rule 9 - *Vires of* - *Challenged on the grounds that (i) No provision has been made for reservation of freedom fighter category, while the State Government has issued rules for Pre-Engineering and Pharmacy Test (PEPT) 2009 making a provision for reservation to freedom fighter category students, (ii) State Government has not explained the reason for not making such reservation - Held - On the basis of framing of another Rule, the Rule of 2009 cannot be declared as ultra vires - Until and unless the rule is in contravention of constitutional provision or statutory provision, such Rule cannot be declared as ultra vires - Petition dismissed.* (Para 11)

निजी व्यावसायिक शिक्षण संस्था (प्रवेश का विनियमन एवं शुल्क का निर्धारण) अधिनियम, म.प्र. (2007 का 21), धारा 8, निजी चिकित्सा और दंत पूर्वस्नातक प्रवेश परीक्षा नियम, म.प्र. 2009, नियम 9 – की शक्तिमत्ता – को इन आधारों पर चुनौती दी गयी कि (i) स्वतंत्रता संग्राम सेनानी श्रेणी के आरक्षण के लिए कोई उपबंध नहीं किया गया है, जबकि राज्य सरकार ने स्वतंत्रता संग्राम सेनानी श्रेणी के विद्यार्थियों के लिए आरक्षण का उपबंध करते हुए पूर्व–अभियांत्रिकी और फार्मेसी परीक्षा (पीईपीटी) 2009 के लिए नियम जारी किये हैं, (ii) राज्य सरकार ने ऐसा आरक्षण न करने का कारण स्पष्ट नहीं किया है – अभिनिर्धारित – दूसरा नियम विरचित करने के आधार पर, नियम 2009 को अधिकारातीत घोषित नहीं किया जा सकता – जब

*W.P. No.8383/2009 (Jabalpur)

तक नियम संवैधानिक उपबंध अथवा कानूनी उपबंध के उल्लंघन में न हों, ऐसे नियम को अधिकारातीत घोषित नहीं किया जा सकता है – याचिका खारिज।

Cases referred :

W.P. No.7818/2009 (Akanksha Pandey Vs. State of M.P. & ors.).

D.K. Tripathi, for the petitioner.
Harish Agnihotri, G.A., for the respondent Nos.1 & 2.
Vivek Mourya, for the respondent No.4.

ORDER

The Order of the Court was delivered by

K.K. LAHOTI, J. :–The petitioner has sought following reliefs in this petition :-

"[1] To call for entire relevant record.

[1(a)] To declare the Section 8 of the Madhya Pradesh Niji Vyavsayik Shikshan Sansthan (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam 2007, Act no.21 of 2007" is unconstitutional.

[2] To declare the Rule 9 of the Madhya Pradesh Private Medical and Dental Under Graduate Entrance Examination Rules, 2009 is unconstitutional.

[3] To direct the respondents to permit the petitioner as open +freedom fighter category in the counseling and the same allot a seat of M.B.B.S., in any private medical college.

[4] To pass such any other order as deem fit under the facts and circumstances of the case.

[5] Any other relief together cost of the petition which this Hon'ble Court deem fit and proper under the facts and circumstances of this case may also be awarded in favour of the petitioner."

2. The facts of the case are that petitioner applied for M.B.B.S. Course in private medical college. The admission is governed by the provision of M.P.Private Medical and Dental Under Graduate Entrance Examination Rules, 2009 (hereinafter referred to as 'Rules of 2009' for short). These Rules are framed by the State exercising powers under section 12 of M.P.Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 (Act no.21 of 2007) (hereinafter referred to as 'Adhiniyam 2007' for short). The petitioner has challenged the vires of section 8 of the said Adhiniyam and Rule 9 of the Rules of 2009 on following grounds :-

(1) That no provision has been made by the respondents in respect of providing reservation to freedom fighter category in the Act no.21 of 2007 and also in Rule 9 of the Rules of 2009, while the State Government has issued rules for Pre-Engineering and

Pharmacy Test (PEPT) 2009 in which a provision has been made for reservation to the freedom fighter category students to the extent of 3% but no provision has been made in the Rules of 2009 for such category.

(2) That the State Government in the reply has not explained the reasons why such reservation has not been made in the Act and Rules by the State.

3. Shri Agnihotri, learned counsel for State though fairly conceded this fact that there is no explanation on the part of State in not providing reservation to the freedom fighter category in the Adhiniyam and Rules, but submitted that merely reservation was provided to the students of PEPT will not be a ground to declare section 8 and Rule 9 of the Adhiniyam and Rules as ultra vires. That the Adhiniyam and Rules are framed to regulate admission in private colleges providing such medical eduction and under the Act of 2007 the Rules have been framed. Apart from this, earlier petitioner filed a petition for the same relief, which was considered by the Division Bench of this Court and dismissed. It is submitted that the provisions of section 8 and Rule 9 are valid and need not be declared ultra vires.

4. To appreciate the rival contentions, section 8 of the Adhiniyam 2007 may be referred which reads as under :-

> "**8. Reservation of seats** - In admission to private unaided professional educational institutions, other than the minority educational institutions referred to in clause (1) of article 30 of the Constitution of India, there shall be reservation at the stage of admission for the persons belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens as may be prescribed by the State Government."

5. The Adhiniyam has been enacted for the regulation of admission and fixation of fee in private professional educational institutions in the State of Madhya Pradesh and to provide for reservation of seats to persons belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes and the matters connected therewith or incidental thereto. The statement of objects and reasons of the Act provides that Article 15(5) of the Constitution of India as inserted by the Constitution (Ninety-third) Amendment Act, 2005 provides for making any special provision by law by the State Government for advancement of any socially and educationally backward classes of citizen or for the Scheduled Castes or the Scheduled Tribes in relation to admission to educational institution including private educational institutions, whether aided or unaided, other than minority educational institutions, notwithstanding anything contained in article 15 and article 19(1)(g) of the Constitution. The State Government in the light of aforesaid object considered necessary to provide for regulation of admission and determination of fee in private unaided professional educational institutions in the State of Madhya Pradesh and to provide for reservation of seats to persons belonging to the

Scheduled Castes, the Scheduled Tribes and Other Backward Classes in the seats in private unaided professional educational institutions. In view of aforesaid preamble and statement of objects, Adhiniyam 2007 was enacted to provide reservation of seat to persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes in the private unaided educational institutions.

6. In view of aforesaid object of enactment of Adhiniyam, it is clear that the entire object of such an enactment was to provide reservation of seats to the students belonging to Scheduled Caste, Scheduled Tribe and Other Backward classes.

7. In view of aforesaid section 8 has been enacted by the Legislature to provide such reservation and validity of this section cannot be challenged on the ground that no reservation has been provided to the candidates of freedom fighter category. No provision could be brought to our notice on the basis of which section 8 can be declared as ultra vires. Merely the State Government framed Pre-Engineering and Pharmacy Test (PEPT) Rules 2009 will not be a ground to declare Adhiniyam 2007 as ultra vires. In view of aforesaid section 8 of the Adhiniyam 2007 cannot be declared as ultra vires and in this regard contention raised by learned counsel for petitioner are repelled.

8. Now the validity of Rule 9 of Rules of 2009 may be examined. This rule has been framed by the State Government in exercise of powers under section 12 of the Adhiniyam 2007 which reads as under:-

> "12. **Power to make rules** - The State Government may, by notification, make rules for carrying out the purposes of this Act."

9. The Rule provides that the State Government may by notification make rules for carrying out the purposes of this Act.

Rule 9 of the Rules provides as under :-

> "9. **RESERVATION** :- Institution shall be allowed to fill up to 15% of the sanction seats by NRI candidates only, in the manner prescribed by the admission and Fee Regulatory Committee before the Counselling. NRI Seats remaining vacant shall be merged into the Counselling.
>
> 20% Seats are reserved for candidates belonging to Scheduled tribes, 16% seats are reserved for candidates belonging to Scheduled castes and 14% seats are reserved for candidates belonging to other backward classes other than creamy layer of OBC of Madhya Pradesh or as amended from time to time.
>
> (1) Reservation for woman candidates shall be 30% according to merit cum option in each category.
>
> (2) The minimum percentage of marks in entrance examination

for eligibility for admission to Under Graduate Medical and Dental courses shall be 40% for SC/ST/OBC candidates and 50% for unreserved category candidates.

(3) The candidate claiming to be a candidate belonging to SC/ ST/ OBC (Non Creamy) category of Madhya Pradesh shall have to attach a valid certified copy of certificate issued by the Competent Authority with the application form and the original certificate has to be produced at the time of counselling.

(4) For Physically Handicapped persons who are bonafide residents of Madhya Pradesh and who belongs to ST, SC, OBC and Unreserved category, three percent (3%) seats are reserved for admission to U.G. Courses.

The candidate claiming admission against these seats will have to produce a valid certificate, in the prescribed form from District Medical Board and eligibility certificate from superintendent vocational Rehabilitation Centre for Physically Handicapped, Government of India, Ministry of Labour, Napier Town, Jabalpur. However it will be governed by guideline framed by MCI.

Following disabilities are not eligible -

1. Upper limb Handicapped.
2. Visual Handicapped.
3. Hearing Handicapped.
4. Lower limb more than 70% Handicapped;

Certificate of eligibility should not be more than 3 months old at the time of counselling."

10. This Rule specifically provides reservation of 20% seats for candidates belonging to Scheduled Tribes, 16% seats for Scheduled Castes and 14% seats for candidates belonging to other backward classes other than creamy layer of OBC of Madhya Pradesh. Sub-section (4) provides that for Physically Handicapped persons who are bonafide residents of Madhya Pradesh and who belongs to Scheduled Tribe, Scheduled Caste, Other Backward Classes and Unreserved category, 3% seats shall be reserved for admission to Under graduation courses.

11. Though it is urged by Shri Tripathi, learned counsel for petitioner that when a reservation has been made for Physically Handicapped person, and no explanation has been given on the part of the State to not provide reservation to the candidates of freedom fighter category, but as stated hereinabove the aforesaid reservation has been made to the candidates belonging to Physically Handicapped category belonging to Scheduled Caste, Scheduled Tribe, Other Backward Classes and Unreserved category. When the provision has been specifically made in section 8 of the Adhiniyam of 2007 to provide reservation for Scheduled Caste,

Scheduled Tribe and OBC and in the same category aforesaid reservation has been made to extent 3% of seat to the physically handicapped, no fault is found. And this by itself will not be a ground to challenge Rule 9 on the anvil that no reservation has been provided to freedom fighter category. Though the State Government while framing Pre-Engineering and Pharmacy Test (PEPT) 2009 provided reservation to the candidates of freedom fighter category, but on the basis of framing of another Rule, the Rule of 2009 cannot be declared as ultra vires. Until and unless the rule is in contravention of constitutional provision or statutory provision, such Rule cannot be declared as ultra vires.

12. The case of petitioner was also considered on merits by the Division Bench of this Court in W.P.No.7818/2009 *(Akanksha Pandey Vs. State of M.P. & others)*, in which a Division Bench of this Court considering the merits of the case held thus :-

> "On a perusal of the said provisions, it is quite clear that the reservation of seats for private unaided professional educational institutions is restricted to the persons belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens, as may be prescribed by the State Government. Thus, the statutes has created reservation in respect of the aforesaid three categories. The Act does not authorise any kind of reservation in favour of the freedom-fighters and sainiks categories for private unaided professional educational institutions. The rule has been framed in consonance with the 2007 Act. As is manifest, the Rule also does not prescribe any reservation for 'freedom-fighter' and 'sainik' categories in private unaided professional educational institution. Thus, the action of the respondents being in accord with the Act and the Rules cannot be found fault with. The stand that there is no prohibition in the Act and the Rules is absolutely spacious and mercurial inasmuch as on that ground the action taken by the respondents cannot be faulted."

13. After decision on merits of the case the petitioner has challenged the validity of section 8 of the Adhiniyam 2007, but as discussed hereinabove we do not find any case for declaring Section 8 of the Adhiniyam 2007 or Rule 9 of the Rules, as ultra vires and accordingly this petition is found without merit and is dismissed with, no order as to costs.

Petition dismissed.

I.L.R. [2010] M. P., 2547
WRIT PETITION
Before Mr. Justice Alok Aradhe
14 September, 2010*

G.P. DEWANGON ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

A. Service Law - *Departmental Enquiry - Natural Justice - Departmental enquiry concluded and petitioner, eventually was punished with order of compulsory retirement - Order challenged on grounds that without any justification after the delay of 15 years, D.E. was completed ex parte without affording proper opportunity of hearing to petitioner - Held - It is not a case of petitioner that he did not have the notice of departmental enquiries - Respondent's version in the return that the petitioner was served with notice and he did not participate in the departmental enquiries proceedings, so he was proceeded ex parte, has not been disputed by the petitioner by filing the rejoinder - Petitioner failed to show that prejudice has been caused to him on account of violation of principles of natural justice - No fault can be found with the order passed by the Disciplinary Authority.* (Paras 7 & 10)

क. सेवा विधि – विभागीय जाँच – नैसर्गिक न्याय – विभागीय जाँच समाप्त की गई और अंततः याची को अनिवार्य सेवानिवृत्ति के आदेश से दण्डित किया गया – आदेश को इन आधारों पर चुनौती दी गयी कि बिना किसी न्यायोचित्य के, 15 वर्ष के विलंब के पश्चात् याची को सुनवाई का उचित अवसर दिये बिना विभागीय जाँच एक पक्षीय पूर्ण की गयी – अभिनिर्धारित – याची का मामला यह नहीं है कि उसे विभागीय जाँचों की सूचना नहीं थी – परिलेख में प्रत्यर्थी के इस विवरण को कि याची को सूचना तामील की गयी थी और उसने विभागीय जाँच की कार्यवाहियों में भाग नहीं लिया इसलिए उसे एकपक्षीय किया गया, याची द्वारा प्रत्युत्तर प्रस्तुत कर विवादित नहीं किया गया – याची यह दर्शाने में असफल रहा कि नैसर्गिक न्याय के सिद्धांतों के उल्लंघन के कारण उसके साथ पक्षपात कारित हुआ है – अनुशासनात्मक प्राधिकारी द्वारा पारित आदेश में कोई त्रुटि नहीं पायी गई।

B. Service Law - *Averments of fact - If not denied the same is taken to be admitted.* (Paras 7 & 10)

ख. सेवा विधि – तथ्य के प्रकथन – यदि उनसे इनकार नहीं किया जाता तो उन्हें स्वीकृत होना मान लिया जाता है।

C. Service Law - *Appeal - The order passed by appellate authority, which is bereft of any reason cannot be sustained in the eye of law - Order passed by appellate authority is quashed.* (Para 12)

ग. सेवा विधि – अपील – अपीलीय प्राधिकारी द्वारा पारित आदेश, जो कि बिना किसी कारण के है, विधि की दृष्टि से कायम नहीं रखा जा सकता – अपीलीय प्राधिकारी द्वारा पारित आदेश अभिखंडित।

---

*W.P. No.3611/2007(S) (Jabalpur)

Cases referred :

AIR 1990 SC 1308, AIR 2006 SC 3475, 2009(2) MPHT 409(DB), 1999 SCC (L&S) 645, 1993 Suppl. (4) SCC 46, (2009) 4 SCC 240, (1995) 6 SCC 279, (1990) 4 SCC 594, (2010) 3 SCC 732 (relied upon).

D.N. Shukla, for the petitioner.
Ashish Shroti, G.A., for the respondent No.1.
Abhishek Dubey, for the respondent No.3.

ORDER

ALOK ARADHE, J. :–In this petition under Article 226 of the Constitution of India the petitioner has challenged the order dated 30.3.1990 (Annexure-P-1) by which punishment of compulsory retirement has been imposed on the petitioner. The petitioner has also assailed the validity of the order dated 25.7.1994 by which appeal preferred by him against the order of punishment has been dismissed by the appellate authority.

2. Facts leading to filing of the writ petition are that the petitioner was appointed as Forest Ranger on 15.4.1958. In 1968-69 the petitioner was posted in Range Office, Katni. By order dated 22.6.1969 the petitioner was transferred to working plan Sheopur and was relieved on the same date. The petitioner submitted representation against the aforesaid order of transfer. The order of transfer dated 22.6.1969 was stayed and the petitioner worked in Katni till 08.8.1969. However, vide order dated 30.7.1969 the petitioner was transferred from Katni to Kalpi District Mandla. In compliance of the aforesaid order the petitioner joined at Kalpi on 09.8.1969. However, charge was not given to him by the Range Officer, therefore, the petitioner was posted as Officer on Special Duty at Kalpi vide order dated 25.8.1969.

3. Thereafter, by an order dated 04.7.1970 the petitioner was transferred from Kalpi to Bastar circle. Against the aforesaid order the petitioner submitted a representation and stated that no salary and allowance has been paid to him. The order of transfer dated 04.7.1970 was stayed by order dated 19.7.1971 (Annexure-P-11) with a direction that the salary of the petitioner may be paid to him. However, without making payment of salary to the petitioner, he was again transferred vide order dated 16.5.1973 to Bilaspur. However, the Last Pay Certificate (L.P.C.) was also not issued. The petitioner submitted representations (Annexures-P-13 to P-16) and pointed out that neither the petitioner has been neither relieved nor salary has been paid to him. The representations submitted by the petitioner failed to evoke any response.

4. Thereafter, vide communication dated 15.6.1982 the petitioner was informed that by order dated 4.7.1970 he was transferred to Bastar, however, the petitioner was absent from his duties and did not join his duties at the transferred place. Therefore, till the decision with regard to absence of the petitioner is taken, payment of salary cannot be made to him. The petitioner brought to the notice of

respondents that his order of transfer to Bastar was stayed by order dated 19.7.1971 and, therefore, he did not execute the order of transfer.

5. A charge-sheet daed 23.10.1982 was served on the petitioner. The petitioner filed reply to the aforesaid charge-sheet on 07.12.1982. Since the petitioner was neither permitted to join his duties nor payment of salary was paid to him, the petitioner filed writ petition which was registered as M.P.No.3724/1986 in which direction was sought with regard to payment of wages as well as for quashing of the charge-sheet. On constitution of the M.P.Administrative Tribunal, the writ petition was transferred to Tribunal. Thereafter, again on abolition of the Tribunal the writ petition was transferred to this Court. Eventually, vide order dated 18.4.2006 the writ petition was disposed of with a direction to the appellate authority to consider and decide the appeal preferred by the petitioner. In the aforesaid factual backdrop the petitioner has prayed for the reliefs, which have already been narrated supra.

6. Respondents no. 1 & 2 have filed the return, in which, inter alia, it is stated that vide orders dated 07.11.1973, 28.1.1989 and 21.12.1989 three chare-sheets alongwith the article of charges were issued to the petitioner containing different charges. The petitioner did not submit reply to the charge-sheets. Thereafter disciplinary proceedings were initiated against the petitioner under Rule 14 of M.P. Civil Service (Classification, Control & Appeal) Rules, 1966 (hereinafter referred to the 1966 Rules') and the Inquiry Officer was appointed. The Inquiry Officer issued notice to the petitioner. However, the petitioner did not participate in the departmental enquiry. Eventually, the petitioner was proceeded exparte in the departmental enquiry proceedings. The Inquiry Officer after conclusion of the enquiry submitted the inquiry report in which charges leveled against the petitioner were duly found to be proved. The Disciplinary Authority agreed with the findings of the Inquiry Officer and eventually by order dated 30.3.1990 imposed punishment of compulsory retirement on the petitioner. The aforesaid order was affirmed in appeal by the appellate authority. It has been averred in the return that full fledged opportunity of hearing was afforded to the petitioner, however, the petitioner failed to avail the same. The departmental enquiry proceedings have been held in accordance with 1966 Rules and principles of natural justice have been duly complied with.

7. Shri D.N.Shukla, learned counsel for the petitioner submitted that without any justification after the delay of 15 years, charge-sheet was issued to the petitioner and the enquiry proceedings have been completed ex parte without affording proper opportunity of hearing to the petitioner. It has further been submitted that appellate authority in mechanical manner has dismissed the appeal preferred by the petitioner, though the appeal preferred by the petitioner was decided on 25.7.1994, yet the order was communicated to the petitioner only on 13.12.2006. In support of his submissions, learned counsel for the petitioner has placed reliance on decisions rendered in the cases of *State of Madhya Pradesh*

vs. Bani Singh and another, AIR 1990 SC 1308 and *M.V.Bijlani vs. Union of India and others,* AIR 2006 SC 3475.

8. On the other hand, Shri Ashish Shroti, learned counsel for respondents No. 1 & 2 while opposing the submissions made on behalf of the petitioner has submitted that three charge-sheets were issued to the petitioner. The petitioner despite receiving of notice of the departmental enquiry proceedings did not appear in the proceedings. The opportunity of hearing was afforded to the petitioner. However, he did not avail of the same and, therefore, the petitioner cannot be permitted to complain about the violation of principles of natural justice. It was further submitted that the instant case is not a case of delay in initiation of departmental enquiry, but of delay in its completion. The petitioner has not pleaded any prejudice which has been caused to him on account of delay in completion of the departmental proceedings. In support of his submissions learned Government Advocate has placed reliance on the decisions rendered in the cases of *Union of India and others vs. Alok Kumar,* (2010) 5 SCC 349, *R.K.Geete vs. Deputy Managing Director and Corporate Development Officer and others,* 2009 (2) MPHT 409 (DB) and *Uma Shanker vs. State of U.P. and others,* 1999 SCC (L&S) 645.

9. Learned counsel for respondent No.3 has submitted that the respondent No.3 has unnecessarily been impleaded and no relief has been sought against respondent No. 3.

10. I have considered the submissions made by learned counsel for the parties. From the averments made in the writ petition it is apparent that it is not a case of the petitioner that he did not have the notice of departmental enquiries. The respondents No. 1 & 2 have categorically stated in the return that the petitioner was served with the notice of departmental enquiries. However, he did not participate in the departmental enquiries proceedings. Accordingly, he was proceeded ex parte. The aforesaid fact has not been disputed by the petitioner by filing the rejoinder. It is settled in law that if the averments of fact is not denied, the same is taken to be admitted. Reference in this connection may be made to the decision of a Supreme Court in *Naseem Banu (Smt.) vs. State of U.P. and others,* 1993 Suppl. (4) SCC 46. Since the petitioner himself had chosen not to participate in the disciplinary proceedings, therefore, he cannot be permitted to complain about the violation of principles of natural justice. In *Alok Kumar* (supra) it has been held that it is incumbent on the delinquent employee to show that he has suffered prejudice on account of violation of principles of natural justice. In the instant case the petitioner failed to show that prejudice has been caused to him on account of violation of principles of natural justice. Therefore, no fault can be found with the order passed by the Disciplinary Authority.

11. In *Chairman, Disciplinary Authority Rani Lakshmi Bai Kshetnya Gramin Bank vs. Jagdish Sharan Varshney and others,* (2009) 4 SCC 240 the Supreme Court has held that an order of affirmation need not contain as elaborate

reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. Crhe order passed by the appellate authority must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority. Similarly, in *State Bank of Bikaner & Jaipur vs. Prabhu Dayal Grover,* (1995) 6 SCC 279 the Supreme Court has held that an order passed by the appellate authority should disclose application of mind. Whether there was an application of mind or not can only be disclosed by assigning reasons. In *S.N. Mukherjee vs. Union of India,* (1990) 4 SCC 594 the Supreme Court has held that people must have confidence in the judicial or quasi-judicial authorities. While emphasizing the need for assigning reasons it was held that giving of reasons minimizes the chances of arbitrariness and hence, it is an essential requirement of the rule of law. In *Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and others,* (2010) 3 SCC 732 it has been held by the Supreme Court that reason is the heartbeat of every conclusion. Absence of reasons renders the order indefenisble/unsustainable particularly when the order is subject to further challenge before a higher forum. It has further been held that recording of reasons is a principle of natural justice. It ensures transparency and fairness in decision making.

12. In the backdrop of well settled legal position the facts of the case may be examined. In the instant case the order passed by the appellate authority (Annexure-P-2) dated 25.7.1994 is bereft of any reason. The order only states that the appeal preferred by the appellant, after due consideration, is rejected. No reason worth name has been assigned for rejecting the appeal preferred by the petitioner. For the aforementioned reasons the order passed by the appellate authority dated 25.7.1994 cannot be sustained in the eye of law.

13. So far as the claim of the petitioner with regard to payment of salary is concerned, from perusal of representations (Annexure-P-10 and P-13 to P-16), the petitioner has repeatedly has made a grievance that the salary has not been paid to him from August, 1969. Respondents No. 1 & 2 in paragraph 6 of the return have only stated that as per the entitlement, entire claim of the petitioner has been settled. The petitioner was not placed under suspension. From perusal of the charge-sheet of third departmental enquiry it is apparent that last pay certificate of the petitioner was sent on 15.10.1987 to Bastar where the petitioner was transferred vide order dated 4.7.1970. It is relevant to mention that order dated 4.7.1970 was stayed vide order dated 19.7.1971. Thus, it appears that the amount due on account of salary has not been paid to the petitioner.

14. For the aforementioned reasons the order passed by the appellate authority is quashed. The appellate authority is directed to reconsider the appeal preferred by the petitioner after affording an opportunity of hearing to the appellant and shall pass a reasoned order within a period of three months from the date of production of the certified copy of this order. So far as the claim of the petitioner

with regard to payment of salary is concerned, it is directed that the competent authority shall examine the claim of the petitioner with regard to payment of salary within a period of two months from the date of production of certified copy. If any amount is found due and payable to the petitioner the same shall be paid to the petitioner within a period of three months together with interest at the rate of 6% per annum. If the amount found due and payable is not paid within a period of three months, the same shall carry interest at the rate of 9% per annum.

15. With the aforesaid directions the writ petition is disposed of.

Petition disposed of.

I.L.R. [2010] M. P., 2552

WRIT PETITION

Before Mr. Justice Rajendra Menon

27 September, 2010*

UMAKANT MUDGAL ... Petitioner

Vs.

STATE OF M.P. & ors. ... Respondents

A. **Service Law** - ***Promotion*** - *When promotion is granted by way of absorption in a higher cadre post after due scrutiny, it will only have prospective effect.* (Para 11)

क. सेवा विधि – पदोन्नति – जब सम्यक् जाँच के बाद उच्च संवर्ग पद पर आमेलन के रूप में पदोन्नति प्रदत्त की जाती है तो इसके केवल भावी प्रभाव होंगे।

B. **Krishi Upaj Mandi (Mandi Nidhi Lekha Tatha Rajya Vipnan Sewa Ka Gathan Ki Riti Tatha Anya Vishay) Niyam, M.P. 1980, Rule 83** - *The decision of the Committee constituted u/R 83 will only have prospective effect and the action in granting retrospective seniority to the employees working in a lower cadre post is wholly impermissible.* (Para 11)

ख. कृषि उपज मण्डी (मण्डी निधि लेखा तथा राज्य विपणन सेवा का गठन की रीति तथा अन्य विषय) नियम, म.प्र. 1980, नियम 83 – नियम 83 के अन्तर्गत गठित समिति के निर्णय का मात्र भावी प्रभाव होगा तथा निम्न संवर्ग पद में कार्यरत कर्मचारियों को भूतलक्षी वरिष्ठता प्रदत्त करने की कार्यवाही पूर्णतः अननुज्ञेय है।

Case referred :

(2003) 7 SCC 110.

D.K. Dixit, for the petitioner.

Rajesh Tiwari, G.A., for the respondent Nos.1 & 2.

None, for the respondent Nos.3 to 5.

O R D E R

RAJENDRA MENON, J. :–Petitioner, who at the relevant time in the year 1998

---

*W.P. No.3720/1998 (Jabalpur)

when this petition was filed was the Mandi Secretary – Grade IV and was posted in Krishi Upaj Mandi Samiti, Sihora, Jabalpur has filed this writ petition challenging the seniority list published from time to time, granting seniority to respondents 3 to 5, over and above the petitioner. Further challenge is also made to an order-dated 17.7.98, by which the representation of the petitioner for correction of the Seniority List is rejected and orders-dated 19.11.1984, 14.11.1984 and 15.11.1984 – Annexures B, C and D, by which respondents 3 to 5 are appointed as Mandi Secretary Grade IV retrospectively with effect from 10.10.1980, adversely affecting the seniority of the petitioner.

2. Facts in brief, necessary for disposal of this writ petition, are that petitioner was appointed as a Mandi Secretary Grade IV, vide order-dated 7.1.1982. Since then till filing of the writ petition, he was holding the said post. In the Gradation List, that was issued by respondent No.2, showing the position of Mandi Secretaries as on 1.10.86, when respondents 3 to 5 were shown senior to the petitioner and it was indicated that they were having seniority with effect from 10.10.1980, in the cadre of Mandi Secretary. Petitioner made enquiries and it was revealed that petitioner is senior to the said respondents and, therefore, the Seniority List was incorrectly prepared. Petitioner, therefore, submitted representations and when nothing was done and the Seniority List was not corrected, records indicate that writ petitions were filed before this Court, being W.P.Nos.1405/95 and 3010/95. In the said writ petitions directions were issued to respondent No.2 to consider the representation of all concerned and decide the same. Accordingly, records indicate that respondent No.2 heard all concerned, called for the records and by the impugned action having rejected the representation, petitioner had filed this writ petition in the year 1998.

3. It is the case of the petitioner that he was appointed as Mandi Secretary Grade IV with effect from 7.1.1982 and respondents 3 to 5 were holding the post in the Ministerial Cadre i.e... Accountant/Clerks in various Mandis. It was only in the year 1984 that they were absorbed in the Service of the Mandi as a Secretary. It is stated that vide orders – Annexures B, C and D, respondents 3 to 5 were absorbed as Mandi Secretaries Grade IV, by the competent authority in accordance to the provisions of Rule 83, of the M.P. Krishi Upaj Mandi (Mandi Nidhi Lekha, Tatha Rajya Vipnan Sewa Ka Gathan Ki Riti Tatha Anya Vishay) Niyam, 1980 (hereinafter referred to as 'Rules of 1980'). According to the petitioner, respondents 3 to 5 prior to their date of absorption i.e... 19.11.84, 14.11.84 and 15.11.84, were holding the substantive post of Accountant/Clerks, which is in the Ministerial Cadre and is the feeder cadre for promotion to the post of Mandi Secretary, it is stated that under Rule 83, of the Rules of 1980, absorption could only be on an equivalent post, but ignoring the same as respondents have been absorbed retrospectively in a higher cadre post, contrary to the provisions of Rules of 1980, adversely affecting the right of the petitioner to the seniority on the post, petitioner has filed this writ petition. Referring to the certificates – Annexures

P/15 and P/16 and the order available on record – Annexure R/4, indicating the post held by respondents 3 to 4, in the Mandi before their absorption, Shri D.K. Dixit argued that all the three persons were working as Clerk (लिपिक)/Accountant and they have been absorbed in a higher cadre of Secretary retrospectively, even though in the year 1980 since when they have been granted seniority, they were working in lower cadre as Accountants/Clerks.

4. Interalia contending that respondents could be absorbed and granted seniority on the post of Mandi Secretary Grade IV only from the date Annexures B, C and D were passed and not from 10.10.80, when they were holding the lower post of Accountant/Clerk, they cannot be absorbed and granted retrospective seniority in the higher grade, which is a promotional post, Shri D.K. Dixit seeks for interference into the matter. Shri Dixit submits that the action of the respondents results in granting retrospective seniority to respondents 3 to 5, in the cadre of Mandi Secretary, with effect from 10.10.1980, even though between 10.10.1980 and till passing of the orders – Annexures B, C and D, in the year 1984, they were holding a post in the lower cadre of Accountant/Clerk, which is the feeder cadre for promotion to the post of Mandi Secretary. Contending that absorption could be only on an equivalent post or if entitled to, on a higher post prospectively from the date of absorption, Shri D.K. Dixit seeks for interference into the matter.

5. As already indicated hereinabove, none has appeared for respondents 3 to 5, but a detailed reply is filed on behalf of respondents 1 and 2. From the reply, filed by respondents 1 and 2, it is seen that the MP Krishi Upaj Mandi Adhiniyam, 1973 was brought into force with effect from1.6.1973 and between 1.6.1973 and 10.10.1980, when the Rules of 1980 came into force, all the employees except Secretary were in employment of the respective Krishi Upaj Mandi Samities. Each Samiti was a separate body corporate having an independent existence under the law, but after the Rules of 1980 came into force on 10.10.1980, a separate cadre of Secretary/Assistant Secretary/Mandi Inspectors were formed and the powers for transfer of these cadre employees to various Mandis were conferred on the Director of the Mandi Board. All the Secretaries became members of the Rajya Vipnan Seva and they were entitled to hold the post of Secretary Grade I to Grade IV, in any Mandi Samiti. It is stated by the respondents in the return that prior to coming into force of Rules of 1980, respondents 3 to 5 and many other similarly situated employees were working in various categories as Accountants/ Clerks/Head Clerks/LDC. Each Mandi Samiti had recommended for their promotion to the post of Mandi Secretary Grade IV, but as no decision was taken till the year 1984, a decision was taken in the year 1984 to constitute a Committee, for considering the cases of such employees for their absorption in the Rajya Vipnan Seva and by filing the recommendations of the said Samiti as Annexure R/3, it is the case of respondents 1 and 2 that in accordance to the qualification of the employees, particularly respondents 3 to 5, the Committee had recommended for their absorption in the cadre of Mandi Secretary Grade IV and the benefit of

such absorption is granted to them retrospectively with effect from 10.10.1980, on which date the Rules of 1980 came into force. In this regard, the averments made by respondents 1 and 2, in their return in paragraphs 3 and 5 may be taken note of and the relevant portions read as under:

> "3. All the Secretaries of any grade became a member of Rajya Vipnan Seva. There were certain persons, who although were not holding the office of Secretary (Grade I to Grade IV) in any Mandi Samiti, but recommendation for their promotion to the post of Secretary, Mandi, were pending. The Director, Mandi took into account the resolutions/recommendations, forwarded to it by different Mandi Samitis, and all those persons, who were found fit for promotion to the post of Secretary Grade IV were also included in Rajya Vipnan Seva, and such persons who were already in service of Mandi Samiti, and promoted as Secretary – Grade IV, were also included in Rajya Vipnan Seva and seniority given to them w.e.f. 10.10.1980. ..... The petitioner entered into the services as Secretary – Grade IV, vide order-dated 7.1.1982 whereas the Respondents No. 3, 4 and 5, were already serving in different Mandi Samitis and the Mandi Samiti concerned, by resolution, recommended the case of Respondents No. 3, 4 and 5, for promotion to the post of Secretary Grade IV. The recommendations/resolutions were accepted by Director, Mandis and they were promoted much before 1982, as Secretary, Grade IV and given seniority w.e.f. 10.10.1980.
>
> ***(Emphasis supplied)***
>
> 5. The case of respondent Nos. 3, 4 and 5 and others were placed before the Absorption Committee, in view of Rule 83 of 1980 Rules. The absorption committee took a policy decision for absorbing such persons who were already in service of the Mandi Samitis and their names were recommended by the Mandi Samitis. Copy of the decision dated 29.8.1981 and order-dated 18.9.1981, both are being annexed with the return, marked as Annexures R/3 and R/4. ..... For the reason that Respondents No. 3, 4 and 5 were already functioning against different posts, as disclosed in the decision dated 18.9.1981, a copy of the decision dated 13.10.1984, a copy of the decision dated 13.10.1984, is also being annexed with the return as Annexure R/5. ..... The petitioner cannot be treated senior to those who were already in service and functioning against the post of either Secretary/ Accountant/Head Clerk or Nakedars, having requisite qualification, experience and merit. ....."

6. Having heard learned counsel for the petitioner and learned counsel for the State and on perusal of the records, it is clear that even though respondents 3 to 5 entered the service of various Mandis much prior to appointment of the petitioner on 7.1.1982, but on 7.1.1982 petitioner was holding the higher cadre post of Mandi Secretary whereas respondent Shri Ramkumar Rai was holding the post of Accountant in Krishi Upaj Mandi Samiti, Shahpura, Bhitoni. Similarly, respondent Shri Shriniwas Sharma was holding the post of Clerk in Krishi Upaj Mandi Samiti, Kailash and respondent Suresh Kumar Jain @ Suresh was holding the post of Clerk in Krishi Upaj Mandi Samiti, Nagda, as is evident from the document - Annexure R/4, filed by the respondents.

7. From the pleadings of respondents 1 and 2, it is seen that all the three respondents and many other employees were holding the lower cadre post of Accountants/Head Clerks/LDC etc, but their respective Krishi Upaj Mandi Samitis had recommended for their promotion to the cadre of Mandi Secretary Grade IV. However, as no decision was taken till 1984, a Committee was constituted, which exercising powers under Rule 83 read with 100 of the Rules of 1980 granted them retrospective absorption with seniority on the promoted post. At this stage, it would be relevant to consider the provisions of Rule 83, of the Rules of 1980. The said Rule is reproduced hereinabove:

> **"83. Absorption** – the incumbents holding posts equivalent to the posts included in the service immediately before the commencement of these rules shall be absorbed on suitable posts on the basis of their qualifications, experience and record of service. A committee shall be constituted as follows for reviewing such cases and deciding post of absorption - ....."
>
> ***(Emphasis supplied)***

From the aforesaid Rule, it is seen that on an incumbent holding post equivalent to the post included in service (i.e... the Rajya Vipnan Seva) immediately before commencement of the Rule i.e... 10.10.1980, is entitled to be absorbed on a suitable post on the basis of their qualification.

8. This Rules clearly contemplates that based on the qualification and experience of the person, a Committee constituted under Rule 83 is entitled to recommend an incumbent holding the post equivalent to the post included in service. Admittedly, respondents 3 to 5 were not holding any post equivalent to the post included in service i.e.... the Rajya Vipnan Seva, namely Mandi Secretary, Mandi Inspector etc. They were holding lower cadre posts of Accountants and Clerks. Even if it is assumed that the Rules permit their absorption in a suitable post based on their qualification and experience, the absorption will have prospective effect and the Committee does not have any power to direct for retrospective promotion with effect from the date when the incumbent was not holding any post equivalent to the post included in service nor were they working on the post of

Mandi Secretary on adhoc or officiating basis. The powers to be exercised under Rule 83 is to assess the suitability and experience of the incumbent candidate and direct for their absorption if found feasible. However, while doing so and while granting them seniority on absorption under Rule 100, the Committee should ensure that absorption and grant of seniority, if retrospectively undertaken is on a post in which the incumbent has atleast performed duties on adhoc or officiating basis and is a post equivalent to the one provided in the Rajya Vipnan Seva. It is not permissible to retrospectively absorb a person on a higher cadre and grant him seniority even though he was discharging duties in a lower cadre on the date from which he is granted seniority.

9. In the present case, if the seniority is granted to respondents 3 to 5 with effect from 10.10.1980, it would mean that even though they were working as Accountants/Clerks between 10.10.1980 till the date of passing the orders – Annexures B, C and D, they are granted seniority in the higher cadre of Mandi Secretary Grade IV with effect from 10.10.1980 on which date they were infact working on a lower cadre post, that also a feeder post for promotion to the post of Mandi Secretary Grade IV. This is wholly impermissible and the decision of the Committee to grant them retrospective seniority on the post of Mandi Secretary Grade IV with effect from 10.10.1980, on which date they were holding a lower cadre post, is clearly impermissible. Respondents 3 to 5 can claim seniority and promotion by way of absorption to the higher post only with effect from the date they are appointed/promoted/absorbed on the higher post. If it had been a case where respondents 3 to 5, as on 10.10.1980 and upto the dates when the orders – Annexures B, C and D were passed, were discharging the duties of Mandi Secretary on adhoc or officiating basis, the Committee could have granted them retrospective seniority, but granting them retrospective seniority on a higher promotional cadre post even when they have discharged the duties of a lower post is not permissible. In that view of the matter, Shri D.K. Dixit, learned counsel for the petitioner, is right in contending that the respondents have been granted seniority retrospectively in a higher cadre, which was never held by them and the same is impermissible. Merely because the Mandi Samiti where respondents 3 to 5 were working, had recommended for their promotion that by itself is not a ground for granting them retrospective seniority. The benefit of seniority can be granted to respondents 3 to 5 only from the date they are appointed to the post as per the rules.

10. This Court is of the considered view that seniority in a particular cadre has to be determined on the basis of appointment or working in that particular cadre. Normally if an employee is not appointed substantively in a particular cadre post, he is not entitled to seniority in the cadre post with effect from the date prior to his substantive appointment. However, the only exception to the Rule is that if an employee is granted adhoc appointment or officiates on a higher cadre post and such adhoc or officiation is after following the due process contemplated under

law, then the adhoc or officiating service can be counted for the purpose of seniority, but while working on a lower cadre post and without even discharging the higher responsibility of a higher cadre post, the seniority on such a higher post cannot be granted, when infact on the date when the seniority is granted, the incumbent was discharging the duties of a lower cadre post. This is the normal and settled principle of law in the matter of granting seniority. See: (2003) 7 SCC 110 – *D.R. Yadav and another Vs. R.K. Singh and another.*

11. When promotion is granted by way of absorption in a higher cadre post after due scrutiny of the Committee constituted under Rule 83, the decision of the Committee will only have prospective effect and the action of the respondents in granting retrospective seniority to respondents 3 to 5 in the cadre of Mandi Secretary Grade IV, with effect from 10.10.1980, on which date they were working in a lower cadre post of Accountants/Clerks is wholly impermissible and in that view of the matter, this petition has to be allowed.

12. Accordingly, this petition is allowed. Respondents are directed to correct the Seniority List in question and fix the seniority of the petitioner above respondents 3 to 5, at a suitable place and ensure that respondents 3 to 5 are granted seniority either below the petitioner or with effect from the date they were absorbed in the cadre of Mandi Secretary Grade IV i.e... the date on which Annexures B, C and D were issued.

13. Petition stands allowed and disposed of with the aforesaid directions. No order so as to costs.

Petition allowed.

I.L.R. [2010] M. P., 2558
WRIT PETITION
Before Mr. Justice R.K. Gupta
30 September, 2010*

RADHAKANT VERMA (Dr.) ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

Service Law - ***Counting of previous service*** - *Petitioner, rendering service with Allahabad University, subsequently selected and appointed as Professor in Awdhesh Pratap Singh University - After retirement when he applied for pensionary benefits, his previous service and probation period was not calculated for the benefit on the ground that the petitioner's lien continued to be at two places - Held - Merely because lien is terminated with the previous employer subsequently after the date of employment with the new employer, does not mean that services rendered by the petitioner with the present employer shall be ignored - The services of the petitioner, rendered with the earlier employer, have to be counted.* (Para 5)

---

*W.P. No.8179/2004(S) (Jabalpur)

सेवा विधि – पूर्ववर्ती सेवा की गणना – याची इलाहाबाद विश्वविद्यालय में सेवारत था बाद में अवधेश प्रताप सिंह विश्वविद्यालय में प्राध्यापक के रूप में चयनित एवं नियुक्त हुआ – सेवानिवृत्ति के बाद जब उसने पेंशन संबंधी लाभों के लिए आवेदन किया, उसकी पूर्ववर्ती सेवा एवं परिवीक्षा अवधि की गणना लाभ हेतु इस आधार पर नहीं की गयी कि याची का धारणाधिकार दो स्थानों पर बना रहा था – अभिनिर्धारित – मात्र इस कारण कि पूर्व नियोजक के पास धारणाधिकार बाद में नये नियोजक के पास नियोजित होनेकी दिनांक से समाप्त हो जाता है, उसका यह तात्पर्य नहीं है कि याची द्वारा वर्तमान नियोजक को दी गयी सेवाओं की अवहेलना की जायेगी – याची द्वारा पूर्व नियोजक को दी गयी सेवाओं की गणना की जावेगी।

P.R. Bhave with *Bhanu Pratap Yadav,* for the petitioner.
Harish Agnihotri, GA, for the respondent Nos. 1 to 3.
Vibhudendra Mishra, for the respondent No. 4.

ORDER

R.K. Gupta, J. :–The petition has been filed by the petitioner seeking writ of mandamus against the respondents for counting his previous services, which he has rendered with the Allahabad University before his appointment with the Awadhesh Pratap Singh University, Rewa for the purpose of pensionary benefits.

2. The petitioner has rendered his services with the Allahabad University for a period from 17.7.1964 till 23.3.1985. During this period, he has applied for the post of Professor without prior permission of the Allahabad University. The petitioner was selected and appointed by the Awadhesh Pratap Singh University, Rewa by order dated 24.3.1985. Initial appointment of the petitioner was on probation. The petitioner, while working with the new University i.e. Awadhesh Pratap Singh University, Rewa submitted his resignation with his earlier employer i.e. Allahabad University by moving an application on 23.3.1987, the same was accepted on 24.3.1987. The petitioner retired with his new employer w.e.f. 31.10.1997 and thereafter, applied for his pensionary benefits. The respondents have not calculated, for the purpose of pensionary benefits, the services of the petitioner, which he had rendered with his earlier employer i.e. Allahabad University and it is also the grievance of the petitioner that the service which the petitioner has rendered with the new employer i.e. Awadhesh Pratap Singh University, Rewa on probation, has also not been counted for the purpose of pensionary benefits.

3. Learned counsel for the petitioner has relied upon the circular/letter issued by M.P.Higher Education Grants Commission, which is placed on record as (Annexure P-5) to the petition. In the aforesaid letter, it is stipulated that the Higher Education Grants Commission of State of M.P. has agreed to count the previous services of an incumbent which he has rendered with the earlier University, if such University is either recognized or has been receiving the grants-in-aid. In the said letter there are three categories of employees; first category relates to the employees who had been working in the University and while working

in the University, has applied to another University for his appointment after having acquired due permission; second category relates to the employees who have applied for the appointment with the new employer while working with the earlier employer and have been selected but no application was rooted. Third category relates to the employees who were on deputation with the recognized University and subsequently have been absorbed. Thus, the M.P. Higher Education Grants Commission has considered the eventuality in relation to all the three categories of the employees. The case of the petitioner does not fall within categories 1 and 3 but is covered under category 2 as the petitioner has forwarded his application for appointment to the new employer without prior permission of the earlier employer and has been selected. With reference to this category of the employees, the circular states that if such an employee is required to submit his resignation then such resignation would be a technical resignation and accordingly, the State Government has to take appropriate decision while examining the case on merit with regard to entitlement of the petitioner for pensionary benefits by counting his previous services. In the present case, it is to be seen that petitioner's case falls within the second category and technical resignation was submitted by the petitioner after his appointment and joining with the new employer and after his resignation was accepted by his previous employer, then he continues to be there and he is entitled to be given the benefit of second category of the employees for whom the benefit is conferred by letter (Annexure P-5).

4. In view of the aforesaid, in my opinion, the petitioner shall be entitled for the pensionary benefits by counting his previous services which he has rendered with the Allahabad University.

5. On behalf of respondents, though it was argued that the petitioner's lien was terminated with the Allahabad University and before his lien is terminated with the earlier University and petitioner was appointed with the new University then the lien of the petitioner continues to be at two places, therefore, petitioner is not entitled to count his previous services for the pensionary benefits.

Submission in this regard is considered. It is to be seen that with regard to counting of previous services for the purpose of pensionary benefits, the lien certainly has to be counted of an incumbent after he submits resignation or he resigns. In the present case, the resignation of the petitioner was accepted by earlier employer on 24.3.1987 and before termination of such lien, the petitioner continues to be into employment of new University/employer but his lien is terminated with the previous employer only after his resignation is accepted. Merely because lien is terminated with the previous employer subseqently after the date of employment with the new employer, does not mean that services rendered by the petitioner with the present employer shall be ignored. It is not the case of the respondent that petitioner had been working at both the places and has been receiving salary from both the places. But

after the appointment of the petitioner with the new employer, he has to apply for termination of his lien by way of resignation and it would certainly be a technical resignation in terms of circular (Annexure P-5) and therefore, the services of the petitioner, rendered with the earlier employer, have to be counted.

6. Apart from the aforesaid, alternatively, it has also to be seen that initial appointment of the petitioner with the new employer, was on probation. Rule 12 of M.P. Civil Services (Pension) Rules, 1976 reads thus :-

12. **Commencement of Qualifying service.**-(1) Except for compensation gratuity, a Government servant's service does not qualifying till he has completed 18 years of age, provided that nothing contained in this clause shall apply in the case of persons who were in service on the date of commencement of these rules and in whose case a lower age limit has been prescribed.

(2) Subject to the provisions of these rules, qualifying service of Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

7. It is provided under Rule 12 (2) of M.P. Civil Services (Pension) Rules, 1976 that subject to the provisions of these rules, qualifying service of Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. Thus two years' services, which the petitioner has rendered with the new employer on probation from 24.3.1985, even otherwise has to be counted by the new employer.

8. In the present case on behalf of the State, reliance was placed on the order passed by the State Government (Annexure R-1) to submit that the period, for which the petitioner was absent from Allahabad University and leave was sanctioned without pay after his technical resignation, cannot be counted for the purpose of pensionary benefits.

The aforesaid reason which has been given in letter (Annexure R-1) issued by the new employer, cannot be said to be correct acceptance of the scheme (Annexure P-5) issued by M.P. Higher Education Grants Commission because in the said circular (Annexure P-5), no restriction has been imposed that the employee, who had been working with his earlier employer, if appointed to the new post, then before he joins, he has to submit his resignation with his earlier employer. If there would have been bar of such nature in the circular/scheme of the State Government, then certainly the petitioner would not have been entitled to count his services rendered by him during the time when he was absent with the earlier employer. It is not the case that employment under the previous employer is terminated lien of the petitioner because of his absence but admitted fact is that earlier employer has accepted the resignation of the petitioner, thereafter petitioner was appointed in the new employment.

9. In view of the aforesaid, respondents are directed to calculate the pensionary benefits of the petitioner by counting his previous services which he has rendered from 17.7.1964 with Allahabad University. Necessary calculations shall be made and would be paid by the respondents within 90 days from the date of furnishing certified copy of this order. Respondents are also directed to consider fixation of pensionary benefits of the petitioner in terms of revision of pay scale time to time.

10. The writ petition is allowed to the aforesaid extent. No costs.

Petition allowed.

I.L.R. [2010] M. P., 2562
WRIT PETITION

Before Mr. Justice Ajit Singh & Mr. Justice Sanjay Yadav

11 October, 2010*

M.P. HASTA SHILPA HATHKARGHA VIKAS NIGAM MARYADIT ... Petitioner

Vs.

OM PRAKASH KORI & ors. ... Respondents

Industrial Disputes Rules, M.P. 1957, Rule 10-B(6) - *The examination of witness in every case is not mandatory - The Rule is applicable only when the tribunal decides to examine a witness.* (Para 7)

औद्योगिक विवाद नियम, म.प्र. 1957, नियम 10–बी(6) – प्रत्येक मामले में साक्षी की परीक्षा आज्ञापक नहीं है – नियम केवल तब लागू होता है जब अधिकरण किसी साक्षी की परीक्षा करने का विनिश्चय करता है।

Case referred :

AIR 2004 SC 355.

R.D. Jain, A.G. with *Anoop Shrivastava,* for the petitioner.

S.H. Moyal with *R.B. Tiwari,* for the respondents.

O R D E R

The Order of the Court was delivered by AJIT SINGH, J. :–By this petition, filed under Articles 226 and 227 of the Constitution, the petitioner has prayed for quashing of award dated 14.2.2008, Annexure P1, passed in Reference No.3/2007 by the Madhya Pradesh Industrial Tribunal, Indore (in short, "the Tribunal") whereby it has answered the reference in favour of respondents.

2. Petitioner, Madhya Pradesh Hasta Shilpa Hathkargha Vikas Nigam Maryadit, is an instrumentality of the State and is engaged in the business of manufacture and sale of cloth and handicraft. By order dated 27.8.1994 it appointed the respondents in "clear vacancies" in the pay scale of Rs.750-945 for a period of one year on the posts of Peon/ Chowkidar. These appointments were renewed

*W.P. No.5315/2008 (Jabalpur)

every year up to 30.4.2006. The respondents, thus, continuously worked for about 12 years in regular pay scales. But their appointments were not renewed from 1.5.2006 onward and instead they were asked to execute bonds on stamp paper of Rs.50/- each, as per letter marked as Ex.P5, if they desired further employment. The form of bond indicates that respondents were offered further employment on consolidated salary of Rs.4,280/- per month and not regular pay scale and their appointments were to be treated as "contractual employment". Since the respondents did not execute the bonds, they were not paid salary from 1.5.2006 despite their attendance being marked up to November 2006. The petitioner also treated the services of respondents terminated from 1.5.2006 though it did not pass any formal written order in this regard. Aggrieved with the petitioner's conduct, the respondents raised a dispute stating that their status, security, tenure of employment and the terms and conditions of service cannot be unilaterally changed by compelling them to execute bonds for fresh appointment.

3. The Deputy Labour Commissioner, Bhopal, in exercise of powers delegated to him by the State Government, referred the dispute under section 10 of the Industrial Disputes Act, 1947 to the Tribunal for adjudication. The term of reference was as under:

> "क्या श्री ओमप्रकाष एवं अन्य 43 को दिनांक 01.05.2006 से वेतन का भुगतान नहीं कर तथा सेवा शर्तों में परिवर्तन कर अनुबंध पर कार्य करने हेतु अनुबंध का प्रस्ताव वैध एवं उचित है ?
>
> यदि नहीं तो वह किस सहायता के पात्र है तथा इस संबंध में नियोजक को क्या निर्देष दिये जाना चाहिये ?"

4. On 15.10.2007 the Tribunal issued notices to the petitioner as well as respondents about the reference and fixed the case for 16.11.2007. On that date the respondents submitted their statement of claim whereas the petitioner submitted its statement of claim on 3.1.2008. The Tribunal on 3.1.2008 gave the petitioner and respondents one week time to file documents and affidavits in support of their respective claims. On 11.1.2008 the petitioner and respondents filed their affidavits and even exchanged the copies of affidavits. After this was done, the Tribunal as agreed heard the final arguments on 30.1.2008 and then passed the award on 14.2.2008.

5. The Tribunal by the impugned award has answered the reference in favour of respondents. It has held that non-payment of wages to them from 1.5.2006 was illegal and since they had continuously worked on their posts in clear vacancies for nearly 12 years without any complaint, they acquired the status of permanent employees. The Tribunal has also held that the condition imposed by the petitioner for executing bonds on stamp paper of Rs.50/- each by the respondents was not legal and proper and directed the petitioner to reinstate them with full back wages from 1.5.2006.The Tribunal has further directed that respondents will be paid wages as per pay scale and at the rate at which they were getting on 30.4.2006 with usual increments and allowances.

6. In the petition although number of grounds are mentioned for challenging the award, the learned Advocate General appearing for petitioner, however, during the course of arguments has pressed the petition only on the ground that since the Tribunal has not recorded the evidence of witnesses, as required under Rule 10-B(6) of the Madhya Pradesh Industrial Dispute Rules, 1957 (in short, "the Rules"), the award is illegal. According to the learned Advocate General, the award has been passed against the principles of natural justice as the petitioner was deprived of its right to cross-examine the witnesses of the respondents whose affidavits were filed. The learned counsel for respondents, on the other hand, defended the legality of the award by submitting that the procedure adopted by the Tribunal is strictly in accordance with the rules.

7. Part III of the Rules deals with the powers and procedure of the Tribunal while adjudicating an industrial dispute referred to it under section 10 of the Industrial Disputes Act. Rule 24 empowers the Tribunal with certain powers of the Civil Court one of which being power to receive evidence on affidavit as contained in Order 18 Rule 4 of the Code of Civil Procedure, 1908 (in short, "the Code"). The object of this rule is to subserve the larger purpose of cutting down the time of Tribunal in recording the evidence of witnesses. The procedure of examination of each witness referred to in Rule 10-B(6) is applicable only when the Tribunal decides to examine a witness. The examination of witness in every case is not mandatory because the Tribunal can receive evidence on affidavit. Under Order 18 Rule 4 of the Code as introduced by the Code of Civil Procedure (Amendment) Act examination of a witness in Court is necessary only for cross-examination. The examination-in-chief of a witness is contained in his affidavit. The object of the amendment is to save time of the Court. In the case at hand, as already mentioned above, the parties had filed affidavits of their witnesses in the Tribunal and even exchanged copies of the affidavits so filed. None of the parties applied to the Tribunal for calling the witnesses whose affidavits were filed for cross-examination. In such a situation it was not necessary for the Tribunal to suo motu call the witnesses for examination before it. It, therefore, cannot be held that the Tribunal followed a wrong procedure by deciding the reference on affidavits without examining oral evidence and the petitioner was victim of the violation of principles of natural justice.

8. Here we find it profitable to refer the decision of the Supreme Court in *Ameer Trading Corporation Ltd. vs. Shapoorji Data Processing Ltd.* AIR 2004 SC 355 wherein it has observed in the context of Order 18 Rule 4 of the Code that presence of a party during examination-in-chief is not imperative and an objection to any statement made in the affidavit can always be taken before the court in writing whereupon the attention of the witness can be drawn while cross-examining him. In this case, the Supreme Court has also observed that there may be cases where a party may not feel the necessity of cross-examining a witness, examined on behalf of the other side, and the time of the court would

not be wasted in examining such witness in open court. Thus, even according to the Supreme Court, cases can be decided on affidavits where a party may not feel the necessity of cross-examining a witness.

9. For these reasons, we find no merit in the petition. The petition is accordingly dismissed but without any order as to costs.

Petition dismissed.

I.L.R. [2010] M. P., 2565
APPELLATE CIVIL

Before Mr. Justice Sanjay Yadav

15 February, 2010*

NISHA PATEL & ors. ... Appellants

Vs.

SYED MUSTAQ & ors. ... Respondents

A. Motor Vehicles Act (59 of 1988), Section 166 - *FIR was in respect of Santro Car bearing registration No. MP20F2002 whereas it was the Maruti Car which was registered on this number - The evidence of two witnesses whose name are given in FIR may be sufficient to prove that it was Maruti Car bearing registration No. MP20F2002 which caused accident.* (Para 10)

क. मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रथम सूचना रिपोर्ट सेन्ट्रो कार पंजीयन क्र. एम.पी.20एफ2002 के सम्बन्ध में थी जबकि इस क्रमांक पर मारुति कार पंजीकृत थी – दो साक्षियों, जिनके नाम प्रथम सूचना रिपोर्ट में दिये गये हैं, की साक्ष्य यह साबित करने हेतु पर्याप्त है कि वह पंजीयन क्र. एम.पी.20एफ2002 की मारुति कार थी जिसने दुर्घटना कारित की।

B. Motor Vehicles Act (59 of 1988), Section 166 - ***Compensation - Quantum*** - *Deceased aged about 35 years of age - No proof of his income - **Held** - Notional income fixed to Rs.24,000/- p.a. - Applying a multiplier of 16 the dependency awarded as Rs.3,84,000/- and Rs.16,000/- funeral expenses and loss of consortium - Compensation computed to Rs.4,00,000/- along with interest @ 6% p.a.* (Para 11)

ख. मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिकर – परिमाण – मृतक की आयु लगभग 35 वर्ष – उसकी आय का कोई प्रमाण नहीं – अभिनिर्धारित – काल्पनिक आय 24,000/– रुपये प्रतिवर्ष नियत की गयी – 16 का गुणक लागू करते हुए आश्रितता 3,84,000/– रुपये अधिनिर्णीत की गयी तथा 16,000/– रुपये अन्तिम संस्कार व्यय एवं सहजीवन की हानि अधिनिर्णीत की गयी – प्रतिकर की गणना 4,00,000/– रुपये 6% प्रतिवर्ष ब्याज सहित की गयी।

Sardar Avtar Singh, for the appellants.
None, for the respondent Nos.1 & 2.
Nirmala Nayak, for the respondent No.3.

---

*M.A. No.1223/2006 (Jabalpur)

ORDER

SANJAY YADAV, J. :–With the consent of learned counsel for the parties the matter is heard finally.

2. Challenge put-forth in the present appeal filed under Section 173 of the Motor Vehicles Act, 1988 is to an award dated 24.12.2005 passed by XI Additional Motor Accident Claims Tribunal, Jabalpur in M.V.C No. 48/2005 whereby the claim petition preferred by the appellants claimants under Section 176 has been dismissed.

3. Brief facts leading to filing of claim petition are that, on 5.11.2002 Ramesh Patel, the deceased, appellant No. 1's husband while was coming back to his house on scooter bearing registration No. MP 20 KD 9217 met with an accident near Shashtri Bridge. The accident was caused by a vehicle bearing registration No. MP 20-F/2002. FIR (Ex. P-1) was lodged on 5.11.2002 at 13.30 against the driver of MP 20-F/2002, reported to be a Santro Car, by one Hareram Chourasia. The legal representatives of Ramesh Patel preferred the claim petition for compensation of Rs.9,30,000/-. The Claims Tribunal after considering the entire material on record rejected the Claim Petition on the ground that the claimants have failed to prove that the accident was caused by Maruti Car bearing registration No. MP 20 F/2002. It held that the FIR was in respect of Santro Car bearing registration No. MP 20 F/2002; whereas it was the Maruti Car which was registered vide aforesaid registration No.. The Trial Court thus, disbelieving the plea put-forth by the legal representatives of the deceased, rejected the claim petition.

4. Criticizing the aforesaid verdict it is urged by learned counsel for the appellant that the trial court grossly erred in rejecting the claim petition on mere technicalities. It is contended that there were two eye witnesses who were examined in the claim case, whereupon, they have categorically deposed that it was the Maruti Car bearing registration No. MP 20 F/2002 which caused accident; consequent whereof Ramesh Patel sustained injuries and later on succumbed to the same. It is contended that mere mention of a Santro Car in the FIR lodged by one passerby, who witnessed the accident, is not a sufficient ground to reject the claim petition when there was a specific mention of registration number in the FIR. It is contended that the trial court ought not to have rejected the claim, instead it should have allowed the same. It is further submitted that, the trial court also erred in holding the deceased Ramesh Patel was a non-earning member. It is submitted that the deceased was employed as Cook in a restaurant and was earning approximately Rs.5,000/- per month. It is contended that the Tribunal committed an error by holding that the said Ramesh Patel was a non-earning member. It is accordingly urged that the award passed by Claims Tribunal is liable to be set aside and the suitable compensation be awarded in lieu of death of Ramesh Patel.

5. The respondents on their turn have opposed the relief sought for by the

appellant. Learned counsel appearing for respondent No. 1 supports the finding arrived at by the Tribunal that there being contradiction in the evidence led by the appellant and the story narrated in the FIR, the Claims Tribunal was justified in rejecting the claim petition on the ground that the claimant had failed to prove that the death of Ramesh Patel was caused in an accident during course of use of motor vehicle, i.e., Maruti Car bearing registration No. MP 20 F/2002. To bring home his submission, the learned counsel has placed reliance on the FIR (Ex. P-1) and reply filed on behalf of respondent No. 1, the owner in the trial court.

6. Admittedly, respondent No. 1 did not enter into witness box to prove the contentions put-forth by him in written statement. The learned counsel for respondent No. 1 placing reliance on contentions put-forth in the written statement filed before the claims tribunal further submits that, in case if the claimants are held entitled for compensation then the same has to be born by the Insurance Co. as the vehicle, i.e., Maruti Car bearing registration No. MP 20 F/2002 was insured with New India Assurance Co. Branch, Rewa for the period 30.10.2002 to 29.10.2003 vide policy No. 450402/31/02/02537.

7. Respondent No. 3 while supporting the award has to submit that, the vehicle in question was not insured with it and, therefore, the Insurance company cannot be held liable for the compensation. It is further contended deceased was on scooter and had collided with an oncoming car and thus was equally responsible for the said accident and for that no liability can be fastened on the Insurance Company.

8. Regarding death of Ramesh Patel and the factum of insurance of Maruti Car M.P. 20 F 2002 the Claims Tribunal has returned a finding that, death of Ramesh Patel was due to accident caused by motor vehicle during course of its operation and he died due to the injuries sustained by him by the said accident. In respect of insurance the Claims Tribunal in paragraph 13 of its award has recorded a finding that Maruti car bearing registration No. 20 F 2002 was duly insured for the period between 30.10.2002 to 29.10.2003. The Tribunal has further found that the Insurance Company has failed to prove that there was a breach of policy. These, findings being not questioned by either of the party, viz., the owner and the Insurance Company, are not interfered with.

9. Next and the vital question for adjudication is as to whether the Trial Court faltered in rejecting the claim on the ground that the claimants have failed to prove that the accident was caused by Maruti Car bearing registration No. MP 20 F 2002 and whether the Tribunal was justified in holding that Ramesh Patel was a non-earning member.

10. Coming to the first question the Claims Tribunal primarily relied upon FIR (Ex. P-1) and the pleadings in written statement filed by respondent No. 1, the owner of Maruti Car. Admittedly, the FIR was lodged by one Hareram Chourasia, a passerby who having distinctly noted the registration number of the offending

vehicle lodged a complaint against the driver of the said vehicle, though the vehicle was depicted as Santro Car. However, when the statement of eye-witness, viz., Shiv Kumar Sen (A.W. 2) and Prakash Patel (AW –3) is minutely scanned and corroborated with the fact as they appear in the FIR it leaves no iota of doubt that Maruti Car bearing registration No. MP 20 F 2002 whereby the accident was caused on 5.11.2002. The Claims Tribunal though placed reliance on the pleadings in the written statement but the fact is that respondent No. 1, the owner of Maruti Vehicle MP 20 F 2002 did not enter into witness box to substantiate the stand taken by him in the written statement nor any witness has been examined to prove that the Maruti M.P. 20 F 2002 on 5.11.2002 at 3 p.m. was being plied at Rewa and not at Jabalpur. The eye witnesses, viz., A.W.-1 and A.W. 2 have categorically stated that they have witnesses the accident and also noted the car and its registration number. There thus being a direct evidence on record, the Claims Tribunal definitely fell into error by placing reliance on the FIR and pleadings in the written statement of respondent No. 1, owner of Maruti Car MP 20 F 2002. The said finding by the Claims Tribunal being contrary to the evidence on record is hereby set aside. It is held that it was Maruti Car bearing registration No. MP 20 F 2002 whereby an accident was caused on 5.11.2002 resulting into death of Ramesh Patel.

11. Now coming to the aspect of loss of dependency, the widow of the deceased has categorically stated that the deceased was employed as cook in a restaurant and was earning Rs.5000/- per month. True it is that no documents are brought on record to substantiate the submission. However, keeping in view that the deceased was about 35 years of age and was maintaining a family he definitely would have been an earning member and not a non-earning member as has been held by the Claims Tribunal. Since there is no documentary evidence on record the approximate wages which the deceased must be getting around Rs.120/- per day and if he was getting work for 25 days the monthly income which he was getting must be around Rs.3000/- the deceased must have been spending on himself 1/3rd of the said income and was spending 2/3rd on his family, i.e., Rs. 2000/- per month. The annual dependency thus comes to Rs.24000/-. Since the deceased was 35 years of age by applying multiplier of 16 as applicable for the age group of 35 to 40. The total dependency comes to Rs.3,84,000/-; by adding Rs.16,000/- towards conventional head such as funeral expenses, loss of consortium; the total compensation comes to Rs.4,00,000/-.

12. At one stage it was suggested by learned counsel for the parties to remit the matter for adjudication by the Claims Tribunal. However, since the entire evidence is on record and the accident is of the year 2002, in the interest of justice the matter is finally decided instead of remitting the same for adjudication before the Claims Tribunal.

13. In view of above the appeal is allowed. The appellants claimants shall be entitled for compensation of Rs.4,00,000/- and the interest @ 6 % per annum

from the date of appeal; of which Rs.1,50,000/- + Rs.1,50,000/- be put in fixed deposit in the name of appellants No. 2 and 3 for a period of five years in a Nationalized Bank and out of Rs.1,00,000/-, Rs.50,000/- may be deposited in a fixed deposit with Nationalized Bank and remaining 50,000/- be paid to appellant No. 1. The appellants would be entitled to draw the interest. The liability for compensation should be jointly and severally borne by respondent Nos. 1 and 2. The appeal is allowed to the extent above.

14. The appeal is allowed to the extent above. However, no costs.

C.c. as per rules.

Appeal allowed.

I.L.R. [2010] M. P., 2569
APPELLATE CIVIL
Before Mrs. Justice S.R. Waghmare
26 July, 2010*

C.B. AWASTHY, SENIOR CO-OPERATIVE INSPECTOR PRASHASAN SAHAKARI VIPNUN SANSTHA & anr. ... Appellants
Vs.
RAMNARAYAN & ors. ... Respondents

Motor Vehicles Act (59 of 1988), Section 166 - *Vicarious liability* - *Deceased, an employee of appellant drove the motorcycle of employer and dashed against the tree, causing death of himself and one pillion rider -* ***Held*** *- In present case, it is not established that the deceased had gone on official work with permission of employer, hence liability cannot be imposed on the owner/employer - Appeal allowed.* (Paras 14 & 16)

मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिनिधिक दायित्व – मृतक, जो कि अपीलार्थी का कर्मचारी था, ने नियोजक की मोटरसायकल चलाई और पेड़ से टकरा गया, जिससे उसकी एवं पिछली सीट पर बैठी एक सवारी की मृत्यु हो गयी – अभिनिर्धारित – वर्तमान मामले में यह सिद्ध नहीं है कि मृतक नियोजक की अनुमति से कार्यालयीन कार्य पर गया था, अतएव मालिक/नियोजक पर अर्थदण्ड का दायित्व आरोपित नहीं किया जा सकता – अपील मंजूर।

Cases referred :

1989 ACJ 938, 1966 ACJ 89.

Sanjay Sharma, for the appellants.
Tarun Kushwah, for the respondent Nos.1 & 2.

ORDER

S.R. WAGHMARE, J. :–This is an appeal filed by the Senior Co-operative Inspector Prashasan Sahakari Vipnan Sanstha under Section 173 of the Motor Vehicles Act (hereinafter referred as 'the Act') challenging the award dated 26.03.2002 passed by the Additional Motor Accidents Claims Tribunal, Garoth in

*M.A. No.1164/2002 (Indore)

M.A.C.T. No.61/94 mulcting the liability on the appellants to pay compensation of Rs.76,000/- to the claimants and respondents No.1 and 2 in the present case.

2. Ramnarayan the applicant was the owner of a tailoring shop which was situated near the institution of appellant No.2 Sahakari Vipnun Sanstha, Maryadit at Shamgarh, Garoth. On the date of incident i.e.9.10.94, the employees of non-applicant No.2 Ravi Kishore and Manikchand were to go for some office work on their motorcycle at Khadavada and requested the son of the applicant Balwant to go with them. On completing work of the institution on 10.10.94 at 12.30 pm in the night when all the three persons were returning, Ravi Kishore driving the motorcycle rashly and negligently near Varkheda Gangasa on the Khadavada Road, dashed against the tree and due to the accident Ravi Kishore and Balwant both died on the spot itself. Manikchand was injured. The report was filed at Police Station Garoth and the bodies were sent for postmortem examination.

The claimants on behalf of Balwant stated that he was their only son and sole bread earner of the family and after his death they were legal representatives and entitled to compensation since the accident had occurred due to the negligence of Ravi Kishore the employee of the institution. They claimed for compensation of Rs.4,00,000/- with interest.

Non-applicant No.1 C.B. Awasthy, the Senior Co-operative Inspector Prashasan Sahakari Vipnun Sanstha and non-applicant No.2 the Sahakari Vipnun Sanstha Maryadit resisted the claim, stating that the deceased Balwant was unemployed and the applicants were not dependent on him. Moreover, he also deposed that Ravi Kishore and Manikchand the employees of the institution had taken the motorcycle illegally at 12.30 in the night and the institution had not sent any official to Khadvada for any work. So also it was alleged that the son Balwant was not an employee of the institution and therefore not entitled to any compensation. The non-applicant institution also took up the plea that the Ravi Kishore was the driver of the alleged vehicle and his legal representatives would be responsible for paying the compensation if any to be paid to the applicants. Moreover only employees were entitled to Workmen's Compensation and the claim was not within the jurisdiction of the MACT.

3. Non-applicant No.3 the government of Madhya Pradesh denied all the allegations and stated that it was merely a formal party and not necessary party and was not liable for any claim made by the claimants.

4. The Tribunal on considering the evidence, however, came to the conclusion that Ravi Kishore was responsible for causing the accident by rash and negligent driving and at the time of the accident although, he had not sought proper permission from the co-operative Vipnun Sanstha, yet the vehicle was under the control of non-applicant No.1. Shri Awasthy as he was the officiating Senior Co-operative Inspector and the State was the controlling authority. Moreover, the vehicle was not insured and hence the Tribunal on considering the evidence adduced came to

the conclusion that the non-applicant Vipnun Sanstha and the officiating person Shri Awasthy the appellant No.1 were jointly and severally liable to pay the compensation to the claimants as owner of the alleged vehicle.

5. On assessing the claim, the Tribunal came to the conclusion that the appellants claimants were entitled to sum of Rs.76,000/-. Being aggrieved the co-operative society and Shri Awasthy the Senior Officer filed the present appeal challenging the liability whereas the non-applicants claimants have also filed cross-objections and prayed for enhancement of compensation.

6. The main contention by the Counsel for the appellants is that the appellant co-operative society was not liable to pay the compensation because on the principles of liability, the driver alone would be personally liable for the injury or death caused by his negligence. Placing his reliance on *Nerati Pichamma and another Versus Pasumala Arogiya and others* [1991 ACJ 251] Counsel stated that unless there is jural relationship of master and servant between the owner and driver, the doctrine of vicarious liability cannot be extended to the third party; driver alone liable.

7. Counsel placed reliance on *Sitaram Motilal Kalal Versus Shantanuprasad Jaishankar Bhatt and others* [1966 A.C.J. 89 whereas the full Bench has held that owner of car had entrusted it to another for plying it as a taxi. The latter gave it to the cleaner for taking driving test and it was held that while taking the test he knocked down and injured the claimant, the owner was not vicariously liable for the tort. The Apex Court has in the said case observed that the law is settled that a master was vicariously liable for the acts of his servant acting in the course of his employment. Unless the act was done in the course of employment, the servant's act would not make the employer liable. The act must either be a wrongful act authorized by the master or a wrongful and unauthorized mode of doing some act authorised by the master.

8. In the instant case, Counsel for the appellants has contended that there was categoric evidence led by appellant No.1 Shri Awasthy that he was only the presiding and acting officer of appellant No.2 Sahakari Vipnun Sanstha Maryadit since there was no elected body at the time of the incident. Moreover, Shri Awasthy has also categorically stated that on the date of incident, neither Ravi Kishore or Manikchand who are employees of the appellant No.2 Vipnun Society had sought permission to take the vehicle to Khadavada Gangasa. Moreover the geographical jurisdiction of the officer Shri Awasthy was only till Shamgarh and its marketing society whereas Garoth was beyond the jurisdiction of the appellant No.1 Shri Awasthy. Counsel stated that acts were done illegally by the employees, then under such circumstances the employer cannot be held liable to pay compensation. Only for legal acts done in the course of duties the co-operative society or the officials would be liable for the acts of its employees. Counsel prayed that mulcting of the liability on the appellants be set aside.

9. Counsel for the Respondent claimant on the other hand has vehemently stated that the deceased Balwant was persuaded by the employees of the appellant co-operative society Ravi Kishore and Manikchand to accompany them and hence, it could not be said that the deceased Ravi Kishore was not the employee of the society at the time of the incident. Merely because Balwant was not aware that the Ravi Kishore, Manikchand and Balwant were not doing anything contrary to the interests of the society, for that matter however, not doing anything illegally.

10. Counsel for the respondent claimant placed reliance on judgment of the High Court of Andhrapradesh at Hyderabad in the case of *Oriental Insurance Company Co. Ltd. vs. S.A. Gafer and others* [1989 ACJ 938] to state that in a similar case the Court had considered that when a person had possession of the ignition-key of the motorcycle and while driving it caused accident and question before the Court was, whether the owner vicariously liable for the tort committed by the motor-cyclist; it had held that the driver was driving the vehicle with the express or implied permission of the owner; when the driver is in possession of the ignition-key, the presumption is that he was driving the vehicle with the permission of the owner unless established otherwise.

11. Counsel for the respondent claimant fully supported the judgment of the Tribunal and stated that the Tribunal had held that both the employees Ravi Kishore as well as Manikchand were in the employ of the appellant co-operative society and whereas deceased Ravi Kishore was paid all the benefits under the Workmen's Compensation, merely because Balwant was a third party under the circumstances; the claimants have been denied the benefits. Moreover, since the Govt. vehicle was not insured in such circumstances, Counsel stated that even under the principles of natural justice, no fault could be found with the liability mulcted on the non-applicant co-operative society. Counsel prayed that the judgment of the lower Court was fully in accordance with the provisions of law and the appeal be dismissed. He, however claimed that just and fair compensation had not been awarded, merely Rs.76,000/- was awarded by the Tribunal for the death of a 20 years old youth.

12. Counsel further urged that the dependency was wrongly assessed by presuming that deceased Balwant was earning Rs.30/- per day and for 20 days a month Rs. 600/- and Rs. 7,200/- per annum. One third deducted Rs. 2,400/- would amount to Rs. 4,800/- and the multiplier of 15 was used which ought to be enhanced. Counsel stated that at least Rs. 80/- per day ought to have been calculated and Counsel prayed that the amount be enhanced and the impugned award be set aside.

13. On considering the above submissions, I find that the legislation and its application under the Motor Vehicles Act has undergone a sea of change. Compensation granted by insurance companies to victims of motor accidents has become a regular and routine phenomena; however in the peculiar facts and

circumstances of the present case the victim Balwant was travelling on a government vehicle, the ill-fated motorcycle belonging to the appellant Vipnun Sahakari Society and therefore, it was not insured; and consequently the question whether the parents of Balwant would be entitled to receive compensation from the appellant society for the negligent act of its employee Ravi Kishore who was admittedly driving the motorcycle. The tribunal has also found that the accident had occurred due to his negligence and this fact has not been controverted by any of the parties till date.

14. The other important point raised by the Counsel for the appellant is that even if the relation between the appellant and deceased Ravi Kishore is one of master and servant, the master cannot be responsible for the illegal acts of its employee, the driver or the actual tort feasor alone would be liable and in the present case it has not been established that Ravi Kishore had gone to Khadavda on official work with permission of the appellant society.

15. Considering the case of *S.A. Gafer* (supra), I find that the learned Judge of the Hyderabad High Court was dealing with the co-extensive liability of the insurance company vis-a-vis the owner of the vehicle and had held that since the motor-cyclist was using the motorcycle in a public place with the express or implied permission of the owner, therefore, the owner is vicariously liable and therefore, the owner, driver and insurance company were held to be jointly and severally liable. The learned Judge has considered the presumption that since the driver is in possession of the ignition key, the presumption is that he was driving the vehicle with the permission of the owner unless otherwise established; and consequently mulcted the liability on all the respondents co-extensively.

16. I find that the learned Judge of the Tribunal has also got carried away by the attractiveness of the said argument in the present case. Undoubtedly the provisions of the M.V. Act are meant for the benefit of the accident victims but at the same time the important fact that must not be lost sight of is that the claimant's should be entitled under the provision of law for the compensation from the owner, driver or insurance company; and when Counsel for the appellant Shri Sharma has drawn my attention to the fact that the question of vicarious liability of the owner and insurer and employer in a motor vehicle accident has been concluded by the Apex Court way back in the year 1966 by a full-Bench decision in the matter of *Sitaram Motilal* (supra) then the question of deviating from the same does not arise at all and the liability cannot be mulcted on the owner/employer and impugned judgment therefore must be set aside in this regard.

17. It may also be noted at this stage that there was a dissent recorded by Hon'ble Justice K. Subba Rao who recorded his dissent in the case of *Sitaram Motilal Kalal Vs. Santanuprasad Jaishankar Bhatt and others* [1966 A.C.J. 89] thus:

"19. The doctrine of constructive liability is in a process

of evolution. It is a great principle of social justice. A court no longer need be over weighed with the old decisions on the subject given under radically different circumstances, for now the owner of a car in India is not burdened with an unpredictable liability as there is a statutory compulsion on him to insure his car against third-party liability and his burden within the framework of the Motor Vehicles Act is now transferred to the insurer."And consequently

"32. In the result, agreeing with the High Court, I hold that the 1st defendant is liable in damages to the plaintiff for the accident caused by the 3rd defendant. The appeal fails and is dismissed with costs."

18. However the majority decision was against the claimants, the appeal was allowed and the view that the employer appellant cannot be mulcted with vicarious liability for the wrongful acts of his employee or agent has not been set aside till date and holds the field till today.

19. Counsel for the respondent has placed reliance on a single bench decision of the High Court of Andhra Pradesh, whereas the decision in *Sitaram* (supra) is by a Full Bench of the Apex Court and therefore, must hold the field unless set aside. Consequently since the Counsel for the respondent in the present case has been unable to establish that the motor-cycle was being driven by Ravi Kishore in the course of his employment and there was no violation of law despite there being three riders on the motor-cycle, I am of the considered opinion that the judgment of the lower Court needs to be set aside.

20. So also considering the cross-objections, I find that no fault can be found with the assessment of income of the deceased Balwant, since there is no evidence on record to support the claim that he was earning his livelihood as a tailor then the notional income taken by the Tribunal for the assessment is adequate under the circumstances. The cross-objections are hereby dismissed.

21. Ex-consequentii, the appeal is allowed, the judgment of the lower Court is set aside to the extent that the owner appellants are exonerated from the liability to pay compensation to the claimants, the driver alone would be liable unfortunately, he died in the accident itself.

22. Thus the appellants are entitled to refund of deposit if any already paid in the Trial Court and it is directed that the Trial Court shall pass appropriate orders for the same on proper application forthwith.

Appeal allowed.

I.L.R. [2010] M. P., 2575

APPELLATE CIVIL

Before Mrs. Justice S.R. Waghmare

9 August, 2010*

NATIONAL INSURANCE CO. LTD. INDORE ... Appellant

Vs.

MANGILAL & ors. ... Respondents

A. **Motor Vehicles Act (59 of 1988), Section 166** - *Evidence - FIR can be used as a piece of evidence when relied on by both the parties.* (Para 7)

क. मोटर यान अधिनियम (1988 का 59), धारा 166 – साक्ष्य – जब प्रथम सूचना प्रतिवेदन पर दोनों पक्षों द्वारा अवलम्ब किया जाता है तब उसे साक्ष्य के भाग के रूप में उपयोग किया जा सकता है।

B. **Motor Vehicles Act (59 of 1988), Section 147** - *Liability of insurer - Claimant got injured, when travelling, as part of band being transported to the wedding party in the tractor trolley, insured for use for agricultural purposes only - Held - Insurance Company exonerated from liability.* (Paras 8 & 10)

ख. मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमाकर्ता का दायित्व – दावेदार वैवाहिक समारोह में ले जाये जा रहे दल के भाग रूप में ट्रेक्टर ट्रॉली, जो केवल कृषि प्रयोजनों के लिए उपयोग हेतु बीमित थी, में यात्रा करने के दौरान घायल हो गया – अभिनिर्धारित – बीमा कम्पनी को दायित्व से मुक्त किया गया।

Cases referred :

2003 ACJ 1 (SC), 2007 ACJ 1928, 2007 ACJ 10, 2009 ACJ 925.

S.V. Dandwate, for the appellant/Insurance Company.

None, for the respondents.

ORDER

S.R. WAGHMARE, J. :–This is an appeal filed by the insurance company under Section 173 of the Motor Vehicles Act (hereinafter referred as 'the Act') being aggrieved by the award dated 11.12.2002 passed by the IVth Member, MACT, Indore in Claim Case No.187/99 mulcting the liability on the appellant insurance company to pay compensation to the claimant Mangilal.

2. Brief facts of the case are that on the date of incident i.e. 17.02.1999 claimant Mangilal was travelling on the tractor trolley insured with the appellant National Insurance Company Ltd. and which was rashly and negligently driven by respondent No.2 Omprakash, the tractor trolley toppled down and resulted in grievous injuries to Mangilal. The tractor trolley was owned by Bhuansingh respondent No.3. The claimant preferred a claim before the learned MACT seeking compensation on various grounds from the appellant as well as respondents

*M.A. No.1200/2003 (Indore)

No.2 and 3. The claim was resisted by the insurance company on the ground that Mangilal was an unauthorized passenger on the said vehicle and therefore, due to the conditions of violation of policy, the appellant insurance company was not liable to pay the compensation. The learned Tribunal however, framed the issues and on recording the evidence, awarded a sum of Rs.20,000/- to the claimant holding the respondents jointly and severally liable to pay the same with 9% interest per annum from date of application. The Insurance Company also filed review before the Tribunal; stating that it had erred in mulcting the liability on the Insurance Company since there were several cases by the Apex Court to the contrary like *New India Assurance Company vs. Asha Rani & others* 2003 ACJ 1(SC) which have not been considered. The review was also dismissed by the Tribunal and hence the present appeal by the appellant insurance company.

3. Counsel for the appellant insurance company has vehemently stressed the fact that the tractor trolley belonging to respondent No.3 Bhuansingh was not covered for passenger risk and therefore, no liability could be fastened on the appellant. He urged that the claimant Mangilal was going to a wedding and was being carried by the tractor trolley and his risk was not covered under the policy since like gratuitous passengers being carried in the goods vehicle are not covered by the policy, in a similar manner it was the condition of breach of the policy and the negligence was of the driver of the vehicle alone, the company was not liable. He urged that the award was against the settled principles of law and evidence adduced by the appellant. Counsel also stated that the review of the appellant insurance company was also dismissed by the Tribunal and hence both the judgments in review as well as the claim case be set aside.

4. Counsel for the appellant also urged that the fact that vehicle which was insured for agricultural purposes was being used for carrying passengers and hence, there was violation of conditions of policy which has been ignored by both the MACT as well as the Court reviewing the order.

5. Counsel relied on *Oriental Insurance Company Ltd. Versus Premlata Shukla and Others* [2007 ACJ 1928] to state that the FIR had been filed to indicate that the driver of a van had not driven the van rashly and negligently. In such a case the FIR could be relied upon for evidence, irrespective of the fact that contents of the document were proved or not. Relying on *Mithlesh and others Versus Brijendra Singh Baghel and others* [2007 ACJ 10]. Counsel stated that this High Court had also considered the case of death of a person travelling on the mudguard of tractor attached to trolley when the vehicle turned turtle. The tractor was insured for use for agricultural purposes but was transporting sand for construction of house and the Court had held that there was breach of policy and insurance company was exempted from liability. Finally relying on *National Insurance Co. Ltd. Versus Rattani and others* [2009 ACJ 925]. Counsel stated that the Apex Court had held that liability of insurance company when the vehicle is a goods vehicle and truck was carrying 30-40 persons

turned turtle and the claimants had stated that these passengers were travelling in the vehicle as representatives of owner of goods and not as members of the marriage party; the question was considered that whether the victims of the accident were travelling in the truck as gratuitous passengers and the Apex Court held that insurance company is exempted from liability.

6. However, none has appeared on behalf of the respondent claimant Mangilal in the present case although served and since the appeal is of the year 2003 and original claim is of the year 1999, the matter is taken for hearing on merits.

7. On considering the above facts, I find that two questions arise for consideration whether the insurance company can be made liable to pay the compensation when it has taken the plea that the vehicle was being used contrary to conditions of policy and secondly whether the FIR can be considered as a piece of evidence. Considering the second question first, I find that undoubtedly the certified copy of the FIR can be used as a piece of evidence since it is being relied on by both the parties and admittedly Mangilal the claimant was part of the band that was being transported to the wedding party according to the contents of the FIR.

Now considering the first question, I find that it is trite to state that when there are violations of conditions of the insurance policy the liability to pay compensation cannot be mulcted on the insurance company. However, in the instant case, in review petition also the learned Judge of the Tribunal had been dissatisfied by the explanation rendered by Sushil Kumar Khandelwal (P.W. 1) the insurance company representative regarding the conditions of policy not being explicitly explained, and the violation was also not specifically pointed out. And besides the fact that the claimant was not in the employment of respondent owner or his status was also not proved and hence the liability was specifically mulcted on the insurance company by the Tribunal.

8. On closer scrutiny, I find that Shri Kandelwal P.W. 1 has stated that the vehicle had a comprehensive policy and third party risk was covered on examining Ex.D/1, D/2, and D/3 the insurance cover note and policy etc. I find that the policy vide cover note (Ex.D/2) made provisions for cover of six labourers and extra premium of Rs. 90/- was paid for the same. From Ex.D/3, the insurance policy, it is evident that the tractor trolley was insured for use of vehicle for agricultural purposes only according to Chapter 14 (1)(b)(c) and third party risk was also to be covered only when the vehicle was being legally and validly plied for agricultural purpose only.

9. Then considering this singular fact in the light of *Asha Rani* (supra), I think that the learned Judge of the lower Court has erred in holding that the insurance company was liable to pay the compensation. I find reinforcement in the view of the Apex Court in the matter of *Rattani* (supra) whereby members of a marriage party were denied to be representatives of the owner of goods or gratuitous passengers.

10. Thus, the liability has been wrongly mulcted on the insurance company and it is hereby exonerated and the impugned award is set aside to that extent.

11. The finding of negligence has attained finality for it has not been challenged either in the Court below or before me. Similarly I find that the assessment of compensation to the claimant is based on the evidence led before the Tribunal and in the instant case no fault can be found with the amount of compensation assessed at Rs.20,000/- since it has not been challenged before me by way of cross-objection or otherwise and has therefore, attained finality.

12. Thus, the appeal is partly allowed and the award is modified as follows:

the insurance company is exonerated from the liability to pay the compensation, the compensation of Rs.20,000 with 9% interest shall be paid by Respondent No.2 driver Omprakash and Respondent No.3 owner Bhuansingh jointly and severally. Rest of the findings need not be disturbed and are hereby upheld.

Appeal partly allowed.

I.L.R. [2010] M. P., 2578
APPELLATE CIVIL
Before Mr. Justice N.K. Mody
12 August, 2010*

SHRI BHAGWATACHARYA NARAYAN DHARMARTH TRUST, BALAJI MANDIR & ors. ... Appellants

Vs.

JAI PRAKASH ... Respondent

A. Accommodation Control Act, M.P. (41 of 1961), Section 3(2) - ***Exemption - Appellant Trust is registered at Bombay and the property of Trust is also situated in M.P. - Held - Registration of Trust under the provisions of Bombay Public Trust Act, suffice the purpose and the exemption granted u/s 3(2) of M.P. Accommodation Control Act is equally applicable for the appellant Trust.*** (Para 8)

क. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 3(2) – छूट – अपीलार्थी ट्रस्ट मुम्बई में पंजीकृत तथा ट्रस्ट की सम्पत्ति म.प्र. में भी स्थित – अभिनिर्धारित – मुम्बई सार्वजनिक न्यास अधिनियम के उपबंधों के अन्तर्गत ट्रस्ट का पंजीकरण, प्रयोजन के लिए पर्याप्त है एवं म.प्र. स्थान नियन्त्रण अधिनियम की धारा 3(2) के अन्तर्गत दी गयी छूट भी अपीलार्थी ट्रस्ट के लिये समान रूप से लागू होती है।

B. Accommodation Control Act, M.P. (41 of 1961), Sections 3(2) & 20 - ***Even if a public institution who is not covered u/s 3(2) of the Act files a suit for eviction, then too, the said institution is not governed by S. 12, but is governed by S. 20 of the Act.*** (Para 9)

---

*S.A. No.159/1997 (Indore)

ख. स्थान नियंत्रण अधिनियम म0प्र0 (1961 का 41), धाराएँ 3(2) एवं 20 – यद्यपि कोई लोक संस्था, जो अधिनियम की धारा 3(2) के अंतर्गत शामिल नहीं है, बेदखली के लिए वाद दाखिल करती है, तब भी उपरोक्त संस्था धारा 12 से शासित नहीं होती बल्कि अधिनियम की धारा 20 से शासित होती है।

Cases referred :

1994 MPLJ 597, 1999(2) JLJ 379, 1997(I) MPWN 3, 1968 MPLJ 545.

H.Y. Mehta, for the appellants.

N.K. Maheshwari, for the respondent.

JUDGMENT

N.K. Mody, J. :–Being aggrieved by the judgment and decree dated 26.7.96 passed by IInd Addl.District Judge, Jhabua in Civil Appeal No.2-A/96, whereby the judgment and decree dated 19.2.96 passed by Civil Judge Class II, Alirajpur in Civil Suit No.36-A/91, whereby suit filed by the appellants for eviction was dismissed, was maintained, the present appeal has been filed.

2. The appeal was admitted by this Court vide order dated 21.8.97 on the following substantial question of law:-

> "(1) Whether in the facts and circumstances of the case, the finding of the Court below with regard to the need of the plaintiff/ appellants of the suit accommodation is perverse and contrary to the evidence ?"
>
> (2) Whether in the facts and circumstances of the case, the Court below has committed an error in not applying Section 20 of the M.P.Accommodation Control Act to the present Case ?

3. Short facts of the case are that appellants filed a suit for eviction on 24/7/91 against the respondent Jai Prakash alleging that appellants are Trustees of the Trust Bhagwatacharya Narayan Balaji Mandir, which is a public trust registered under the provisions of Bombay Public Trust Act,1950. It was alleged that appellant No.3 is the Manager and Power of Attorney of the Trust. It was alleged that respondent is tenant @ Rs.350/- per month. It was alleged that appellants require the suit accommodation for running the Ayurvedic Dispensary for which a resolution was passed by the appellant Trust on 7.7.90, wherein it was resolved that in the memory of late Madhavacharya Swami public dispensary be opened. It was alleged that respondent was requested in the meeting of managing committee to vacate the suit accommodation but inspite of assurance the accommodation was not vacated. It was alleged that respondent is in arrears of rent w.e.f.1.1.91, which has not been paid inspite of notice. It was prayed that suit filed by the appellants be decreed and the respondent be directed to vacate the suit accommodation. The suit was contested by the respondent by filing written statement, wherein all the plaint allegations were denied. It was also denied that the suit is maintainable. It was alleged that since the Trust is not registered under

the provisions of M.P.Public Trust Act, therefore, the suit is not maintainable. It was alleged that registration under the Bombay Public Trust Act shall not be valid for the properties situated in Madhya Pradesh. It was alleged that for filing the suit the appellant Trust ought to have been registered under the provisions of M.P.Public Trust Act. It was also alleged that the accommodation which is in occupation of the respondent is not enough for opening the dispensary. It was prayed that suit be dismissed. After framing of issues and recording of evidence learned trial Court dismissed the suit against which an appeal was filed, which was also dismissed, hence this appeal.

4. Learned counsel for the appellants submits that the impugned judgment passed by the learned Courts below is illegal, incorrect and deserves to be set aside. It is submitted that the learned Courts below dismissed the suit on extraneous grounds. It is submitted that to prove the case appellant examined appellant No.3, who was the Manager and Power of Attorney of the Trust and also submitted the documents to prove the requirement of the Trust. It is submitted that need of the appellants has not been held to be bonafide only because from the evidence adduced by the appellants it was found that some of the properties, which were occupied by the tenants were sold by the appellant Trust. It is submitted that it cannot be a ground for holding that need of the appellants is not bonafide. Learned counsel submits that if the learned Court below was having any doubt about the bonafides of appellant/trust, then conditions could have been imposed on the appellants. It is submitted that appeal filed by the appellants be allowed and the impugned judgment passed by the learned Courts below be set aside.

5. Shri N.K.Maheshwari, learned counsel for the respondent, submits that no illegality has been committed by the learned Courts below in holding that need of the appellants is not bonafide. It is submitted that the Trustees are from Mumbai and whole object is to get the suit accommodation vacated and sell out the property on higher price. It is submitted that the Trust is registered under the provisions of Bombay Public Trust Act, therefore, suit filed by the appellants is not maintainable. It is submitted that appeal filed by the appellants be dismissed.

6. From perusal of record, it is evident that the appellant/Shri Bhagwatacharya Narayan Dharmarth Trust, Balaji Mandir is a public trust having a Narsingh Temple at Alirajpur. The trust is registered under the provisions of Bombay Public Trust Act, 1950. In exercise of powers conferred by Section 3(2) of M.P. Accommodation Control Act State Government issued notification dated 07/09/89 whereby accommodations owned by public trust registered under M.P. Public Trust Act 1951 were exempted from all the provisions of M.P. Accommodation Control Act, 1961. This notification was challenged before this Court and this Court in the matter of Chintamani *Chandramohan Agrawal,* reported in 1994 MPLJ 597 held that notification dated 07/09/89 granting exemption under Section 3(1) of the Act is constitutionally illegal and void being violative of Article 14 of Constitution of India. Ultimately the matter travelled upto Hon'ble Apex Court in the matter of

State of M.P. Vs. Chintamani Agrawal, 1999(2) JLJ 379 wherein it was held that the notification dated 07/09/89 was valid. In the matter of *Baburam Vs. State of M.P.*, 1997(I) MPWN 3 Division Bench of this Court also held that notification exempting the public trust from all provisions of M.P. Accommodation Control Act was valid. This position of law is further affirmed by this Court in the matter of *Kewalchand Vs. Aachalgachha Kachhi Bisa Oswal Jain Swetambar Dharmik Evam Parmarthik Nyas,* 2010(1) MPLJ 159, wherein this Court held that accommodation owned by public trust is exempted from all the provisions of the Act.

7. So far as registration of trust is concerned, undisputedly appellant/trust is registered under the provisions of Bombay Public Trust Act, 1950. Question which needs answer is whether a Trust registered at Bombay can also claim exemption of M.P. Accommodation Control Act because of notification dated 07/09/89? The scheme and object of the Bombay Public Trust Act was to regulate and to make better public religious and charitable trusts in the State of Bombay. Object and scheme of M.P. Public Trust Act, 1951 is also same. In the matter of *Rameshwar Prasad Vs. Pandit Krishna Mohanath Raina* 1968 MPLJ 545 wherein Division Bench of this Court has held that in a case where the trust having principal office outside Madhya Pradesh do not require registration under the provisions of M.P. Public Trust Act.

8. The purpose of registration of trust under the Public Trust Act is to regulate and to make the better trust, therefore, in case where trust is having its properties in more then one State, then it is not expected from the trust to get it registered in all the States where the properties are situated. In the facts and circumstances of the case, since the trust is registered at Bombay and the property of the appellant trust is also situated in M.P., therefore, the registration of the appellant trust under the provisions of Bombay Public Trust Act, suffice the purpose and the exemption granted under Section 3(2) of M.P. Accommodation Control Act is equally applicable for the appellant trust.

9. From perusal of the judgment it is evident that the learned Courts below dismissed the suit filed by the appellant Trust holding that the appellant trust has failed to make out a case for eviction under Section 12 of M.P. Accommodation Control Act as the appellant has failed to prove the bonafide requirement. Section 3(2) of the M.P. Accommodation Control Act empowers the Government to exempt from all or any of the provisions of this Act which is owned by educational, relegious or charitable institution. Even if an institution who is not covered under Section 3(2) of M.P.Accommodation Control Act files a suit for eviction, then too, the said institution is not governed by Section 12 of M.P. Accommodation Control Act, but is governed by Section 20 of M.P. Accommodation Control Act, which lays down a special provision for recovery of possession where the landlord is any company or other body body corporate or any local authority or any public institution. Since appellant Trust is public institution, therefore, Section 12 of M.P.

Accommodation Control Act is not applicable in the present case. Even if it is assumed for the sake of argument that appellant Trust is not entitled for the benefit of exemption as appellant Trust is registered at Bombay, then too, it is only Section 20 of M.P. Accommodation Control Act which is applicable. Since the appellant is a registered charitable Trust, therefore, in view of the notification dated 07/09/89 it was not necessary for the appellant to make out a case either under Section 12 or 20 of M.P. Accommodation Control Act and the appellant was entitled to terminate the tenancy of the respondent under Section 106 of T.P. Act. In view of this, this Court is of the view that the learned Courts below committed error in dismissing the suit filed by the appellant trust holding that the appellant trust failed to prove that the suit accommodation is required bonafidely for running Ayurvadic Dispensary. In the facts and circumstances of the case, appeal filed by the appellant is allowed and the impugned judgment passed by the learned Courts below are set aside and decree of eviction is passed in favour of appellant holding that the appellant shall be entitled to get vacant possession of the suit accommodation.

10. To save the respondent from the peril of eviction six months' time is granted to the respondent to vacate the suit accommodation, provided respondent furnishes an undertaking within four weeks to the effect that respondent shall handover the vacant possession of the suit accommodation peacefully on or before 31.01.2011 to the appellants and shall also deposit the entire arrears of rent and cost, if any, within the period of four weeks and shall pay the rent regularly to the appellant as per law. In case of failure on the part of respondent in submitting the undertaking or in complying the other conditions, appellants shall be at liberty to get the suit accommodation vacated forthwith.

11. With the aforesaid observations, appeal stands disposed of. No order as to cost.

Appeal disposed of.

I.L.R. [2010] M. P., 2582
APPELLATE CIVIL
Before Mr. Justice U.C. Maheshwari
18 August, 2010*

MOOL CHAND RAJAK ... Appellant
Vs.
S.P. KAPOOR & ors. ... Respondents

Accommodation Control Act, M.P. (41 of 1961) - *Right of pre-emption - Held - Tenant always remains tenant and does not acquire any right of preemption against the landlord to purchase the premise unless some express contract taken between the parties by their act.* (Para 13)

---

*S.A. No.646/2006 (Jabalpur)

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41) – अग्रक्रयाधिकार – अभिनिर्धारित – किरायेदार/अभिधारी सदा ही किरायेदार/अभिधारी रहता है और भूस्वामी के विरुद्ध परिसर को क्रय करने का कोई अग्रक्रयाधिकार अर्जित नहीं करता है जब तक कि पक्षकारों के मध्य उनके कार्य द्वारा कोई अभिव्यक्त संविदा न की गयी हो।

R.S. Tiwari, for the appellant.

ORDER

U. C. MAHESHWARI, J.:–The appellant/plaintiff has preferred this appeal under Section 100 of the C.P.C. being aggrieved by the judgment and decree dated 1.2.2006 passed by Additional District Judge Sohagpur, District Hoshangabad in regular civil appeal no.27-A/05 upholding the judgment and decree dated 30.7.2005 passed by Civil Judge Class-I Pipariya in civil original suit no.4-A/01 whereby, dismissing the suit of the appellant filed for declaration and perpetual injunction, the counter claim of the respondents No.6 & 7 filed for eviction of the appellant from the disputed premises had been decreed.

2. Facts giving rise to this appeal in short are that the appellant/plaintiff herein filed the suit against the respondents for declaration, perpetual injunction and mandatory injunction with respect of the house situated at Pachmarhi on 1385.33 Sq.ft. land of survey no.93/791 and 93/790(A) contending that he is in occupation of such house from the time of his forefather since last 70 years as tenant of Kamla Patel and after her demise, the same was inherited by the respondents no.1 and 2 and on their behalf by giving the receipt the respondent no.3 is receiving the rent. As per further pleadings, the appellant family being in possession of the house since long having sentimental attachment with it, was interested to purchase the same. Therefore, appellant and his daughter-in-law had intimated the respondent no.1 and 2 regarding such wish, but no response was given by the respondents No.1 and 2. Inspite of aforesaid intimation such house was sold by the respondents to respondents No.6 & 7 vide registered sale deed dated 31.8.2001. As per custom prevailed in the area of Panchmarhi, on selling the house by the land-lord, the tenant of the premises had a preemption right to purchase the same. Therefore, the aforesaid sale deed executed by the respondents No. 1 to 5 in favour of respondents No.6 & 7 being ab-initio void is not binding against the appellant. With these pleadings the aforesaid suit with the prayer of declaring the appellant had a premptory right to purchase the disputed property with a further prayer for issuing perpetual injunction restraining the respondents to sell the aforesaid house along with a mandatory injunction directing the respondents not to sell the aforesaid house to any other person except the appellant, is filed.

3. In the joint written statement of the respondents, it is stated that such house is not situated on the area as stated in the plaint, but the same is situated on 1,000 Sq.ft. of land. As per further pleadings, the appellant and his family members were residing in their own house situated adjoining to the aforesaid disputed house. The disputed house was belonging to respondent No.1 to 5. and on their terms

under intimation to the appellant they had sold the same in consideration to respondents No.6 and 7 vide registered sale deed dated 31.8.2001. It is also stated that the appellant and his daughter-in-law shown their interest to purchase the same in consideration of Rs.3,00,000/- while, the same was sold to respondents No.6 & 7 in consideration of Rs.4,38,000/-. The suit is not valued in accordance with law on market value of the disputed house and on carrying out the valuation in such manner then, the same is not falling under the territorial jurisdiction of the trial Court. With these submissions the prayer for dismissal of the suit is made. Simultaneously, on behalf of respondents No.6 & 7 a counter claim was also filed against the appellant contending that the appellant being monthly tenant of respondents No.1, 2, 4 & 5 @ Rs.230/- per month was in occupation of the aforesaid premises for residential purpose. As per further averments on purchasing the house by the respondents No.6 & 7 by aforesaid registered sale deed, the appellant has become their tenant on the same terms in such house. Before execution of the sale deed, an intimation in that regard was given by the respondent no.2 to the appellant and his daughter-in-law and even subsequent to execution of the sale deed, the respondents No.6 & 7 intimated the appellant about acquisition of the title in such property with a further intimation to pay the rent of such premises to them vide notice dated 10.6.2002 Ex.D/1. The same was served on him vide Ex.D/3. Subsequently, by another notice dated 10.9.2002 Ex.D/4 by making the demand of the outstanding rent the appellant was informed to vacate the premises on the ground that he had acquired sufficient accommodation of his own on Patel Road Pachmarhi for the residence of his family and his aforesaid tenancy was also terminated at the end of tenancy month on 30.9.2002 the same was also served. Inspite service of such notices on appellant, non of them was replied by him. With these pleadings the counter claim for eviction of the appellant from the disputed premises on the grounds available under Sections 12 (1) (a) and 12(1) (i) of the M.P. Accommodation Control Act 1961, (In short 'the Act) is filed with the written statement.

4. In response of aforesaid counter claim of respondents No.6 & 7 in rejoinder of the appellant, it is stated that such claim of the respondents is not entertainable because the same is filed without mentioning any cause of action. Such respondents are not in bonafide need of such accommodation. Before selling such house, no intimation was given to the appellant. The averments about giving offer to the appellant and his daughter-in-law to purchase the disputed house is wrongly mentioned as no such offer to purchase the property on such consideration was given. The rent of the disputed accommodation was regularly paid to the respondent No.3. Even on tendering the rent of the accommodation to the respondents No.6 & 7 they refused to accept the same on which, Rs.2,530/- was sent through money order to respondent no.3. As per further averments the alleged tenancy of the appellant could not be terminated by the respondents No.6 & 7. It is further stated that in pendency of the suit Rs.2,990/- the sum of the rent has been deposited

in the Court and prayer for dismissal of the counter claim with a prayer to award him the cost of Rs.1,000/- is made.

5. In view of pleadings of the parties after framing the issues and recording the evidence, on appreciation of the same, the trial Court by dismissing the suit of the appellant, decreed the counter claim of respondents no.6 & 7 for eviction on the ground under Section 12(1)(a) and (i) of the Act against the appellant holding the relationship of the tenant and landlord had been established between them. On challenging the same bythe appellant before the appellate Court on consideration by setting aside the finding of the trial Court for eviction on the ground under Section 12 (1) (a) of the Act by dismissing the appeal, the judgment and decree of the trial Court for eviction has been affirmed on which the appellant has come forward with this appeal.

6. Shri R.S. Tiwari, learned appearing counsel of the appellant after referring the pleadings, evidence and the exhibited documents on record argued that on proper appreciation of the evidence, the Courts below ought to have decreed his suit for the prayer made in it by dismissing the counter claim of respondents no.6 and 7. In continuation, he said that as per prevailed custom in Pachmarhi and adjoining area on intending to sell the tenanted premises, the tenant of the accommodation is having the right of preemption to purchase the same first. But in the present matter contrary to such custom without asking the appellant, the respondents no.1 to 5 had sold such property to respondents no.6 & 7.

7. He further argued that even after execution of the sale deed between respondents no.1 to 5 and respondents no. 6 & 7 the attornment of appellant's tenancy in favour of such purchaser has not been established by any admissible evidence. So, the approach of the Courts below holding the relationship between them as tenant and the landlord is not sustainable. It was also argued that appellant's tenancy was not terminated by the respondents no.6 & 7 in accordance with the prescribed procedure. He also argued that mere on acquisition of the residential house of his own by the appellant or his family, the impugned decree could not have been passed against him under Section 12(1) (i) of the Act, as the respondents No.6 & 7 could not prove their case, as per requirement of such provision. With these submissions, he prayed for admission of this appeal on the proposed substantial questions of law mentioned in the appeal memo.

8. Having heard, keeping in view his arguments, I have carefully gone through the record and also perused the impugned judgments.

9. It is apparent on record that the Courts below after taking into consideration the pleadings, evidence and the exhibited documents of the parties concurrently held that relationship of the tenant and the landlord between the appellant and respondents No. 6 & 7 after purchasing the property by them has been established, as such the tenancy of the appellant with the respondents nos. 1 to 5 has been found to be duly attorned in favour of respondents no.6 & 7.

10. The aforesaid concurrent findings are based on available evidence as well

as the proved documents the notice Ex.D./1 dated 10.6.2002 given by the respondents No. 6 & 7 to the appellant informing him regarding acquisition of the title vide registered sale deed 31.8.2001 from the respondents nos. 1 to 5 with a further intimation to pay the rent of the disputed accommodation to them which was sent to the appellant through registered post vide receipt no.2390 Ex.D/2 and the same was served on him by acknowledgement due receipt Ex.D/3 and the subsequent notice Ex.D./4 dated 9.9.2002 given by the respondents No.6 & 7 to the appellant terminating his tenancy in the disputed accommodation on the expiry of tenancy month on 30.9.2002 with a direction to handover the vacant possession of the disputed accommodation along with outstanding sum of the rent, which was send by postal receipt Ex.D/6 and was duly served on the appellant as per certificate of Sub-Post Master Ex.D./5, and the circumstance that inspite having the opportunity to disclose the defence at earliest opportunity by sending the reply none of the aforesaid notice has been replied by the appellant by stating his defence which was taken by him at latter stage in his suit.

11. It is settled proposition of law that whenever a notice is given by a party to the other party and inspite service of the same if it is not replied by the other party then, such circumstance is sufficient to draw inference against such other party that he did not have any proper defence to challenge or rebut the case of the party who issued such notice. So in such premises, it could not be said that the intimation of purchasing the house was not given to the appellant by respondents no. 6 & 7 and the tenancy of the appellant was not attorned in favour of respondents nos. 6 & 7. My aforesaid view is fully fortified by the decision of Patna High Court in the matter of *Kameshwar Lal vs. The King.* reported in AIR (35) 1948 Patna 406 holding that non-reply of notice is sufficient circumstance to draw an inference against the noticee. So in such premises, the arguments advanced by the appellant's counsel saying that the tenancy was not duly attorned between him and the respondents nos. 6 & 7 has not appealed me. In such premises, the concurrent findings of the Courts below holding the relationship as land-lord and tenant between the parties does not require any consideration under Section 100 of the CPC at this stage and in such premises such argument is not giving rise to any substantial question of law in this appeal.

12. Even otherwise the concurrent findings of the Courts below holding the relationship of the parties as land-lord and the tenant being based on appreciation of the evidence and documents are finding of fact and the same could not be interfered under Section 100 of the CPC as laid down by the apex Court in the matter of *Kalyan Singh vs. Ramswaroop and another* reported in 1996 JLJ 247. Such view is further followed by this Court in the matter of *Machala Bai vs. Nanak Ram* reported in 2006 (II) MPLJ page 484. So in such premises also, this appeal does not involve any substantial question of law.

13. So far as argument relating to right of preemption to purchase the property by the tenant like appellant is concerned, I am not apprised by any legal position by the counsel for the appellant in support of such contention. Even otherwise, in the

existing law, the tenant did not have any such right of preemption in the tenanted premises to purchase the same. Once a person who entered in the premises as tenant he always remains tenant and does not acquire any right of preemption against the land-lord to purchase the same unless some express contract takes between the parties by their act. In such premises, the concurrent findings of the Courts below holding that in the area of Pachmarhi no such right of preemption is available to the appellant is not giving rise to any substantial question of law in the present matter.

14. So far the decree passed on the ground under Section 12 (1) (i) of the Act is concerned, after taking into consideration the entire evidence available on the record, it was concurrently held the appellant had acquired accommodation of his own for the residence of his family in which they are residing. Even at this stage, after going through the evidence, I have not found any perversity in appreciation of such evidence of the Courts below for passing the decree on such ground. It is settled proposition of law that the concurrent finding of the Courts below based on appreciation of the evidence howsoever the same are erroneous, could not be interfered under Section 100 of the CPC by framing any substantial question of law as the same does not give rise to any question of law rather than the substantial question of law, as laid down bythe apex Court in the matter of *Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and others* reported in AIR 1999 SC page 2213. So, on this question also this appeal did not have any material or the substance to frame any substantial question of law for admission of this appeal.

15. In view of the aforesaid, I have not found any substance in the case giving rise to any substantial question of law requiring any consideration under Section 100 of CPC at this stage of second appeal resultantly, the appeal being devoid of any question of law, is hereby dismissed at the stage of motion hearing.

16. However, considering the over all circumstances of the case and taking into consideration that the appellant was remained in possession as tenant since long, I deem fit to extend him some period to vacate the disputed premises on certain conditions.

17. Hence, it is directed that on payment of regular monthly mesne profit @ the monthly rent within 15 days, from the end of every Georgian calendar month and on furnishing the appropriate surety to the satisfaction of the trial Court within 30 days from today with an undertaking that the appellant shall hand over the vacant possession of the disputed premises peacefully to the respondents No. 6 & 7 on or before 31.12.2010, the time upto 31.12.2010 is extended to the appellant for vacating the disputed premises, failing in compliance of any of the aforesaid condition, the respondents shall be at liberty to execute the decree forthwith with all aspects. There shall be no order as to the costs.

18. Appeal is dismissed with aforesaid observations and directions.

Appeal dismissed.

I.L.R. [2010] M. P., 2588
APPELLATE CIVIL
Before Mr. Justice U.C. Maheshwari
19 August, 2010*

GOLMAN ... Appellant
Vs.
MUNIYA BAI & ors. ... Respondents

A. **Hindu Law** - *Coparceners property - Right of coparceners - Whereas the ancestral property is inherited by the Karta or member of any branch of such family in his name even then the other male member of his branch the sons being coparcner and if they are / he is predeceased then their/his natural heirs has their vested right in such property and on arising the occasion the same be partitioned between them according to their share as coparceners of such family.* (Para 11)

क. हिन्दू विधि – सहदायिक सम्पत्ति – सहदायिक का अधिकार – जबकि पैतृक सम्पत्ति, कर्ता या ऐसे परिवार की किसी शाखा के सदस्य द्वारा उसके नाम से विरासत में प्राप्त की जाती है तब भी उसकी शाखा के अन्य पुरूष सदस्य पुत्रगण सहदायिक होने के नाते एवं यदि वे/वह पूर्वमृत हों तब उनके/उसके नैसर्गिक वारिस ऐसी सम्पत्ति में निहित अधिकार रखते हैं और अवसर आने पर उसे ऐसे परिवार के सहदायिक के रूप में उनके हिस्से के अनुसार उनमें विभाजित किया जा सकता है।

B. **Evidence Act (1 of 1872), Sections 91 & 92** - ***Admissibility of evidence*** - *Whenever anything is in writing between the parties and such document in original is neither produced nor proved by admissible evidence then mere on the basis of pleadings or oral evidence no inference could be drawn regarding the veracity of such document.* (Para 13)

ख. साक्ष्य अधिनियम (1872 का 1) धारा 91 एवं 92 – साक्ष्य की ग्राह्यता – जब पक्षकारों के मध्य कुछ लिखित में है एवं ऐसा दस्तावेज मूलतः न तो प्रस्तुत किया जाता है और न ही ग्राह्य साक्ष्य द्वारा साबित किया जाता है तब मात्र अभिवचनों या मौखिक साक्ष्य के आधार पर ऐसे दस्तावेज की सत्यता के सम्बन्ध में कोई अनुमान नहीं निकाला जा सकता।

Cases referred :
AIR 1982 SC 679, AIR 1999 SC 2213.

Sudeep Chaterjee, for the appellant.

O R D E R

U. C. Maheshwari J.:–The appellant/ defendant has filed this appeal under Section 100 of CPC being aggrieved by the judgment and decree dated 30.6.2008 passed by 1st additional District Judge, Betul in Civil Regular Appeal No.37-A/05, affirming the judgment and decree dated 30.8.2005 passed by 1st Civil Judge Class-II Betul in Civil Original Suit No.25-A/00 decreeing the suit of respondent

*S.A. No.1306/2008 (Jabalpur)

No.1 against the appellant and respondent No.2 to 8 for declaration, perpetual injunction and partition of the disputed agricultural land.

2. The facts giving rise to this appeal in short are that respondent No.1 herein filed the aforesaid suit contending that land bearing survey No.319, 400 and 406 area 0.891, 0.235 and 1.348 hector situated at village Malajpur being ancestral property of her grand father Roniya was earlier recorded in his name under the Bhoomiswami right. Roniya had five daughters the respondent No.4 to 8 and two sons namely Bhuta and Mallu, the father of respondent No.2 Omkar and respondent No.1/ plaintiff Muliya bai respectively and on demise of Bhuta and Mallu they inherited their respective Bhoomiswami rights in such land. As per further pleading after the death of Roniya except the name of respondent No.1/ plaintiff and Satish the respondent No.3 (the son of respondent No.2) the name of all aforesaid natural heirs of Roniya were mutated in the record of rights. Subsequent to that in the year 1994 in presence of village Community Panchayat in order to resolve their dispute the partition took place between all heirs of Roniya in which land bearing survey No.319 area 0.891 hector and survey No.400 area 0.235 hector was given in the share of respondent No.1 while the land bearing survey No.406 area 1.338 hector was given to Omkar respondent No.2 in his share. Since then according to such partition the respondent No.1 and 2 being in possession of the land, are cultivating the same. It is also stated that the aforesaid all five daughters of Roniya respondent No.4 to 8 had left their share in favour of respondent No.1 and 2 in such partition. Therefore, they never remained in possession of any part of it. Subsequent to it respondent No.5 Kallo without any legal right only by taking advantage of the revenue records in which her name was recorded as legal heirs of Roniya had executed a registered sale deed on 3.7.97 in favour of respondent No.3 Satish the son of respondent No.2 wherein the land bearing survey No.400 and 406 was shown to be sold to such respondent No.3 whereas the respondent No.5 after relinquishing her share in the property in the above mentioned partition in favour of respondent No.1 and 2 was not having any authority to sale the same. Therefore, the aforesaid sale deed 3.7.1997 is not binding against respondent No.1. In such premises the purchaser had not acquired any rights or title in the property by such sale deed. Subsequent to it respondent No.4 and 6 to 8 also by executing registered sale deed dated 29.12.1996 in favour of the appellant Golman sold him some disputed land but due to above mentioned reason such sale deed was also not binding against respondent No.1. In addition it is also pleaded that if aforesaid partition dated 19.6.1994 is not found to be proved or legal then the aforesaid ancestral land of Roniya be partitioned between the parties taking into consideration the aforesaid Bhuta and Mallu being co-parcenor of the family with Roniya had 1/3 – 1/3 undivided share while 1/3 was belonging to Roniya and subsequent to death of Roniya only his 1/3 share is inherited by his natural heirs the five daughters respondent No.4 to 8 two sons the respondent No.1 and 2 or their natural heirs. In such premises the declaration is also prayed

that above mentioned sale deeds executed by respondent No.5 and 4 with 6 to 8 in favour of respondent No.2 and the appellant respectively are not binding till the extent of right and title of plaintiff/ respondent No.1 in the aforesaid land. With these pleading the suit for declaring the share of respondent No.1 in such land and partition accordingly with a further prayer declaring the aforesaid sale deeds dated 3.7.97 and 29.12.1996 had not adversely affected her right along with further prayer restraining the respondents from interfering in her possession of the disputed land is filed.

3. In the joint written statement of the respondent No.2, 4 and 5 it is stated that after death of Roniya, his all successor have become joint owner of the above mentioned land. The respondent No.5 under her right has sold her share by the alleged registered sale deed dated 3.7.1997 to respondent No.3. The respondent No.1 did not have any authority to demand the partition of the same. It is also stated that respondent No.5 has not sold any excess land contrary to her share. It is accepted by them that respondent No.4 and 6 to 8 have also sold three acres of aforesaid land to appellant/ defendant No.9 Golman by registered sale deed dated 29.12.1996 and prayer for dismissal of the suit is made.

4. In the separate written statement of appellant/ defendant No.9 it is stated that on 19.6.1994 in presence of the Panchayat the partition of aforesaid land had taken place between respondent No.1, 2 and 4 to 8 the same is admitted by respondent No.1. Since the date of such partition they were in the separate possession of their respective land. After such partition he purchased the land described in sale deed in consideration of Rs.60,000/- from respondent No.4 and 6 to 8 whom such land was given in the partition. Now the respondent No.1/ plaintiff did not have any authority to make the prayer for re-partition of the land. It is also stated that respondent No.4 and 6 to 8 have not sold any excess land and prayed for dismissal of the suit.

5. The remaining respondents/ defendants were remained ex-parte in the trial court.

6. In view of the pleadings of the parties after framing the issues and recording the evidence on appreciation of the same the trial court by holding that in above mentioned alleged partition respondent No.4 to 8 never left their right in the disputed property has held the factum of alleged partition dated 19.6.1994 has not been proved by either of the parties. It was also held that Respondent No.1 plaintiff could not prove that after death of Roniya she and respondent No.2 Omkar were remained in possession of the entire land. The sale deeds dated 3.7.97 and 29.12.1996 are not binding against the respondent No.1 plaintiff. The respondent No.1/ plaintiff had the share of his father Mallu in the property in accordance with the provision of Hindu Succession Act as held in the finding of issue No.4 whereby holding the entire land of ancestral, Mallu the father of plaintiff being co-parcenor of the family with Roniya and respondent No.2 Omkar had 1/3 share in the entire land. The sale deed dated 3.7.97 and 29.12.1996 had not given any

right and title to the respondent No.3 and the appellant in the disputed property. In such premises the suit of the respondent No.1 was decreed with preliminary decree by the trial court on following terms.

(a) It is declared that respondent No.5 Kallo did not have any right to execute the sale deed dated 3.7.97, therefore, the title and right of the respondent No.1 over survey No.400 area 0.235 hector is not adversely affected by this deed. Respondent No.3 and appellant had not got the land described in the above mentioned sale deed. The respondent/ plaintiff is entitled to get fresh partition of the disputed entire land with the co-Bhoomiswamies.

(b) In such partition respondent No.4 to 8 each one are held to be entitled to get 1/7 share in 1/3 share of deceased Roniya in such property. Such respondents had sold more land in comparison of their share to the respondent No.3 and appellant, so such purchaser could be the owner in such property only till the share of respondent No.5 and 4 with 6 to 8 respectively.

(c) The perpetual injunction is issued in favour of respondent No.1 restraining the respondent No.2 to 8 and appellant themselves or through other person not to interfere in the right and possession of the respondent No.1 with respect of disputed land bearing survey No.319/1 area 0.891 hector and survey No.400 area 0.235 hector.

(d) The respondent No.1/ plaintiff and the defendants respondent No.2 and 4 to 8 were directed to initiate the proceedings for partition and their separate possession under Order 20 Rule 18 r/w Section 54 of CPC in the revenue court.

7. Being dissatisfied from the aforesaid judgment and decree of the trial Court, the appellant/ defendant No.9 herein filed the appeal before the subordinate appellate court. On consideration, by affirming the same such appeal has been dismissed, on which the appellant has come forward to this Court.

8. Shri Sudeep Chaterjee, learned appearing counsel of the appellant after taking me through pleadings, evidence and exhibited documents on record argued that in view of admission of respondent No.1 in her plaint that on earlier occasion with respect of disputed land the partition took place between the parties on 19.6.1994, in which the respondent No.4 to 8 had left their share in the aforesaid property in favour of the respondent No.1 and 2. Hence, there was no occasion before the courts below for holding that no partition had taken place between the parties. In continuation, he said that in view of settled proposition of law once partition had taken place between the co-owners of the disputed property then the decree for subsequent partition being not permissible under the law could not be passed by the courts below. In such premises, the impugned decree of the courts below being contrary to the pleadings of the parties and the settled legal

position is not sustainable under the law. He also said that in view of aforesaid admission of respondent No.1 in her plaint, there was no necessity to prove the earlier partition by producing the dead of partition written between them. In continuation he said that in any case the appellant had purchased the land from respondent No.5, which was given to her in the aforesaid partition and therefore, with respect of such land, purchased by the appellant, the courts below could not pass the impugned decree against him and prayed for admission of this appeal keeping in view of the aforesaid admission of the respondent No.1 on the proposed substantial question of law mentioned in the appeal memo.

9. Having heard the counsel, I have carefully examined the records of the courts below and perused the impugned judgments. It is apparent on record that long before the disputed entire land was inherited by one Roniya, the father of respondent No. 4 to 8 and the grand father of respondent No.1 and 2 in family partition and the same was recorded in his name. Subsequent to his death on carrying out the mutation in the record of rights except the name of respondent No.1, the daughter and heirs of Mallu the predeceased son of Roniya, the name of all the above mentioned heirs respondent No.4 to 8 and respondent No.2 Omkar the son of Bhuta the another son of Roniya was recorded jointly as Bhoomiswami. As per concurrent findings of the courts below even after taking into consideration the aforesaid undisputed fact that the aforesaid property being ancestral was belonging to Hindu Joint Family was inherited by Roniya for his branch (As capita) in which Bhuta and Mallu his sons (the father of respondent No.2 and 1 respectively) being co-parcner of the family each one had 1/3 – 1/3 share with Roniya and after death of Roniya only his 1/3 share was inherited by his natural heir the sons Bhuta, Mallu and the daughters respondent No.4 to 8, and in the absence Bhuta and Mallu on account of their death to their successor the respondent No.2 and 1 respectively. In such premises the courts below have decided the share of the parties in aforesaid disputed land holding the respondent No.4 to 8 along with respondent No.1 and 2, each of them are entitled to get 1/7 share in 1/3 share of Roniya in entire property while besides the aforesaid share the respondent No.1-plaintiff under the title of there predecessor namely Bhuta and Mallu are the co-parceners of the family entitled 1/3 – 1/3 share in the entire land.

10. Keeping in view the proposition of the Hindu Law that on acquisition of ancestral property in family partition by Karta of the branch as capita his sons being co-parcner with him in the family had their vested right in such property. After going through the evidence led by the parties I have found that the findings of the courts below holding the respective share of the parties in the disputed land is in consonance of the evidence and also in accordance with the above mentioned principle of the Hindu Law. Contrary to it, I am not apprised with any legal position by the appellant's counsel showing the courts below have committed any error in deciding the shares of the parties by the judgments and decree impugned.

11. It is settled proposition of Hindu Law that whereas the ancestral property is inherited by the Karta or member of any branch of such family in his name even then the other male member of his branch the sons being co-parcner and if they are/ he is predeceased then their/his natural heirs had their vested right in such property and on arising the occasion the same be partitioned between them according to their share as co-parceners of such family.

12. In view of the aforesaid the concurrent approach of the courts below, holding that in the life time of Roniya his sons Bhuta and Mallu the father of respondent No.2 and 1 respectively each of them had 1/3 share in the aforesaid entire land with the Roniya and after death of Roniya only his 1/3 share was inherited by the branch of his sons said Bhuta and Mallu and the respondent No.4 to 8. In such premises the concurrent findings of the courts below holding the respondent No.5 to 8 had not any authority to sale more then their aforesaid share i. e. 1/21 each (1/7 out of the 1/3 of total land) to the respondent No.3 and appellant/ defendant No.9 by way of above sale deed, appears to be based on proper appreciation of evidence and also in conformity with law. Pursuant to it, the approach of the courts below holding the above mentioned sale deeds executed by respondent No.5 in favour of respondent No.3 and by respondent No. 4 with 6 to 8 in favour of appellant are not binding against the respondent No.1 till the extent of her right as stated above could not be said contrary to law in any manner. In such premises this appeal does not have any material or substance giving rise to any substantial question of law requiring any consideration at this stage under Section 100 of CPC.

13. So far the arguments advanced by the appellant's counsel that in view of earlier partition of the parties which had taken place on 19.6.1994 at subsequent stage by decreeing the suit of the respondent No.1 the courts below did not have any authority to pass the decree for repartition by holding the separate share of the parties with respect of the disputed land, specially when such partition was admitted by respondent No.1 in her plaint is concerned, firstly the concurrent findings of the courts below holding the alleged partition of 19.6.1994 has not been proved by either of the parties by any document or other admissible evidence, based on appreciation of evidence being finding of fact could not be interfered at the stage of appeal under Section 100 of CPC and secondly in view of the settled proposition of law that whenever anything is in writing between the parties and such document in original is neither produced nor proved by admissible evidence then mere on the basis of pleadings or oral evidence no inference could be drawn that some earlier partition had taken place between the parties. In such premises the arguments of the appellant's counsel in this regard has not appealed me and in such premises the concurrent findings of the courts below do not require any interference at this stage by framing any substantial question of law under Section 100 of CPC.

14. Apart the above the concurrent approach of the courts below based on

appreciation of evidence holding that no partition had taken place between the parties being findings of facts could not be interfered at this stage under Section 100 of CPC. My such view is fully fortified with the principle laid down by the Apex Court in the matter of *E. Mahboob Vs. N. Sabbarayan* reported in AIR 1982 SC 679, in which it was held that the concurrent findings on the question of partition being finding of fact is not interfereable under Section 100 of CPC. So on this question also I have not found any substance in the matter giving rise to any substantial question of law.

15. Even otherwise for the sake of argument if the submission of the appellant's counsel regarding earlier partition of 1994 had taken into consideration by the courts below, even then according to such partition as stated by respondent No.1/ plaintiff in the plaint that the respondent No.4 to 8 had left their share of the property in favour of respondent No.1 and 2 then the appellant/ defendant No.9 who acquired the disputed land from respondent No. 4 and 6 to 8 through registered sale deed dated 29.12.1996 had not acquired any right or title in the property as such respondent No.4 and 6 to 8 had left their share in favour of respondent No.1 and 2 in such alleged admitted partition. In such premises also this appeal could not be admitted at the instance of the appellant by framing any substantial question of law.

16. In view of the aforesaid it is apparent that courts below keeping in view the entire scenario and circumstance of the case, have decided the share of the parties in accordance with the principle of the Hindu Law and the settled proposition of it and directed the parties to get partitioned accordingly from the revenue authority under Order 20 Rule 18 r/w Section 54 of CPC. Therefore, in such premises also I have not found any material or substance in the appeal giving rise to any substantial question of law at this stage.

17. Apart the above the concurrent findings of the courts below based on proper appreciation of evidence being finding of fact, howsoever the same are erroneous, in view of law laid down by the Apex Court in the matter of *"Kondiba Dagadu Kadam v. Savitribai Sopan Gujar"* reported in AIR 1999 S. C. 2213 could not be interfered by re-appreciation of the evidence at this stage under Section 100 of CPC.

18. Therefore, this appeal being devoid of any substance giving rise to any substantial question of law requiring any consideration at this stage under Section 100 of CPC deserves to be and is hereby dismissed at the stage of motion hearing.

19. The appeal is dismissed as indicated above.

Appeal dismissed.

I.L.R. [2010] M. P., 2595
APPELLATE CIVIL
Before Mr. Justice N.K. Mody
20 August, 2010*

SAJID & anr. ... Appellants
Vs.
AMTULAH BAI ... Respondent

A. **Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a)** - *Arrears of rent - At the time of notice appellants/tenants were not in arrears and also there is no proof of receipt of notice - The ground u/s 12(1)(a) is not availabe.* (Para 13)

अ. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए) – किराये का बकाया – सूचना देने के समय अपीलार्थी/किरायेदार पर बकाया नहीं था एवं सूचना प्राप्ति का कोई सबूत भी नहीं था – धारा 12(1)(ए) के अन्तर्गत आधार उपलब्ध नहीं।

B. **Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f)** - ***Bona fide requirement*** - *Plaintiff's son wants to do business at Shajapur in his own shop - His parents and sisters are residing at Shajapur - He is also having ancestral property at Shajapur - Even if it is assumed that the plaintiff's son doing some business at Mumbai, it can not be said that the need of plaintiff is not bona fide - Appeal dismissed.* (Para 14)

ख. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – वास्तविक आवश्यकता – वादी का पुत्र शाजापुर में अपनी स्वयं की दुकान में व्यवसाय करना चाहता है – उसके माता–पिता एवं बहनें शाजापुर में रहती हैं – शाजापुर में उसका पैतृक निवास भी है – यह मान लेने पर भी कि वादी का पुत्र मुम्बई में कोई व्यवसाय कर रहा है तो भी यह नहीं कहा जा सकता कि वादी की आवश्यकता वास्तविक नहीं है – अपील खारिज।

Cases referred :

1994 JLJ 174, 2007(II) MPACJ 238, 2007(I) MPACJ 385, 2000(2) MPHT 247, AIR 1998 SC 746, 2010(II) MPACJ 1, 2010(I) MPACJ 118.

Pramod Nair, for the appellants.
A.K. Shrivastava, for the respondent.

J U D G M E N T

N.K. Mody, J. :–Being aggrieved by the judgment and decree dated 12/01/2010 passed by ADJ, Shajapur in civil regular appeal No.17-A/2009 whereby the judgment and decree dated 16/06/2009 passed by Civil Judge, Class-I, Shajapur in civil suit No.11-A/2004 whereby decree of eviction was passed against the appellants under Section 12 (1) (a) and (f) of M.P. Accommodation Control Act (which shall be referred hereinafter as "Act"), was modified by maintaining the decree only under Section 12 (1) (a) of the Act, the present appeal has been filed.

---

*S.A. No.168/2010 (Indore)

2. This appeal was admitted by this Court for final hearing on the following substantial question of law :-

> "Whether in the facts and circumstances of the case learned Courts below committed error in passing the decree of eviction against the appellant under Section 12 (1) (a) of the M.P. Accommodation Control Act ?"

3. Upon the cross-objections filed by the respondent following substantial question of law was framed by this Court vide order dated 16/07/2010 :-

> "Whether in the facts and circumstances of the case learned Appellate Court was justified in setting-aside the findings of the learned trial Court relating to Section 12 (1) (f) of the M.P. Accommodation Control Act ?"

4. Short facts of the case are that suit for eviction was filed by the respondent on 24/06/1997 against the appellants alleging that the appellants are the tenant in the suit accommodation situated at Chota Chowk, Opposite to Mosque, Shajapur. It was alleged that the suit accommodation was taken on rent by the appellants @ Rs.30/- per month with effect from 25/09/1973. It was alleged that subsequently the rent was enhanced to Rs.175/- per month w.e.f. 01/01/1995. It was alleged that the appellants are in arrears of rent w.e.f. 01/01/1997 which has not been paid inspite of notice of demand dated 14/01/1997. It was alleged that the second notice was also issued on 15/03/1997 but inspite of that rent was not paid. Further case of respondent was that respondent requires the suit accommodation bonafidely for the need of her son for which respondent is having no alternative accommodation. It was prayed that decree of eviction be passed under Section 12(1)(a)&(f) of the Act.

5. The suit was contested by the appellants by filing written statement wherein all the allegations made in the plaint were denied, however, tenancy @ Rs.30/- per month was not disputed. It was denied that the tenancy of the appellants is @ Rs.175/- per month. It was denied that appellants are in arrears of rent w.e.f. 01/01/1997. It was alleged that appellants are tenant @ Rs.100/- per month. It was alleged that rent for the month of December, 1996 and January, 1997 Rs.200/- was sent by the appellants to the respondent which was duly received by the respondent. It was prayed that suit be dismissed. After framing of issues and recording of evidence learned trial Court decreed the suit under Section 12 (1) (a) and (f) of the Act against which an appeal was filed which was allowed in part by maintaining the decree under Section 12 (1) (a) of the Act and setting-aside the decree under Section 12 (1) (f) of the Act. Against that part of the decree which was maintained present appeal has been filed in which cross-objections have been filed by the respondent.

6. Learned counsel for the appellants argued at length and submit that the impugned judgment and decree passed by learned Courts below are illegal, incorrect

and deserves to be set-aside. It is submitted that it was only the rent of August, 1999 and September, 1999 for which the receipt could not be produced by the appellants while the rent was duly deposited. However, to avoid any controversy application was moved for condonation of delay which has wrongly been dismissed by learned Courts below. It is submitted that since the plea raised by appellants in the application was that the amount has already been deposited, therefore, there was no justification on the part of learned Courts below in dismissing the application for condonation of delay specially in the facts and circumstances of the case that the appellants were regularly depositing the rent as per Section 13 (1) of the Act. Learned counsel placed reliance on a decision in the matter of *Bhagwandas Pawaiya Vs. Regd. Firm Kailash Narain* 1994 JLJ 174 wherein tenant deposited rent though late and landlord withdrawn the same without any objection as to delay in deposits. It was held that delay either waived or condoned, no decree of eviction can be passed under Section 12 (1) (a) of the Act.

7. So far as decree of eviction under Section 12 (1) (f) of the Act is concerned, it is submitted that learned appellate Court has rightly refused the decree under Section 12 (1) (f) of the Act. It is submitted that burden to prove that the respondent requires the suit accommodation for the need of her son Kutubudin was on the respondent and right from beginning case of the appellants was that Kutubudin is residing at Mumbai. It is submitted that except Ration Card Ex.P/12 there is nothing to prove that Kutubudin is residing at Shajapur. It is submitted that Ex. P/12 also does not prove that at the time of institution of suit Kutubudin was residing at Shajapur. It is submitted that no other documents such as election ID card, voter list etc. which could have been a authentic proof was submitted by the respondent in evidence to prove the fact that Kutubudin is residing at Shajapur. It is submitted that appellant has proved that Kutubudin is owner of a shop and is carrying-on his business in the name and style of Kutubudin Electricwala having a shop at Haji Kasam Chal, 2-Tanki Bindi Bazar, Kajipura Building, Mumbai. It is submitted that no prudent man will leave Mumbai who is having a flourishing business and came back to Shajapur. It is submitted that there were lot of contradictions in the statement of Kutubudin and the respondent which has not been taken into consideration by learned appellate Court. It is submitted that except on the date of evidence Kutubudin never appeared in Court, which shows that Kutubudin is residing at Mumbai. Learned counsel placed reliance on a decision in the matter of *Shyamlal Vs. Hajarilal* 2007 (II) M.P.A.C.J. 238 wherein suit filed for bonafide requirement for carrying on business of electrical goods was dismissed by two Courts, this Court held that element of bonafide requirement in the sense of a felt need which is an outcome of sincere, honest desire in contradiction with mere pretense or pretext to evict a tenant is conspicuously missing. This Court further held that for making out a case for bonafide requirement the landlord has to prove the sincere, honest desire and since the finding recorded by two Courts are the finding of fact does not suffer from any perversity or

misreading or non-reading of relevant evidence leading to miscarriage of justice, therefore, the appeal was dismissed. Learned counsel further placed reliance on a decision in the matter *Sardarmal Vs. Ashish* 2007 (I) M.P.A.C.J. 385 wherein this Court held that question of bonafide need set-up by the landlord whether for residential purpose or non-residential, is a question of fact. It was further held that it is only when the findings so recorded on this issue is found to be dehors the pleadings or against the evidence led or is based on no evidence or is against the statutory requirement of law or it is so bad that no judicial man can ever reach to its conclusion, then such finding is amenable to interference in second appeal. Further reliance is placed on a decision in the matter of *Shri Uttam Chand Vs. Shri Purushottamdas Ji Patel* 2000 (2) M.P.H.T. 247 wherein first appellate Court has held that the alternative accommodation available with the plaintiffs is reasonably suitable for the business and decree passed was reversed, this Court has held that finding of first appellate Court is just and reasonable and no substantial question of law is involved. Reliance is also placed on a decision in the matter of *S.J. Ebenezer Vs. Velayudhan* AIR 1998 SC 746 wherein Hon'ble Apex Court has held that mere desire of landlord not sufficient to constitute bonafide need and the said desire is to be tested objectively. Burden also lies upon landlord to establish that he genuinely requires the accommodation.

8. On the strength of aforesaid position of law, learned counsel for the appellants submit that learned appellate Court has rightly refused the decree under Section 12 (1) (f) of the Act. It is submitted that appeal filed by the appellants be allowed and the impugned judgment passed by learned trial Court whereby decree of eviction was passed against the appellants under Section 12 (1) (a) of the Act be set-aside and the cross-objections filed by the respondent be dismissed.

9. Mr. AK Shrivastava, learned counsel for the respondent submits that after due appreciation of all the facts and circumstances of the case learned trial Court has rightly rejected the application for condonation of delay which was within the discretion of learned trial Court and the same is affirmed by learned appellate Court which requires no interference. Learned counsel placed reliance on a decision in the matter of *Kamlabai Wd/o Jeenlal Sharma, Vs. Surjeet Kaur Oberoi,* 2010 (II) MPACJ 1 wherein Trial Court decreed the suit under Section 12(1)(f) of the Act, which was set aside in appeal, this Court held that learned Appellate Court committed error of law in reversing the findings recorded by the learned trial Court with regard to Section 12(1)(f) of the Act. Further reliance is placed on a decision in the matter of *Premchand Vs. Radheshyam,* 2010 (I) MPACJ 118 wherein suit for eviction of tenant was decreed by the trial Court and in appeal it was set aside, this Court held that once the landlord establishes his bonafide need for the accommodation, then it is not for the Court to decide as to sufficiency or insufficiency of the accommodation as the need of landlord is paramount and he cannot be directed or forced to make do with the accommodation available with him nor can a decree of eviction be denied on the ground that the

accommodation available with him is sufficient. On the strength of aforesaid position of law, learned counsel submits that the learned Courts below has rightly passed the decree against the appellants under Section 12(1)(a)&(f) of the Act and the learned Appellate Court committed error in setting aside the decree passed under Section 12(1)(f) of the Act. It is submitted that in the facts and circumstances of the case, appeal filed by the appellants be dismissed and the cross-objections filed by the respondent be allowed.

10. From perusal of the record it is evident that the suit for eviction was filed on 24/06/97, which was decreed by the learned trial Court on 24/12/04, against which an appeal was filed which was numbered as 34-A/05 and was dismissed on 07/03/06, against which Second Appeal was filed by the appellants which was numbered as SA. No.283/06 and was allowed vide judgement dated 18/12/08 observing that it is now necessary to remand the case back to the trial Court which is to afford opportunity to both the sides to lead additional evidence in support of their respective case and thereafter the Trial Court shall pass judgement and decree in accordance with law. In compliance of the remand order, after recording of further evidence again suit was decreed by the trial Court vide order dated 16/06/09, which was modified by the learned Appellate Court vide judgment dated 12/01/10 whereby while maintaining decree under Section 12(1)(a) of the Act, decree passed by the learned trial Court under Section 12(1)(f) of the Act was set aside.

11. To prove the case respondent has filed the documents Ex.P/1 to Ex.P/12. Ex.P/1 is the rent note dated 25/09/1973 whereby suit accommodation was letted out on rent @ Rs.30/- per month, Ex.P/2 is the rent receipt whereby appellants agreed to pay rent @ Rs.175/- per month w.e.f. 01/01/95, Ex.P/3 is the notice dated 14/01/97 for eviction of appellant, Ex.P/4 & Ex.P/5 are the registry receipt and acknowledgement, Ex.P/6 is reply notice issued by the appellants on 18/02/97, Ex.P/7 is again notice dated 15/03/97 issued by the respondent, Ex.P/8 is the UPC receipt whereby notice was sent, Ex.P/9 is the rent note of Imamuddin dated 01/02/67, Ex.P/11 is the copy of register of establishment, Ex.P/12 is the copy of Rashan card. Apart from the aforesaid documentary evidence, respondent has examined herself as PW/1, Gulam Hussain PW/2 and Kutubudin PW/3.

12. Appellants have produced the documents Ex.D/1 to Ex.D/14. Ex.D/1 is the photocopy of the rent note dated 25/02/73, Ex.D/2 is the agreement dated 25/02/73, Ex.D/3 to Ex.D/11 are the copies of the abstracts of the cash book maintained by the appellants, Ex.D/12 & Ex.D/13 are the money order coupons, Ex.D/14 is the death certificate of Abdul Ansari. Apart from this appellants have examined Mohammed Siddiqui DW/1, Abdul Ajij DW/2, Abdul Shahid DW/3, Abdul Hamid DW/4, Sagir Khan DW/5 and Abdul Wahid DW/6.

13. So far as decree of eviction under Section 12(1)(a) of the Act is concerned, the case of the respondent is that the appellants are in arrears of rent w.e.f.

01/01/97, which has not been paid inspite of notice of demand. It is no more in dispute that the rent was sent to the respondent for the month of December, 1996 and January, 1997, which was duly accepted by the respondent. For making out a case under Section 12(1)(a) of the Act fundamental requirement is that the tenant should be in arrears of rent. Notice of demand is issued by the landlord to the tenant which should be duly served, whereby arrears was demanded and inspite of notice of demand, tenant fails to pay or tender the arrears of rent to the landlord. As per the plaint allegations itself appellants are in arrears of rent w.e.f. 01/01/97. Ex.P/1 is the notice dated 14/01/97 at that time no rent was due as the arrears was being claimed from 01/01/97. Another notice is Ex.P/7 which is dated 15/03/97 of which receipt of registry and acknowledgement has not been filed and also in the said notice no demand of payment of arrears of rent was made. Thus, it is clear that for making out a ground under Section 12(1)(a) of the Act the basic requirement has not been fulfilled. Since the ground under Section 12(1)(a) of the Act itself was not available as the appellants were not in arrears and no notice of demand was sent and also there is no proof of receipt of the notice Ex.P/7, therefore, this Court is of the view that both the Courts below have committed error in passing the decree under Section 12(1)(a) of the Act. Even if at the subsequent stage any default is committed by the appellants in payment of rent from month to month, then too, no decree of eviction can be passed as the ground itself was not available.

14. So far as decree under Section 12(1)(f) of the Act is concerned, in first round of litigation learned trial Court and also learned Appellate Court held that the respondent has proved the ground under Section 12(1)(f) of the Act. In Second Appeal before this Court the case was remanded to the learned trial Court to adduce further evidence, therefore, after the remand learned Court below were required to see whether any subsequent evidence adduced by the appellant disentitles the respondent from the decree of eviction under Section 12(1)(f) of the Act. In the present case after the remand by this Court vide judgment dated 18/12/08 appellants have examined DW/4 Abdul Hamid, Sagir Khan DW/5 and Abdul Wahid DW/6 on 27/04/09. DW/4 states that Kutubudin is not residing at Shajapur and carrying on his business at Bombay. DW/5 Sagir Khan who is driver submits that whenever he goes to Bombay he finds the Kutubudin their. DW/6 Abdul Wahid proves the registration of the shop. Thus, there is absolutely no evidence after the remand of the case, which goes to show that Kutubudin was residing and carrying on business at Mumbai. Even if it is assumed that Kutubudin was doing some business at Mumbai and wants to do the business at Shajapur in his own shop, then too, there is noting on the basis of which it can be said that need of the respondent is not bonafide. From the record it is evident that parents of Kutubudin and his sisters are residing at Shajapur. Kutubudin is also having ancestral property at Shajapur, therefore, there are possibilities that Kutubudin must have decided to carry on the business at Shajapur.

15. There is nothing on record to show that respondent is having flourishing business at Mumbai. In the facts and circumstances of the case, there was no justification on the part of learned Appellate Court in setting aside the findings recorded by the learned trial Court under Section 12(1)(f) of the Act, which was also found proved in earlier round of litigation. So far as decree under Section 12(1)(a) of the Act is concerned, this Court is of the view that no decree could have been passed as appellants were not in arrears of rent. In view of this, appeal filed by the appellants is allowed and the cross-objections filed by the respondent are also allowed by setting aside the decree passed by the learned Courts below under Section 12(1)(a) of the Act and by setting aside the findings of the learned Appellate Court whereby decree under Section 12(1)(f) of the Act was refused and the judgment passed by the learned trial Court so far as it relates to Section 12(1)(f) of the Act is concerned, is restored.

16. However, the order of eviction shall not be executed on or before 31/07/2011 on the condition that the appellants herein file an undertaking before the learned trial Court within six weeks to the following effect namely :-

1. that the appellants herein shall not induct any other person in the suit premises and shall hand-over vacant and peaceful possession of the said premises to the respondent/landlord on or before 31/07/2011.

2. that the appellants herein shall pay to the respondent/landlord arrears of rent, if any, within one month from today and shall pay to the respondent/landlord future compensation for use and occupation of the suit premises month by month before the 10th day of every month.

17. With the aforesaid observations, appeal stands disposed of. No order as to costs.

Appeal disposed of.

I.L.R. [2010] M. P., 2601
APPELLATE CIVIL
Before Mr. Justice R.K. Gupta
23 August, 2010*

ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED ... Appellant
Vs.
HAROON BI & ors. ... Respondents

Motor Vehicles Act (59 of 1988), Section 147 - *Liability of Insurance Company - Deceased travelling as a passenger in the goods vehicle - He was not travelling with or for the safety of his goods - Insurance Company would be absolved from liability to pay compensation - Appeal dismissed.* (Paras 6 to 8)

*M.A. No.3041/2009 (Jabalpur)

मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमा कम्पनी का दायित्व – मृतक माल वाहन में यात्री के रूप में यात्रारत था – वह अपने माल के साथ या उसकी सुरक्षा हेतु यात्रा नहीं कर रहा था – बीमा कम्पनी प्रतिकर अदा करने के दायित्व से मुक्त रहेगी – अपील खारिज।

Case referred :

(2003) 2 SCC 223.

Aditya Narayan, for the appellant.

V.C. Rai, for the respondents.

ORDER

R.K. Gupta, J. :–The default pointed out by the office for payment of fresh process fee on behalf of respondent nos.I to 7 with regard to correct and present address be ignored.

2. In these appeals the dispute involved is similar and, therefore, they are heard analogously.

3. M.A. No.3041/2009 is an appeal by the Insurance Company challenging the impugned award wherein the Insurance Company is held responsible to indemnify the claim of compensation. M.A.No.5616/2008, is the appeal preferred by the claimants for the enhancement of the amount of compensation.

4. The facts in the present case are that the claim application by respondent no.1 was filed alleging that on 28.1.2006 her husband namely; Mohd. Ravi Khan was travelling in a truck which was belonging to respondent no.8 and was driven by respondent no.7 rashly and negligently as a result of which the vehicle bearing registration no.MP37-G-0201 dashed with a tree and the deceased succumbed to the injuries.

5. The claimant appeared before the Motor Accidents Claims Tribunal (in short, "the Tribunal") and submitted that the deceased had gone to the market to purchase vegetables and while returning home he boarded the offending truck by paying a fare of Rs. 10/- to the driver. This submission was supported by witnesses Gangaram and Sakina Bi (P.W.2). Thus, it is clear that deceased Mohd. Ravi Khan was a passenger in a goods vehicle, Mahendra pick-up van, and he travelled in it by paying a fare of Rs.10/-. The story is also supported by Surendra Singh Joshi (P.W.4). None of the witnesses examined by the claimants has stated that deceased Mohd.Ravi Khan travelled in the said goods vehicle for the safety of his good and the truck was hired.

6. The Apex Court in *National insurance Company Ltd. Vs. Asha Rani* 2003 (2)SCC 223 has held that a passenger is also entitled to the compensation in case of death or injury received due to the accident. It has been further held that the insurance company would be entitled to pay the compensation only if it is proved before the Tribunal that the passenger was travelling along with the goods for the purposes of its safety and protection.

7. It is not the case of claimants that deceased Mohd. Ravi Khan was sitting in the vehicle for the safety of his goods. He was only a passenger. There is nothing on record to show that he was in possession of the goods and was boarded along with the same.

8. In view of the law laid down by the Apex Court in *Asha Rani* (Supra), I am of the view that the Tribunal has committed an illegality in holding the insurance company liable to indemnify the claim of compensation. However, the judgment and decree passed in favour of the claimants and against the owner and driver of the vehicle is affirmed. The Tribunal has awarded Rs.3,91,000/- under all heads. The Insurance Company is discharged of its liability to pay compensation, however, if the amount has been received by the claimants, the Insurance Company shall be entitled to recover the same from the owner.

9. In view of the aforesaid, the appeal preferred by the Insurance Company is allowed.

10. So far as the appeal for enhancement of award is concerned, it is submitted that in the present case the Tribunal wrongly applied the multiplier. The notional income calculated at the rate of Rs.3000/- is not an adequate income which has been assessed by the Tribunal.

11. It is to be seen that the date of accident is 28.1.2006. No proof of notional income has been submitted. The Tribunal has taken into account that the deceased was selling vegetables and in the absence of any evidence, the Tribunal arrived at a conclusion that Rs.3000/- would be the notional income of deceased and on that basis ratio of 2:3 has been applied by the Tribunal. In the present case, there has been dependency. The Tribunal has deducted ¼ part of the claim amount and the remaining has been treated as dependency. In view of the aforesaid, I do not find any substance.

12. Accordingly, the appeal for enhancement of amount is dismissed.

Appeal dismissed.

I.L.R. [2010] M. P., 2603
APPELLATE CIVIL
Before Mr. Justice Abhay M. Naik
27 August, 2010*

SATYA PRAKASH & ors. ... Appellants
Vs.
BHAGWAN DAS ... Respondent

A. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - *Bona fide requirement - Eviction sought on basis of bona fide requirement of plaintiffs "B" & "D" - "B" died during pendency of suit and after obtaining*

*S.A. No.29/2001 (Gwalior)

vacant possession of another shop - Ownership of "D" not established - Held -Alleged need is not proved/covered u/s 12(1)(f) of the Act. (Para 10)

क. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – वास्तविक आवश्यकता – वादी "बी" एवं "डी" की वास्तविक आवश्यकता के आधार पर बेदखली चाही गयी – वाद के लम्बित रहने के दौरान एवं अन्य दुकान का रिक्त कब्जा प्राप्त करने के बाद "बी" की मृत्यु – "डी" का स्वामित्व सिद्ध नहीं – अभिनिर्धारित – तथाकथित आवश्यकता अधिनियम की धारा 12(1)(एफ) के अन्तर्गत सिद्ध/सम्मिलित नहीं।

B. Civil Procedure Code (5 of 1908), Order 6 Rule 17 & Order 41 Rule 27 - *Plaintiffs intending to probe an enquiry as regards the sale deed for proving the title - Held - When the relationship between landlord and tenant has been proved on the basis of documents and receipts - An extensive enquiry in respect of title in favour of a person other than a person named in the sale deed cannot be permitted - Eviction suit cannot be permitted to be converted into a title suit - Applications rightly dismissed.* (Para 12)

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 व आदेश 41 नियम 27 – वादियों का स्वत्व को सिद्ध करने के लिए विक्रय पत्र के सम्बन्ध में जाँच करना आशयित – अभिनिर्धारित – जब दस्तावेजों एवं रसीदों के आधार पर भूस्वामी एवं किरायेदार के मध्य सम्बन्ध साबित हो चुका है – तब विक्रय विलेख में वर्णित व्यक्ति के अलावा किसी अन्य व्यक्ति के पक्ष में स्वत्व के सम्बन्ध में व्यापक जाँच की अनुमति नहीं दी जा सकती – बेदखली के वाद को स्वत्व वाद में परिवर्तित करने की अनुज्ञा नहीं दी जा सकती – आवेदन खारिज होना सही।

Cases referred :

1994 JLJ (SC) 486, 2006(II) JLJ 275, AIR 1974 SC 2367, AIR 1974 SC 1596.

Anand Bhardwaj, for the appellants.

A.K. Jain, for the respondent.

J U D G M E N T

Abhay M. Naik, J. :–Plaintiffs/appellants instituted a suit for eviction and recovery of arrears of rent mainly with the allegations that the defendant in the suit shop is a tenant @ Rs. 200/- p.m. under the oral agreement of tenancy created in the month of March, 1977. Plaintiffs Kamal Prakash and Narayandas were unemployed and they required the suit shop to start a business of ready-made garments. Suit was instituted on 11/4/1989. It was alleged in the plaint that the defendant was in arrears of rent w.e.f. 1/3/1989. By way of amendment, it was stated that two of the plaintiffs, namely, Satya Prakash and Kamal Prakash had earlier instituted a suit against Manoharlal in the year 1981 for the bonafide need of Kamal Prakash. Due to family circumstances, the shop was occupied by Gopaldas, the plaintiff No.3 who started his business in the shop vacated by Manoharlal in the year 1982. Adjoining shop is occupied by Gopaldas, plaintiff No.3.

2. Defendant/respondent submitted his written statement denying thereby claim of the plaintiffs. It was contended that the house comprising the suit shop was

purchased by Satya Prakash and Kamal Prakash alone vide registered sale-deed dadted 17/11/1951 and they alone are the owners of it. Gopaldas and Narayandas have no right, title or interest in the suit shop. Earlier, the defendant was also in occupation of the shop adjoining the suit shop. Half of the portion was vacated by the defendant which is in occupation of plaintiffs No. 2 and 4, who were running their business in it. Remaining suit shop is in occupation of the defendant. Plaintiff No.1 Satya Prakash is running his business at Jaipur. Since Narayandas is not owner of the suit shop, suit on the basis of his alleged need is not maintainable. Kamal Prakash whose need is also projected got vacated half of the portion of the shop of the defendant and is running his business in such a portion. Shop vacated by Manoharlal is not occupied by Gopaldas but is in occupation of Kamal Prakash and Narayandas who are running their business of Samose, Kachodi and tea etc. in it. Thus, the suit is liable to dismissal. It is further stated that the defendant was inducted in the suit shop by Kamal Prakash and Satya Prakash, who alone are the owners of the suit shop. Defendant is not a tenant of plaintiffs Nos. 3 and 4 and no eviction can be sought on the alleged need of Narayandas, plaintiff No.4.

3. Learned trial judge after recording the evidence dismissed the suit of the plaintiffs vide judgment and decree dated 31/1/2000 with a finding that the plaintiffs No. 1 and 2 alone are the owners of the suit shop. They obtained the vacant possession of one shop from another tenant Manoharlal through Civil Suit No.13A/81 on the ground of their own need. The alleged need of plaintiffs No. 2 and 4 was not found proved. It was further found that the plaintiffs No.3 and 4 were wrongly joined despite having no right, title or interest in the suit shop.

4. Aggrieved by the same, plaintiffs submitted Civil Appeal No.7A/2000. I.A.No.I (under Order 41 Rule 27 CPC) and I.A. No.II(under Order VI Rule 17 CPC) were submitted by the plaintiffs/appellants before the lower appellate court. Learned lower appellate Judge dismissed the appeal as well as both the I.As. , vide impugned judgment and decree dated 4/12/2000, hence the present appeal which has been heard on the following substantial questions of law:-

(1) Whether the courts below have committed an error in holding that plaintiffs are not the owners of the disputed property and ignoring the law laid down by the Apex court in 1994 JLJ 486 ?.

(2) Whether the courts below have committed an error in holding that the requirement of the appellant is not genuine and bonafide ?.

(3) Whether learned lower appellate judge has committed illegality in dismissing the applications submitted by the plaintiffs/ appellants under Order 6 Rule 17 and under Order 41 Rule 27 CPC.

5. Appellants have submitted two applications both under Order 41 Rule 27 CPC., bearing I.A.Nos. 241/07 and I.A.No.14457/09. I.A.No.241/07 is

accompanied by a judgment and decree dated 10/10/1959 passed by the court of First Civil Judge Class-I, Morena. I.A.No.14457/09 is also in respect of a prayer to accept such judgment and decree as additional evidence.

6. It has been argued on behalf of the appellants that the courts below have committed illegality in holding that the suit shop is owned by plaintiffs No. 1 and 2 alone on the strength of registered sale-deed dated 17/11/1951. According to learned Sr. Advocate, Ex.D/35 is a certified copy of the sale-deed which having not been duly proved in accordance with law, could not have been looked into. Reliance for this purpose has been placed on the decision of the Apex Court in the case of Anar Devi Vs. Nathuram [1994 JLJ (SC)486] and of this court in the case of *Rekha and others Vs. Smt. Ratnashree* 2006(II) JLJ 275.

7. In the case of *Anar Devi* (supra), it has been held that a tenant cannot deny the title of his landlord at the beginning of the tenancy. In the case in hand, the defence of the defendant is that the plaintiffs No. 1 and 2 alone are the owners of the suit property and they have inducted him as a tenant. He has, nowhere, denied the title of plaintiffs No. 1 and 2, who according to him had inducted him as a tenant in the suit shop. Plaintiff No.2 has admitted categorically in para 16 that he and plaintiff No.1 got the house comprising the suit shop by virtue of sale-deed marked as Ex.D/35. Admission of this document was opposed on the ground that it was not original sale-deed. Original sale-deed dated 17/11/1951 is in favour of plaintiffs No. 1 and 2, which must be in their control, custody and power. Division Bench of this court in the case of *Rekha and others Vs. Smt. Ratnashree* 2006(II) JLJ 275 has held in para 18 that a certified copy can be offered as secondary evidence where the existence, condition or contents of the original have been admitted in writing by the person against whom it is proved and such admission is proved. Plaintiff No.2 has admitted the existence of registered sale-deed (Ex.D/35) in his statement on oath and when question about its existence was put to him, neither he nor his counsel did raise any objection on the ground of absence of original document. On the contrary, admission of the certified copy of sale-deed contained in Ex.D/35 was accepted and it was admitted that the plaintiffs No. 1 and 2 got the house comprising the suit shop in their favour by virtue of the sale-deed marked as Ex.D/35. Moreover, there are various admissions about the ownership of the plaintiffs No. 1 and 2 alone. Counterfoils of original rent receipts marked as Ex.D/13 to Ex.D/34 are all in the names of Satya Prakash and Kamal Prakash alone. Names of other plaintiffs, i.e. Gopaldas and Narayandas are not mentioned in the receipts as owners and/or co-owners of the suit property. In addition to this, it is on record that plaintiff Satya Prakash and Kamal Prakash instituted Civil Suit No.13A/81 describing the suit property as owned and occupied by them alone. Copy of the plaint is on record as Ex.D/11, which contains an admission to the aforesaid effect. It cannot be lost sight of that it is an eviction suit based on ground under Section 12(1)f) of the M.P. Accommodation Control Act, 1961 in respect of the alleged need of Kamal Prakash and Narayandas.

Defendant/respondent categorically stated in his written statement that Kamal Prakash has already obtained possession of a vacant shop vide Civil Suit No.13A/81 and Narayandas having no right, title or interest, eviction cannot be sought from the suit shop on the basis of his alleged need. In such a situation, more so when plaintiff Kamal Prakash himself has admitted Ex.D/35, registered sale-deed dated 17/11/1951 whereby he and Satya Prakash received the suit property, the courts below are not found to have committed any error in considering the sale deed in view of the decision of the Apex Court in the case of *Gurnam Singh and others Vs. Surjit Singh and others* (AIR 1974 SC 2367), wherein, it is observed that the sale deed is a public document and could have been easily looked into, if they would have asked for it to be admitted at the appellate stage.

Case in hand is an eviction suit, wherein, plaintiff Kamal Prakash and Narayandas with other plaintiffs claimed to be owners of the suit shop and sought eviction on the ground of bonafide need on ground under Section 12(1)(f) of the Act in respect of Kamal Prakash and Narayandas, alone. Thus, Narayandas was also obliged to establish his ownership over the suit shop. The property comprising the suit shop is mentioned as having been purchased by Kamal Prakash and Satya Prakash alone vide registered sale deed marked as Ex.D/35, which has been admitted by Kamal Prakash in his own statement. This being so, Courts below are not found to have committed any error in taking Ex.D/35 into consideration looking to the nature of eviction suit and the admission of plaintiff Kamal Prakash himself about Ex.D/35 in para 16 of his statement.

8. It is further contended that the document proposed under Order 41 Rule 27 CPC is a judgment and decree dated 10/10/1959 passed by the court of First Civil Judge Class-I, Morena in C.S.No.37/56, which goes to show that the house comprising suit shop does not belong to Kamal Prakash and Satya Prakash alone.

On perusal it is found that the said house was got attached by one Bhagwandevi in the recovery proceedings against Hariprasad, father of Satya Prakash and Kamal Prakash. Attachment was challenged by plaintiffs No.1 and 2 on the ground that the house belonged to them. This was not accepted. This judgment and decree in no manner can bind the defendant/respondent more so when the plaintiff No.2 himself has admitted in his statement that he and his brother got the suit house by virtue of registered sale-deed contained in Ex.D/35. Plaintiffs No. 1 and 2 have not placed any document to show that the suit house was further treated as a property inherited from their father. Instead, in the litigation initiated by way of suit for eviction, (Ex.D/11) as well as from perusal of rent-receipts issued, it seems that the suit property used to be described always as belonging to plaintiffs No. 1 and 2 alone. Thus, there being ample admissions in respect of ownership in favour of plaintiffs No. 1 and 2 alone, the document proposed under Order 41 Rule 27 CPC is not found necessary for the adjudication of the eviction suit. Consequently, both I.As. are accordingly dismissed.

9. At this stage, it is observed that the courts below after properly appreciating

the entire material on record have arrived at a finding in concurrent manner that plaintiff-Satya Prakash has settled down at Jaipur and Kamal Prakash has already obtained vacant possession of shop vide Civil Suit No.13A/81. It has further been found that Satya Prakash and Kamal Prakash alone are the owners of the suit shop as revealed in Ex.D/35. Consequently, eviction cannot be ordered for the alleged need of Narayandas, who has no right, title or interest in the suit shop. These are findings of facts arrived at after correct appreciation of the evidence on record. Hon'ble Supreme Court of India in the case of *Mattulal Vs. Radhe Lal*, AIR 1974 SC 1596, has observed: -

> "It is settled law that the High Court in second appeal cannot reappreciate the evidence and interfere with findings of fact reached by the lower appellate court. The lower appellate court is final so far as findings of fact are concerned. The only limited ground on which the High Court can interfere in second appeal is that the decision of the lower appellate court is contrary to law. It is only an error of law which can be corrected by the High Court in exercise of its jurisdiction in second appeal. If the finding recorded by the lower appellate court is one of law or of mixed law and fact, the High Court can certainly examine its correctness, but if it is purely one of fact, the jurisdiction of the High Court would be barred and it would be beyond the ken of the High Court unless it can be shown that there was an error of law in arriving at it or that it was based on no evidence at all or was arbitrary, unreasonable or perverse.....".

Learned counsel for the appellant has been unable to point out consideration of any inadmissible evidence or non-consideration of any material admissible piece of evidence. He has also been unable to demonstrate arbitrariness, unreasonableness or perversity.

10. It may further be seen that the need of Kamal Prakash and Narayandas was pleaded and eviction was sought on its basis. Kamal Prakash has already died on 13/3/04 and his alleged need did vanish. Moreover, Kamal Prakash is already found to have obtained vacant possession from a tenant Manoharlal. Narayandas is not found to have proved any ownership in the suit shop, therefore, his alleged need is not covered by section 12(1)(f) of the M.P. Accommodation Control Act, 1961. As regards another plaintiff, namely, Satya Prakash, he has settled down at Jaipur as admitted by plaintiffs in para 3 of I.A.No.14457/09. Accordingly, substantial questions of law No.(1) & (2) are answered against the appellants on the basis of the discussion contained in the preceding paragraph.

11. Now, coming to the third substantial question of law.

It may be seen that the plaintiffs have sought amendment by incorporating that the house comprising the suit shop is a property of ancestors of the plaintiffs,

which was mortgaged by them. However, the sale-deed was got executed in favour of the mortgagee in place of mortgage-deed. Father of the plaintiffs got the same to the extent of his share by making payment of Rs.800/-. However, the sale-deed was got executed on 17/11/1951. Thus, it is stated that it was a property belonging to Joint Hindu Family of plaintiffs.

12. I.A.No.I (under Order 41 Rule 27 CPC) submitted before the lower appellate court is not found to have been accompanied with any document. Moreover, the plaintiffs had made a prayer to allow them to place the document relating to title on record. Firstly, I.A.I was not accompanied by any document and no such application without proposed document may be made. Secondly, an eviction suit cannot be permitted to be converted into a title suit by entering into the question of true intention behind purchase, mortgage, redemption etc. Since the relationship of landlord and tenant has been found proved by the courts below on the basis of various documents including rent-receipts (Ex.D/13 to D/34),an extensive enquiry in respect of title in favour of a person other than a person named in the registered sale-deed cannot be permitted. This being so, learned lower appellate judge is not found to have committed any error in dismissing both I.A.I and I.A.II. Accordingly, substantial question of Law No.(3) is also decided against the appellants.

13. In the result, the appeal being devoid of force is hereby dismissed, however, with no order as to costs.

Appeal dismissed.

I.L.R. [2010] M. P., 2609
APPELLATE CRIMINAL
Before Mr. Justice I.S. Shrivastava
27 January, 2010*

BHAWARSINGH ... Appellant
Vs.
STATE OF M.P. ... Respondent

Penal Code (45 of 1860), Section 306 - *Abetment of suicide - If by suspicion at the character of husband, a wife commits suicide, the accused can not be liable - Particularly when the wife/deceased was living with her parents in her father's house, at the time of death.* (Para 7)

दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या का दुष्प्रेरण – यदि पति के चरित्र पर संदेह के कारण पत्नी आत्महत्या कर लेती है तो अभियुक्त दायी नहीं हो सकता है – विशेष रूप से जब पत्नी/मृतक मृत्यु के समय अपने पिता के घर में अपने माता–पिता के साथ रह रही हो।

Cases referred :

(2000) 1 SCC (Cri) 664, (2004) 13 SCC 129, (1994) 1 SCC 73.

---

*Cr.A. No.690/1996 (Indore)

Mr. Qyamuddin. for the appellant.
Dipak Rawal. Dy.G.A., for the respondent/State.

J U D G M E N T

I.S. Shrivastava, J. :–The appeal has been preferred under section 374 of the Cr.P.C by the appellant Bhawarsingh being aggrieved by the judgment dated 13/08/1996 passed by the Court of Shri R. Y. Durve, Sessions Judge, Dhar in Special Case no. 385/1995, by which the appellant has been convicted under sections 306 of the IPC and sentenced to undergo rigorous imprisonment of five years with fine of Rs.1000/-; in default of payment of fine to undergo rigorous imprisonment of six months.

2. According to the prosecution story, deceased Pepabai wife of the appellant Bhawarsingh committed suicide on 07/10/1994, hence marg no.32/1994 was registered at police station -Kanwan, District- Dhar. After investigation, it was found that deceased Pepabai was married with the appellant three years before her death. She went to her in-laws' house and thereafter, she went to Indore with her husband. Her husband was keeping a lady Daryabai, with whom he was having illicit relation. Due to this dispute, the appellant left the deceased to her parents' house, where she was living with her father and mother. In the night of 07/10/1994, deceased Pepabai committed suicide, hence crime no. 112/1995 was registered against the appellant and after investigation and filing of the challan, the appellant was convicted after trial as mentioned herein above.

3. It has been argued on behalf of the appellant that he has been falsely implicated in this case. The said lady Daryabai with whom allegations of illicit relation of the appellant has been implicated is the sister of the appellant. She was residing at Indore and the appellant was residing with her. Long before of the incident, the appellant was not living with his wife Pepabai, but his wife Pepabai was living with her father and mother and the accused / appellant did not come to deceased Pepabai before her death. The appellant has not abetted the commission of the suicide and hence, the appeal be accepted.

4. It has been argued on behalf of the respondent / State that the case was proved on the basis of the evidence produced before the Trial Court, hence the appeal being devoid of merit, be dismissed.

5. Considered the arguments. Record of the Trial Court perused.

6. There is no evidence before the Trial Court that at the time of the suicide, deceased Pepabai was living with her husband, but it is the prosecution case supported by the prosecution witnesses that at the time of suicide by Pepabai, she was living at her father's home with her father and mother and since last four months of the date of the incident, the appellant did not visit his in-laws' house and met with Pepabai.

Ayodhyabai PW-2, mother of the deceased Pepabai has deposed that deceased Pepabai told her that the appellant was keeping second lady, hence

Pepabai could not live with her husband. In cross-examination, she has admitted that Daryabai is the sister of the appellant in relation and she has two children. Champalal is the husband of Daryabai living at Indore and the appellant was also living with Daryabai.

Rajubai PW-4 is the sister of the deceased Pepabai and has deposed that after four months of the marriage, the appellant left the deceased Pepabai to her parents. When Pepabai met her, Pepabai told her that the appellant had left her after beating and she informed that he was keeping second lady Daryabai. She thought that if the appellant will come, then she would send Pepabai with him, but the accused / appellant never turned up. In cross-examination, she has deposed that Pepabai told her that Daryabai was the sister of the father of the appellant. Deceased Pepabai lived with her husband for twenty days and thereafter came back to her parents' home and after four months of that, Pepabai committed suicide. At that time, the appellant was living at Indore. The appellant had beaten Pepabai; this fact was not narrated by her to anyone and has deposed at the first time in the Court.

7. From the above evidence, it is clear that at the time of death of Pepabai, she was living with her father's house with her father and mother. From last four months of the incident, the appellant did not visit her in this period. Daryabai who has alleged to have illicit relation with the appellant was the sister or sister of the father of the accused. Daryabai was living with her husband Champalal at Indore. As the appellant was serving at Indore, therefore, he was living with Daryabai. Therefore, there is no evidence in this case that it was the appellant, who abetted the commission of suicide by Pepabai. For the suicide, sometimes the mental state and ideas of the deceased are also responsible. If by suspicion at the character of her husband, deceased has committed suicide, then the accused / husband cannot be held liable.

8. For the offence of abetment of suicide, the prosecution has to prove that the appellant abetted the commission of suicide. In *Bhagwan Das Vs. karter Singh and other* [2000 (1) SCC (Cri) 664], it has been held that â€œmere harassment of wife by her husband or in-laws, due to disputes or differences, without anything more, pursuant to which if wife commits suicide, held, it will not attract section 306 read with 107 of the IPC. It often happens that there are disputes and discords in the matrimonial home and a wife is harassed by the husband or her in-laws. This, however, would not by itself and without something more attract section 306 read with 107 of the IPC. This mere harassment of wife by husband due to differences per se does not attract Section 306 read with section 107 of the IPC, if the wife commits suicide".

9. It has been held in the case of *Randhir Singh Vs. State of Punjab* [2004 (13) SCC 129] that :

> "12..... More active role which can be described as instigating or aiding the doing of a thing is required before a person

can be said to be abetting the commissi on of offence under section 306 of the IPC".

In the case of *West Bengal Vs. Orilal Jaiswal* [1994 (1) SCC 73], it has been held that :

> "17..... the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty"

10 Therefore, on the basis of above discussion, it is concluded that the appellant was not liable to be convicted under section 306 of the IPC, hence the appeal deserves to be allowed.

11. Accordingly, this appeal is allowed and the appellant is acquitted from the charges under section 306 of the IPC. The appellant is on bail; his bail bonds are discharged. The fine, if deposited be refunded to him.

Appeal allowed.

I.L.R. [2010] M. P., 2612
APPELLATE CRIMINAL

Before Mr. Justice Rakesh Saksena & Mrs. Justice Sushma Shrivastava
9 April, 2010*

HARERAM KAURAV ... Appellant

Vs.

STATE OF M.P. ... Respondent

Prevention of Corruption Act (49 of 1988), Section 7 - *Demand* - *Complainant changed his version every step and so his testimony is not reliable & acceptable - Younger brother of complainant, who accompanied him, not examined - Tape recorded conversation also not proved - Held - Apparently, there is no dependable evidence of any demand or acceptance of bribe by the appellant - Conviction and sentence set aside - Appeal allowed.*
(Paras 17, 27 to 29)

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 7 – माँग – परिवादी ने प्रत्येक प्रक्रम पर अपना कथन बदला, इसलिए उसकी साक्ष्य विश्वसनीय और स्वीकार योग्य नहीं है –

*Cr.A. No.247/2006 (Jabalpur)

परिवादी का छोटा भाई, जो उसके साथ था, की परीक्षा नहीं की गयी – टेप रिकार्ड की गई बातचीत भी साबित नहीं हुई – अभिनिर्धारित – प्रकट रूप से, अपीलार्थी द्वारा रिश्वत की कोई माँग या रिश्वत स्वीकार किये जाने संबंधी कोई विश्वसनीय साक्ष्य नहीं है – दोषसिद्धि एवं दण्डादेश अपास्त – अपील मंजूर।

Cases referred:

AIR 1979 SC 1408, AIR 1986 SC 3, (2009) 5 SC 417.

Namrata Kesharwani, for the appellant.

Aditya Adhikari, for the respondent.

J U D G M E N T

The Judgment of the Court was delivered by SUSHMA SHRIVASTAVA, J. :– Appellant has preferred this appeal against the judgment dated 27.1.06 passed by Special Judge, Bhopal in Special Case No.16/04 convicting him under Section 7 of Prevention of Corruption Act, 1988 and sentencing him to rigorous imprisonment for six months with fine of Rs.2,000/-, in default further rigorous imprisonment for one month.

2. As per prosecution case, at the relevant time appellant Hareram Kaurav was posted as Station Officer, Police Station Berasiya, District Bhopal, while co-accused Chhatrapal Singh was posted as Head Constable. It is alleged that on 26.5.03 about 8 'O'clock at night, when complainant Bhairolal went to Police Station Berasiya alongwith his younger brother Hariom to lodge a report against one Harprasad Sahu and others for assaulting his younger brother and beating his she-buffalo for entering his field, Station Officer Hareram Kaurav asked for a sum of rupees five thousand for writing the report and for shielding Hariom against the report lodged against him and his father at the Police Station and directed the complainant to meet Head Constable Chhatrapal Singh. When complainant Bhairolal expressed his inability to pay such a huge amount, Head Constable Chhatrapal Singh, after consulting the appellant, informed him that Station House Officer Hareram Kaurav was not agreeing to take less amount than two thousand rupees. Then complainant Bhairolal paid one thousand rupees to Head Constable Chhatrapal Singh and undertook to pay the remaining amount later on, but he was not willing to pay rest of the amount of rupees one thousand, so he lodged a written report with Superintendent of Police Lokayukt, Bhopal against the appellant for apprehending him red handed taking the bribe of rupees one thousand from him.

3. The written report dated 2.6.03 submitted by complainant Bhairolal to Superintendent of Police Lokayukt, Bhopal was forwarded to D.S.P. Shankarlal Dharse for necessary action. Thereupon D.S.P. Shankarlal Dharse gave a micro tape-recorder and a cassette to complainant Bhairolal with a direction to record the conversation of demand of bribe. The tape-recorder alongwith cassette and another written application was handed over back in the office of Lokayukt Police by complainant Bhairolal on 4.6.03, which was marked to Inspector Chand Singh

Bamaniya of Lokayukt Police, who played the cassette in presence of complainant Bhairolal and two witnesses, namely, Chandrashekhar Viadya and Radheyshyam Mishra and prepared the transcript of the tape-recorded conversation between appellant Hareram Kaurav and complainant Bhairolal and also effected the seizure thereof. Inspector Chand Singh Bamaniya thereafter recorded the FIR and called two official witnesses for arranging trap against the appellant and co-accused Chhatrapal Singh. It is said that after verification of the facts mentioned in the written complaints dated 2.6.03 and 4.6.03 of the complainant by the two official witnesses, a pre-trap panchnama was prepared and phenolphthalein powder was applied to the currency notes of one thousand rupees produced by complainant Bhairolal for being given as bribe to the appellant and same were kept in the pocket of the complainant with necessary directions for tape-recording the conversation between him and the appellant at the time of giving the bribe.

4. The other formalities required for trap proceedings were also completed and the trap party proceeded to Police Station Berasiya, but the trap could not be successful due to non availability of Station Officer Hareram Kaurav at the Police Station because of his being busy with some investigation in murder case and having gone to Bhopal. However, after due investigation and obtaining sanction for prosecution, appellant Hareram Kaurav, the Station House Officer and Head Constable Chhatrapal Singh were prosecuted under Section 7 and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (for brevity the 'Act') and were put to trial before Special Judge, Bhopal.

5. Appellant Hareram Kaurav and co-accused Chhatrapal Singh abjured the guilt and pleaded false implication at the instance of the complainant, who wanted to hush up the case registered against his father and brother at Police Station Berasiya.

6. Learned Special Judge, after trial and upon appreciation of the evidence adduced in the case, acquitted co-accused Chhatrapal Singh of the charge under Section 7 and Section 13(1)(d) read with 13(2) of the Act, extending him benefit of doubt, but found the appellant guilty under Section 7 of the Prevention of Corruption Act for agreeing to accept, being a public servant, the bribe of two thousand rupees from the complainant, convicted and sentenced him as aforesaid by the impugned judgment, which has been challenged in this appeal.

7. We have heard the learned counsel for the parties.

8. Learned counsel for the appellant submitted that the trial court erroneously convicted the appellant without there being any cogent and reliable evidence and material against him. Learned counsel for the appellant emphatically urged that indisputably the trap arranged against the appellant having failed, there was no cogent evidence and material on record that he demanded or accepted the bribe or agreed to accept the same. Learned counsel for the appellant further submitted that the trial court gravely erred in placing implicit reliance on the inconsistent

testimony of complainant Bhairolal, who was declared hostile by the prosecution and who gave inconsistent and discrepant version at different stages and who even disowned the contents of the written complaints made by him. Learned counsel for the appellant further urged that the trial court also erred in treating the so-called tape-recorded conversation and the transcript as a corroborative piece of evidence, though it was not duly proved that any conversation demanding bribe took place between the appellant and the complainant and that in absence of proof of tape-recording of such conversation, the transcript could not be taken into consideration. According to learned counsel for the appellant, the trial court failed to consider that complainant Bhairolal had a motive for false implication of the appellant as he wanted to hush up the case registered against his father and brother and, therefore, lodged a false report after seven days.

9. Learned counsel for the State, on the other hand, justified and supported the conviction of the appellant.

10. We have gone through the entire evidence on record.

11. Complainant Bhairolal (P.W-2) is the principal witness, who lodged the report against appellant Hareram Kaurav, who was undisputedly posted as Station House Officer at Police Station Berasiya at the relevant time and was thus a public servant. Complainant Bhairolal (P.W-2) deposed in his evidence that two years prior to his deposition, he had gone to Police Station Berasiya alongwith his brother to lodge a report against one Harprasad Sahu, who had quarrelled with his brother in the field, but his report was not recorded and he was asked by Station House Officer Hareram Kaurav to contact Head Constable Chhatrapal Singh and to give a sum of rupees five thousand. According to complainant Bhairolal (P.W-2), he gave a sum of rupees one thousand to Head Constable Chhatrapal Singh and assured to give the remaining amount of one thousand later on, and thereafter went to SP Office and narrated the incident, where he was given a tape with a direction to record the conversation of the demand of bribe; the next day he went to appellant Hareram Kaurav, conversed with him and offered to give him the remaining amount and thereafter he returned the tape in the SP Office and signed the transcript memo (Ex.P-16) in this behalf.

12. The main thrust of the submission of learned counsel for the appellant in respect of the testimony of complainant Bhairolal (P.W-2) has been that his evidence is not at all trustworthy and he did not make any positive statement against the appellant regarding demand or acceptance of bribe and it was only when he was declared hostile and cross-examined by the prosecution that he admitted certain facts at the instance of the public prosecutor, but again deviated from his earlier version and categorically deposed, when cross-examined by the defence, that appellant and the co-accused never talked to him regarding bribe, nor they made any demand from him, and the complainant (P.W-2) even disowned the contents of two written reports (Ex.P-18 and Ex.P-19), thus his evidence was not at all reliable and acceptable without any independent corroboration. Reliance

was placed in this behalf on the decision of the Apex Court rendered in the case of *Suraj Mal Vs. The State of Delhi Administration* reported in AIR 1979 Supreme Court page 1408.

13. On careful scanning of the entire evidence of complainant Bhairolal (P.W-2), it is manifest that he has given inconsistent and discrepant version throughout his deposition. First of all in his examination-in-chief he deposed about demand of rupees five thousand from him by the Station Officer Hareram Kaurav and Head Constable Chhatrapal Singh for writing his report and payment of rupees one thousand to Chhatrapal Singh, but later on deviating from his earlier statement, he declined to speak anything against co-accused Chhatrapal Singh and even refused to identify him. Likewise, earlier in his examination-in-chief complainant Bhairolal (P.W-2) deposed simply of having gone to SP Office and narrated the incident and refused to have given any written or typed report there, while later on he admitted his signatures on the FIR (Ex.P-17) as well as on his written reports (Ex.P-18 & P-19) dated 2.6.03 and 4.6.03 respectively.

14. It is also pertinent to point out that during his cross-examination by the Public Prosecutor, he refuted the suggestion that he himself submitted typewritten report (Ex.P-18) and another report (Ex.P-19) on 4.6.03 at the office of Lokayukt, though he admitted his signatures on both the written reports (Ex.P-18 and Ex.P-19) as well as on FIR (Ex.P-17) recorded by the Police. Apposite to add that during cross-examination by the defence in para 17 of his deposition complainant Bhairolal made an adverse statement that the two applications (Ex.P-18 and Ex.P-19) were never got typed by him, but got typed by Police Lokayukt and he had signed Ex.P-18 and Ex.P-19 as well as the Ex.P-17 at the directions of the Police Lokayukt Bhopal.

15. Although complainant Bhairolal (P.W-2) admitted at one place during cross-examination by the Public Prosecutor that the contents of Ex.P-18 and Ex.P-19 were read over to him and verified from him by one of the official witnesses, but next moment he completely changed his stand and said that the relevant portions marked as B to B in Ex.P-18 and Ex.P-19 (relating to the demand of bribe) were got typed by officers of Lokayukt and not narrated by him and he had merely signed on them. More so, in para 22 of his deposition, complainant Bhairolal clearly stated that he had no talks of bribe with the appellant/accused persons and none of them made any demand from him.

16. In view of the aforesaid glaring inconsistencies appearing in the evidence of complainant Bhairolal (P.W-2), his stray statements made here and there that Station House Officer Hareram Kaurav demanded rupees five thousand or two thousand for writing a report, particularly when, later on he denied that appellant made any such demand or asked for a bribe, cannot be considered as reliable and acceptable beyond periphery of doubt.

17. There is no doubt about the legal preposition that even a part of the testimony

of a hostile witness can be accepted if it is found to be reliable and trustworthy upon careful scrutiny thereof, but in the instant case the testimony of complainant Bhairolal (P.W.-2), who has changed his version at every step, cannot be treated as reliable and acceptable beyond reasonable doubts. Needless to point out that the younger brother of the complainant, who accompanied him to lodge the report at the Police Station Berasiya, has not been examined to corroborate the allegation of demand of bribe by the appellant in connection with the writing of his report at Police Station Berasiya.

18. Learned counsel for the appellant also submitted that even as per contents of written report (Ex.P-18) allegedly given by complainant Bhairolal (P.W-2), the alleged demand was made on 26.5.03 on two counts, firstly for writing an FIR and secondly for shielding his father and brother from the counter report registered against them at Police Station Berasiya, while as per report Ex.P-27, the offence against his brother and father was registered on 27.5.03, as such there was no cause for demanding any bribe on 26.5.03 so as to shield them against any counter report. Learned counsel for the appellant also submitted that complainant (P.W-2) never reported the matter against his adversary, nor he filed any private complainant against him, which he could have done if he was really annoyed with the incident. Whatever it may be, the evidence of complainant Bhairolal (P.W-2) itself, on the whole, is not found to be reliable and dependable so as to arrive at a safe conclusion that appellant Hareram Kaurav being a Station Officer at Thana Berasiya demanded rupees five thousand or two thousand in connection with writing the report of the complainant.

19. The trial court has given much weight to the tape-recored conversation and its transcript (Ex.P-16) as corroborative evidence to the alleged demand of bribe by the appellant, while according to learned counsel for the appellant, the tape-recording of any conversation between the appellant and the complainant regarding alleged demand of bribe, was not proved and the transcript (Ex.P-16) could not be taken into consideration in view of the law laid down by the Apex Court in the case of *Ram Singh and others Vs. Col. Ram Singh* reported in AIR 1986 Supreme Court page 3 and reiterated in the case of *All India Anna Dravida Munnetra Kazhagam Vs. L.K. Tripathi and others* reported in (2009)5 Supreme Court Cases page 417.

20. The Apex Court in the case of *Ram Singh* (Supra) has laid down the following conditions for admissibility of tape-recorded statement:-

> "1. The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.

2. The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence direct or circumstantial.

3. Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

4. The statement must be relevant according to the rules of Evidence Act.

5. The recorded cassette must be carefully sealed and kept in safe or official custody.

6. The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbance."

21. In view of aforesaid legal position, we proceed to examine the evidence available on record with regard to the so-called tape-recorded statement of the appellant in respect of the demand allegedly made by him as a public servant being posted as Station Officer, Police Station Berasiya. Dy. Supt. of Police Shankarlal Dharse (P.W-5) has deposed in his evidence that after receipt of the typed complaint (Ex.P-18) from SP Lokayukt for further necessary action, he had handed over a mini tape-recorder alongwith a new cassette to complainant Bhairolal for tape-recording the conversation relating to the demand of bribe from him and to give it back in the office of Lokayukt. According to Chand Singh Bamaniya (P.W-8), on 4.6.03 the second typed complaint (Ex.P-19) was forwarded to him for necessary action and a mini tape plus cassette handed over to complainant was also produced before him alongwith typed complaint (Ex.P-19); he had then played the cassette before the complainant, Dy. Supt. of Police Shankarlal Dharse and two other witnesses of his office, namely, Chandrashekhar Vaidya and Radheyshyama Mishra and after hearing the same, he prepared the transcript of tape-recorded conversation (Ex.P-16) and then recorded the FIR and thereafter arranged for a trap.

22. Although complainant Bhairolal (P.W-2) corroborated this fact that he was given a tape in the SP office to record the conversation of demand of bribe and he had returned the same in the SP Office, where it was played and transcript memo (Ex.P-16) was prepared, which also bears his signatures, but he never specifically stated before the trial court that he had tape-recorded the conversation between him and the Station Officer Hareram Kaurav. He simply said that he had talked to Hareram Kaurav at Police Station Berasiya after receipt of the tape from the Lokayukt Police and next day he had returned the tape at Lokayukt office informing that he had tape-recorded the conversation. In fact it does not transpire from his testimony as to what dialogue or talks took place between him and the Station Officer Hareram Kaurav after receipt of the tape, and that the same was recorded. On the other hand, as per para 2 of his deposition, after taking the tape when he

went to Station Officer Hareram Kaurav and told him to write his report and accept the remaining amount, then he said "nothing" and thereafter he came to Bhopal and returned back the tape in the SP office.

23. It also does not transpire from the evidence of complainant Bhairolal (P.W-2) that the transcript (Ex.P-16) of the so-called conversation, was ever read over to complainant (P.W-2) before the Court. Although complainant Bhairolal (P.W-2) deposed at one place that the tape was played and heard by Lokayukt Police and then transcript memo (Ex.P-16) was prepared, but he categorically deposed in para 17 of his deposition that he does not know as to what was written in Ex.P-16 and he had merely signed it. Evidently thus, the contents of Ex.P-16, i.e. the transcript of the so-called conversation do not stand proved to be the conversation between the appellant and the complainant, nor it is proved to be in the voice of appellant Hareram Kaurav. On the other hand, the cassette article 'A' when played in the Court, as per note appended to para 14 of the deposition of the complainant (P.W-2), its voice was not clear and it was unintelligible. In such a situation, it could not be said that the voice recorded in the cassette in question was that of the appellant or that it related to any so-called demand of bribe. Consequently, the transcript (Ex.P-16) could not be treated as the transcript of the so-called conversation between the appellant and complainant Bhairolal (P.W-2).

24. Apposite to add that Inspector Chand Singh Bamaniya (P.W-8), who prepared the transcript memo (Ex.P-16) and claimed to have played it in the presence of D.S.P. Shankarlal Dharse (P.W-5), complainant (P.W.2) and other witnesses, admitted in cross-examination that he was not conversant with the voice of the appellant, nor did he prepare specimen cassette of the voice of the appellant and the complainant, nor he got it examined by any expert. According to Inspector Chand Singh Bamaniya (P.W-8) he had accepted the version of complainant (P.W-2) that it was the voice of the appellant, but, as said earlier, complainant Bhairolal (P.W-2) himself never identified the tape-recorded statement (Ex.P-16) to be in the voice of appellant, rather he even failed to say that he had tape-recorded any such conversation of any such demand of bribe between him and the appellant.

25. It is also significant to mention that D.S.P. Shankarlal Dharse (P.W-5) has also not corroborated this fact that the tape-recorded cassette in question was played before him or transcript memo was prepared before him. On the other hand according to D.S.P. Shankarlal Dharse (P.W-5), the complainant never came back to him with the cassette in question. The other two witnesses, namely, Chandrashekhar Vaidya and Radheyshyam Mishra, in whose presence transcript memo (Ex.P-16) of the so called tape-recorded statement was said to have been prepared by Inspector Chand Singh Bamaniya (P.W-8), were not examined to throw any light in this regard. In the aforesaid facts, the transcript (Ex.P-16) of the so called tape-recorded statement could not be validly accepted as the evidence

of so called conversation between the appellant and complainant Bhairolal (P.W-2), particularly when the recording of such conversation was not duly proved by the evidence on record.

26. It is quite evident from the testimony of Inspector Chand Singh Bamaniya (P.W-8), Komal Singh Sisodiya (P.W-6) coupled with the evidence of two official witnesses, namely, C.K. Dubey (P.W-3) and B.P. Tiwari (P.W-4) plus the evidence of complainant Bhairolal (P.W-2) himself that the trap arranged against the appellant in connection with the demand and acceptance of bribe by the appellant had failed and thus, there was no evidence of acceptance of any bribe by him from the complainant. Even the amount of rupees one thousand alleged to have been paid by the complainant (P.W-2) to Head Constable at the instance of the appellant was never recovered from either of them.

27. In view of the aforesaid discussion, it is apparent that there is no dependable evidence of any demand or acceptance of bribe by the appellant from the complainant. The evidence of complainant Bhairolal (P.W-2) in this behalf is found to be quite suspicious and not acceptable beyond periphery of doubt.

28. Thus, we are of the considered opinion, that the prosecution failed to establish by cogent and dependable evidence that appellant Hareram Kaurav being a public servant demanded, accepted or agreed to accept or attempted to obtain any bribe or illegal gratification from the complainant as a motive or reward for performing the official act of recording of FIR of the complainant.

29. In the wake of aforesaid, the conviction of appellant under Section 7 of the Prevention of Corruption Act cannot be safely maintained and deserves to be set aside.

30. Consequently, the appeal is allowed. The conviction of appellant and the impugned sentence passed on him under Section 7 of the Prevention of Corruption Act are hereby set aside and he is acquitted of the charge.

31. Appellant is on bail. His bail bonds shall stand discharged.

Appeal allowed.

I.L.R. [2010] M. P., 2620

APPELLATE CRIMINAL

Before Mr. Justice Rakesh Saksena & Mr. Justice N.K. Gupta

7 May, 2010*

BALLA @ BALADEEN ... Appellant

Vs.

STATE OF M.P. ... Respondent

Penal Code (45 of 1860), Sections 302 & 304 Part-I - *Murder or culpable homicide - No previous enmity between the deceased and the*

*Cr.A. No.2467/2005 (Jabalpur)

appellant - Deceased remonstrated with appellant about his cattle entering the field of deceased and appellant inflicted stick injuries on the head of deceased resulting into fracture of two parietal bones - Deceased was an old man of 70 years of age - It can be readily inferred that he acted with the intention of causing such bodily injuries to deceased as were likely to cause death - Conviction of appellant u/s 302 of IPC not justified - However, he is liable to be convicted u/s 304 Part-I of IPC. (Para 17)

दण्ड संहिता (1860 का 45), धाराएँ 302 व 304 भाग–I – हत्या या आपराधिक मानव वध – अपीलार्थी और मृतक के बीच पूर्व से कोई वैमनस्यता नहीं – अपीलार्थी के मवेशी मृतक के खेत में घुसने के संबंध में मृतक ने अपीलार्थी के साथ प्रतिवाद किया और अपीलार्थी ने मृतक की सिर पर डंडे से चोटें पहुँचायीं जिसके परिणामस्वरूप दो पार्श्विक हड्डियाँ टूट गयीं – मृतक 70 वर्ष की आयु का एक वृद्ध व्यक्ति था – यह निष्कर्ष सुगमता से निकाला जा सकता है कि उसने मृतक को ऐसी शारीरिक क्षति कारित करने के आशय से कार्य किया जिससे मृत्यु कारित होना संभाव्य था – भा.द.सं. की धारा 302 के अन्तर्गत अपीलार्थी की दोषसिद्धि न्यायसंगत नहीं – तथापि वह भा.द.सं. की धारा 304 भाग–I के अन्तर्गत दोषसिद्ध किये जाने योग्य है।

Case referred :

AIR 1977 SC 701.

Ashok Kumar Chourasiya & Sarita Chourasiya, for the appellant.

S.K. Rai, G.A., for the respondent.

JUDGMENT

The Judgment of the Court was delivered by **Rakesh Saksena, J.** :– Appellant has filed this appeal against the judgment dated 9th November, 2005 passed by Sessions Judge, Chhatarpur in Sessions Trial No. 235/2004, convicting the appellant under Sections 302 and 323 of the Indian Penal Code and sentencing him to imprisonment for life with fine of Rs. 5000/- and rigorous imprisonment for six months with fine of Rs. 500/-.

2. In short, the prosecution case is that on 20.9.2004 at about 9.05 a.m., complainant Mansukha lodged report with police Matguwan that at about 8.00 A.M., cattle of accused Balla @ Baladeen entered his `Kuanwala' field. When his father Chauva remonstrated with Balla and his wife, who were working in the neighbouring field, Balla got infuriated and assaulted Chauva on his head with a stick, as a result of which Chauva fell down unconscious. When Mansukha tried to save his father, wife of accused namely Prembai caught him and Balla continued to assault his father. Hearing noise Halke, Chutwa, Bhupat and Bhagwandas reached at the spot and intervened. Mansukha and his mother took unconscious Chauva to police station and lodged the report. Police registered the case under Section 307/34 of the Indian Penal Code against Balla and his wife and sent the injured for medical examination and treatment to P.H.C. Matguwan, where Dr. Lakhan Tiwari (PW9) examined his injuries. During treatment, Chauva died in the hospital. A merg report was recorded by Police City Kotwali, Chhatarpur. After inquest, dead body was sent for postmortem examination. Dr. D.D.

Chaurasiya (PW5), Assistant Surgeon of District Hospital Chhatarpur conducted the postmortem examination of the dead body and found three injuries on the body. After requisite investigation, charge sheet was filed against both the accused persons.

3. Appellant/accused abjured his guilt and pleaded false implication. According to appellant, the cattle of deceased had entered his field and damaged the crops. When he drove them out, deceased wanted to stop them, but being dashed by the cattle, he fell down and suffered injuries.

4. For substantiating its case, prosecution examined 12 witnesses. Appellant also examined DW1-Munnu Yadav and DW2- Bhaiyalal in his defence.

5. Learned Sessions Judge, after trial and upon appreciation of evidence adduced in the case held the appellant guilty under Sections 302 and 323 of the Indian Penal Code. However, finding the evidence not sufficient against the accused Prembai, acquitted her. Aggrieved by his conviction, appellant has filed this appeal.

6. We have heard the learned counsel for the parties.

7. It was no longer disputed that deceased Chauva died of head injury. It was also reflected from the evidence of Dr. Lakhan Tiwari (PW9), who examined his injuries and also by the postmortem examination conducted by Dr. D.D. Chaurasiya (PW5).

8. Dr. Lakhan Tiwari (PW9) deposed that on 20.9.2004, he examined the injuries of Chauva at about 9.45 p.m. General condition of the injured was weak and he was unconscious. He found (i) swelling with contusion 3"x2" on right fronto parietal area of the skull (ii) contusion 2"x2" on left parietal region of the skull and (iii) lacerated wound 1"x1/3"x skin deep on right forearm, on the body of deceased.

All the aforesaid injuries were caused by hard and blunt object. He had referred the patient for X-ray examination of injuries no. 1 and 2.

9. After the death of Chauva, V.B.S. Parihar, A.S.I. (PW10) recorded the merg intimation report Ex. P/15 and after conducting the inquest Ex. P/17 sent the dead body for postmortem examination. Dr. D.D.Chaurasiya (PW5) conducted the postmortem examination. He also found (i) contusion 6 cm. x 4 cm. on right fronto parietal region of the skull (ii) 4cm.x 4cm. on left fronto parietal region of the skull and (iii) a stitched wound 3cm. long on right forearm. According to him, both the parietal bones of the skull of Chauva were fractured. Postmortem examination report is Ex. P/8. In the opinion of doctor, cause of death of the deceased was head injury. Duration of the injury was within 24 hours since the time of postmortem examination. It was thus clearly evident that the deceased Chauva died of head injury.

10. Learned counsel for the appellant, however, submitted that the trial Court gravely erred in placing implicit reliance on the evidence of eye witnesses namely

Mansukha (PW6) and Haridas (PW11). According to him, Mansukha was the son of deceased, therefore, he was an interested witness and Haridas was a child witness, whose evidence was discrepant and contradicted. He was also a tutored witness. According to learned counsel, appellant was falsely implicated.

11. Learned counsel for the State, on the other hand, justified and supported the conviction of the appellant.

12. We have gone through the entire evidence on record. Mansukha (PW6) categorically stated that he saw the incident from his field. The cattle of Balla Yadav had entered his field. When his father Chauva, who was also present there stopped the cattle, Balla and his wife started assaulting them with sticks. Balla gave stick blow on the head of his father, as a result of which he fell down. He further inflicted 2-3 stick blows to him. Thereafter, accused persons ran away. He picked up Chauva and took him to police station and lodged the report Ex. P/10. He then, carried Chauva to Chhatarpur for treatment, but after about one and a half hour, he died. He stated that he was also taken for medical examination, but he could not be examined because doctor was not present there. This witness was cross examined at length, but nothing could be elicited out to render his evidence unreliable. Though, there were some minor discrepancies, but they were not of substantial nature. Learned counsel argued that since the injuries of this witness were not examined, it indicated that he was not injured in the incident and that he was not present at the time of occurrence. We are unable to accept this proposition because it has been clearly stated by Mansukha (PW6) that he was taken for medical examination, but his injury could not be examined because doctor was not available at that time. He categorically stated that his field was adjacent to the field of Balla and his house was situated only about 50 ft. away from the place of incident. Evidence of this witness stood corroborated by the version given by him in the first information report Ex. P/10 lodged by him only about an hour after the incident. His evidence was further corroborated by the medical evidence of Dr. Lakhan Tiwari (PW9), who found three injuries on the body of Chauva, caused by hard and blunt object.

13. Haridas (PW11), happened to be a child witness of about 10 years of age. He was son of Mansukha (PW6). Haridas, though in the chief examination of his evidence stated that the cattle of Balla had entered his field and Prembai and Balla had assaulted Chauva with sticks, but in the cross examination, he swerved and said that his cattle had entered the field of Balla and he had driven them out. However, he firmly denied that Chauva fell down by the push of cattle. This discrepancy, in our opinion, cannot be held to be so material as to render his whole of the evidence unreliable. He has remained firm that Balla inflicted stick injuries on the head of Chauva. He, though admitted that police people suggested him as to how he had to give his statement, but he did not say that he deposed according to guidance of police people. Thus, the evidence of this witness rendered firm corroboration to the evidence of Mansukha (PW6). We are unable to accept

the argument advanced by learned counsel for the appellant that since Mansukha and Haridas were related witnesses, therefore, their evidence deserved to be discarded. In *Varghese Thomas Vs. State of Kerala*-AIR 1977 SC 701, the Apex Court held that the evidence of relatives cannot be regarded as suspect needing corroboration from independent witnesses, when there is no previous enmity between the relatives of the injured and the accused. In the present case, there is no iota of evidence to indicate that there was previous enmity between the complainant and the accused.

14. After bestowing our anxious consideration to the submissions made by learned counsel for the appellant and having gone through the record, we find that it has been amply established that it was appellant, who had caused head injury to deceased Chauva, as a result of which he died.

15. The next submission by the learned counsel for the appellant is that the incident had occurred suddenly, on spur of moment without premeditation, therefore, trial Court committed error in convicting the appellant under Section 302 of the Indian Penal Code. Learned counsel submitted that the incident erupted suddenly when deceased remonstrated with the appellant for entering of his cattle into the field of deceased.

16. Learned counsel for the State on the other hand submitted that the deceased was an old man of 70 years of age. The act of appellant in inflicting two stick blows on the head of deceased clearly indicated that he intended to cause death of deceased, therefore, the conviction of the appellant under Section 302 of the Indian Penal Code was fully justified.

17. From the evidence of Mansukha (PW6), it is apparent that there was no previous enmity between the deceased and the appellant. It was just when deceased remonstrated with appellant about his cattle entering the field of deceased, appellant inflicted stick injuries on the head of deceased. It is true, from the evidence of Dr. Lakhan Tiwari (PW9) and Dr. D.D.Chaurasiya (PW5), it is revealed that two blows by hard and blunt object were caused on the skull of deceased, as a result of which, his left and right parietal bones of the skull were fractured, but at the same time, it can be gathered from the surrounding circumstances, that there was no premeditation on the part of appellant and just on the spur of the moment, he took in his mind to assault the deceased with stick. It can also be gathered that in doing so he might have got oblivious of the fact that deceased was an old man of 70 years of age. Had it been a case of single blow, it could have been held that the appellant entertained no intention to cause death or to cause such bodily injury as was likely to cause death of deceased. But, appellant inflicted two successive blows on the skull of deceased which resulted into fracture of two parietal bones, it can be readily inferred that he acted with the intention of causing such bodily injuries to deceased as were likely to cause death. In these circumstances, we are of the view that the conviction of appellant

under Section 302 of the Indian Penal Code was not justified. However he was liable to be convicted under Section 304 Part-I of the Indian Penal Code.

18. Learned counsel for the appellant pointed out that the appellant is in jail since the date of his arrest i.e. 23.9.2004, as such by now he has suffered custody for a period of about five years and eight months and that now he has attained the age of 60 years.

19. For the reasons stated hereinabove, the conviction of the appellant under Section 302 of the Indian Penal Code is modified; he is convicted under Section 304 Part-I of the Indian Penal Code and in view of his old age, he is sentenced to rigorous imprisonment for seven years. His conviction under Section 323 of the Indian Penal Code and sentence of rigorous imprisonment for six months with fine of Rs. 500/- is affirmed. Sentences of imprisonment shall run concurrent.

20. Appeal partly allowed.

Appeal partly allowed.

I.L.R. [2010] M. P., 2625

APPELLATE CRIMINAL

Before Mr. Justice Rakesh Saksena & Mr. Justice N.K. Gupta

14 May, 2010*

RAM BHADRA TIWARI & anr. ... Appellants

Vs.

STATE OF M.P. ... Respondent

A. Penal Code (45 of 1860), Section 302, Evidence Act, 1872, Section 3 - *Appreciation of evidence - Death of deceased (wife) in house of accused (husband) due to head injury and others - The presence of accused on relevant time in the house is also proved - Accused failed to explain as to how the deceased received the injuries - Accused/husband is the only person who is responsible for commission of crime - Other family members (A-2) can not be held guilty on mere suspicion.* (Para 14)

क. दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम, 1872, धारा 3 – साक्ष्य का अधिमूल्यन – अभियुक्त के घर में मृतक (पत्नी) की सिर पर आयी चोटों एवं अन्य चोटों के कारण मृत्यु – सुसंगत समय पर अभियुक्त की घर पर मौजूदगी भी साबित – अभियुक्त मृतक को आयी चोटों के संबंध मे स्पष्टीकरण देने मे असफल रहा – अभियुक्त/पति ही वह व्यक्ति है जो अपराध करने के लिए उत्तरदायी है – परिवार के अन्य सदस्य (ए–2) को केवल संदेह पर दोषी नहीं ठहराया जा सकता।

B. Penal Code (45 of 1860), Sections 302 & 304 Part-I - *Murder or culpable homicide - Deceased (wife) carrying pregnancy of 32-36 weeks received one fatal/head injury out of 4 injuries - No evidence to establish motive on part of accused to kill his wife - The accused is liable to be convicted u/s 304 Part-I and not u/s 302.* (Para 16)

---

*Cr.A. No.744/2002 (Jabalpur)

ख. दण्ड संहिता (1860 का 45), धाराएँ 302 व 304 भाग–I – हत्या या आपराधिक मानव वध – मृतक (पत्नी) जो 32–36 सप्ताह का गर्भ धारण किये हुए थी को आयीं 4 चोटों में से एक घातक/सिर की चोट थी – अभियुक्त का अपनी पत्नी को मारने का हेतु साबित करने के लिए कोई साक्ष्य नहीं – अभियुक्त धारा 304 भाग–I के अन्तर्गत दोषसिद्ध किये जाने योग्य है न कि धारा 302 के अन्तर्गत।

C. Penal Code (45 of 1860), Sections 304-B & 498-A, Evidence Act, 1872, Section 113-B - *No nexus established between demand of scooter and the death of deceased - The presumption u/s 113-B of Evidence Act can not be made applicable and accused can not be convicted u/s 304-B of IPC - However, from prosecution evidence (evidence of brother and mother of deceased), it can be gathered that after the marriage, both the accused persons had harassed and subjected the deceased to cruelty to meet their unlawful demand of scooter - Therefore, their conviction u/s 498-A of IPC affirmed.* (Para 18)

ग. दण्ड संहिता (1860 का 45), धारा 304–बी व 498–ए, साक्ष्य अधिनियम, 1872, धारा 113–बी – स्कूटर की मांग एवं मृतक की मृत्यु के मध्य संबंध स्थापित नहीं – साक्ष्य अधिनियम की धारा 113–बी के अन्तर्गत उपधारणा प्रयोज्य नहीं की जा सकती एवं अभियुक्त को भा. द.सं. की धारा 304–बी के अन्तर्गत दोषसिद्ध नहीं किया जा सकता – तथापि, अभियोजन साक्ष्य (मृतक के भाई एवं माँ की साक्ष्य) से यह निष्कर्ष निकाला जा सकता है कि विवाह के पश्चात् दोनों अभियुक्तों ने उनकी स्कूटर की अवैध मांग को पूरा करने के लिए मृतक को तंग किया था और क्रूरतापूर्वक बर्ताव किया था – अतः भा.द.सं. की धारा 498–ए के अन्तर्गत उनकी दोषसिद्धि की पुष्टि की गयी।

Cases referred :

(2006) 10 SCC 681, (2006) 12 SCC 667, (2000) 5 SCC 207.

Akhil Singh & Praveen Dubey, for the appellants.

J.K. Jain, Dy.A.G., for the respondent.

J U D G M E N T

The Judgment of the Court was delivered by RAKESH SAKSENA, J. :– Appellants have filed this appeal against the judgment dated 3,5.2002 passed by Special & Additional Sessions Judge, Shahdol, in Sessions Trial No.179/2001, convicting them under Sections 302/34, 304-B/34 and 498-A of the Indian Penal Code and sentencing them to imprisonment for life, rigorous Imprisonment for 10 years and rigorous imprisonment for 2 years with fine Rs. 500/-, on each count respectively.

2. Facts, as alleged by the prosecution, are that Sonika, the deceased, was married to appellant Ram Bhadra on 4th June 1997. Appellant Deowati was the mother-in-law of Sonika. After marriage, Sonika went to her nuptial house and kept on visiting her mother's house. After sometime, she complained about harassment meted out to her by her husband and mother-in-law for not bringing a scooter in dowry. On 3.6.2001, at about 5.15 in the morning, Vidya Sagar (PW-1),

brother of Sonika, received information on telephone that Sonika had died. Vidya Sagar alongwith his elder brother Rajaram Pathak went to village Garfandia where accused resided and saw the dead body of Sonika lying in the courtyard of their house. There were injuries on her face. None disclosed to them how Sonika died. On the same day, at about 8.30 a.m., Vidya Sagar (PW-1) lodged a report with Police Dhanpuri. Sub Inspector M.S. Karchuli (PW-11) registered a Murg (Ex. P/l). Police, in the presence of Executive Magistrate, Jaithpur, conducted the inquest of the dead body and prepared memorandum (Ex.P/3). Executive Magistrate sent the dead body to community Health Centre, Dhanpuri for postmortem examination. Dr. K.K.Gautam (PW-5) alongwith Dr. B.N. Sharma and Dr. Richa Gupta conducted postmortem examination at about 5.00 p.m. on the same day. He found that deceased was carrying pregnancy of 32 to 36 weeks. She had injuries on her face. There was bleeding from her nose and mouth. The injuries found on the body of the deceased were ante mortem in nature, and were caused within 24 hours of the postmortem examination. Postmortem examination reports are Ex.P/9-A and Ex.P/10.

3. In the course of investigation, investigating officer prepared the spot map, arrested the accused persons and at the instance of accused Ram Bhadra on 7.6.2001 seized a stone and a 'Danda' kept under his cot. In the Murg enquiry, it was revealed that accused persons subjected the deceased to cruelty for not meeting the demand of a scooter in dowry and that on some dispute, on not allowing her to go to her parents' house, assaulted her, as a result of which she died.

4. After investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Budhar and the case was committed for trial to the Court of Sessions, Shahdol.

5. On charges being framed, accused abjured their guilt and stated that witnesses spoke false against them due to enmity. They were falsely implicated. No evidence in their defence was adduced.

6. Relying on the evidence of Vidya Sagar (PW-1), Pushpa Pathak (PW-2), Kalpana (PW-3), Hirawati (PW-6), Chintamani Yadav (PW-7), Suryakant Tiwari (PW-8), Rajnikant (PW-12), Dr. K.K. Gautam (PW-5) and the Investigating Officer M.S. Karchuli (PW-11), learned trial judge held accused persons guilty and convicted and sentenced them as mentioned above.

7. We have heard the learned counset for the parties.

8. Learned counsel for the appellant submitted that it was not established by the prosecution evidence that the deceased met with a homicidal death. According to him, she had fallen down from the staircase and contracted injuries, which resulted into her death.

9. On perusal of the evidence of Dr. K.K. Gautam (PW-5), it is revealed that on postmortem examination of the dead body of the deceased he found following injuries:

(1) Haematoma on leftside forehead with black eye left in area of 10 cms x 12.5 cms.

(2) Multiple abrasions over both cheeks, chin with clotted dark red blood.

(3) Fracture of clavicle bone, left lateral with dislocation of left shoulder.

(4) Abrasion at left forearm near wrist .4 cm x 1 cm.

On dissection- Dark tan clotted blood under haematoma. Brain tissue left frontal injured, sub dural clotted blood at middle and left side frontal cranial cavity. Heart right full, lung congested. Fracture of left clavicle and lateral with collection of blood.

32-36 weeks' size, full term female child found cynosed in uterus.

In the opinion of doctor, the injuries were ante mortem in nature. Head injury was caused by hard and blunt object within 24 hours. Cause of death Was coma due to anti mortem head injury.

Cause of death of foetus was anorexia due to cessation of blood supply.

The head injury of the deceased was sufficient in ordinary course of nature to cause her death.

In cross examination. Dr. K.K. Gautam (PW-5) admitted that injuries found on the body of deceased might have been accidental if she struck against some stone or fallen down from stairs.

10. It is true that Dr. K.K. Gautam (PW-5) did not specifically state that the injuries found on the body of the deceased were homicidal in nature and expressed the possibility of them being caused in an accident, but. In our opinion, it can be gathered from the nature of injuries that they could be homicidal also. Since doctor is not an eyewitness, for establishment of the fact that the injuries were homicidal or accidental in nature, appreciation of the surrounding circumstances is essential.

11. In the statement of accused under Section 313 of the Code of Criminal Procedure, none of the accused stated that the deceased had fallen down from any staircase. It was not even reflected from the spot map (Ex.P/21) drawn by Inspector M.S. Karchuli (PW-11) that there had been any staircase in the courtyard. On the contrary, it was revealed from the spot map that the house where the incident took place was a 'Kachcha' house having roof of earthen tiles (Khaprel). There was nothing on record to indicate that the house of the appellants was a double storeyed house.

12. Suryakant (PW-8) and Rajnikant (PW-12) though in cross-examination admitted that they heard in village that deceased had died by a fall from the staircase, but they did not disclose from whom they heard it They were declared hostile. Thus,

in the absence of any evidence on record to the effect that deceased fell from stairs coupled with the statement of accused wherein they did not say that deceased fell from stairs, it cannot be held that the deceased suffered injuries by an accidental fall. Therefore, the natural corollary is that the injuries and the death of deceased were homicidal in nature.

13. In *Trimukh Maroti Kirkan vs. State of Maharashtra*-(2006) 10 SCC 681 the Apex Court observed that:

> If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it would be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led.....Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.....Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstances which indicates that he is responsible for commission of the time."

14. Now, the question before us is whether on the basis of facts brought on record, the husband of the deceased viz. Ram Bhadra only or both the accused

would be liable for causing injuries to deceased. The indication given by the Apex Court in *Trimukh Maroti* (supra) appears to be that where an accused is alleged to have committed murder of his wife and prosecution succeeds in leading evidence to show that shortly before commission of crime they were together in the dwelling home; it has to be held that if accused husband does not offer any explanation, how the wife received injuries or offers a false explanation, it would be a strong circumstance indicating that he is responsible for commission of the crime. Thus, it appears to indicate the responsibility of the husband only and not of other members of the family except where there is clear evidence of their involvement. In the opinion of doctor, the cause of death of deceased was coma due to ante mortem head injury. The head injury was a haematoma on the left side of forehead with black left eye. On the basis of the evidence adduced in the case, it is not possible for us to hold all the persons in the house including Deowati liable for causing injuries to deceased in view of the ratio of *Trimukh Maroti* (supra). However, it can safely be held that the injury was caused by accused Ram Bhadra as his presence in the house stood established by the evidence of Rajnikant (PW-12). Rajnikant, though did not toe the line of prosecution, but he stated that after return from the house of Ganga Singh in the night, Ram Bhadra went to his house. Apart from that, from the evidence of Kalpana (PW-3) also, the presence of Ram Bhadra in the house is clearly established. It is true that circumstances give rise to suspicion against appellant Deowati also, but the suspicion howsoever great; cannot take place of proof. Merely a single stray line appearing in the evidence of Kalpana (PW-3), a child witness of 8 years, that Deowati grappled with the deceased cannot be accepted because of it being merely a suggestion by the prosecution to which she innocently yielded.

15. In these circumstances, we are of the definite view that it has been satisfactorily established by the prosecution evidence that it was only accused Ram Bhadra, who caused the death of deceased. The evidence however does not appear to us sufficient against accused Deowati to hold her guilty under Section 302 of the Indian Penal Code. As such she deserves to be acquitted.

16. Learned counsel for the appellant strenuously urged that the conviction of accused Ram Bhadra under Section 302 IPC is not justified as the origin or the genesis of the occurrence, which resulted into the death of deceased, has not been proved. It is true that no evidence has been adduced by the prosecution to indicate, under what circumstances injuries were caused to deceased. There was only one injury on the forehead, which was the cause of death. There were some abrasions on the cheek and chin and a fracture of clavicle bone of the shoulder. It can, therefore, be inferred that there must have been a scuffle between deceased and the accused. Since accused did not offer any explanation for that, and there is no evidence on record from which the exact situation under which the incident occurred can be gathered, this Court is left with the option only to conjecture the probabilities. It is also significant to note that at the time of death the deceased

was carrying pregnancy of 32-36 weeks. There was a full term foetus in her womb. Therefore, it does not stand to reason that her husband would take up in his mind to deliberately kill her. The prosecution has tendered no evidence to establish motive on the part of the accused to kill his wife. In these circumstances, we are of the definite opinion that the conviction of accused/appellant Ram Bhadra under Section 302 IPC is not justified. However, since the act by which he caused the death of the deceased was done by him with the intention of causing such bodily injury to deceased as was likely to cause her death, he is liable to be convicted under Section 304-1 of the Indian Penal Code.

17. As far as conviction of accused/appellants under Section 304-B and 498-A of the India Penal Code is concerned, from the evidence of Vidya Sagar (PW-1) and Pushpa Pathak (PW-2) it stands established that deceased Sonika was married to accused Ram Bhadra on 4th June 1997 and she died a homicidal death in the house of her husband during the intervening night of 2nd and 3rd June 2001. Thus, it has been proved that deceased died otherwise then under normal circumstances in the house of her husband within seven years of her marriage. The question now remains to be answered is whether soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand of dowry. Vidya Sagar (PW-1), brother of deceased deposed that whenever deceased came to his house, she told that her in-laws used to manhandle her and ask her to bring a scooter. This demand was being made by her husband, mother-in-law and father-in-law. The evidence of Vidya Sagar (PW-1) finds support from the evidence of Pushpa Pathak (PW-2), mother of the deceased, who deposed that for about one year after the marriage of Sonika, her in-laws kept her well, but, thereafter, whenever she came to her house, she complained that accused persons made demand of a scooter. There is nothing in the evidence of these witnesses to indicate that the accused persons caused the death of deceased for not meeting the demand of dowry. There is also no evidence on record to indicate that the accused persons harassed or subjected the deceased to cruelty for or in connection with any demand of dowry soon before her death. In *Kailash vs. State of M.P.* (2006) 12 SCC 667 the Apex Court, affirming the law laid down in *Kans Raj vs. State of Punjab and others* (2000) 5 SCC 207. held:

> "9. In *Kans Raj v. State of Punjab* a three-Judge Bench of this Court dealt with the presumption available in terms of Section 113-B of the Evidence Act, 1872 (in short "the Evidence Act") and its effect on finding persons guilty in terms of Section 304-B IPC. It was noted as follows: (SCC P.217), para 9)
>
> > "9. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years

of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304-B. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

(a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

(b) such death should have occurred within 7 years of her marriage;

(c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

(d) such cruelty or harassment should be for or in connection with the demand of dowry; and

(e) to such cruelty or harassment the deceased should have been subjected soon before her death."

10. No presumption under Section 113-B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the victim. This is so because the expression used in the relevant provision is "soon before". The expression is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. The expression is pregnant with the idea of proximity test. It cannot be said that the term "soon before" is synonymous with the term "immediately before". This is because of what is stated in Section 114 illustration (a) of the Evidence Act. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of proximate and live link (see *Hira Lal v. State* (Govt. of NCT), Delhi-(2003) 8 SCC 80."

18. On examining the factual position in the present case in the light of above proposition of law, we find that prosecution failed to establish that death of the deceased was caused in connection with demand for dowry that too soon before the death of deceased. Since,\no nexus could be established by the prosecution evidence between demand of scooter and the death of deceased, the provision relating to presumption under Section 113-B can also be not made applicable. As such the conviction of accused persons under Section 304-B of Indian Penal Code cannot be sustained. However, from the evidence of Vidya Sagar (PW-1) and Pushpa Pathak (PW-2) it can be gathered that after the marriage, both the accused persons had harassed and subjected Sonika to cruelty to meet their unlawful demand of a scooter. Therefore, their conviction by the trial Court under Section 498-A of the Indian Penal Code deserves to be affirmed.

19. In view of the above discussion, conviction and sentence of both the appellants under Section 302/34 of the Indian Penal Code is set aside. Appellant No. 1 Ram Bhadra is, however, convicted under Section 304-I of the Indian Penal Code and sentenced to rigorous imprisonment for 10 years. Conviction of both the appellants under Section 304-B/34 of the Indian Penal Code is set aside. They are acquitted of that charge. Conviction of both the appellants under Section 498-A of the Indian Penal Code is affirmed. However, in view of the old age of appellant No. 2 Deowati, who must be of around 70 years of age now, and long lapse of time after the incident, sentence of both the appellants on that count is reduced from 2 years to rigorous imprisonment for six months only. It has been pointed out that appellant No.2 Deowati has already suffered custody for a period of six months, therefore, she need not surrender.

20. Appeat partly allowed.

Appeat partly allowed.

I.L.R. [2010] M. P., 2633
APPELLATE CRIMINAL
Before Mr. Justice I.S. Shrivastava
9 August, 2010*

MAKHMAD KHAN ... Appellant
Vs.
CBN MANDSAUR ... Respondent

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/18 & 8/18/29 - *Independent witnesses were hostile - Bulk quantity of seized opium formula was not produced at the time of evidence - At the time of seizure of opium formula articles A, B, C, D were not marked on the samples - Similarly, on both bulk quantity packets no articles were marked - At the time of deposit of seized property in the Malkhana in the office of*

*Cr.A. No.316/2006 (Indore)

CBN, it was not resealed with the seal of Officer Incharge of Malkhana - Impression of seal and seal were not deposited in the Malkhana at the time of seizure - Local witnesses were not collected but the pocket witnesses were called on the spot by the raiding party - Samples were deposited in the Court after 1 year and 5 months with unexplained delay - Malkhana Incharge not examined - Preparation of the Panchanamas was doubtful and not reliable - Appellants are not liable to be convicted - Appeal allowed. (Para 18)

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8/18 व 8/18/29 – स्वतंत्र साक्षी पक्षद्रोही हो गये – बड़ी मात्रा में अभिग्रहीत अफीम फार्मूला को साक्ष्य के समय प्रस्तुत नहीं किया गया – अफीम फार्मूला के अभिग्रहण के समय नमूनों पर अ, ब, स, द, वस्तु के रूप में चिन्हित नहीं किया गया – इसी प्रकार वृहद् परिमाण वाले दोनों पैकेटों पर वस्तु चिन्हित नहीं किया गया – अभिग्रहीत संपत्ति को सी.बी.एन. कार्यालय में मालखाना में जमा करते समय उसे मालखाने के प्रभारी अधिकारी की सील से पुनः सील नहीं किया गया – अभिग्रहण के समय सील की छाप एवं सील को मालखाना में जमा नहीं किया गया – स्थानीय साक्षियों को एकत्रित नहीं किया गया, बल्कि छापा दल द्वारा अपने गवाहों को मौके पर बुलाया गया – नमूनों को न्यायालय में 1 वर्ष 5 माह बाद अस्पष्टीकृत विलम्ब के साथ जमा किया गया – मालखाना प्रभारी की परीक्षा नहीं करायी गयी – पंचनामों को तैयार किया जाना संदेहपूर्ण और विश्वसनीय नहीं – अपीलार्थी दोषसिद्ध किये जाने के दायी नहीं हैं – अपील मंजूर।

Cases referred :

AIR 1994 SC 117, 2003(1) EFR 220, 1994 CrLJ 1987, ACR II (2006) 362, 2001(1) EFR 160, 2004(1) SCC 562, 2008(IV) AD-Cri (SC) 337, 2009 JLJ 148.

D.D. Vyas with *Ajay Vyas, R.R. Choursiya,* for the appellants.

Manoj Soni, for the respondent.

J U D G M E N T

I.S. Shrivastava, J. :–These four appeals are arising out of same judgment, hence they are being disposed of by a common judgment.

These appeals have been preferred by the appellants being aggrieved by the judgment dated 28..12.05 passed by the Court of Shri Jaswantsingh Kshtriya, Special Judge, (NDPS),Mandsaur in Special case No. 138/96 by which the appellant Ajij has been convicted under S.8/18/29 of the N.D.P.S.Act (for short the Act) and remaining appellants are convicted under S. 8/18 of the Act and all the appellants have been sentenced with rigorous imprisonment of 12 years along with fine of Rs.1,50,000/- (one lakh, fifty thousand)) and in default of payment of fine, to undergo additional four years rigorous imprisonment by each appellant.

2. According to prosecution story on 3.8.1996 a preventive party was organized by the CBN and general checking of the vehicles was being carried out at railway crossing near Agricultural College, Mandsaur. During this checking a tempo trax No. RJ-09C-0812 was intercepted. This tempo trax was being driven by Ashraf Khan and Makhmad Khan, Rahim Khan were sitting at the back seat. The member of raiding party, gave their introduction and accused persons were

informed about the search of the vehicle and after obtaining due consent of accused persons for search, raiding party searched tempo trax in which two gunny bags were found below the seat. On enquiry, the appellants informed that the gunny bags contained opium formula for mixing in opium which they have brought from the house of Sabir Khan s/o Sikkandar Khan and it was being transported to the house of Makhmad Khan where it will be mixed with the opium and its quantity will be increased. The bags were opened and in each bag 5 polythene bags were found; weight of first gunny bag was 25 kg. 120 gms. and weight of other was 25 kg. 420 gms. In this way in both the gunny bags 50 kg. 540 gms. opium formula was recovered. From each polythene bag 2 samples of 24-24 gms. were prepared and were sealed and remaining two gunny bags were also sealed on the spot. Statement of witnesses were recorded. Appellants were arrested. The relevant Panchnama was prepared before independent witnesses.

3. Thereafter preventive party returned to the office and a detailed report was submitted to the Superintendent, Preventive Cell, Mandsaur and seized property was handed over to be deposited in the Malkhana. From the statement of the accused persons it was found that the above seized opium formula was brought from the house of Sabir. Hence raiding party reached to the house of Sabir but he was absconding from his house, Rs.2,89,900/- were recovered which were sealed on the spot and deposited in Malkhana. On further investigation it was found that Ajij s/o Alam Khan is also involved in this profession. On 5.12.96 on interrogation he admitted that he was also involved in conspiracy and abetment of this business. Hence he was also arrested. Seized samples were sent to FSL. From report of FSL it was found that samples contained opium. Hence after completion of investigation, challan was filed. After trial appellants have been convicted and sentenced as mentioned above.

4. It has been argued on behalf of the appellants that they have been falsely implicated in this case. The independent witnesses were hostile. Articles were not marked on the seized samples and two gunny bags of bulk quantity of opium. Bulk quantity was not produced at the time of evidence. Only samples were produced. After taking little quantity from each bag, samples were prepared. At the time of deposit in the Malkhana, samples and bulk quantity packets were not re-sealed. The impression seal was not deposited in the Malkhana. The seized property was produced in the court after two years of the date of incident and there is no explanation of such late deposit. Local witnesses of the place of incident, were not joined in the proceedings. So called independent witnesses were pocket witnesses of the police party. Hence on the basis of evidence, offence was not proved. Therefore, this appeal be allowed.

5. It has been argued on behalf of the respondent State that case was proved on the basis of evidence produced before the trial court. From the FSL report, presence of opium was found in the seized substance. The appeal should be dismissed being devoid of merits accordingly.

6. Considered the arguments. Record of trial Court perused.

7. The proceeding was conducted by seizing officer Shri Ramsingh Detha (PW.5) vide Panchnama Ex.P.3 to Ex.P.10. Ex.P.3 is the Panchnama seizure of the opium formula. In this Panchnama this fact has been mentioned that 4 samples were prepared and they were sealed on the spot. Remaining quantity was sealed in the two gunny bags but it has not been mentioned that articles were marked on all these six packets. Normally at the time of seizure, samples are marked as articles and remaining bulk quantity is also sealed and marked as article. But Panchnama Ex.P.3 and other Panchnama and statement recorded by the Investigation Officer do not reveal that the articles were marked on the samples and bulk quantity. In this way it can not be said that each sample was sent for analysis in the FSL. Hence procedure adopted by the Seizing Officer Shri Ramsingh Detha (PW.5) was defective.

8. The independent witnesses of the seizure memo Ex.P.3 were Manohar (PW.2) and Prakashchandra (PW.3) Both these witnesses were hostile. They have not supported the proceedings taken up by the seizing officer by Panchnama Ex.P.3 to Ex.P.10. According to Manohar PW.2 he does not know accused persons. On 3.8.1996 no proceedings were taken up before him near Sitamau Phatak and tempo trax was not intercepted before him. He has not supported step by step proceeding taken up by seizing officer. He accepts his signature on Ex.P.3 to Ex.P.10 and said that he has signed on these papers in the office. He is electrician and working in the office of Narcotics. Prakashchandra PW.3 has also deposed that he does not know accused persons. On 3.8.96 he did not go to Sitamau Phatak with officers of narcotics department. Tempo Trax was not intercepted near agricultural college and no proceedings were taken up before him. He has denied step by step proceeding taken up by seizing officer. On specific question being asked, he has denied the fact that before him temp trax was intercepted by the narcotics department officers and the opium formula was seized from the accused persons before him. Both these independent witnesses have denied with their police statement Ex.P.14 and Ex.P.15 respectively.

9. Ram Singh Detha PW.5 has admitted that Manohar is an electrician and working in his office. Prachashchandra PW.3 runs a hotel at the gate of his office. Ravindra Singh Chouhan PW.6 has deposed that Manohar was employed as contingency employee in his office as electrician and Prakash runs a tea hotel out side his office. In this way both these witnesses are not independent witnesses but they are pocket witnesses of the raiding party. The incident took place at railway crossing near agricultural college.

10. As regards calling of independent witnesses, Ramsingh Detha PW.5 has deposed that it is correct that on the spot there are so many shops and houses but he did not call any local person. These witnesses were known to them hence he called them urgently with the idea that they will support in their work. This shows

that independent witnesses of the local area were not called at the time of seizure of the opium formula.

11. It has been argued by appellants' counsel that Panchnama seizure memo Ex.P.3 , Notice under S. 50 of the Act, Ex.P.4 seizure memo of tempo trax, Ex.P.5 and Panchnama Ex.P.10 for the impression of seal, were prepared at 12.30 p.m. and seizure memo Ex.P.6, Ex.P.7, and Ex.P.8 were prepared at 1.30 p.m. At the same time it is not possible to prepare all these Panchnamas. This shows that Panchnamas were prepared at the office of CBN at the convenience of the officers. Otherwise naturally they would have been prepared on the spot. The time of preparation of Panchnamas would have been naturally different. Considered the circumstances. From the Panchnama Ex.P.3 about the seizure of opium formula Ex.P.4, notice under S. 50 of the Act, seizure of memo of tempo trax Ex.P.5 and Panchnama about the seal impression, Ex.P.10 it reveals that they were prepared at 12.30 p.m. Seizing Offier Ramsingh Detha PW.5 has not noted the time below his signatures while it was necessary. Similarly at the arrest memo Ex.P.6, Ex.P.7 and Ex.P.8 time of arrest has been mentioned as 1.30 p.m. This shows that all the Panchnamas of the proceedings were prepared at 12.30 p.m. and 1.30 p.m. on the spot. It is not possible. Their preparation is doubtful. Hence statement of Ramsingh Detha PW.5 is not reliable in this respect.

12. As regards statement of Vyasji Shukla PW.4 is concerned, it has been argued that he was not member of checking party. But he has pretended himself to be member of checking party. Considering circumstances Ramsingh Detha PW.5 seizing officer has deposed that in the checking party Gopalsingh, R.S. Chouhan, S.S.Yadav, he and other persons were included. He has not mentioned presence of Vyasji Shukla PW.4. Vyasji Shukla PW.4 has in this respect deposed that the whole proceedings were taken up before him and he was included in the party. Those documents which are signed by him, were prepared in his presence. Other papers on which he has not signed, were not prepared before him. In this respect Ex.P.4 prepared under S.50 of the Act and Ex.P.5 seizure memo of tempo trax do not bear his signatures. But Ex.P.3 about seizure of opium formula, bears signatures of Vyasji Shukla PW.4 but on this Panchnama his name has not been included as a witness. By simply signing on this Panchnama, it can not be said that he was present at that time. Since Ex.P.3, Ex.P.4, Ex.P.5 were prepared at the same time at 12.30 p.m. Hence if Ex.P.3 bears his signature then naturally Ex.P.5 would bear his signature if he was present there. Specifically Ramsingh Detha PW.5 has not named him as member of the checking party and no such Rojnamcha has been produced in support of it. Under the circumstances, presence of Vyasji Shukla P.W.4 on the spot is doubtful. Other members of raiding party Gopalsingh, R.S.Chouhan and SS Yadav have not been examined in this respect.

13. As regards compliance of S. 55 of the Act is concerned, R.S.Chouhan PW.6 has deposed that he deposited the samples in the Malkhana Ex.P.22 which bears his signatures A-A and B-B of the superintendent. He made entries on the

direction of superintendent. In the cross examination he has admitted the fact that he did not resealed the property before deposition in the Malkhana because there is no procedure of resealing of the property in his department. The impression of seal was not given to him for deposition in the Malkhana. In this way it is clear that property was not resealed by the incharge of Malkhana at the time of deposit and Panchnana of seal impression was also not deposited in Malkhana nor the seal was deposited in the Malkhana. In this respect, Incharge of Malkhana Gopal Singh has not been examined. Therefore, it is clear that property was not deposited in the Malkhana in compliance of S. 55 of the Act. In the the case of *Valsala Vs. State of Kerala* -AIR 1994 SC 117 it has been held that that " no evidence to show that article was sealed and kept in proper custody in Police Station; delay of more than 3 months in production of seized article in Court, conviction can not be sustained." Similar view has been adopted in *Rembul Vs. State of M.P.* 2003(1) EFR 220.

14. As regards the fact stated by R.S.Chouhan (PW.6) that procedure of resealing of the sample is not prevailing in his department this explanation is not reliable.

15. In R.D.Makwana Vs. State of Maharashtra – 1994 Cr.L.J. 1987 it has been held that "We do not need to observe here that the provisions of Section 56 (Sic Section 55-ED.) necessarily imply, and for good reason, that at the earliest point of time, all mterial seized in an action under this Act must be deposited with the Officer in charge of a local Police Station because he is an authority of sufficient rank and he is also invested with the requisite facilities and the records to ensure that all the material is kept in safe custody and that there is no scope of its being lost or tampered with. This provision is a reasonable and necessary one in so far as since the consequences of a prosecution under this Act are serious, it is equally incumbent that safeguards be taken to ensure that there is no scope for any accident or for that matter negligence or even tampering. It does not however mean that where a specialised authority condusts a raid such as the Narcotics Control Bureau or for that matter the Customs, Central Excise etc. that they would be precluded from retaining the contraband in safe custody at their own headquarters."

It means that within the local area of the police station of the articles seized under the Act shall be handed over to police and be kept by police in safe custody, if any of the authorities seizing property under the provisions of this Act, do not have facility of Malkhana in their office, then they have to deposit the property in the local police station for safe custody and the incharge of the P.S. or any officer deputed for this purpose, shall affix the seal articles with seal of the officer incharge of the P.S.

16. If an officer has facility of Malkhana in his office like CBN, then in compliance of S. 55 of the Act, he should hand over the property to the Officer

Incharge of the Malkhana of that office who shall affix his seal to such articles and shall seal the samples with the seal of the officer incharge of their office. The idea of reseal of the property with the seal of the officer incharge of Malkhana is that the possibility of loss or tampering of the property and sample should be nullified.

17. This incident took place on 3.8.1996 and according to copy of Malkhana register Ex.P.21(C), property was sent to Court on 23.1.98 after 1 year and 5 months. There is no explanation of such a delay for deposition in the court.

18. As regards production of bulk quantity of seized opium formula at the time of evidence in the court is concerned, there is no evidence that both the packets of bulk quantity of Opium formula was produced at the time of evidence. Only samples A,B,C,D were produced at the time of evidence while the bulk quantity of seized opium formula ought to have been produced in the court. Reason has not been explained for non-production. From the Panchnama seizure memo Ex.P.3 it is clear that samples were not marked as articles. Also it is not mentioned in Ex.P.3 that bulk quantity packets were marked as article. Ramsingh Detha PW.5 and Vyasji Shukla PW.4 have deposed that samples are ABCD which bear their signatures. When articles were not marked on samples and bulk quantity packet, then how samples A,B,C,D were marked on samples which were produced before the court, it is not explained. This shows that articles A,B,C,D, were marked on the samples by tampering after preparation of Panchnama. This makes Panchnama Ex.P.3 doubtful.

16. In this way in this case independent witnesses of the seizure memo have not supported the fact of seizure. The witnesses are pocket witnesses of the prosecution. Hence according to law laid down in *Ritesh Chakraworti Vs. State of M.P.* - ACR II (2006) 362 and *Bholaram Kushwaha vs. State of M.P.* - 2001(1) EFR 160 – the seizure Panchnama has not been proved.

17. In the case of *Jitendra and another Vs. State of M.P.* reported in 2004(1) SCC 562, it has been held by the Apex Court that :

> *"the evidence to prove that charas and ganja were recovered from the possession of accused consisted of the evidence of the police officers and the panch witnesses. The panch witnesses turned hostile. Thus, we find that apart from the testimony of Rajendra Pathak PW-7, Angad Singh PW-8 and sub-inspector D. J. Raj PW-6, there is no independent witness as to the recovery of the drugs from the possession of accused. The Charas and Ganja alleged to have been seized from the possession of the accused, were not even produced before the Trial Court, so as to connect it with the samples sent to the FSL. There is no material produced in the Trial apart from the interested testimony of police officers, to show that the Ganja*

and Charas were seized from the possession of the accused or that the samples sent to FSL which were taken from drugs seized from the possession of the accused.

In the Trial, it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of Charas and Ganja were seized from the possession of accused. The best evidence would have been the seized materials, which ought to have been produced during the trial and marked as material objects. There is no explanation for this failure to produce them. Mere oral evidence as to their features and production of panchanama does not discharge the heavy burden, which lies on the prosecution, particularly where the offence is punishable with stringent sentence as under the NDPS Act".

The same view has been adopted in *Noor Aga Vs. State of Punjab* [2008(iv) AD-Cri (SC) 337] as well as in *Laxminarayan Vs. State of M.P.* - 2009 JLJ - 148.

18. Under the circumstances on the basis of above discussion I conclude that at the time of trial, independent witnesses were hostile. Bulk quantity of seized opium formula was not produced at the time of evidence. At the time of seizure of opium formula articles A,B,C,D were not marked on the samples. Similarly, on both bulk quantity packets no articles were marked. At the time of deposit of seized property in the Malkhana in the office of CBN, it was not resealed with the seal of Officer Incharge of Malkhana. Impression of seal and seal were not deposited in the Malkhana at the time of seizure. Local witnesses were not collected but the pocket witnesses were called on the spot by the raiding party. Samples were deposited in the Court after 1 year and 5 months with unexplained delay. Malkhana Incharge has not been examined. Preparation of the Panchnamas was doubtful. Ex.P.3, Ex.P.4 and Ex.P.5 and Ex.P.10 bear same time 12.30 p.m. and Ex.P.6, Ex.P.7 and Ex.P.8 bear same time 1.30 p.m. Hence they were not reliable. As a cumulative effect of all these facts, appellants were not liable to be convicted on the basis of evidence produced before trial court. Hence this appeal deserves to be allowed.

19. Therefore, on the basis of above discussion, all these appeals are allowed. The conviction of appellant Ajij Khan under S. 8/18/29 of the Act and conviction of the appellants Makhmad, Ashraf Khan and Rahim Khan u/s 8/18 of the Act are hereby set aside. They are acquitted of the charges levelled against them. They be released, if not required in any other offence. Fine if deposited be returned to them.

Appeal allowed.

I.L.R. [2010] M. P., 2641
APPELLATE CRIMINAL
Before Mr. Justice R.C. Mishra
6 September, 2010*

RAVI ... Appellant
Vs.
STATE OF M.P. ... Respondent

A. **Penal Code (45 of 1860), Section 363 - *Kidnapping* -** *Prosecution did not examine the husband of the prosecutrix, his cousin and the woman, who could prove the facts relating to absence of the prosecutrix from her matrimonial home and her presence in the company of the appellant - Probabilities factors favoured the defence - Appellant was entitled to benefit of doubt.* (Paras 9 & 10)

क. दण्ड संहिता (1860 का 45), धारा 363 – व्यपहरण – अभियोजन ने अभियोक्त्री के पति, उसके समभ्राता तथा उस स्त्री की, जो अभियोक्त्री के उसके वैवाहिक घर से अनुपस्थित होने एवं अपीलार्थी के साथ मौजूद होने संबंधी तथ्य को सिद्ध कर सकते थे, की परीक्षा नहीं करायी – अधिसंभाव्य कारक बचाव पक्ष का समर्थन करते हैं – अपीलार्थी संदेह के लाभ का हकदार था।

B. **Penal Code (45 of 1860), Section 376 - *Rape* -** *Prosecutrix gave a materially different version in her sworn testimony - No medical or forensic evidence to support the specific allegation about rape - Probabilities factors favoured the defence - Appellant was entitled to benefit of doubt - Appeal allowed.* (Para 10)

ख. दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – अभियोक्त्री ने अपने शपथ कथन में तात्विक रूप से भिन्न बयान दिया – बलात्संग के विनिर्दिष्ट अभिकथन के समर्थन में कोई चिकित्सीय या न्यायालयिक साक्ष्य नहीं – अधिसंभाव्य कारक बचाव पक्ष का समर्थन करते हैं – अपीलार्थी संदेह के लाभ का हकदार था– अपील मंजूर।

Cases referred :

AIR 1983 SC 753, AIR 2005 SC 643; 2007 AIR SCW 2732, 2007 AIR SCW 5845.

Pushpendra Dubey, for the appellant.

Sameer Chile, G.A., 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 07.03.1990 passed by First Additional Sessions Judge, Chhindwara in S.T. No.29/88 whereby the appellant and co-accused Munna (since deceased) were convicted and sentenced as under :-

*Cr.A. No.328/1990 (Jabalpur)

No. & Name of the appellant/ co-convict	convicted under Sections	sentenced to
1. Ravi	363 of the IPC	undergoR.I. for 5 years.
	376 of the IPC	undergoR.I. for 7 years.
	with the direction that jail sentences shall run consecutively	
2. Munna	376 of the IPC	undergo R.I. for 7 years.

2. It is relevant to note that this appeal was heard and decided by another Bench of this Court on 04.08.2003. Consequently, the convictions were maintained but sentences of imprisonment were reduced to the periods already undergone by the appellant and co-convict Munna. However, the Apex Court, vide its order dated 06.01.2010 passed in Criminal Appeal No.31/2010, set aside this Court's judgment and remanded the matter for consideration afresh on its own merits uninfluenced by the observation, if any, made in the order.

3. The appeal so far as it relates to co-convict Munna (hereinafter referred to as 'Munna' only) has already abated consequent to his death during pendency of this appeal preferred by the State before the Supreme Court.

4. The prosecution story, in short, may be narrated thus –

(i) The appellant is related as Nandoi (husband of sister-in-law) of the prosecutrix (PW8), a married girl aged about 16 years. At the relevant point of time, they were residing in village Sukludhana to which Munna also belonged to.

(ii) On 12.9.1987 at about 10 p.m. the appellant persuaded the prosecutrix, who was carrying pregnancy of 6 months, to accompany to live as mistress of Munna. As they reached Narsinghpur Naka (Outpost), Munna also joined and all of them went to village Lahgadwa where they stayed at the house of a woman belonging to Gond Tribe, who also prepared meals for them. In the night, the appellant and Munna made the prosecutrix to drink illicitly distilled liquor and after taking the food at about 3 a.m., they took her to a nearby agricultural field located on a hillock. At about 4 in the morning, the appellant caught hold of her whereas Munna, brandishing a knife, threatened to kill her in case she raised any alarm and then, both of them subjected the prosecutrix to rape one after the other on as many as three occasions. She was brought back to the Naka and was left there. Out of fear, she did not disclose the incident to anyone. However, on the following day, she was taken by her husband namely Guddu @ Ramla to Lahgadwa where his cousin Hari Singh who had spotted her as well as both the accused in the field, informed him accordingly.

At this juncture only, the prosecutrix revealed the incident to her husband. He, in turn, took her to the Police Station. It was upon an FIR (Ex.P-12) that a case under Section 376 read with 34 of the IPC was registered.

(iii) The prosecutrix was sent to District Hospital, Chhindwara for medical examination. Dr. Mrs. Pratibha Sthapak (PW5), while expressing her inability to give any definite opinion as to commission of rape, prepared two slides from vaginal smear of the prosecutrix and also preserved her petticoat for chemical analysis. The medical expert further referred the prosecutrix to the Radiologist for determination of her age. In the Ossification Test, Dr. R.C. Verma (PW6) found that the age of the prosecutrix was about 16 years.

(iv) After their arrest on 15.09.1987, underwears worn by the appellant and Munna were seized. They were also subjected to medical examination. Dr. S.K. Bindra (PW7) found each of them capable of performing sexual intercourse. The medical expert also prepared semen slides and preserved the same for chemical examination.

5. On being charged with the offences punishable under Sections 363 and 376 read with 34 of the IPC, the appellant pleaded false implication.

6. In her chief examination, although the prosecutrix (PW8) admitted that Munna was not known to her yet, in Paragraph 6 of her statement, she clearly stated that each one of the accused viz. the appellant as well as Munna had subjected her to sexual assaults one after the other. However, in her cross-examination, defence could elicit the following inconsistencies with reference to recitals of FIR (Ex.P-12) and contents of her case diary statement (Ex.D-1) -

(i) As per her statement on oath, the prosecutrix used to go with sister of the appellant to work as labour and on the day of the incident, on being informed that his sister had already left for Dharam Tekdi where the work was going on, she had agreed to accompany the appellant up to the site whereas the FIR and the case diary statement scribed by Sub-Inspector K.C. Chhadi (PW12) contained an specific assertion that she had gone with the appellant to enter into marital relationship with Munna as per the customs.

(ii) According to the prosecutrix, it was the appellant who had put her in fear of death by showing a knife whereas the FIR and the police statement reflected that the knife was brandished by Munna only.

(iii)The FIR and the case diary statement clearly suggested that

each one of the accused had ravished the prosecutrix thrice whereas before the Court, she was emphatic in deposing that she was raped twice by each one of the offenders.

7. It is well settled that in a rape case, corroboration cannot not be insisted upon, except from the medical evidence, provided that the evidence of victim does not suffer from any basic infirmity and the 'probabilities factor' does not render it unworthy of credence (*Bharwada Bhoginbhai Hirjibhai v. State of Gujrat* AIR 1983 SC 753 referred to). However, in the instant case, there is no medical or forensic evidence to support the specific allegation made by the prosecutrix that she was subjected to rape by each one of the accused on two occasions in quick succession one after the other. Dr. Smt. Pratibha Sthapak (PW5) clearly admitted that no external or internal injury/bleeding was noticed on the body of the prosecutrix who was carrying pregnancy of 6 months. Further, the FSL report indicated that no seminal stain or human spermatozoa was found on her vaginal smear slide and petticoat preserved by the lady doctor. All this evidence gave rise to the inference that the story of gang rape was not convincing. The approach that a married woman would not 'put her character at stake' by making a false charge of rape cannot be applied universally as each case has to be determined on the touchstone of the factual matrix thereof (Pandurang Sitaram Bhagvat v. State of Maharastra AIR 2005 SC 643 relied on).

8. Since, the prosecutrix had given a materially different version in her sworn testimony, it could not have formed a basis for the impugned conviction of rape (See. *Narayan @ Naran v. State of Rajasthan* 2007 AIR SCW 2732 and *Radhu v. State of M.P.* 2007 AIR SCW 5845).

9. Coming to the offence of kidnapping, it may be observed that the prosecution did not examine the husband of the prosecutrix viz. Ramla, his cousin Hari and the Gond woman, who could prove the facts relating to absence of the prosecutrix from her matrimonial home and her presence in the company of the appellant.

10. For these reasons, it was not possible to act upon testimony of the prosecutrix. Since the probabilities factors favoured the defence, the appellant was entitled to benefit of doubt. Thus, learned trial Judge completely misdirected himself in holding the appellant guilty of the offences charged with, by taking recourse to conjectures and surmises to explain the glaring infirmities in the prosecution evidence.

11. In the result, the appeal is allowed. The impugned convictions and the consequent sentences are hereby set aside. Instead, the appellant is acquitted of the offences.

12. The appellant Ravi is in custody. He shall be released forthwith if not required in any other case.

Appeal allowed.

I.L.R. [2010] M. P., 2645
CRIMINAL REVISION
Before Mrs. Justice Indrani Datta
21 September, 2010*

MEWALAL SHARMA ... Applicant
Vs.
STATE OF M.P. ... Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Sections 451 & 457 - *Release of vehicle - Vehicle seized in offence u/ss. 379, 408, 420 IPC r/w S. 3/7 of Essential Commodities Act - Held - No prolific purpose would be served by letting the vehicle idle in the Police Station for such a long period - Directed to be released on interim Supurdgi - Revision allowed.* (Para 12)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 451 व 457 – वाहन का छोड़ा जाना – वाहन धारा 379, 408, 420 भा.द.सं. सहपठित धारा 3/7 आवश्यक वस्तु अधिनियम के अन्तर्गत अपराध में अभिग्रहीत किया गया – अभिनिर्धारित – वाहन को इतनी लम्बी अवधि के लिए पुलिस थाने में बेकार रोककर कोई लाभदायक प्रयोजन पूरा नहीं होगा – अंतरिम सुपुर्दगी पर छोड़ने का निदेश दिया गया – पुनरीक्षण मंजूर।

Cases referred :

2010(1) EFR 193, AIR 1986 AP 82, AIR 2003 SC 638.

Sanjay Bahirani, for the applicant.
T.C. Bansal, Public Prosecutor, for the non-applicant/State.

ORDER

INDRANI DATTA, J. :–Heard.

2 With the consent of parties, matter is finally heard at motion hearing stage itseif.

3. Applicant has filed this revision .under Section 397/401 of CrPC for setting aside the order dated 06.08.2010 passed in M.J.C. No. 1237/2001 by JMFC Lahar, District Bhind whereby application submitted by the applicant under Section 451/457 CrPC for releasing the vehicle Tractor & Trolley bearing registration No.MP06A-7066 has been dismissed.

4. Laconically, the facts of the case are. that on 15.04.2010 on the basis of information received that Wheat which was to be distributed as per PDS Scheme, is illegally unloaded in the premises of co-accused Ashok Singh for the purpose of black-marketing. Tehsildar Revenue Inspector and Patwari reached on spot and recovered Tractor & trolley No.MP 06-A-7066 carrying 40 quintal of Wheat and also recovered one Matador bearing No.MP30/H-0186 which never reached its destination. The Tractor & Trolley bearing registration No.MP06-A/7066 alongwith 40 quintal Wheat has been seized and FIR concerning Crime No.36/2010 has been registered against the applicant and other co-accused under Section

*Cr.R. No.661/2010 (Gwalior)

379, 408, 420 IPC read with Section 3/7 of E,C. Act. The applicant who is owner of aforesaid Tractor & Trolley bearing No.MP06-A/7066 filed application for seeking vehicle on Supurdgi under Section 451/457 CrPC before the learned JMFC Lahar, District Bhind. That application has been rejected by the learned JMFC, giving rise to present revision.

5. It is contended on behalf of the applicant that impugned order dated 06.08.2010 passed by the learned trial court is bad in law, illegal and unsustainable and is liable to be set aside. No confiscation proceedings have been started by the learned Collector concerning the above Vehicle as Collector can initiate confiscation proceedings only on the basis of inquiry report filed by authority and no inquiry report has been filed yet by the inspection authority till today. It is further submitted that alleged vehicle has not been seized in pursuance to violation of Control Order which made under Section 3 of the E.C. Act. It is further submitted that for the sake of arguments if it is presumed that confiscation proceeding is pending before the Collector under Section 6-A of E.C. Act. even then seized vehicle cannot be confiscated as per Sub-section (1) of Section 6-A of E.C. Act which provides that owner of such vehicle shall be given option to pay in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of essential commodity sought to be carried by such vehicle.

6. It is further urged that seized vehicle is kept in Police Station and possibility of damage to vehicle cannot be ruled out. On these grounds prayed for setting aside the impugned order.

7. Learned Counsel for the applicant drew this Court's attention to a citation in *Rama Shankar Yadav vs. State of U.P.* 2010 (1) EFR 193. In that case it is held that even if it is presumed that proceedings under Section 6-A of E.C. Act are pending, release of vehicle should not be ignored. Furthermore, reliance is placed in *G. Subbarama Naidu v. The Joint Collector, Chittoor Dist and others.* AIR 1986 Andhra Pradesh 82 in that case also same view has been expressed.

8. Placing reliance on the above citations, learned counsel for the applicant submits that applicant is entitled for interim custody of vehicle till disposal of the confiscation proceedings if initiated against, him (though no confiscation proceedings have been initiated till today).

9. Learned Public Prosecutor opposed the petition and prayed for its dismissal.

10. It is admitted fact that present applicant is registered owner of seized Tractor & Trolley for which Crime No.37/2010 has been registered against him and co-accused. No document is available on record to assume that confiscation proceedings are started against the seized Tractor & Trolley No.MP06-A/7066.

11. In the case of *Sunderbhai Ambalal Desai v. State of Gujarat,* AIR 2003 SC 638 the Hon'ble Apex Court has held that powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation:
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. The jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

12. Considering the above legal aspect and the material available on record and considering the fact that applicant is registered owner of the seized Tractor & Trolley no prolific purpose would be served by. letting the vehicle idle in the Police Station for such a long period. In view of the aforesaid, the impugned order is having apparent perversity and as such it requires interference in this revision, hence the impugned order dated 06.08.2010 is set aside with a direction to the trial Court that Tractor & Trolley bearing No.MP06A/7066 be released on interim Supurdgi of applicant on his furnishing surety bond and personal bond of Rs.1,00,000/- (Rupees One Lac) with a condition that during investigation whenever required applicant will produce that vehicle and shall not alienate, dispose of or transfer that vehicle and also produce it before the Collector if confiscation proceedings are initiated concerning that vehicle and the aforesaid release of vehicle will be subject to outcome of confiscation proceedings, if initiated.

With the aforesaid direction, the revision is disposed of.

Revision disposed of.

I.L.R. [2010] M. P., 2647
CRIMINAL REVISION
Before Mrs. Justice Indrani Datta
23 September, 2010*

SANTOSH TOMAR (SMT.) ... Applicant
Vs.
RAJESH SINGH TOMAR ....Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 125 - *Maintenance - Adultery - Allegation by husband that wife is living in adultery - This must necessarily be proved by husband by cogent and reliable evidence - Mere friendship with a man does not amount to living in adultery.* (Paras 8 to 10)

---

*Cr.R. No.187/2008 (Gwalior)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – भरण–पोषण – जारता – पति द्वारा अभिकथन कि पत्नी जारता की अवस्था में रह रही है – यह पति द्वारा अकाट्य और विश्वसनीय साक्ष्य से आवश्यक रूप से साबित करना चाहिए – किसी पुरुष से मित्रता मात्र जारता की अवस्था में रहने की कोटि में नहीं आता है।

Prashant Sharma, for the applicant.
Sunil Sharma with *Anamika Kumar,* for the non-applicant.

J U D G M E N T

INDRANI DATTA, J. :–Applicant has preferred this revision under Section 397 read with Section 401 Cr.P.C. for setting aside the order dated 16.2.2008 passed by Principal Judge, Family Court, Gwalior in Case No. 225/06, by which the application filed by the applicant for grant of maintenance under Section 125 Cr.P.C. has been rejected.

2. The facts in nutshell are that the applicant has filed one application under Section 125 Cr.P.C. in the Court of Principal Judge, Family Court, Gwalior on the ground that she is married with respondent Rajesh Singh Tomar. Respondent and his family members used to harass and torture her with respect to demand of dowry. They also attempted to kill her. On 10/1/2004, they kicked her out from her matrimonial house and since then, she is residing in her parental house. She has no independent source of income and there is no arrangement for her livelihood and she is unable to maintain herself. Respondent is having sufficient source of income, though he is not maintaining her. He is having source of income from agriculture and is also driving tractor, hence Rs.4000/-maintenance is to be awarded to her. That application has been rejected by Principal Judge, Family

3. It is contended by learned counsel for the applicant that applicant has proved that she has been ill-treated due to demand of dowry and she was kicked out from matrimonial home and is dependent upon her father. The learned trial Court has not considered the evidence. It is further submitted that in compelled circumstances applicant is residing separately and case under Section 498-A is also registered. The learned trial Court has wrongly come to the conclusion that she is living in adultery, hence order of trial Court is illegal, improper and deserves to be set aside.

4. The learned counsel for the respondent supported the impugned order of learned trial Court and submitted that under Section 125(4) Cr.P.C., the learned trial Court has rightly observed that since the applicant is living in adultery, she is not entitled to receive any maintenance from the respondent. The order of trial Court is correct and requires no interference and the revision petition deserves to be rejected.

5. Heard rival contentions of parties and perused the record.

6. The applicant has examined herself and two witnesses, namely Dhanpal and Manish Singh Tomar. The applicant has deposed that after marriage respondent and her in-laws used to harass her with respect to demand of dowry. She has been kicked out from matrimonial house by respondent and thereafter she is

dependent of her father and there is no independent source of income. She has further stated that respondent is having earning from agriculture. Detailed cross-examination has been conducted by respondent. In cross-examination para 7 some questions were put up to her concerning alleged adultery and she has only stated that she is well acquainted with Jabar Singh and Jabar Singh is her brother's friend, who sometimes comes with her in the Court. It cannot be assumed from her cross examination that she is having illicit relation with Jabar Singh. From the statement of applicant's witness Dhanpal and Manish Singh Tomar it is not proved that applicant is living with Jabar Singh Gurjar.

7. Respondent Rajesh Singh has examined himself in the Court and in para 2 of his statement he has stated that applicant is residing with Jagar Singh Gurjar. His statement is not supported by any witness. Mahendra Singh, who is non-applicant's witness has not stated anything about the alleged illicit relation of applicant with Jabar Singh.

8. When the allegations are levelled by husband that wife is living in adultery then this matter necessarily is to be proved by husband and adultery must be proved by cogent and reliable evidence. Mere friendship with a man does not amount to living in adultery. From the perusal of evidence and material available on record, I am of the opinion that trial Court is erred in coming to a conclusion that applicant is living in adultery.

9. In the reply of main application, respondent denied the averments of application filed by applicant under Section 125 Cr.P.C, but it is not averred that applicant is living in adultery. As per reply the applicant is living separately since 1998. One notice was issued to her in the year 2004. Copy of the notice is Ex P-2. In that notice no specific allegation of adultery has been levelled by respondent against the applicant. It is not mentioned in the notice that applicant is living with Jabar Singh and having illicit relations with him. In the statement of respondent recorded in the Court on 5.2.2008 he has stated that the applicant is living with Jabar Singh since four years. Then the question arises that why this fact is not mentioned in the notice sent to her in the year 2004.

10. Considering the above facts and circumstances of the case, as no reliable and cogent evidence have been produced by the respondent concerning the alleged adultery of applicant, the order passed by learned Principal Judge, Family Court dated 16.2.2008 deserves to be set aside. Matter is remanded back to that Court to decide afresh after giving reasonable opportunities to the parties for leading evidence. Parties are directed to appear before trial Court on 12.10.2010.

Accordingly, the revision petition stands disposed of.

Copy to trial Court for compliance.

C.C. as per rules.

Revision disposed of.

I.L.R. [2010] M. P., 2650
MISCELLANEOUS CRIMINAL CASE
Before Mrs. Justice Indrani Datta
14 September, 2010*

YASHWANT SINGH & ors. ... Applicants
Vs.
SMT. SITA SINGH & anr. ... Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Sections 204 & 397 - *Interlocutory order - Order of issuance of process and taking cognizance cannot be treated as interlocutory order and hence, no bar of sub-section (2) of S. 397 is applicable.* (Para 9)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 204 व 397 – वादकालीन आदेश – आदेशिका जारी करने और संज्ञान लेने का आदेश अन्तवर्ती आदेश नहीं माना जा सकता और इसलिए धारा 397 की उपधारा (2) का कोई वर्जन लागू नहीं होता।

Cases referred :

2005(I) MPWN 12, 2004 SCC (Cri) 1927, (1999) 3 SCC 134, AIR 1978 SC 47, 1980 SCC (Cri) 695.

V.K. Saxena with *Mayank Bajpai,* for the applicants.

D.R. Sharma, for the non-applicant No.1.

T.C. Bansal, Public Prosecutor, for the non-applicant No.2/State.

ORDER

INDRANI DATTA, J. :–Invoking extraordinary jurisdiction of this Court conferred under Section 482 of Cr. P. C., petitioners have assailed the order dated 15/12/2009, passed by the Special Judge and Additional Sessions Judge, Datia (M.P.) in Criminal Revision No.52/2008, confirming the order dated 01/05/2007, passed by the Judicial Magistrate First Class, Bhander, District Datia in Criminal Case No.152/2007, by which cognizance has been taken against the petitioners under Section 498-A of IPC on a complaint filed by the respondent no.1.

2. Facts in nutshell giving rise to this petition are that respondent no.1 Smt. Sita Singh filed a complaint against the petitioners under Sections 498-A, 323, 294 and 506-B of IPC, alleging that she was married to petitioner no.1 about three and a half years back. Her father had given sofa, almirah, cooler, T.V., refrigerator, ornaments, clothes etc. valuing about at Rs.1.5 lacs. In the marriage, petitioners demanded a motor-cycle which her father could not give. After some time, petitioners started harassing her with respect to demand of motor-cycle. She was also beaten and sustained injuries. Thereafter, she lodged a report at police station Bhander on 17/08/2007. After examination of the complainant and her witnesses, learned trial Court has taken cognizance against the petitioners under Section 498-A of IPC. Order of the learned trial Court was challenged by the petitioners

*M.Cr.C. No.466/2010 (Gwalior)

by preferring a Criminal Revision before the Revisional Court and the same has confirmed by the Revisional Court, giving rise to this petition.

3. Manifold submissions have been advanced by learned senior counsel for the petitioners that the Revisional Court has erred in holding that order of taking cognizance passed by the trial Court is an interlocutory order. It is submitted that the said order is not an interlocutory order and, therefore, the revision is maintainable. It is further submitted that from the evidence adduced by the respondent no.1/ complainant, prima facie, offence under Section 498-A of IPC is not made out against the petitioners as the ingredients required for making out an offence under Section 498-A of IPC are wholly lacking.

4. Learned senior counsel for the petitioners placed reliance in the case of *Devchand Manji Bheel Vs. Kutub @ Kutubuddin Fakruddin*, 2005 (I) MPWN [12], wherein a Bench of this Court has held that order issuing process for trial is revisable.

5. Further, learned senior counsel for the petitioners placed reliance in the case of *Adalat Prasad Vs. Rooplal Jindal and Others*, 2004 SCC (Cri) 1927, wherein the Hon'ble Apex Court in paragraph 15 has held as under:-

> " It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code."

6. Relying on the above citations, it is contended by learned senior counsel for the petitioners that the order passed by learned Magistrate for taking cognizance against the petitioners is interlocutory, hence, that order is not justified and deserves to be quashed and the petitioners are entitled to be discharged.

7. Combating the claim of the petitioners, learned counsel for the respondents urged that the order passed by the trial Court is interlocutory order, hence, revision is not maintainable. The order of Revisional Court is legal, proper and does not require any interference. Therefore, the petition deserves to be dismissed.

8. Heard rival contentions of both the parties and perused the documents on record.

9. So far as the order of taking cognizance against the petitioners is concerned, this order cannot be treated as interlocutory order and hence, no bar of sub-section (2) of Section 397 of Cr.P.C. is applicable in the present case. The

petitioners are substantially affected by that order. Hence, order cannot be treated as interlocutory order.

10. In the case of *Rajendra Kumar Sitaram Pande and others Vs. Uttam and Another,* (1999) 3 SCC 134, the Hon'ble Apex Court has held that it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same.

11. In the case of *Madhu Limaye Vs. State of Maharashtra,* AIR 1978 SC 47, the Hon'ble Apex Court has held that ordinary and generally the expression "interlocutory order" has been understood and taken to mean as a converse of the term "final order". But an interpretation and the universal application of the principle that what is not a final order, must be an interlocutory order, is neither warranted nor justified. If it were so, it will render almost nugatory the revisional power of the Sections Court or the High Court conferred on it by Section 397(1). On such a strict interpretation only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seen to be the intention of the Legislature when it retained the revisional power of the High Court in terms identical to the one in the 1989 Code.

12. Similar is in the case of *V. C. Shukla Vs. State,* 1980 SCC (Cri) 695, wherein the Hon'ble Apex Court has held that the term " interlocutory order" used in the code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi-final. This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same. The High Court, therefore, was not justified in coming to the conclusion that the Sessions Judge had not jurisdiction to interfere with the order in view of the bar under sub-section (2) of Section 397 of the Code.

13. Considering the above legal position, the order of issuance of process and taking cognizance cannot be treated as interlocutory order. Hence, the order dated 15/12/2009 passed by the Revisional Court in Criminal Revision No.52/2008 is hereby set aside and the matter is remanded back to the Revisional Court to decide the revision afresh in accordance with law.

14. With the aforesaid observation, M.Cr.C. stands disposed of.

Petition disposed of.
